

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.379 of 2002****Judgment reserved on :18.06.2021****Judgment delivered on:28.06.2021**

Munni Bai @ Latputi d/o late Laxman, age 34 years,
 Caste-Uraon, Occupation-Household, r/o village
 Kawandand, P.S. & Tehsil Ambikapur, Dist. Surguja (CG)

---- Appellant/Defendant No.1**Versus**

1. Manchan @ Kokdi (died) through LR's

1A. Purushottam S/o Suresh Chandra, aged about 46
 years,

1B. Shrimati Pista W/o Purushottam, aged about 40
 years,

Both are R/o. Mayapur road (Kouwandand), City –
 Ambikapur, Post and Police Station – Ambikapur,
 District Surguja (CG)

2. Jugul (died) through LR's

2.a Hario @ Pakri (died and deleted)

2.b Shri Uraon, S/o Late Jugul Ram aged about 25
 years.

2.c Shri Pandu S/o Late Jugul Ram aged 23 years.

2.d Chokho S/o Late Jugul aged 20 years.

2.e Ghoghi S/o Late Jugul aged 18 years

All are R/o Khairbar (Ganaghat), P.S. Ambikapur,
 Distt. Surguja (CG)

3. Jaipal S/o Muneshwar, age 34 years.

4. Babla S/o Muneshwar, age 32 years,

5. Jagman S/o Muneshwar, age 38 years,

All by caste Uraon, Occupation Agriculture, Resp.No.3
 to 5 r/o village Khairbar, P.S. & Tehsil Ambikapur,
 District Surguja M.P. (Now C.G.)

6. The State of M.P. (Now C.G.) through Collector
 Surguja (CG)

---- Respondents

For Appellant/Defendant No.1:

Mr.A.K.Prasad, Advocate

For Respondents No.1A to 1B/ LR's of Plaintiff No.1:

Mr.A.N.Pandey, Advocate

For Respondents No.2b to 2e, 3 and 4:

Mr.Bhupendra Singh, Advocate

For Respondent No.6/State:

Mr.Ravi Bhagat,Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal
C.A.V. Judgment

1.This second appeal preferred by defendant No.1 was admitted for hearing on 18.2.2015 by formulating following substantial questions of law:

(i) "Whether the lower Appellate Court was not justified in reversing a well reasoned judgment and decree passed by the Trial Court?

(ii) Whether the entire relevant evidence has not been considered and a wrong finding/perverse finding in relation to partition, as alleged by the plaintiffs has been recorded by the lower Appellate Court?"

[For the sake of convenience, the parties would be referred hereinafter as per their status shown and nomenclature in the suit before the trial Court].

2.The property shown in Schedule "A" of the plaint was settled in Surguja settlement in favour of Late Muneshwar Uraon and Laxman Uraon and thereafter Muneshwar Uraon died on 31.7.89. It is the case of

the plaintiffs that they are legal representatives of Muneshwar, whereas defendant No.1 is sole daughter of Laxman namely Munni Bai. Shri Laxman sold 12 decimal of land and executed sale deed in favour of her daughter i.e. defendant No.1 on 16.5.89 vide Ex.D-5 and thereafter the suit was filed on 30.8.90 by the plaintiffs herein seeking cancellation of sale deed dated 16.5.89 executed by Laxman in favour of her daughter Munni Bai vide Ex.D-5. Apart from cancellation of sale deed, they also claimed that the suit property shown in Schedule "C" of the plaint be declared that it is owned by the plaintiffs as the property held by their father Muneshwar i.e. 0.29 decimal of land. The present dispute relates to sale deed executed by Laxman in favour of her daughter Munni Bai/defendant No.1 as well as the land bearing Khasra Nos.2376, 2378 and 2379 i.e. total 29 decimal of land as it is the case of the plaintiffs that out of total 35 decimal of land, Laxman has only right to 6 decimal of land and remaining is held by Muneshwar and now the plaintiffs. Therefore, except 6 decimal of land, all the lands are held by Muneshwar and as such, the plaintiffs are entitled for possession of the said land.

3. Resisting the suit, defendant No.1 filed her written statement and denied the averments made in the plaint stating inter-alia that the suit property was held by Muneshwar and Laxman both in Surguja settlement and both have equal share in the property, but they were staying separately and in the year 1955-56 both have partitioned and in Khasra No.2376 Muneshwar has constructed his house and in Khasra No.2377 Laxman has constructed his house and the land being Khasra Nos.2378 and 2379 both have partitioned and as such, there is already partitioned between them. It has also been pleaded that in earlier Civil Suit No.4A/82, decided on 26.7.83 and Civil Appeal No.56A/86, decided on 30.8.1987 (Ex.D4) it has been held that Khasra No.2377 area 6 decimal was held by Laxman and Khasra No.2376 area 8 decimal was held by Muneshwar and finding of partition between them has already been recorded. It has also been pleaded that Laxman has right to alienate the suit property in favour of defendant No.1 and the suit is barred by res-judicata with regard to Khasra Nos.2376 and 2377 and as such, the suit is liable to be dismissed.

4. The trial Court upon appreciation of oral and documentary evidence available on record, by its

judgment and decree 23.12.96, dismissed the suit holding that the land bearing Khasra Nos.2376 and 2377 has already been decided in previous suit filed by Laxman and therefore, in subsequent suit, the plaintiffs are not entitled for any relief. However, with regard to the land bearing Khasra No.2378 and 2379, the trial Court dismissed the suit filed by the plaintiffs finding no merits. Feeling aggrieved against the judgment and decree of the trial Court, the plaintiffs preferred first appeal before the first appellate Court. The first appellate Court by the impugned judgment and decree, set aside the judgment and decree of the trial Court and decreed the suit declaring that the property shown in Schedule "C" of the plaint is held by the plaintiffs and except 6 decimal, sale deed is void. Questioning the judgment and decree of the first appellate Court, defendant No.1 preferred this second appeal under Section 100 of the CPC, in which two substantial questions of law have been formulated by this Court, which have been set-out in the opening paragraph of this judgment for sake of completeness.

5. Mr. A.K. Prasad, learned counsel for the appellant/defendant No.1, would submit that the first appellate Court is absolutely unjustified in

interfering with the judgment and decree of the trial Court and decreeing the suit filed by the plaintiffs merely on the basis of statement of Munni Bai (DW-1) that in partition, more land was given to Muneshwar. Such a finding recorded by the first appellate Court is totally perverse and contrary to evidence of Manchan @ Kokdi (PW-1), Somaru (PW-2) and Jugul (PW-3) as well as defendant No.1-Munni Bai. If the finding of the trial Court is accepted, then out of 35 decimal of land, the plaintiffs would get 29 decimal of land and defendant No.1 would get only 6 decimal of land. Therefore, the impugned judgment and decree of the first appellate Court deserves to be set aside by answering the substantial questions of law in favour of defendant No.1 and against the plaintiffs.

6. Mr.A.N.Pandey and Mr.Bhuprendra Mishra, learned counsel for the respondents/plaintiffs and legal representatives of the plaintiffs, would support the impugned judgment and decree of the first appellate Court and submit that the partition already held and acted upon cannot be reopened and defendant No.1 herself has admitted that since Muneshwar had more issues, therefore, in partition 29 decimal of land was given to him. Therefore, the first appellate

Court is absolutely justified in granting decree in favour of the plaintiffs particularly in view of finding in earlier suit that daughters have no right in the property of their father, as such, the appeal deserves to be dismissed.

7. I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

8. Suit land bearing Khasra Nos.2377, 2376, 2378 and 2379 situated Kouwadand, District Surguja was settled in favour of the plaintiffs predecessor-in-title Muneshwar and father of defendant No.1 Laxman by Surguja settlement vide Ex.D-3. Thereafter with respect to land bearing Khasra Nos.2377 and 2376, Civil Suit NO.4A/82 was filed for partition by Laxman. That suit was dismissed on 26.7.83 vide Ex.D-4A and it was held that the suit land bearing Khasra No.2377 area 6 decimal was held by Laxman and the suit land bearing Khasra No.2376 area 8 decimal was held by Muneshwar and said decree was affirmed by the first appellate Court in Civil Appeal No.56A/86 on 30.8.1987. It is pertinent to mention here that the suit land bearing Khasra Nos.2378 and 2379 was not subject-matter of litigation in the

earlier suit. Thereafter, Laxman sold total 16.5 decimal of land vide Ex.D-5 in favour of his daughter/defendant No.1 which necessitated for filing of instant suit by legal representatives of Muneshwar for declaration of title and cancellation of sale deed dated 16.5.89 stating inter-alia that the suit property shown in Schedule "A" of the plaint was the property of Laxman and Muneshwar, whereas the suit property shown in Schedule "B" of the plaint was the property of Laxman and the suit property shown in Schedule "C" of the plaint i.e. 29 decimal was the property of Muneshwar and now the plaintiffs. Therefore, Laxman has no right to alienate the suit property more than 6 decimal of land. In a suit filed, stand of defendant No.1 was that her father has rightly executed sale deed of his share in the suit property in her favour and the suit land bearing Khasra No.2377 area 6 decimal has already held by his father Laxman and the land bearing Khasra No.2376 area 8 decimal has already been held by Muneshwar by earlier civil suit. However, the land shown in Khasra Nos.2378 and 2379 both have equal share and therefore, they were cultivating in their respective lands and Laxman, her father has rightly sold the part of suit land in

her favour.

9. The trial Court dismissed the suit holding that the land bearing Khasra Nos.2377 and 2376 has already held to be Laxman and Muneshwar respectively and in remaining part, Laxmnan and Muneshwar both were in possession and Laxman has rightly sold his part of suit land in favour of her daughter Munni Bai, as such, the plaintiffs are not entitled for any relief, which has been interfered with by the first appellate Court basically relying upon the statement of defendant No.1-Munni Bai, in which she has stated that more lands were given to Muneshwar as he has more issues than Laxman and decreed the suit except 6 decimal of land.

10. From perusal of the records, it is quite vivid that in earlier civil suit, Laxman, father of defendant No.1 Munni Bai, has been held to be owner of the land bearing Khasra No.2377 area 6 decimal and Muneshwar, predecessor-in-title of the plaintiffs, has held to be owner of the land bearing Khasra No.2376 area 8 decimal. Those findings cannot be challenged now and it is binding on both the parties. However, the dispute relates to the land shown in Schedule "C" of the plaint bearing Khasra No.2376 area 0.08 decimal, Khasra No.2378 area 0.14

decimal and Khasra No.2379 area 0.07 decimal. The trial Court held that the properties of these khasra numbers were also equally divided between Muneshwar & Laxman and Laxman has alienated his part of land in favour of his daughter i.e. defendant No.1-Munni Bai appreciating the evidence on record particularly evidence of Manchan @ Kokdi (PW-1), Somaru (PW-2) and Jugul (PW-3) holding that these lands i.e. Khasra Nos. 2378 and 2379 were equally divided among Muneshwar & Laxman and they were in possession of their respective share and Laxman has alienated his part of land in favour of her daughter. The first appellate Court relying upon the statement of defendant No.1-Munni Bai (para-5) that some more land was given to Muneshwar as he has more issues i.e. 5 issues (5 in number), therefore, some more land has been allotted to him.

11. A careful perusal of statement of Munni Bai (DW-1) would show that she has not stated that in partition Laxman has given only 6 decimal of land and remaining 29 decimal of land was given to Muneshwar. Her statement has been misread by the first appellate Court. Similarly, statement of Kedwaram (DW-3) has also been misread by the first appellate Court to reach a conclusion that they have

admitted that some more land (29 decimal out of 35 decimal) was given to Muneshwar and now the plaintiffs. Total suit land i.e. 35 decimal was settled jointly in favour of Muneshwar and Laxman in Surguja Settlement and it is the case of defendant No.1 that in earlier civil suit, it has been recorded that they have equally divided the suit property between them, as such, there was no reason for the first appellate Court to reverse the judgment and decree of the trial Court that the land bearing Khasra Nos.2378 and 2379 was equally divided among Muneshwar and Laxman and the plaintiffs are not entitled for entire land i.e. 29 decimal giving only 6 decimal land to Laxman. It appears to be totally unjustified also that the property jointly acquired by Muneshwar and Laxman, predecessor-in-title of the plaintiffs and defendant No.1, the plaintiffs will get 29 decimal of land and defendant No.1 or her father Laxman will get only 6 decimal of land merely because Laxman has no male issue and the plaintiffs are in dominating position, it cannot be held that Laxman has got only 6 decimal of land in partition and remaining 29 decimal of land fell in share of Muneshwar, father of the plaintiffs, as such, the first appellate Court is absolutely

unjustified in interfering with the judgment and decree of the trial Court by misreading the statements of Munni Bai (DW-1) and Kedwa Ram (DW-3) assuming the fact which is not available on record, as such, finding of the first appellate Court being perverse and contrary to record is liable to be set aside.

12. Accordingly, the judgment and decree of the first appellate Court is hereby set aside and that of the trial Court is hereby restored meaning thereby the suit would stand dismissed.

13. The second appeal is allowed to the extent indicated hereinabove leaving the parties to bear their own cost(s).

14. Appellate decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-