

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 159 of 2011

- Dharamdas S/o Pahatiya Satnami, aged about 52 years, R/o Village Fingeshwar, Tahsil Raji, District Raipur, C.G.

----- Appellant

Versus

1. (Deleted) Pahatiya Satnami Vide Court Order Dated 09-02-2021
2. Anand Ram S/o Pahatiya Satnami Aged About 35 Years R/o Village Fingeshwar, Tahsil Rajim, District Raipur, Chhattisgarh.
3. State of Chhattisgarh Through Collector Raipur, District Raipur, Chhattisgarh.
4. Samarin Bai W/o Gopal Satnami Aged About 40 Years R/o Village Beldih, Tahsil Abhanpur, District Raipur, Chhattisgarh.
5. Gangabai W/o Ghuruva Satnami Aged About 35 Years R/o Village Nawagaon, Tahsil Magarlod, District Dhamtari, Chhattisgarh.
6. Maheshwari W/o Bhaiyalal Satnami Aged About 33 Years R/o Village Torla, Tahsil Abhanpur, District Raipur, Chhattisgarh.

----- Respondents

For Appellant :- Mr. Vivek Tripathi, Advocate.
For Respondents No.2,4-6 :- Mr. A.P. Sharma, Adv.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

21/06/2021

1. Proceedings of this matter have been taken up through video conferencing.
2. Heard on admission and formulation of substantial question of law in second appeal preferred by the appellant/plaintiff.
3. By the impugned judgment and decree, the first appellate Court has dismissed the appeal preferred by the appellant / plaintiff affirming the judgment and decree of the trial Court partly decreeing the suit of the appellant / plaintiff.
4. Mr. Vivek Tripathi, learned counsel for the appellant / plaintiff, would submit that the first appellate Court is absolutely

unjustified in dismissing the appeal filed by the appellant / plaintiff by recording a finding which is perverse to the record. It ought to have held that the property shown in Ex. P-1 to Ex. P-3 are benami property, which were not the exclusive property of plaintiff-Dharamdas, as such, the appeal deserves to be admitted for hearing by formulating substantial question of law for determination.

5. The plaintiff and defendant No.2 are sons of defendant No.1-Pahatiya and defendants No.4 to 6 are sisters of the plaintiff and defendant No.2. The plaintiff filed a suit that the suit property is an ancestral property in which the plaintiff, defendants No.1 & 2 and defendants No.4 to 6 all have equal share i.e. $1/3^{\text{rd}}$ share, in which defendants No.1 and 2 filed their written statement and also filed counter claim stating that the property covered by Ex. P-1 to Ex. P-3 are also benami property and, as such, this property be also subjected to partition.

6. The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment and decree dated 29.06.2010, partly decreed the suit holding that the suit property is ancestral property of the plaintiff, defendants No.1 & 2 and defendants No. 4 to 6 and each one have $1/6^{\text{th}}$ share in the property. The trial Court has also held that as claimed by defendants No.1 and 2, only the property bearing Khasra Nos.2680 and 1454 are joint family property and remaining properties which are subject matter of Ex. P-1 to Ex. P-3 are self-acquired property of plaintiff-Dharamdas and accordingly, partly decreed the suit, against which, the plaintiff filed first appeal stating that other property which is in the name of the plaintiff, Ex. P-1 to Ex. P-3, are also ancestral property purchased in the name of the plaintiff, therefore, the trial Court ought to have held that it is also the ancestral property of the parties. The first appellate Court did not accept the plea of the plaintiff and dismissed the appeal.

7. Findings recorded by two Courts below that only the property shown in Exs. D-6 and D-7 bearing Khasra Nos. 2680 and 1454 are the property purchased by defendant No. 1 and it is ancestral property and the property purchased by plaintiff vide Exs. P-1 to P-3 are self-acquired property of plaintiff-Dharamdas are findings of fact based on evidence available on record. These findings are neither perverse nor contrary to record, as such, I do not find any substantial question of law for determination of this second appeal.

8. Accordingly, the second appeal being devoid of merit is liable to be and is hereby dismissed in *limine* without notice to other side. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Ankit