

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.475 of 2009**

Gauntu (died) through LR's

(I) Chain Sai Singh, S/o Late Gauntu, aged about 57 years,

(II) Suraj Singh S/o Late Gauntu, aged about 55 years,

(III) Likhan Singh S/o Late Gauntu, aged about 52 years,

All R/o Village-Amgaon, P.O.-Shalhi, P.S.and Tahsil Ramanujnagar, District-Surajpur (CG)

----- Appellants/LR's of the Plaintiff**Versus**

1. Banshrup S/o. Punit, aged about 40 years,

2. Saheba, S/o. Punit, aged about 35 years,

3. Chotku (died and deleted)

All Caste-Gond, R/o. Village-Aamgaon, P.S. & Tahsil-Surajpur, Distt.-Sarguja (CG)

4. State of Chhattisgarh Through Collector, Sarguja, Distt.-Sarguja (CG)

----- Respondents/Defendants

For Appellant/LR's of the Plaintiff:

Ms Sharmila Sinhghai and Mr.Sanjay
Agrawal, Advocates

For Respondents No.1 and 2/Defendants No.1 and 2:

Mr.Sakti Raj Sinha, Advocate

For Respondent No.4/State:

Mr.Ravi Bhagat, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

08/02/2021

1. The substantial question of law involved, formulated and to be answered in this second appeal preferred by the appellants/legal representatives of the plaintiff is as under:-

"Whether the first appellate court is justified in reversing the judgment and decree of the trial Court by recording a finding which is perverse to record ?"

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

2. Sukhsai had two sons namely Gauntu, plaintiff herein and Punit, father of defendants No.1 and 2 and husband of defendant No.3, who died during pendency of this second appeal. The plaintiff filed a suit for declaration of title and confirmation of possession stating inter-alia that the suit land bearing Khasra No.31 area 0.75 are. and Khasra No.282 area 0.01 are. total area 0.76 are. are jointly held by the plaintiff and Punit, father of defendants No.1 and 2 and husband of defendant No.3 and they are in possession of half portion as per partition which has been taken place during life-time of Sukhsai. It was further pleaded that since Sukhsai had more land in his account, therefore, patta was granted in Surguja Settlement in the name of his elder son Punit, father of defendants No.1 and 2, but it was property of their father Sukhsai, who has partitioned the suit land between the plaintiff and Punit, father of defendants No.1 and 2,

but it was recorded for the reasons stated hereinabove in the name of Punit, but the defendants are disputing the plaintiff's right, title and interest over the suit land, necessitated the filing of the suit for declaration of title and restoration of possession as the defendants have dispossessed the plaintiff from the suit land.

3. Resisting the suit, the defendants filed their written statement and denied the averments made in the plaint stating inter-alia that they are exclusive owners of the suit land, which is duly recorded in the name of Punit, father of defendants No.1 and 2 and husband of defendant No.3, as such, the plaintiff has no right, title and interest over the suit land.

4. The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment and decree dated 17.10.2008, decreed the suit holding that the plaintiff and defendants No.1 to 3 are joint owners of the suit land and the plaintiff is entitled for 1/2 share in the suit land after partition as during continuation of the suit, defendants No.1 to 3 have dispossessed the plaintiff from the suit land. On appeal being preferred by defendants No.1 to 3, the first appellate Court reversed the judgment and decree of the trial Court

and dismissed the suit, against which, this second appeal under Section 100 of the CPC has been filed by the appellants/legal representatives of the plaintiff, in which one substantial question of law has been formulated, which has been set-out in the opening paragraph of this judgment for sake of completeness.

5. Ms Sharmila Shinghal, learned counsel for the appellants/legal representatives of the plaintiff, would submit that the first appellate Court went wrong in reversing the judgment and decree of the trial Court without meeting with the reasonings recorded by the trial Court and merely on the ground that the suit property was not mutated in the name of the plaintiff and inconsistent plea of adverse possession having been taken by the plaintiff, the suit could not have been dismissed by the first appellate Court, as such, there is clearcut admission of plaintiff Gauntu (PW-1) and Ramprasad (DW-2), who have admitted the fact of partition during lifetime of Sukhsai, father of the plaintiff and Punit and also admitted the fact of the plaintiff being in possession, as such, the first appellate Court on perverse ground reversed the judgment and decree of the trial Court, which is liable to be restored by answering the substantial question of law in favour of the plaintiff and against

the defendants.

6. On the other hand, Mr. Sakti Raj Sinha, learned counsel for respondents No.1 and 2/defendants No.1 and 2, would submit that the first appellate Court has rightly recorded a finding that in absence of mutation, the plaintiff having been taken a plea of adverse possession rightly dismissed the suit by granting the appeal, which warrants no interference in exercise of jurisdiction under Section 100 of the CPC.
7. I have heard learned counsel for the parties, considered their rival submissions made herein-above and also went through the records with utmost circumspection.
8. The case of the plaintiff is that the suit property is the property of his father Sukhsai and father of Punit and since Sukhsai was having more land in his account, therefore, in Surguja Settlement, patta was got allotted in the name of Punit, his elder brother and father of defendants No.1 and 2 and merely because it is recorded in the name of Punit, it cannot become his self-acquired property. The trial Court upon appreciation of oral and documentary evidence available on record clearly recorded a finding that it was the property of Sukhsai, which was jointly owned

by the plaintiff and Punit, father of defendants No.1 and 2 and resolution was also passed by the Gram Panchayat on 20.8.97, as such, the property being ancestral property of the plaintiff and Punit, father of defendants No.1 and 2, the plaintiff is entitled for 1/2 share in the suit land and the defendants have dispossessed the plaintiff from the suit land during pendency of the suit, which was admitted by plaintiff-Gauntu and Ramprasad (DW-2), who have admitted the fact of partition during life-time of Sukhsai and further admitted the possession of the plaintiff over the suit land on the date of institution of the suit, but the first appellate Court reversed the same without meeting with the reasonings recorded by the trial Court.

9. The plaintiff has brought oral and documentary evidence on record to show that the suit land was the property of his father Sukhsai and father of Punit, which was allotted to him in Surguja Settlement, but it was recorded in the name of Punit, father of defendants No.1 and 2 and husband of defendant No.3, as Sukhsai has sufficient land in his account on the date of allotment. Defendant No.1-Banshrup has been examined as DW-1. He has admitted the fact of partition during lifetime of his father. He has also

admitted the fact that he has got one share in the suit land. Ramprasad (DW-2), who has been examined on behalf of the defendants, has clearly admitted that Sukhsai has partitioned the suit property during his lifetime and there was no dispute during lifetime of his father. He has also admitted the fact that since Sukhsai has sufficient land in his account, therefore, in Surguja Settlement patta was granted in favour of his elder son Punit.

- 10.** Thus, it is established on record that the suit property was originally held by Sukhsai, father of the plaintiff and grandfather of defendants NO.1 and 2 and it was allotted to him in Surguja Settlement, but he was having sufficient land in his name, therefore, the suit land came to be allotted and recorded in the name of Punit, father of defendants No.1 and 2 and husband of defendant No.3. It is also established on record that Sukhsai has partitioned the suit land between his two sons i.e. the plaintiff and Punit, father of defendants No.1 and 2 and both have equal share in the suit property, as such, the the trial Court on the basis of oral and documentary evidence available on record recorded the finding that the plaintiff and Punit, father of defendants No.1 and 2, have equal share in the suit property and since the defendants

have dispossessed the plaintiff from the suit land directed for partition and 1/2 share in the suit property, which has been interfered by the first appellate Court. The first appellate Court has taken strong objection that the suit land is not recorded in the name of the plaintiff. It is correct to say that the plaintiff's name was mutated in revenue records by order of the Naib-Tahsildar, Surajpur dated 26.5.2005, but it was set-aside by the Sub-Divisional Officer, Surajpur on 30.6.2006.

- 11.** It is well established law that mutation entries do not confer any right, title or interest over the land, it is only for keeping the records up-to-date and to collect the land revenue, therefore, the suit land having not been recorded in the name of the plaintiff, it cannot be held that he has no right, title or interest over the suit land, as it is established on record that he has right and title over the suit land. Similarly, the first appellate Court has taken strong objection to the plea taken by the plaintiff that he has perfected his title by way of adverse possession. A party to the suit is entitled to take inconsistent plea, if it is permissible under the law, but that cannot itself a ground to non-suit the plaintiff. The trial Court has clearly recorded a

finding that the plaintiff is title-holder and entitled for 1/2 share in the suit property.

12. In view of above-stated legal position, this Court is of the considered opinion that the first appellate Court is absolutely unjustified in reversing the judgment and decree of the trial Court without meeting with the reasonings recorded by the trial Court.

13. Accordingly, the impugned judgment and decree passed by the first appellate Court is hereby set aside and that of the trial Court is hereby restored by answering the substantial question of law in favour of the plaintiff and against the defendants.

14. The second appeal is allowed to the extent indicated hereinabove leaving the parties to bear their own cost(s).

15. Appellate decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-