

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.5 of 2010

Guthlu, S/o Torge, aged about 65 years, caste Kanwar,
Occupation Agricultural, R/o Village Aamgaon, P.S.
Shankergarh, Tahsil Kusmi, Distt. Sarguja (C.G.)

(Plaintiff)
---- Appellant

Versus

1. Ghasis, S/o Kalu, aged about 60 years, Caste Kanwar,
Occupation Agricultural, R/o Village Amgaon, P.S. Shankergarh,
Tahsil Kusmi, Distt. Sarguja (C.G.)

2. State of Chhattisgarh, Through Collector, Sarguja, District
Sarguja (C.G.)

(Defendants)
---- Respondents

For Appellant / Plaintiff: Mr. D.N. Prajapati, Advocate.

For Respondent No.2 / State: -

Mr. Ravi Kumar Bhagat, Dy. Govt. Adv.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

05/01/2021

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellant herein / plaintiff.
2. By the impugned judgment, the first appellate Court has dismissed the first appeal of the plaintiff affirming the judgment & decree of the trial Court dismissing the suit.
3. Learned counsel for the appellant herein / plaintiff would submit that both the Courts below are absolutely unjustified in holding that the property mentioned in Schedule A attached with the plaint is not the exclusive property of the plaintiff and he is not

entitled for recovery of possession, by recording a finding which is perverse to the record and the appeal deserves to be admitted by formulating substantial question of law.

4. Samarjit Kanwar had three sons namely Mohan, Torge and Kalu. Plaintiff Guthlu is son of Torge and defendant No.1 Ghasiya is son of Kalu. In the Surguja State Survey Settlement, the suit land was granted in favour of Torge – plaintiff's father and Kalu – defendant No.1's father, but in the Adhikar Abhilekh of the year 1954-55, it came to be recorded only in the name of Torge, but thereafter, after the death of Torge, the Revenue Officer in the year 1982, partitioned the land amongst the plaintiff and defendant No.1's father Kalu and the suit land was granted in favour of defendant No.1. It is the case of plaintiff, defendant No.1 in the year 2004, started disputing that the plaintiff has no right and title over the suit land and he is in continuous possession of the suit land leading to filing of suit for declaration of exclusive possession in the property shown in Schedule A of the plaint and for recovery of possession in the property shown in Schedule C of the plaint.
5. The trial Court after appreciation of oral and documentary evidence available on record, dismissed the suit holding that in partition, the property shown in Schedule A of the plaint fell in the share of the plaintiff and the plaintiff has not dispossessed the property shown in Schedule C of the plaint, as partition between the plaintiff and defendant No.1's father Kalu had already taken place 22 years prior to the date of filing of suit. The said finding has been affirmed by the first appellate Court in the appeal filed by the plaintiff. The first appellate Court has

also clearly recorded a finding that defendant No.1 is in possession of the property shown in Schedules A & C of the plaint which he has obtained from his father Ghasia and he has no other land granted during the Surguja State Survey Settlement and thereafter affirmed the finding of the trial Court that in partition, defendant No.1's father has got the land which defendant No.1 has inherited after his death. As such, the finding recorded by the two Courts below that the suit land held by defendant No.1 is the property which his father has received on partition between him and the plaintiff, is a finding of fact based on the evidence available on record, it is neither perverse nor contrary to the record. I do not find any substantial question of law for determination of this appeal. The second 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