

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.64 of 2006****Judgment Reserved on :20.01.2020****Judgment Delivered on:24.01.2020**

1. Sonsingh S/o Late Jhitku,
2. Samu S/o Bhaira,
3. Tagru S/o Bhaira,
4. Gangru S/o Late Jhitka,
5. Sukri Wd/o Late Mansingh

All R/o Hataiguda Para, Village-Keshlur, Tahsil-Jagdalpur, Dist: Bastar (CG)

----- Appellants/Defendants**Versus**

1. Sonaru S/o Gagru (since dead) through – LRS
 - a) Manki W/o Late Sonaru, Aged about 50 years,
 - b) Panchmi D/o Late Sonaru, W/o Anthu, Aged about 27 years
 - c) Kamlesh S/o Late Sonaru, Aged about 8 years
 - d) Fulmati D/o Late Sonaru, Aged about 5 years

Respondents 1c & 1d are minors through their natural guardian and mother Manki W/o Late Sonaru, All R/o Village – Keshlur, Hataigudapara, Tahsil – Jagdalpur, Dist : Bastar-(CG)

----- LR's of Plaintiff

2. State of Chhattisgarh Through-Collector Bastar, Jagdalpur (CG)

----- Respondents

For Appellants/Defendants: Mr.Prafull Bharat and Mr.Akash Pandey, Advocates
 For Respondents No.1(a) to 1(d)/LR's of Plaintiff:
 None present
 For Respondent No.2/State: Mr.Ravi Bhagat, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal**C.A.V. Judgment**

1. The substantial questions of law involved, formulated and to be answered in this second appeal

preferred by the appellants/defendants are as under:-

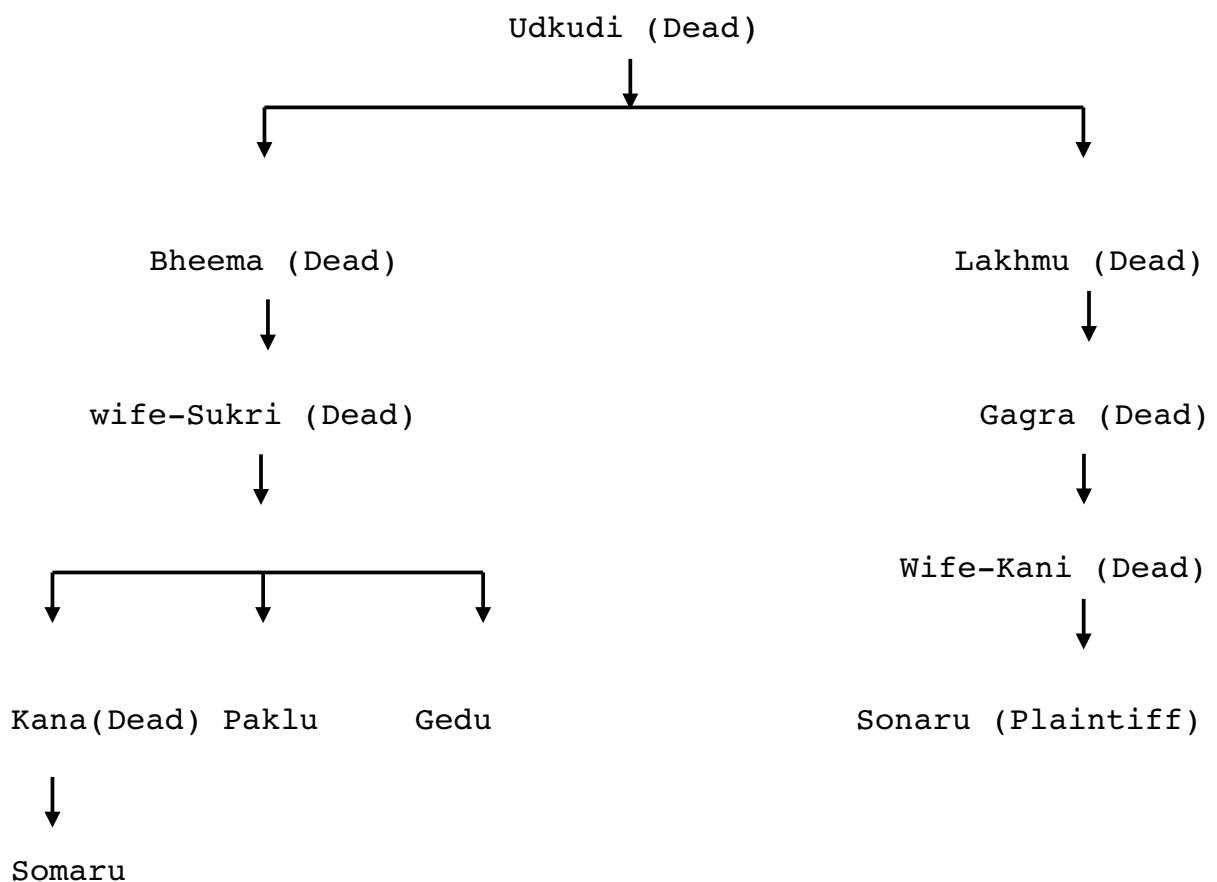
"1. Whether a suit for declaration of title without prayer for consequential relief is maintainable ?

