

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.324 of 2003

Kusum Kumari, D/o Late Mohan, aged about 47 years,
Occupation Agriculture, R/o Pipra, P.S. Patna, Tehsil
Baikunthpur, Distt. Korla (C.G.)

(Plaintiff)
---- Appellant

Versus

1. Sohan (dead) through LRs
(Dfd. No.1)
 - 1.a) Raghuveer, S/o late Sohan, aged about 50 years
 - 1.b) Jawahir, S/o late Sohan, aged about 45 years
 - 1.c) Girdhari, S/o late Sohan, aged about 42 years
 - 1.d) Nahru, S/o Late Sohan, aged about 40 years

All R/o Village Kerabahara, Tahsil Manendragarh, Distt. Korla (C.G.)
2. Shanti, D/o Jukmen @ Jukki, age 47 years, R/o Basti, P.S. & Tehsil Baikunthpur, Distt. Korla (C.G.)
(Plaintiff No.2)
3. Dalluram, S/o Bahoran Rajwar, age 52 years, Occupation Agriculture, R/o Basti, P.S. & Tehsil Baikunthpur, Distt. Korla (C.G.)
(Plaintiff No.3.A)
4. Sumariya Bai, D/o Bahoranram, W/o Ramnath Rajwar, age 37 years, Occupation Agriculture, R/o Shankarpur (Belbahra), P.S. & Teh. Manendragarh, Distt. Korla (C.G.)
(Plaintiff No.3.B)
5. Rajan, Wd/o Late Mohan, age 67 years, Occupation Agriculture, R/o Pipra, P.S. Patna, Tehsil Baikunthpur, Distt. Korla (C.G.)
(Plaintiff No.4)
6. The State of Chhattisgarh, through Collector, Korla, Baikunthpur, Distt. Korla (C.G.)
(Proforma Dfd. No.2)
---- Respondents

For Appellant: Mr. Manoj Chauhan, Advocate on behalf of Mr. R.N. Jha, Advocate.

For Respondents No.1.a to 1.d: -
Mr. Sanjay Patel, Advocate.

For Respondent No.6 / State: -
Mr. Sunil Otvani, Additional Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

14/06/2021

1. The second appeal was admitted for final hearing on 8-12-2014 on the following substantial question of law: -

“Whether the two courts below were justified in holding that defendant No.1 was entitled for a right and title over the suit property only by virtue of his name being entered into the revenue records along with the name of Sundar Sai, the grand father of the plaintiff?”

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

2. Four plaintiffs – grand-son, two sons and son-in-law of Sundar Sai, filed suit for declaration of title and permanent injunction over the suit land shown in Schedule A appended with the plaint stating inter alia that it is the exclusive property of Sundar Sai in which original defendant No.1 has no right and title and mutation of his name is illegal, without jurisdiction and without authority of law. Defendant No.1 filed written statement stating inter alia that it is the joint family property of Sundar Sai and his father which he has inherited and they are in joint possession of the suit land, therefore, the plaintiffs are not entitled for decree as claimed. However, defendant No.1 has also filed counter-claim claiming half share in the suit property pleading inter alia that he is entitled for half share in the suit property, as defendant No.1's father Mohit and Sundar Sai both were brothers. The trial Court after appreciating oral and documentary evidence available on record held that the suit property is the joint family property of Sundar Sai and defendant No.1 and they are in joint possession of the suit property and accordingly, granted decree of half share

in favour of defendant No.1 and dismissed the suit of the plaintiffs. In appeal preferred by the plaintiffs, they remained unsuccessful and now, they have filed second appeal in which one substantial question of law has been formulated which has been set-out in the opening paragraph of this judgment for the sake of completeness.

3. Mr. Manoj Chauhan, Advocate appearing on behalf of Mr. R.N. Jha, learned counsel for the appellant herein / plaintiff, relying upon the written submission filed by Mr. Jha, would submit that the finding recorded by the two Courts below holding that the suit property was held by Sundar Sai and defendant No.1 is a perverse finding, as it is the exclusive property of Sundar Sai in which defendant No.1 has no right, title and interest, therefore, decree granted by the two Courts below is liable to be set aside, as the decree has been granted in favour of defendant No.1 and refused in favour of the plaintiffs and it is based on perverse finding and is contrary to the record.
4. Mr. Sanjay Patel, learned counsel appearing for the LR's of original defendant No.1 / respondents No.1.a to 1.d herein, would support the impugned judgments and decrees of the two Courts below holding that it is based on the evidence available on record, it is neither perverse nor contrary to the record.
5. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the records with utmost circumspection.
6. It is the case of the plaintiffs being the successors-in-interest of Sundar Sai, that the suit property is the exclusive property of Sundar Sai, therefore, defendant No.1 has no right and title over

the said property to which defendant No.1 has claimed that his father Mohit and Sundar Sai both were brothers, therefore Sundar Sai and he (defendant No.1), both have joint interest in the suit property and they are in joint possession of the suit property which the trial Court accepted relying upon Exs.D-2 & D-4, particularly Ex.D-4 Jamabandi in which survey settlement was granted in favour of Sundar Sai – predecessor-in-title of the plaintiffs and Mohit – predecessor-in-title of defendant No.1. As such, the finding recorded by the trial Court that the suit property was jointly held by Sundar Sai and defendant No.1's father – Mohit, is a finding of fact based on the evidence available on record. On appeal, the first appellate Court concurred with the said finding of the trial Court holding that such finding has been arrived at by the trial Court after appreciating oral and documentary evidence available on record and there is no reason to interfere with the finding recorded by the trial Court. The finding recorded by the two Courts below holding that the suit property was jointly held by Sundar Sai – predecessor-in-title of the plaintiffs and Mohit – predecessor-in-title of original defendant No.1, is a pure and simple finding of fact based on the evidence available on record, particularly Exs.D-2 & D-4 in which the names of Sundar Sai and Mohit, both are said to have been recorded. As such, the said finding is not liable to be interfered with being based on the material available on record and it is not contrary to the record. I do not find any perversity or illegality in the said finding. The substantial question of law is answered accordingly.

7. As a fallout and consequence of the aforesaid discussion, the second appeal is devoid of merit, it deserves to be and is

accordingly dismissed leaving the parties to bear their own cost(s).

8. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma