

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.207 of 2008

1. Smt. Ramhin Bai, aged about (42) 56 years, W/o Shri Beniram Sahu,
R/o Village Khairtarayee, Tah. Balod, Distt. Durg (C.G.)
(Defendant No. 1)
2. Smt. Suraja Bai, W/o Parsaram Sahu, aged about (40) 56 years, R/o
Village Jagtara, Tah. Balod, Distt. Durg (C.G.)
(Defendant No. 2)
---- Appellants

Versus

Ram Ratan (Since dead) through his Legal representatives.
(Plaintiffs)

1. Chatur Ram, S/o Late Ram Ratan Sahu, aged about 50 years,
(Plaintiff No.1)
2. Manohar Lal, S/o Late Ram Ratan Sahu, aged about 42 years,
(Plaintiff No.2)
3. Dhannu Lal, S/o Late Ram Ratan Sahu, aged about 40 years,
(Plaintiff No.3)
4. Amrit Lal, S/o Late Ram Ratan Sahu, aged about 38 years,
(Plaintiff No.4)
5. Sunder Lal, S/o Late Ram Ratan Sahu, aged about 32 years,
(Plaintiff No.5)
6. Bisan Bai (Died and deleted)
(Plaintiff No.6)

Respondents No.1 to 5 R/o Nayapara, Balod, Distt. Durg

7. Savitri Bai, Wd/o Late Ram Ratan Sahu, aged about 48 years, R/o
Pasaud, Tah. Gunderdehi, Distt. Durg (C.G.)
(Plaintiff No. 7)
8. Kunti Bai, D/o Late Ram Ratan Sahu, aged about 46 years, R/o Pondi,
Tah. Balod, Distt. Durg (C.G.)
(Plaintiff No.8)
9. Kanti Bai, D/o Late Ram Ratan Sahu, aged about 34 years, R/o Baghela,
Tah. Gunderdehi, Distt. Durg
(Plaintiff No.9)
10. Janaki Bai, D/o Ram Ratan Sahu, aged about 30 years, R/o Nevarikala,

Tah. Balod, Distt. Durg (C.G.)

(Plaintiff No. 10)

11. Dulari Bai, D/o Late Ram Ratan Sahu, aged about 30 years, R/o Singarpur, Tah. Daundi Lohara, Distt. Durg (C.G.)

(Plaintiff No. 11)

12. Narayan Lal, S/o Bheesan Lal Sahu, aged about 35 years,

(Defendant No.3)

13. Rup Ram, S/o Bheesam Lal Sahu, aged about 33 years,

(Defendant No. 4)

14. Kaushal Ram, S/o Bheesam Lal Sahu, aged about 22 years

(Defendant No. 5)

15. Hemant Kumar, S/o Bheesam Lal Sahu, aged about 19 years

(Defendant No. 6)

16. Bheesam Lal (Died and deleted)

(Defendant No.7)

Respondents No.12 to 15 R/o Balod, Tah. Balod, Distt. Durg (C.G.)

17. Lalit Prasad, S/o J.N. Prasad, aged about 24 years,

(Defendant No. 8)

18. Kamleshwar Prasad, S/o J.M. Prasad, aged about 20 years,

(Defendant No. 9)

19. Nageshwar Prasad, S/o J.N. Prasad, aged about 18 years,

(Defendant No. 10)

20. Kewra Bai, W/o J.N. Prasad, aged about 42 years.

(Defendant No. 11)

Respondents No.17 to 20 R/o Balod, Tah. Balod, Distt. Durg, presently resided at Block-B , Qtr.No.735, Sonari, Distt. Singbhoom (Bihar)

21. State of Chhattisgarh, through the Collector, District Durg (C.G.)

(Defendant No. 12)

---- Respondents

For Appellants / Defendants No.1 and 2: -

Mr. Viprasen Agrawal, Advocate.

For Respondents No.1 to 20: -

None present though served.

For Respondent No.21 / State: -

Mr. Ravi Kumar Bhagat, Deputy Government Advocate and
Mr. Aakash Pandey, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

20/02/2020

1. This second appeal preferred under Section 100 of the CPC by defendants No.1 & 2 / appellants herein was admitted for hearing by formulating the following substantial question of law: -

“Whether the lower appellate Court was not justified in holding that in the year 1975 in a partition between Ram Ratan and Dukala Ram, the suit properties were allocated as mentioned in paragraph 6 of the plaint?”

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

2. Original plaintiff Ramratan, S/o Dhanesar Sahu, filed a suit for declaration of title that his father were two brothers namely, Dhanesar & Dukla and the lands mentioned in paragraphs 2 and 5 of the plaint namely, 2.941 hectares & 1.290 hectares, respectively, were partitioned between him and Dukla and in the said partition, 2.072 hectares came in his share and 2.159 hectares fell in the share of Dukla which Dukla has bequeathed in his favour by way of will dated 1-7-1988 (Ex.P-7) and as such, he is the title-holder of the entire suit land in exclusion of defendants No.1 & 2 who are daughters of Dukla, which defendants No.1 & 2 refuted by filing written statement stating inter alia that Sukuram had five sons namely, Nanhe, Jagesar, Suklal, Dhanesar & Dukla, and the plaintiff was son of Dhanesar, whereas defendants No.1 & 2 namely, Ramhin Bai & Surja Bai, respectively, are daughters of Dukla and defendant No.3 Prem Bai is daughter of Dhanesar and partition between Suklal, Nanhe and Jagesar, who are also brothers of

Dhanesar and Dukla, had already taken place 50 years back from the date of filing of suit and as such, no will was ever executed vide Ex.P-7 in favour of the plaintiff by late Dukla.