2. Whether the suit was barred by law of limitation ?

3. Whether the finding of both the Courts below that the plaintiffs and defendants do not hail from a common ancestor, has been arrived at by non-consideration of the oral and documentary evidence available on record and as such it is perverse ?"

[For the sake of convenience, the parties would be referred hereinafter as per their status shown in the suit before the trial Court].

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



3. Plaintiff-Sonarlu filed a suit for declaration of title and permanent injunction stating inter-alia that the suit property was held by Udkudi and he was having 13.65 acres of land, he had two sons namely Bheema and Lakhmu. After death of Udkudi, Bheema and Lakhmu came into joint possession. Gagra was son of Lakhmu and the plaintiff was son of Gagra. After death of Bheema, Lakhmu and Gagra, the suit property came into the name of the plaintiff in the year 1963 when he was minor. Since the plaintiff was unable to cultivate the suit land, assistance was sought from the defendants father Bhaira and Jhitka and the plaintiff allowed the defendants' father to cultivate half of the suit land on the basis of *adhiya*. The plaintiff has no relationship at all with the family of Bhira and Ghitka. When the defendants father got the suit land mutated in their names and order of partition dated 18.7.2000 was passed and threatened the plaintiff to dispossess from the suit land, necessity arose to file a suit for declaration of title and permanent injunction.

4. The defendants have filed their written statement and denied the averments made in the plaint stating inter-alia that Udkuda had one more son namely Paran apart from Bheema and Lakhmu. After death of Udkuda,

the suit land was recorded in the name of elder son Bheema, however, all three brothers were joint in cultivation, as such, the plaintiff is not entitled for exclusively title and not entitled for permanent injunction. It was further pleaded that the suit was barred by limitation as cause of action arose in the year 1963, 1976-77 and 77-88 and the suit was filed on 3.4.2001 and prayed for dismissal of suit.

5. The trial Court upon evaluation and after appreciation of oral and documentary evidence available on record, by its judgment and decree dated 8.9.2003, decreed the suit. On appeal being preferred by the defendants under Section 96 of the CPC before the first appellate Court, the said appeal Court dismissed the appeal and upheld the judgment and decree of the trial Court, against which, this second appeal under Section 100 of the CPC has been filed by the appellants/defendants, in which substantial questions of law have been framed by this Court, which have been set-out in opening paragraph of this judgment.

6. Mr. Prafull Bharat, learned counsel for the appellants/defendants, would submit that both the Courts below were absolutely unjustified in entertaining the suit as the suit for declaration of

title without prayer for consequential relief of possession was not maintainable and the suit was barred by limitation. He would further submit that both the Courts below have committed legal error in holding that the plaintiff and the defendants do not belong to a common ancestor Urkuda, as such, finding recorded in this regard is finding which is perverse and contrary to record and therefore, it is liable to be set aside.

7. None present for respondents No.1(a) to 1(d).

8. I have heard learned counsel for the appellants/defendants and considered his submission and also went through the records with utmost circumspection.

Answer to substantial question of law No.1:-

9. It is the case of the plaintiff that half of the suit land was given to Jhitku, Bhaira and Mansingh by the plaintiff. In para-5 of the plaint, it has been pleaded that the defendants are in possession of half of the suit land. The defendants in their written statement have stated that all three sons of Urkudi namely Bheema, Lakhmu and Paran are in joint possession of the suit land and cultivating jointly. In para-4 of written statement, it has been specifically pleaded that the suit land is recorded

in the names of the plaintiff and the defendants jointly and they are cultivating the same jointly as there is no plea in the written statement that the plaintiff is not in possession of the suit land and only the defendants are in possession of the suit land and therefore, in absence of further relief, under proviso to Section 34 of the Specific Relief Act, 1963, the suit is barred. Even otherwise, the trial Court has held that the plaintiff has given the suit land in adhiya to the defendants and their ancestors, which has been affirmed by the first appellate Court. So question that the suit for declaration of title without prayer for consequential relief is not maintainable and does not arise for consideration as it is neither raised nor considered by both the Courts below and for the first time, such a plea cannot be permitted to be raised by the defendants before this Court. Accordingly, this substantial question of law is answered in favour of the plaintiff and against the defendants.

