

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 205 of 2012**

Milandas, S/o. Chheduram Satnami, aged about 50 years, R/o. Mohtara, Patwari Halka No.20, Tahsil Bilaigarh, Distt. Raipur (CG)

---- Appellant/Plaintiff**Versus**

1. Sukwara Bai D/o. Santram Satnami, R/o. Mohtara, Patwari Halka No. 20 Tahsil Bilaigarh Distt. Raipur (CG)
2. State of Chhattisgarh Through the Collector Raipur Distt. Raipur (CG)

---Respondents/Defendants

For Appellant	: Shri Manoj Paranjpe and Shri Anurag Singh, Advocates
For Respondent 1	: Not noticed
For Respondent No.2/State	: Shri Ankur Kashyap, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****24.02.2021.**

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 27.4.2012 passed by Second Additional District Judge, Baloda Bazar, distt. Raipur in Civil Appeal No.74A/2011 affirming the judgment and decree dated 14.7.2008 passed by Civil Judge Class-II, Bilaigarh in Civil Suit No.136A/2007 by which the trial Court dismissed the suit of the plaintiff.

2. Learned counsel for the appellant herein/plaintiff submits that both the courts below have concurrently erred in dismissing the suit, 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.

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

4. The suit property was originally held by late Santram Satnami. He has two daughters namely Ramayanmati and Sukwara Bai (Defendant No.1). The plaintiff is the son of Ramayanmati and she has already died. The plaintiff filed suit for declaration, partition, possession and for permanent injunction inter alia stating that partition has already been taken place between two sisters i.e. Ramayanmati and Sukwara Bai in the year 1999 and therefore, order for partition passed by Tahsildar dated 01.4.2004 is illegal and bad in law.

5. The learned trial Court after appreciating the oral and documentary evidence, did not accept the plea of the plaintiff that partition has already been taken place between the parties and upheld the order of Tahsildar dated 01.4.2004 for partition. The said finding of the trial Court has been affirmed by the first appellate Court against which the plaintiff has preferred the second appeal.

6. The two Courts below have concurrently recorded a finding that no partition has taken place between the sisters i.e. between the mother of the plaintiff and defendant No.1, and therefore, order of Tahsildar for partition under Section 178 of Land Revenue Code is in accordance with law. The finding recorded by both the Courts below holding that no partition has taken place between two sisters in the year 1999 and order of Tahsildar dated 01.4.2004 directing partition is in accordance with law, 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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