

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 205 of 2011**

- Paniyal, S/o. Late Simon Uraon, aged about 55 years, R/o. Village Bargaontola Dumartoli, Tahsil and Distt. Jahspur (CG)

---- Appellant**Versus**

1. Subardan Ekka, S/o. Late Ruben, aged about 52 years, Caste Uraon R/o. Dixit Colony Kosa Nagar, Nehru Nagar Bhilai Distt. Durg (CG)
2. Premoday S/o. Late Ruben, Caste Uraon, R.o. Village Bargaon, Dumartoli, Post Ichkela, Tahsil and distt. Jashpur (CG)
3. Jonson S/o. Late Ruben, Caste Uraon R/o. Village Krishna Nagar, Post Kohka, Bhilai Distt. Durg (CG)
4. Vijay Ekka, S/o. Late Muktidan Ekka, aged about 25 years, Caste Uraon, R/o. Village Bargaon Dumartoli, Post Itchkela, Tahsil and Distt. Jashpur (CG) At present R/o. Indravati, Post Kohka, Bhilai Distt. Durg (CG)

---Respondents

For Appellant	: Shri AK Prasad, Advocate
For Respondents	: Not noticed

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****03.3.2021.**

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 14.02.2011 passed by District Judge, Civil Distt. Jashpur in Civil Appeal No.12A/2010 affirming the judgment and decree dated 12.5.2010 passed by Civil Judge Class-II, Jashpur Nagar in Civil Suit No.19A/2009 by which the trial Court has dismissed the suit of the plaintiff.

2. Learned counsel for the appellant herein/plaintiff submits that oral partition has already been taken place long back between father of

plaintiff namely Simon and father of defendants 1 to 3 namely Ruben and they are in possession of the property as per oral partition, therefore, Tahsildar could not have made partition by his order dated 11.01.2000, as such, finding recorded by the trial Court as well as the first appellate Court are 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.

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

4. It is the case of the plaintiff that the suit property was partitioned orally between father of the plaintiff and father of defendants 1 to 3 long back and they are in possession of their respective shares after partition and therefore, by order dated 11.01.2000, Naib Tahsildar cannot make partition of the suit property.

5. The trial Court though recorded a finding that oral partition has already been taken place, however, further recorded a finding that parties are not in possession of their respective shares as per the oral partition and further held that by order dated 11.01.2000, the Tahsildar directed only for division of the property between two parties and actual order of partition was passed on 10.4.2000. The said finding recorded by the trial Court has been affirmed by the first appellate court against which the plaintiff has preferred the instant second appeal.

6. The two Courts below have concurrently recorded a finding that though oral partition has already been taken place but the parties are not in possession of their respective shares as per the oral partition and therefore, order dated 10.4.2000 passed by the Tahsildar for partition

under Section 178 of Land Revenue Code is in accordance with law, even otherwise order dated 10.4.2000 directing partition has not been challenged in the suit. The above concurrent finding of both the Courts below are finding based on material available on record, which is neither perverse nor contrary to the record and the appeal does not involve any substantial question of law.

7. 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

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