Answer to substantial question of law No.2:-

10. The plaintiff asserted in his suit filed before the trial Court that when the revenue Court passed an order for partition and possession on 18.7.2000

and thereafter the defendants started threatening to dispossess the plaintiff from the suit land and as such, cause of action arose for filing the suit for declaration of title and permanent injunction, in which the defendants filed their written statement and in para-9 denied the accrual of cause of action on 18.7.2000 and only one line plea was raised that the suit was not barred by limitation and in the year 1963, 1976-77 and 1978 changes were made in revenue records as the suit is barred by limitation. The trial Court has framed the issue NO.9 and came to the specific conclusion that on the date of order of partition dated 18.7.2000 cause of action has arisen and the suit filed on 3.4.2001 is within the period of limitation.

- 11.** The plaintiff's principal relief is declaration of title. Article 58 of the Limitation Act, 1963 (hereinafter called as "the Act of 1963") applies only where the suit is for declaration, which states as under:-

58	To obtain any other declaration	Three years	When the right to sue first accrues.
----	---------------------------------	-------------	--------------------------------------

- 12.** Article 58 of the Act of 1963 prescribes a period of limitation of three years commencing when

the right to sue first accrues. It is trite law that the limitation would not commence unless there has been a clear and unequivocal threat to infringe the right claimed by the plaintiffs (See C. Mohd. Yunus v. Syed Unnissa¹, Rukhmabai vs. Laxminarayan² and Mt. Bolo vs. Mt. Koklan³).

13. In C. Mohd. Yunus's case (supra), it is further held by the Supreme Court that mere denial by the defendant of the rights of the plaintiffs would not set the period of limitation running against them. In Mst. Rukhmabai's case (supra), Their Lordships observed that where there were successive invasions or denials of right, the right to sue would accrue when the defendant had clearly and unequivocally threatened to infringe the right asserted by the plaintiff in the suit. Their Lordships also observed:-

"Every threat by a party to such a right, however ineffective and innocuous it may be, cannot be considered to be clear and unequivocal threat so as to compel him to file a suit, whether a particular threat gives right to a compulsory cause of action depends upon the question whether that threat effectively invades or jeopardizes the said right."

14. 12. In Daya Singh and another v. Gurdev Singh

1 AIR 1961 SC 808

2 AIR 1980 SC 335

3 AIR 1930 PC 270

(dead) by LRs. and others⁴ relying upon C. Mohd. Yunus's case (supra) Their Lordships of the Supreme Court have held that mere existence of adverse entry in revenue records does not give rise to cause of action. Cause of action to sue accrues only when right asserted in suit is infringed or there is threat to infringe that right.

15. 13. Similarly, in the matter of Khatari Hotels Private Limited and another v. Union of India and another⁵ the Supreme Court has considered the earlier decisions of Rukhmabai's case (supra) and Mt. Bolo's case (supra) and held as under:-

"24. The Limitation Act, 1963 (for short, "the 1963 Act") prescribes time limit for all conceivable suits, appeals etc. Section 2(j) of that Act defines the expression "period of limitation" to mean the period of limitation prescribed in the Schedule for suit, appeal or application. Section 3 lays down that every suit instituted, appeal preferred or application made after the prescribed period shall, subject to the provisions of Sections 4 to 24, be dismissed even though limitation may not have been set up as a defence. If a suit is not covered by any specific article, then it would fall within the residuary article. In other words, the residuary article is applicable to every kind of suit not otherwise provided for in the Schedule.

30. While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word "first" has been used between the words "sue" and "accrued". This would mean that if a suit is based on

4 (2010) 2 SCC 194

5 (2011) 9 SCC 126

multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued."

- 16.** Reverting to the facts of the present case in the light of principles of law laid down by the Supreme Court in the above-stated judgments (supra), it is quite vivid that mere entering the name in revenue records or change in revenue records or adverse entry in revenue records does not give rise to cause of action and the period of limitation would not start running from that date as held in C. Mohd. Yunus's case (supra). In the instant case, when the order of partition was actually passed on 18.7.2000, then only on 3.4.2001 the suit was filed for declaration of title and permanent injunction, as such, finding recorded by both the Courts below that the suit is within limitation is strictly in accordance with law. It is neither perverse nor contrary to record.

