

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 341 of 2009**

Mani Ram S/o Suna Ram Sande, Aged about 40 years,
R/o Village Jampali, Post Jajang, Tahsil Sakti,
District Janjgir-Champa, Chhattisgarh.

---Appellant/Defendant No. 1

Versus

1. Paharu S/o Sunaram, Aged about 35 years.

--- Plaintiff

2. Dhanwa S/o Sunaram, Aged about 50 years.

3. Gopal S/o Ramcharan, Aged about 55 years.

Above all by Caste Sande, R/o Village Jampali, Post
Jajang, Tahsil Sakti, District Janjgir-Champa,
Chhattisgarh.

4. The State of Chhattisgarh, Through the Collector,
Janjgir, District Janjgir Champa, Chhattisgarh.

---- Respondents

For Appellant :- Mr. Pushpendra Ku. Patel, Advocate
For State :- Dr. Veena Nair, Dy. A.G.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

01/09/2020

1. Proceedings of this matter have been taken up
through video conferencing.

2. Heard on admission and formulation of substantial
question of law in this second appeal preferred by

the appellant/defendant No. 1 under Section 100 of the CPC. By the impugned judgment and decree, the first appellate Court reversed the judgment and decree of the trial Court and decreed the suit in favour of the plaintiff.

3. Mr. Pushpendra Ku. Patel, learned counsel for the appellant/defendant No. 1, would submit that the first appellate Court is absolutely unjustified in reversing the judgment and decree of the trial Court by recording a finding which is totally impermissible in law and is contrary to the facts and law available on record as well, as such, the appeal deserves to be admitted by formulating substantial question of law for determination in this regard.

4. Plaintiff as well as defendants No. 1 and 2, all three of them are brothers. Plaintiff brought a suit for permanent injunction simpliciter stating inter alia that the suit land admeasuring 0.14 acre in total was acquired by him in the mutual partition taken place between him and defendants No. 1 and 2 after which he came into possession of the said suit land, but the defendants, on the garb of registered sale deed dated 06/06/1995 (Ex. D/1), threatened the plaintiff to dispossess him from the

suit land which led to the filing of the suit by the plaintiff for permanent injunction.

5. Defendants opposed the plaint averments and stated in their written statement that defendant No. 1 purchased the suit land from one Baigaram by sale deed dated 06/06/1995 (Ex. D/1), therefore, plaintiff is not entitled for decree in his favour.

6. Learned trial Court, after evaluation of oral and documentary evidence on record, though held that partition has taken place between the plaintiff and defendants No. 1 and 2, but ultimately dismissed the suit. On appeal being preferred by the plaintiff, learned first appellate court reversed the judgment and decree of the trial Court holding that the fact of mutual partition between the plaintiff and defendants No. 1 and 2 is true and the suit land is duly recorded in the name of the plaintiff vide Exhibits P/1 and P/2, as such, he is the title-holder of the suit land and the sale deed dated 06/06/1995 (Ex. D/1) does not include the suit land held by the plaintiff, therefore, defendant No. 1's plea is not established and he has not perfected his title by way of adverse possession.

7. The concurrent finding recorded by both the Courts below with regard to the fact of mutual partition

that took place between the plaintiff and defendants No. 1 and 2 and further the findings recorded by the first appellate Court that the suit land is held by the plaintiff vide Exhibits P/1 and P/2 and the defendant No. 1 is not the title-holder by the sale deed (Ex. D/1) are findings of fact based on evidence available on record which is neither perverse nor contrary to the record.

8. The second appeal deserves to be and is accordingly dismissed in limine without notice to the other side. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet