

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.399 of 2012**

1. Kunjram, aged 65 years, S/o late Shri Rikhiya Verma, R/o Village Achanakpur, Bodri, Post Office/Police Station Chakarbhata, Tahsil Bilha, District Bilaspur (C.G.)
2. Smt. Harjinder Kaur, aged 42 years, W/o Gyan Singh, R/o Village Nayapara, Bodri, Post Office/Police Station Chakarbhata, Tahsil Bilha, District Bilaspur (C.G.)

(Defendants)
---- Appellants

Versus

1. Sanjay Verma, aged 24 years, S/o late Ganesh Verma,
2. Ajay Verma, aged 20 years, S/o late Ganesh Verma,
3. Sanju Verma, aged 18 years, S/o late Ganesh Verma,
4. Anita Verma, aged 22 years, D/o late Ganesh Verma,
5. Shail Kumari, aged 42 years, W/o late Ganesh Verma,

All above No.1 to 5 are residents of Village Achanakpur, Bodri, Post Office/Police Station Chakarbhata, Tahsil Bilha, District Bilaspur (C.G.)

6. Ganesiya, aged 40 years, D/o late Rikhiya Verma, R/o Village/Post Office Hardikala, Police Station Chakarbhata, Tahsil Bilha, District Bilaspur (C.G.)
7. Mitni, aged 45 years, D/o Rikhiya Verma, R/o Village Bhilmi, Tahsil / Post Office / Police Station Sipat, District Bilaspur (C.G.)
(Plaintiffs)

8. State of Chhattisgarh, through the District Collector, Bilaspur, District Bilaspur (C.G.)

(Defendant)
---- Respondents

For Appellants / Defendants No.1 and 2: -

Mr. Somnath Verma, Advocate.

For Respondents No.1 to 7 / Plaintiffs: -

Mr. Ravindra Agrawal, Advocate.

For Respondent No.8 / State: -

Mr. Sanjay Pathak, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

08/02/2021

1. This second appeal preferred by the appellants herein / defendants No.1 and 2 was admitted for hearing on 2-1-2013 by formulating following substantial question of law :-

“Whether both the Courts below were justified in holding that respondent Nos. 1 to 7 are entitled for share over the property when they have alienated their share received from the property of Bhola?”

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

2. Rikhi Ram @ Rikhiya had two sons namely, Ganesh and Kunjram and two daughters namely, Mitni Bai and Ganeshia. Rikhiya and Bhola were brothers. Bhola died issue-less. The dispute is with regard to 1 acre of land recorded at the relevant point of time in the name of Manglin Bai, widow of Rikhiya and his son Kunjram. Seven plaintiffs who are children and wife of Ganesh and the two daughters of Rikhiya filed suit that they are entitled for 37.5 decimal of land as it is the property of their mother / grandmother Manglin Bai and therefore decree for declaration of possession of the said land be granted in their favour. Defendant No.1 who sold the suit land in favour of defendant No.2 by registered sale deed dated 17-8-2010 has opposed the prayer and stated that the land was held by Bhola and Bhola had given the land to Kunjram and in that case, he has sold the suit land in favour of defendant No.2 as such, the suit be dismissed.
3. The trial Court after appreciating oral and documentary evidence available on record, partly dismissed the suit holding that the suit property was held by Manglin Bai and Kunjram and

as such, Manglin Bai and Kunjram, both, had half share in the suit property i.e. 50 decimal – 50 decimal and since out of the wedlock of Manglin Bai with Rikhiya, they had sons namely Ganesh & Kunjram and two daughters Mitni Bai & Ganeshia, therefore, each will have 12.5 acres of land and as such, the plaintiffs will be entitled only for 37.5 decimal of land and Kunjram will be entitled for 62.5 decimal and accordingly decreed the suit partly which the first appellate Court affirmed on appeal being filed by defendants No.1 & 2 against which this appeal under Section 100 of the CPC has been preferred by the appellants herein / defendants No.1 & 2 in which substantial question of law has been formulated which has been set out in the opening paragraph of this judgment.

4. Mr. Somnath Verma, learned counsel appearing for the appellants herein / defendants No.1 & 2 would submit that both the Courts below concurrently erred in holding that the suit property belongs to Manglin Bai and Kunjram and therefore they are entitled for 37.5 decimal of land and the defendants are entitled for 62.5 decimal, in fact, the defendants were entitled for the entire land as it was given by Bhola to Kunjram, as such, judgment & decree of both the Courts below deserve to be set aside.
5. On the other hand, Mr. Ravindra Agrawal, learned counsel for respondents No.1 to 7 / plaintiffs, would support the impugned judgment & decree.
6. I have heard learned counsel for the parties and considered their submissions made herein-above and also went through the records with utmost circumspection.

7. Though defendant No.1 has claimed that the suit property was held by him alone as the same was given to him by Bhola who was brother of Rikhiya and as such he alone was the owner of the suit property and in that case, he has sold the suit property, but no document has been brought on record to establish that the suit property was held by Bhola and it was given by Bhola to him and in that capacity, the name of Manglin Bai was recorded as guardain of defendant No.1 and Manglin Bai has given the land to him. As such, both the Courts have rightly held that the suit property was held by Manglin Bai and Kunjram and since it was recorded in the name of Manglin Bai and Kunjram, both, will have half share each in the suit property i.e. 50 decimal – 50 decimal and Kunjram will get 62.5 decimal of land and since Manglin Bai had four children, each one will take 12.5 acres of land and therefore the plaintiffs will be entitled for 37.5 decimal of land. As such, the trial Court has rightly decreed the suit which has been duly affirmed by the first appellate Court. The said finding is concurrent finding of fact recorded by both the Courts below and is based on the evidence available on record, it is neither perverse nor contrary to the record. As such, defendant No.1 could have sold only 62.5 decimal of land to defendant No.2 and the decree granted by the two Courts below is strictly in accordance with law. The substantial question of law is answered accordingly. I do not find any merit in this second appeal. Consequently, the appeal is dismissed. No order as to cost(s). A decree be drawn accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge