

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No.341 of 2011**

1. Fulkunwar (wrongly typed as 'Falkunwar'), W/o Bihari, aged about 50 years
2. Sabal Singh, S/o Late Manghat, aged about 50 years
3. Fulendra, S/o Gopi, aged about 35 years
4. Rameshwar, S/o Gopi, aged about 38 years
5. Krishna Kumar, S/o Gopi, aged about 22 years

All above R/o Village Khamariya, Police Station Udaipur, Tahsil Ambikapur, District Surguja (C.G.)

---- Appellants**Versus**

1. Manichand, S/o Late Raghunath, aged about 25 years
2. Bhual Sigh, S/o Late Manghat Ram, aged about 52 years

Both above R/o Village Khamariya, Police Station Udaipur, Tahsil Ambikapur, District Surguja (C.G.)

3. State of Chhattisgarh, through Collector, Surguja, Ambikapur, District Surguja (C.G.)

---- Respondents

For Appellants	Mr. Manoj Paranjpe, Advocate
For Respondent-State	Mr. Vinod Tekam, PL

Hon'ble Justice Shri Sanjay K. Agrawal

Order On Board

16/02/2021

1. Heard on admission and formulation of substantial question of law in the second appeal preferred by the appellants/plaintiffs, whereby the First Appellate Court has dismissed the appeal preferred by the appellants/plaintiffs vide judgment and decree dated 23.06.2011 passed by the learned 2nd Additional District Judge, Ambikapur, District Sarguja (C.G.) in Civil Appeal No.69A/2011 affirming the judgment and decree dated 19.09.2005 of the Trial Court passed by the learned 5th Civil Judge Class-II, Ambikapur, District Sarguja (C.G.) in Civil Suit No.235A/2004 dismissing the suit filed by the appellants/plaintiffs.
2. Mr. Paranjpe, learned counsel for the appellants/ plaintiffs, would submit that both the Courts below have grossly erred in concurrently holding that there is prior partition between the ancestors of the

plaintiffs and defendants by recording a finding perverse to the record. As such, the appeal be admitted for hearing by formulating substantial question of law.

3. I have heard learned counsel for the appellants, considered his submissions made herein-above and also went through the records with utmost circumspection.
4. The suit property was originally held by Pawan Sai. He had two sons namely Sonsai and Manghat Ram. The plaintiff Nos.1 & 2 are sons of Manghat Ram, whereas the plaintiff Nos.3 to 5 are grand sons of Manghat Ram. The defendant No.2 is also the son of Manghat Ram, whereas the defendant No.1 is the grand son of Sonsai. The plaintiffs filed a suit for partition claiming that the suit property has not been partitioned in the life time of their forefathers. The suit so filed by the appellants/plaintiffs was dismissed by the Trial Court holding that there was prior partition between the ancestors of plaintiffs and the defendants i.e. Sonsai and Manghat Ram

during their life time, which has also been affirmed by the First Appellate Court.

5. The finding recorded by both the Courts below that the partition has already taken place between Sonsai and Manghat Ram during their life time, the ancestors of the plaintiffs and defendants, is a finding of fact based on the material available on record, as such there is no perversity or illegality in the judgment and decree passed by the two Courts below.
6. I do not find any substantial question of law involved in this second appeal so filed by the appellant/plaintiff. 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