3. The trial Court upon pleadings of the parties struck ten issues and held that Sukuram had five sons namely, Nanhe, Jagesar, Suklal, Dhanesar & Dukla and partition had already taken place between them 50 years back from the date of institution of suit and no will was ever executed by Dukla in favour of Ramratan on 1-7-1988 and accordingly, dismissed the suit. Questioning the judgment & decree of the trial Court, the plaintiffs preferred first appeal before the first appellate Court under Section 96 of the CPC in which the first appellate Court accepted the finding of the trial Court with regard to non-execution of valid will by Dukla in favour of plaintiff Ramratan, but the first appellate Court reversed the finding of the trial Court on issue Nos.2 & 3 and accordingly, decreed the suit granting declaration in favour of the plaintiffs that the plaintiffs are entitled for declaration of title with regard to ten khasras, total area 2.072 hectares against which defendants No.1 & 2 being daughters of Dukla preferred this second appeal under Section 100 of the CPC in which substantial question of law has been formulated which has been set-out in the opening paragraph of this judgment.
4. Mr. Viprasen Agrawal, learned counsel appearing for the appellants herein / defendants No.1 & 2, would submit the first appellate Court misdirected itself by not reversing the finding of the trial Court that Sukuram had five sons and partition had already took place between them 50 years prior to the date of institution of suit and therefore no

partition could again be taken place in the year 1975 though the finding of will in favour of Ramratan by Dukla was affirmed, yet the first appellate Court has committed illegality in decreeing the suit of the plaintiff which is contrary to the facts and law available on record and it deserves to be set-aside and the suit be dismissed.

5. None present for respondents No.1 to 20 herein though served.
6. I have heard learned counsel for the appellants herein / defendants No.1 & 2 at length and considered his submissions made herein-above and also went through the record with utmost circumspection, as none appeared on behalf of respondents No.1 to 20 herein, though all are served with notices of this appeal.
7. It is correct to say that both the Courts below have concurrently held that Dukla has not executed any valid will in favour of Ramratan on 1-7-1988 vide Ex.P-7 as such that finding need not be considered again, as there is no challenge to that finding that Dukla has not executed any will in favour of the plaintiff vide Ex.P-7.
8. The trial Court upon detailed analysis of the evidence available on record of the plaintiff's witnesses in paragraphs 7 to 9 has clearly held that parties were five brothers namely, Nanhe, Jagesar, Suklal, Dhanesar & Dukla; and the property has already been partitioned between them 50 years back. In this regard, the evidence of the plaintiffs and their witnesses may be noticed herein-below.
9. Plaintiff Ramratan himself as PW-1 in paragraph 8 of his evidence has stated that their account has been separated and his father were five brothers namely, Nanhe, Jagesar, Suklal, Dhanesar & Dukla. He has

also given the details of the property given to them in partition. Likewise, Jagatram (PW-3) has also stated that the plaintiff's father were five brothers and all five brothers have partitioned 50 years back from the date of institution of suit. In the cross-examination of Surjabai (DW-1) – defendant No.2, she has clearly stated that 40-50 years back, partition between Nanhe, Jagesar and Suklal has already taken place. Ganeshram (DW-2) in cross-examination, paragraph 9, has also stated that partition has already taken place among five brothers.

10. As such, it is a clear cut evidence available on record to establish the plaintiff's and defendants' evidence that plaintiff's father namely Dhanesar were five brothers i.e. Nanhe, Jagesar, Suklal, Dhanesar & Dukla and partition has taken place between them 50 years prior to the date of institution of suit and therefore the property was not available to be partitioned again in the year 1975.

11. The Supreme Court in the matter of Ratnam Chettiar and others v. S.M. Kuppuswami Chettiar and others¹ laid down the law as to when the already concluded partition can be reopened and it has been held as under: -

(1) A partition effected between the members of the Hindu undivided family by their own volition and with their consent cannot be reopened, unless it is shown that the same is obtained by fraud, coercion, misrepresentation or undue influence. In such a case the Court should require a strict proof of facts because an act inter vivos cannot be lightly set aside.

(2) When the partition is effected between the members of the Hindu undivided family which consists of minor coparceners it is binding on the minors also if it is done in good faith and in bona fide manner keeping into account the

1 (1976) 1 SCC 214

interests of the minors.

(3) Where, however, a partition effected between the members of the Hindu undivided family which consists of minors is proved to be unjust and unfair and is detrimental to the interests of the minors the partition can certainly be reopened whatever the length of time when the partition took place. In such a case it is the duty of the Court to protect and safeguard the interests of the minors and the onus of proof that the partition was just and fair is on the party supporting the partition.

(4) Where there is a partition of immovable and moveable properties but the two transactions are distinct and separable or have taken place at different times, if it is found that only one of these transactions is unjust and unfair it is open to the Court to maintain the transaction which is just and fair and to reopen the partition that is unjust and unfair.”

12. Reverting to the facts of the present case, it is not the case of the plaintiff that partition, which has taken place between his father and brothers 50 years prior to the date of institution of suit, was either unjust and unfair or it suffers from fraud, coercion, misrepresentation or undue influence. As such, following the judgment of the Supreme Court in Ratnam Chettiar (supra), it is held that partition which has already concluded between the parties and which is evident from the record and evidence noticed herein-above, cannot be reopened.

13. In that view of the matter, the first appellate Court is absolutely unjustified in holding that partition did not take place 50 years prior to the date of institution of suit and the party was available for partition in the year 1975 and in the year 1975, partition took place. The finding recorded by the first appellate Court in this regard is hereby set-aside. As such, judgment & decree of the first appellate Court is set-aside and that of the trial Court is restored. The substantial question of law is answered accordingly.

14. The appeal is allowed to the extent indicated herein-above. Parties are directed to bear their own cost(s).

15. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

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