

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 61 of 2011**

- Sakharam, S/o. Bhikhariram, Caste Rohidas, aged about 30 years, R/o. Village Semra Via Ratanpur, Tahsil and Distt. Bilaspur (CG)

---- Appellant**Versus**

1. Ambika Bai Wd/o. Khorbahra, Caste Surwanshi, R/o. Village Semra, Tahsil and Distt. Bilaspur (CG)
2. Geeta D/o. Khorbahra, Caste Surwanshi, R/o. Village Semra, Tahsil and Distt. Bilaspur (CG)
3. Sukhiram S/o. Baisakhu, Caste Surwanshi, R/o. Village Semra, Tahsil and Distt. Bilaspur (CG)
4. (1) Arun Kumar S/o. Late Sanohar, Caste Suryawanshi, aged 31 years, R/o. Village Semra, Post Singhari, PS Ratanpur, Tahsil and Distt. Bilaspur (CG)
(2) Chhail Kumar S/o. Late Sanohar, Caste Suryawanshi, aged about 25 years, R/o. Village Semra, Post Singhari, PS Ratanpur, Tahsil and Distt. Bilaspur (CG)
(3) Ram Kumar S/o. Late Sanohar, Caste Sirawashi, aged 37 years, R/o. Village Semra, Post Singhari, PS Ratanpur, Tahsil and Distt. Bilaspur (CG)
(4) Vijay Kumar S/o. Late Sanohar, Caste Suryawanshi, aged 19 years, Village Baima, Post Baima, PS Sarkanda, Distt. Bilaspur (CG)
5. State of Chhattisgarh, through Collector, Bilaspur (CG)

---Respondents

For Appellant	: Shri Ram Kumar Tiwari, Advocate
For Respondents	: Not noticed

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****15.02.2021.**

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellant herein/plaintiff against the impugned judgment and decree dated 12.10.2010 passed by Fifth Additional District Judge, Bilaspur in Civil Appeal No.02-A/2010 affirming the judgment and decree dated 13.10.2009 passed by Fourth Civil Judge

Class-I, Bilaspur in Civil Suit No.23A/2005 by which the trial Court dismissed the suit of the plaintiff.

2. Learned counsel for the appellant/plaintiff submits that both the courts below have concurrently erred in holding that the suit property was joint family property and the same was not held by Khorbahra alone who was the husband of defendant No.1 and father of defendant No.2 and further erred in holding that Khorbahra had not executed valid agreement in favour of the plaintiff on 15.3.1996 vide Ex-P/7, by recording a finding which is perverse to the record, therefore, the appeal involves substantial question of law for determination and the appeal may be admitted for hearing by formulating substantial question of law. To substantiate his arguments, learned counsel for the appellant placed reliance in the matter of ***S. Kaladevi v. VR Somasundaram & Ors.***¹

3. I have heard learned counsel for the appellant and went through the record with utmost circumspection.

4. The plaintiff filed a suit inter alia stating that the suit property was in the joint property of defendants 3 & 4 and Khorbahra, who was husband of defendant No.1 & father of defendant No.2. Khorbahra agreed to sell the suit property in favour of the plaintiff on 25.5.1993 and thereafter executed an agreement for sale on 15.3.1996 and possession was handed over to the plaintiff. It is the case of the plaintiff that since the defendants are trying to sell the disputed land, necessity arose for filing suit for specific performance of the contract .

5. The trial Court after appreciating the oral and documentary evidence, dismissed the suit holding that the suit property is the joint family property of Khorbahra, husband of defendant No.1 & father of defendant No.2, and

1) 2010(2)CGLJ 305(SC)

defendants 3 & 4 and partition of the suit property had not been taken place between the parties and agreement for sale dated 15.3.1996 (Ex-P/7) had not been registered in accordance with the provisions Registration Act, 1908 and in alternative it has also been held if Ex-P/7 is accepted as agreement to sale, then also it has not been stamped in accordance with the provisions of Indian Stamp Act, 1899 and therefore, inadmissible in evidence. The said findings of the trial Court have been affirmed by the first appellate Court. Findings recorded by both the Courts below holding that there is no partition between Khorbahra and defendants 3 & 4 and the suit property is a joint family property and Ex-P/7 suffers from legal defect for want of registration under the provisions of Registration Act, are findings based on material available on record, which are neither perverse nor contrary to the record and the appeal does not involve any substantial question of law .

6. The second appeal deserves to be and is accordingly dismissed in limine without notice to the other side. No cost(s).

Sd/-

(Sanjay K. Agrawal)
JUDGE