

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.92 of 2008

Smt. Lalati Bai, W/o Man Singh Verma, aged about 25 years (Daughter of deceased Ram Narayan Verma), R/o Gram Paraswani, Tahsil Bhatapara, District Raipur (C.G.)

(Plaintiff)
(Appellant in first appeal)
---- Appellant

Versus

1. Sukdeo Verma, S/o Kunj Ram Verma, aged 50 years.
2. Dashrath Verma, S/o Sukdeo Verma, aged 30 years.
3. Rajkumar Verma, S/o Sukdeo Verma, aged 28 years.
4. Ram Kumar Verma, S/o Sukdeo Verma, aged 26 years.
5. Om Prakash Verma, S/o Sukdeo Verma, aged 24 years.

All are cultivators and residents of Village Paraswani, Tahsil Bhatapara, District Raipur (C.G.)

6. Smt. Dulari Bai, W/o Krishna Verma, aged 47 years, R/o Village Khaira, Post Office Anda, Tahsil Patharia, District Bilaspur (C.G.)
7. Sunita Kumari, D/o Ganesh Ram Verma, aged 20 years, through Natural Guardian father Ganesh Ram, R/o Village Anda, Tahsil Patharia, District Bilaspur (C.G.)
8. Jagdish, S/o Vishnu Verma, Cultivator, R/o Village Paraswani, Tahsil Bhatapara, District Raipur (C.G.)
9. State of Chhattisgarh, Through Collector, Raipur, District Raipur (C.G.)
(Defendants)
(Respondents in first appeal)
---- Respondents

For Appellant/Plaintiff: -

Mr. Sourabh Sahu, Advocate.

For Respondents No.1 to 7/Defendants: -

Mr. Anshuman Shrivastava, Advocate on behalf of
Mr. Vinay Pandey, Advocate.

For Respondent No.9 / State: -

Mr. Aakash Pandey, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

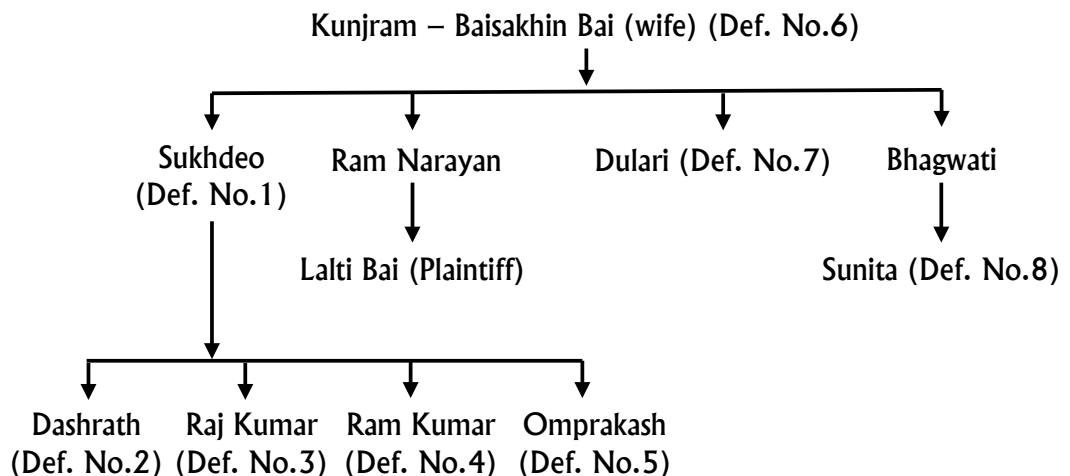
09/03/2020

1. This second appeal under Section 100 of the CPC filed by the plaintiff was admitted for hearing by formulating the following substantial question of law: -

“Whether the findings recorded by the Courts below that the property in Schedule 1 to 4 of the plaint is the self acquired property of the defendant Sukdeo Verma, is perverse?”

(For the sake of convenience, parties hereinafter will be referred as per their status shown and ranking given in the suit before the trial Court.)

2. The following genealogical tree would demonstrate the relationship among the parties:



3. Kunjram had two sons and two daughters namely Sukdeo, Ram Narayan, Dulari and Bhawati. The plaintiff is daughter of Ram Narayan. Sole plaintiff Lalti Bai filed suit for declaration of title and partition in the property shown in Schedules 1 to 5 of the schedule appended to the plaint stating inter alia that it is the self-acquired property of her grandfather Kunjram in which her late father has $\frac{1}{3}$ share in the suit property and in which the defendants pleaded that it is the self-acquired property

of Sukdeo (except the property shown in Schedule 5 appended to the plaint), therefore, the plaintiff is not entitled for share in the suit property and not entitled for decree of declaration and partition.

4. The trial Court upon appreciation of oral and documentary evidence available on record only decreed the property shown in Schedule 5 of the plaint and dismissed the suit with regard to the properties shown in Schedules 1 to 4 which the first appellate Court in an appeal filed by the plaintiff maintained resulting into preference of second appeal under Section 100 of the CPC by the plaintiff in which substantial question of law has been framed which has been recorded in the opening paragraph of this judgment.
5. Mr. Sourabh Sahu, learned counsel appearing for the appellant herein / plaintiff, would submit that both the Courts below have concurrently held that the properties shown in Schedules 1 to 4 are self-acquired property of defendant No.1 and thereby committed illegality in denying decree in favour of the plaintiff overlooking the candid admission made by defendant No.1 and his witnesses that the property shown in Schedule 1 to 4 are the ancestral property in the hands of Kunjram, therefore, the plaintiff being grand-daughter would be entitled for $\frac{1}{4}$ share in the suit property. As such, judgment & decree of both the Courts below to the extent of not decreeing the suit in relation to the properties shown in Schedules 1 to 4 deserves to be set aside.
6. Mr. Anshuman Shrivastava, Advocate appearing on behalf of Mr. Vinay Pandey, learned counsel for respondents No.1 to 7 herein / defendants, would support the judgment & decree of the first appellate Court and submit that the judgment & decree passed by the first appellate Court is

in accordance with law and no interference is called by this Court in exercise of jurisdiction under Section 100 of the CPC.

7. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the records of both the Courts below with utmost circumspection.

Schedule 1 annexed with the plaint: -

8. Schedule 1 of the plaint is house and courtyard. It is the plaintiff's case that the property mentioned in Schedule 1 of the plaint is the property of her grand-father Kunjram which the parties have inherited, therefore her late father is also entitled to share in the said property of which she is entitled. Both the Courts have denied share to the plaintiff. The said claim has been refuted by the defendants by filing written statement (paragraph 4) stating inter alia that the suit house has been constructed from the earnings of defendant No.1 with the assistance of his mother.
9. Defendant No.1 Sukhdeo has been examined as DW-1. Though he has pleaded that there is already partition during the lifetime of his father and the plaintiff's father was given 1.50 acres of land, but no evidence has been brought to demonstrate that the plaintiff's father was given 1.50 acres of land and he has also admitted in paragraph 5 of his statement that he has filed no document evidencing that he has purchased the suit land from his own income.
10. Jeevanlal (DW-2) has clearly admitted in paragraph 1 of his statement that defendant No.1 has constructed a house on the land which is the ancestral property of Kunjram and he has also admitted that Sukhdeo was living in the accommodation which is the ancestral house. In

paragraph 6, he has also admitted that all the lands recorded in the names of Baisakhin Bai, Dulari Bai, Bhagwati Bai, Sukdeo, etc., are the properties held by Kunjram.

11. Likewise, Melandas (DW-4) in paragraph 10 of his statement has clearly admitted that defendant No.1 Sukhdeo was residing in the house in which Kunjram was previously residing and Sukhdeo has not purchased the suit house. In paragraph 12 he has admitted that all the suit lands are ancestral properties of Kunjram.

12. In view of the above, there is not an iota of doubt that the suit house and court yard are the exclusive properties of Sukhdeo – defendant No.1 and as such, the fact of partition between Kunjram, Sukhdeo and the plaintiff's father has not been established. Therefore, the properties mentioned in Schedule 1 annexed with the plaint being the ancestral properties, plaintiff's father Ram Narayan was entitled for share in the suit property and his daughter is also entitled for share of her late father in the suit property. It is held accordingly.