Answer to substantial question of law No.3:-

- 17.** Mr.Prafull Bharat, learned counsel for the appellants/defendants, relying upon Exs.D-5, D-10 and D-17 submits that Ex.D-10 is statement of Sonaru

recorded on 24.12.70 before the Naib-Tahsildar in which he has admitted that Paran was his grandfather's brother and he is one of the co-sharer in the suit property. Exs.D-5, D-10 and D-17 clearly establish that Paran, defendants predecessor-in-title, was brother of Bheema and Lakhmu being son of Urkudi and therefore, the suit ought to be dismissed by both the Courts below. Ex.D-5 is an application filed by Son Singh and others against Sonaru before the Naib-Tahsildar, Keshlur for partition of the property holding that they have partitioned the suit land equally between them. Likewise, Ex.D-10 is the statement of Sonaru recorded before the revenue officer on 24.12.70 holding that the suit land is owned by Jhitku and Mansingh (defendants). Likewise, Ex.D-17 is the application filed by Paklu against Sonaru and others. The defendants in their written statement have pleaded that these are admitted documents in which plaintiff-Sonaru has admitted relationship between the plaintiff and the defendants, which clearly demonstrates that the plaintiff and the defendants belonged to a common ancestor and Bheema, Lakhmu and Paran, defendants predecessor-in-title were brothers.

18. Now the question for consideration would be,

whether the defendants have proved admission under Section 17 of the Indian Evidence Act, 1872 ?

19. Section 17 of the Evidence Act states as under:-

"17. Admission defined.-An admission is a statement, oral or documentary or contained in electronic form, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned."

20. The Supreme Court in the matter of **Bharat Singh and others v. Mst. Bhagirathi**⁶ considered the true nature of evidentiary value of admission and whether without confronting the maker of the admission it could be used and held as under:-

"19. Admissions have to be clear if they are to be used against the persons making them. Admissions are substantive evidence by themselves in view of Ss. 17 and 21 of the Indian Evidence Act, though they are not conclusive proof of the matter admitted. We are of opinion that the admissions duly proved are admissible evidence irrespective of whether the party making them appeared in the witness box or not and whether that party when appearing as witness was confronted with those statements in case it made a statement contrary to those admissions. The purpose of contradicting the witness under S. 145 of the Evidence Act is very much different from the purpose of proving the admission. Admission is substantive evidence of the fact admitted while a previous statement used to contradict a witness does not become substantive evidence and merely serves the purpose of throwing doubt on the veracity of the witness. What weight is to be attached to an admission made by a party is a matter

different from its use as admissible evidence."

21. The Supreme Court in the matter of Sita Ram Bhau Patil v. Ramchandra Nago Patil (Dead) by L.Rs. And another⁷ while following the principle of law laid down in Bharat Singh (supra) has held that admission before it is used against any person, it must not only be proved, but also the party must be confronted at the stage of cross examination with its previous admission and held as under:-

"17. If admission is proved and if it is thereafter to be used against the party who has made it the question comes within the provisions of Section 145 of the Evidence Act. The provisions in the Indian Evidence Act that 'admission is not conclusive proof' are to be considered in regard to two features of evidence. First, what weight is to be attached to an admission? In order to attach weight it has to be found out whether the admission is clear, unambiguous and is a relevant piece of evidence. Second, even if the admission is proved in accordance with the provisions of the Evidence Act and if it is to be used against the party who has made it, "it is sound that if a witness is under cross examination on oath, he should be given an opportunity if the document are to be used against him, to tender his explanation and to clear up the point of ambiguity or dispute. This is a general salutary and intelligible rule" (see Bal Gangadhar Tilak v. Shrinivas Pandit)⁸. The Judicial Committee in that case said, "it has to be observed with regret and with surprise that the general principle and the specific statutory provisions have not been

7 (1977) 2 SCC 49

8 42 IA 135, 147

followed". The general principle is that before any person is to be faced with any statement he should be given an opportunity to see that statement and to answer the same. The specific statutory provision is contained in Section 145 of the Indian Evidence Act that "A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant matters in question, without such writing being shown to him or being proved; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him". Therefore, a mere proof of admission, after the person whose admission is alleged to be has concluded his evidence, will be of no avail a cannot be utilised against him."

- 22.** Finally, reverting to the facts of the present case in light of principle of law flowing from the judgment of the Supreme Court in Sita Ram Bhau Patil (supra), it is quite vivid that in the instant case, the plaintiff was not confronted with documents Exs.D-5, D-10 and D-17, which is said to be admission made by the plaintiff during course of cross-examination though he was subjected to lengthy cross-examination under Section 145 of the Evidence Act and he was examined on oath as PW-1. Therefore, a mere admission by the plaintiff that Bheema, Lakshmu and Paran were brothers, if any, by Exs.D-5, D-10 and D-17 would not be a clear and unambiguous admission within the meaning of Section 17 of the Evidence Act and documents Exs.D-5, D-10 and D-17

alleged admission of the plaintiff cannot be used against him for want of confronting him as he has made contrary statement in his pleading and his evidence before the Court.

23. In view of that, both the Courts below are absolutely justified in answering the questions against the defendants and in favour of the plaintiff. The substantial questions of law are answered in favour of the plaintiff and against the defendants. I do not find any merit in this second appeal.

24. Accordingly, the second appeal deserves to be and is hereby dismissed leaving the parties to bear their own cost(s).

25. A decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)

Judge

B/-