

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 289 of 2011**

Rameshwar Prasad S/o Late Dharamjeet Kunbi, Aged about 45 years, Occupation Agriculturist, R/o Village Tenduva, Tahsil Baikunthpur, Distt. Korea, Chhattisgarh.

---Appellant/Defendant No. 1

Versus

1. Lahri Ram S/o Late Dharamjeet Kunbi, Aged about 55 years, Occupation Agriculturist, R/o Village Tenduva, Tahsil Baikunthpur, Distt. Korea, Chhattisgarh.

--- Plaintiff

2. State of Chhattisgarh, Through The Collector, Baikunthpur, Distt. Korea, Chhattisgarh.

--- Defendant No. 2

--- Respondent

For Appellant :- Mr. Pushpendra Kumar Patel, Advocate
 For State :- Mr. Animesh Tiwari, Dy. A.G.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

08/03/2021

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellant/defendant No. 1 against the impugned judgment and decree passed by the first appellate Court reversing the judgment and

decree by which learned trial Court dismissed the suit of the plaintiff.

2.Mr. Pushpendra Kumar Patel, learned counsel for the appellant/defendant No. 1 would submit that the first appellate Court has committed illegality in reversing the judgment and decree of the trial Court dismissing the suit of the plaintiff by recording a finding which is perverse and contrary to the record, as such, the appeal deserves to be admitted by formulating substantial question of law.

3.Plaintiff and defendant No. 1, both are brothers. Plaintiff filed a suit for declaration of title, partition and possession to the extent of $\frac{1}{2}$ share in the suit property stating that the said suit property has not been partitioned during the lifetime of their father, therefore, he is entitled for decree as claimed, which was opposed by his brother defendant No. 1 stating that the suit property has already been partitioned during the lifetime of their father, as such, plaintiff is not entitled for any share in the suit property.

4.Learned trial Court, after appreciation of oral and documentary evidence on record, dismissed

the suit of the plaintiff which was then reversed by the first appellate Court. Learned first appellate Court, while reversing the judgment and decree of the trial Court and thereby, decreeing the suit of the plaintiff, has clearly recorded a finding that plaintiff and defendant No. 1, both are brothers and the suit property situated at Village Tendua, Tahsil Baikunthpur was owned by their father and further no partition with regard to the suit property had taken place during the lifetime of their father, as such, plaintiff is entitled for $\frac{1}{2}$ share in the suit property as it is the joint family property of plaintiff and defendant No. 1.

5. The aforesaid finding recorded by the first appellate Court that suit property, originally held by father of plaintiff and defendant No. , is their joint family property in which plaintiff as well as defendant No. 1, both are entitled to get $\frac{1}{2}$ share is a finding of fact based on evidence available on record which is neither perverse nor contrary to the record. I do not find any perversity or illegality in the said finding and it does not involve any substantial question of law for determination.

6.The second appeal, being devoid of merits,
deserves to be and is accordingly dismissed in
limine without notice to the other side.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet