

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.157 of 2010**

1. Mangalram @ Bhagela, aged about 65 years, S/o Gayaram Patel, R/o Village Torwa, Tahsil & Distt. Bilaspur (C.G.)
 2. Markhande, aged about 60 years, S/o Budhram Patel, R/o Village Torwa, Tahsil & Distt. Bilaspur (C.G.)
- (Defendants No.1 & 2)
---- Appellants

Versus

1. Shiv Kumar Patel, aged about 31 years, S/o Saligram Patel,
 2. Teejan Bai, aged about 38 years, D/o Saligram Patel,
 3. Jam Bai, aged about 34 years, D/o Gayaram Patel,
 4. Smt. Sumitra Bai, aged about 40 years, D/o Gayaram Patel,
- All R/o Village Torwa, Tahsil & Distt. Bilaspur (C.G.)
(Plaintiffs)
5. State of Chhattisgarh, Through the Collector, Bilaspur, District Bilaspur (C.G.)
(Defendant No.3)
 6. Shivendra Kumar Singh, aged 38 years, S/o Krishna Kumar Singh
(Def. No.4)
 7. Sandeep Singh, aged about 29 years, S/o Ashwani Kumar Singh
(Def. No.5)
 8. Navneet Singh, aged 27 years, S/o Nand Kumar Singh
(Def. No.6)
- No. 6 to 8 are R/o Village Nariyara, Tahsil Pamgarh, Distt. Janjgir-Champa (C.G.)
---- Respondents

For Appellants: Mr. Ramakant Pandey, Advocate.

For Respondent No.5 / State: -

Mr. Vinod Kumar Tekam, Panel Lawyer, on advance copy.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

14/01/2021

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by defendants No.1 & 2.
2. By the impugned judgment, the first appellate Court has partly reversed the judgment & decree of the trial Court and fully decreed the suit of the plaintiffs.
3. Mr. Ramakant Pandey, learned counsel appearing for the appellants herein / defendants No.1 & 2, would submit that the first appellate Court is absolutely unjustified in fully granting the appeal filed by the plaintiffs by recording a finding which is perverse to the record, as such, the appeal involves substantial question of law for determination and it be formulated accordingly.
4. Bhagtu was the original holder of the suit land. He has 1.404 hectares of land. He had two sons namely, Budhram and Gayaram. Defendant No.2 Markhandey is son of Budhram, whereas defendant No.1 Mangalram is son of Gayaram and Sumitra Bai – plaintiff No.4 is daughter of Gayaram and Ledhi Bai was also daughter of Gayaram. Plaintiffs No.1, 2 & 3 are son and daughters of Ledhi Bai – wife of Salikram. Four plaintiffs brought suit for declaration of title and possession stating inter alia that the suit property was originally held by Bhagtu and he had two sons Budhram and Gayaram and since plaintiffs No.1 to 3 are son and daughters of Ledhi Bai, plaintiff No.4 was also daughter of Gayaram and defendant No.1 is also son of Gayaram, therefore they will be entitled for half share in the property of Bhagtu and therefore decree for declaration of title, partition and possession be passed in their favour.
5. The trial Court after appreciating oral and documentary evidence

available on record, applying Section 6 of the Hindu Succession Act, 1956, partly granted decree in favour of the plaintiffs which the plaintiffs challenged by way of filing first appeal under Section 96 of the CPC. By the impugned judgment & decree the first appellate Court fully allowed the appeal and decreed the suit in toto holding that in the property of Bhagtu, Budhram and Gayaram each one will have half share and Gayaram's half share will be inherited by the plaintiffs and defendant No.1 equally and Budhram's half share will be inherited by defendant No.2 holding that the amendment in the Hindu Succession Act by the Hindu Succession Amendment Act, 2005 would apply and accordingly decreed the suit which has been called in question in the present second appeal.

6. In the considered opinion of this Court, the first appellate Court has rightly held that since it is the property of Bhagtu, it will be divided among his two sons Budhram and Gayaram equally and Budhram's share will be inherited by defendant No.2 and Gayaram's share will be inherited by plaintiffs No.1 to 3 being son and daughters of Ledhi Bai, plaintiff No.4 and defendant No.1 equally. As such, the first appellate Court has rightly decreed the suit of the plaintiffs modifying the judgment & decree of the trial Court which is neither perverse nor contrary to the record. I do not find any substantial question of law involved in this second appeal. The appeal deserves to be and is accordingly dismissed *in limine* without notice to the other side. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge