

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No.448 of 2012

1. Ramashankar Prasad, S/o Late Timbu, Caste Uraon, aged about 65 Years, R/o Village Larangi, Police Station and Tahsil Samri Kusmi, Distt. Surguja, Chhattisgarh
2. Satyanarayan, S/o Late Timbu Ram, Caste Uraon, aged about 51 Years, R/o Village-Larangi, Police Station and Tahsil Samri Kusmi, Distt. Surguja, Chhattisgarh

---- Appellants

Versus

1. (A) Dharmsai, S/o Late Budhram, Aged About 55 Years

(B) Parsu Ram, S/o Late Budhram, Aged About 53 Years
2. Bhukharam, S/o Late Timbu Ram, Aged About 60 Years, Caste Uraon

Respondent Nos.1(A), (B) & 2 are R/o Village Larangi, Police Station and Tahsil Samri Kusmi, Distt. Surguja, Chhattisgarh
3. State of Chhattisgarh through the Collector, Surguja, Ambikapur, Distt. Surguja, Chhattisgarh

---- Respondents

For Appellants	Mr. D. N. Prajapati, Adv.
For Respondent-State	Mr. R. K. Bhagat, Dy. GA

Hon'ble Justice Shri Sanjay K. Agrawal

Order On Board

07/07/2021

1. The 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 appellants/plaintiffs.
3. By the impugned judgment and decree, the First Appellate Court has dismissed the appeal preferred by the appellants/plaintiffs vide judgment and decree dated 17.10.2012 passed by the learned Third Upper District Judge, Ambikapur, District Sarguja (C.G.) in Civil Appeal No.16A/2012 affirming the judgment and decree of the Trial Court dated 21.02.2011 passed by the learned Civil Judge Class-I, Sarguja, Ambikapur (C.G.) in Civil Suit No.28-A/2009, whereby the learned Trial Court dismissed the suit preferred by the appellants/plaintiffs.
4. Mr. Prajapati, learned counsel for the appellants/plaintiffs, would submit that both the Courts below have concurrently erred in holding that the suit land shown in Schedule-A

of the plaint is the self acquired property of Budhram, the father of defendant Nos.1A & 1B, and was not purchased from the money of his father Timbu Ram by recording a finding perverse to the record and further erred in holding that the plaintiffs are not entitled for 1/4th - 1/4th share in the suit property shown in Schedule-A, B & C. As such, the appeal involves substantial question of law for determination and deserves to be admitted for hearing.

5. I have heard learned counsel for the appellants/plaintiffs, considered his submissions made herein-above and also went through the records with utmost circumspection.
6. Timbu Ram had four sons namely Budhram, Ramashankar, Bhukha and Satyanarayan. The plaintiffs and the defendant No.2 are the sons of Timbu Ram, whereas defendant Nos.1A and 1B are the sons of Budhram and grand sons of Timbu Ram. The plaintiffs filed a suit for declaration of title and permanent injunction claiming that the suit property mentioned in

the schedule-A of the plaint was purchased by Budhram from the money of their father Timbu Ram and the property shown in the Schedule-A, B & C was partitioned during the lifetime of Timbu Ram, therefore, the plaintiffs are entitled for 1/4th-1/4th share in the property, in which the defendants filed their written statement inter-alia stating that the suit land is the self acquired property of Budhram and was not partitioned during the life time of Timbu Ram, therefore, the plaintiffs are not entitled for decree.

7. The Trial Court after appreciation of oral and documentary evidence available on record dismissed the suit holding that the suit property shown in Schedule-A was settled in favour of Budhram, the father of defendant Nos.1A & 1B, by the order of the Deputy Commissioner (Land Reforms) and as such it is manwar land vide Ex-D/1 & D/2, therefore, it is not established that it was purchased by Timbu Ram and accordingly held that the property mentioned in Schedule-A is the self acquired property of Budhram. Likewise, the

Trial Court has also recorded a finding that the application filed by the plaintiffs for mutation of their name in the revenue record before the Nayab Tahasildar, Shankargarh was allowed and *ex parte* order dated 25.02.1999 in Revenue Case No.41-A-6A/98-99 was passed and their names were mutated in the revenue record without notice to the defendant No.1 and when the appeal was preferred by the defendant No.1 before the SDO, District Sarguja, the SDO vide order dated 22.03.2003 in Revenue Case No.67/A-6A/2001-02 set aside the order of Tahsildar and the name of Budhram, the father of defendant Nos.1A & 1B, was mutated in the revenue record in place of plaintiffs. As such, it is not proved that by oral partition during the life time of Timbu Ram, each of them (sons of Timbu Ram) got 1/4th-1/4th share in the schedule property mentioned in Schedule-A, B & C, which has also been affirmed by the First Appellate Court.

8. The concurrent finding recorded by the two Courts below holding that the property mentioned in the Schedule-A is the self

acquired property of Budhram, the father of defendant Nos.1A & 1B, and the plaintiffs are not entitled for 1/4th-1/4th share in the property mentioned in Schedule-A, B & C is a pure and simple finding of fact based on the material available on record, which is neither perverse nor contrary to record.

9. I do not find any substantial question of law for determination in this second appeal. It deserves to be and is hereby dismissed in *limine* without notice to the other side. No order as to cost (s).

Sd/-
Sanjay K. Agrawal
Judge

Nirala