Schedule 2 annexed with the plaint: -

13. So far as the properties mentioned in Schedule 2 of the plaint are concerned, it is the plaintiff's case that the suit property was purchased by sale deed dated 21-3-1988 in the names of defendants No.2 to 5 during their minority, but the said sale deed has not been challenged and it has not been pleaded that the suit properties mentioned in Schedule 2 of the plaint was purchased out of the income of the joint family and the joint family has nucleus to purchase that property. In that view of the matter, it cannot be held that the suit properties mentioned in Schedule 2 of the plaint purchased by defendants No.2 to 5 was the joint family

property. (See Srinivas Krishnarao Kango v. Narayan Devji Kango and others¹ and D.S. Lakshmaiah and another v. L. Balasubramanyam and another².) As such, the properties mentioned in Schedule 2 annexed with the plaint cannot be held to be the properties owned by joint family and therefore the plaintiff is not entitled for partition in the said properties mentioned in Schedule 2 appended with the plaint.

Schedule 3 annexed with the plaint: -

14. So far as the suit property mentioned in Schedule 3 of the plaint namely Khasra No.123/2, area 0.227 hectare, is concerned, grand-father of the plaintiff Kunjram has purchased the said property vide Ex.D-1 and Khasra No.126, area 0.109 hectare, was purchased vide Ex.D-3, and other properties were also the properties claimed by the plaintiff to be the properties of her grand-father Kunjram. The defendants claimed that they have received the said property on family partition with the consent of defendants No.1, 6, 7 and 8, but no documents evidencing family partition has been placed on record, whereas the fact of partition between Kunjram, Sukhdeo and the plaintiff's father has been though pleaded, but same has not been established by placing material on record. Melandas (DW-4) has clearly admitted all the suit lands to be the ancestral properties in the hands of Kunjram and that they were jointly cultivated by Kunjram and defendants No.1 & 2. Khasra Nos.123/2 and 126 have been shown to be purchased by Kunjram himself and defendants No.1 & 3, respectively. As such, it has duly been established on the face of record that so far as the properties mentioned in Schedule 3 is concerned, it was the ancestral property of

1 AIR 1954 SC 379

2 (2003) 10 SCC 310

Kunjram in which the plaintiff's father was entitled to get share which he has not been given. Therefore, the finding of the two Courts below in respect of the properties mentioned in Schedule 3 annexed with the plaint is perverse and contrary to record and it is hereby set-aside and the plaintiff is entitled for share of her father in Schedule 3 appended with the plaint.

Schedule 4 annexed with the plaint: -

15. The properties mentioned in Schedule 4 of the plaint were sold vide sale deed dated 27-1-1997 (Ex.P-6) in favour of defendants No.1 to 7 in which the plaintiff is also one of the sellers, though she was minor through her guardian defendant No.1 which has been explained by the defendants to be the legal necessity and which the Courts below have rightly accepted. Such a finding is a finding of fact. Apart from that, the fact that no permission has been granted by the jurisdictional court for selling the property of minor is also bereft of any substance, as the suit land bearing Khasra No.328 was the joint family property which was alienated by all members of the joint family and for alienation of joint family property obtaining of permission under Section 8 of the Hindu Minority and Guardianship Act, 1956 is not required.

16. The Supreme Court in the matter of **Sri Narayan Bal and others v. Sridhar Sutar and others**³ has clearly held that the previous permission of the court under Section 8 of the Hindu Minority and Guardianship Act, 1956 for disposing of the undivided interest of the minor in the joint family property is not required.

17. In view of the above, the alienation made by the plaintiff and other

members by sale deed dated 27-1-1997 mentioned in the suit property (Schedule 4 annexed with the plaint) is justified and the plaintiff is not entitled for any share in the said property and it has rightly been held so by the Court below.

18. In view of the aforesaid facts and circumstances of the case, the appeal of the plaintiff partly succeeds. Consequently, in the notional partition held between Kunjram, Sukhdeo and Ram Narayan so far as the properties mentioned in Schedules 1 & 3 annexed with the plaint, each one will get $\frac{1}{3}$ share and $\frac{1}{3}$ share of Kunjram will be further divided into four parts, so the plaintiff will be entitled for $\frac{1}{3} + \frac{1}{12}$ share.

19. The substantial question of law is answered accordingly and the appeal is partly allowed to the extent indicated herein-above. Parties shall bear their own cost(s).

20. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge