

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 52 of 2010**

1. Sant Lal (died) through LRs. :-

(a). Krishna Murari Lal Roy.

(b). Gendlal Roy.

(c). Murari Lal Roy.

(d). Ram Asharay Roy.

(e). Smt. Jagora Bai.

All are R/o Pendri, Tahsil Manendragarh, Distt. Korea, Chhattisgarh.

---Appellants/Lrs. Of Defendant No. 1

Versus

1. Harish Chandra S/o Shri Shyamlal, Aged about 58 years.

2. Subhash S/o Shri Shyamlal, Aged about 47 years.

Both are R/o Village Pendri, tahsil Manendragarh, Distt. Koriya, Chhattisgarh. **--- Plaintiffs**

3. State of Chhattisgarh, through Collector, Koriya, Baikunthpur, Distt. Koriya, Chhattisgarh.

--- Respondents

For Appellants :- Mr. Vivek Tripathi, Advocate

For Respondents 1 & 2 :- Ms. Sharmila Singhai, Advocate

For State :- Mr. Ravi Bhagat, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

14/01/2021

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellants/defendant No. 1 (now his Lrs.) against the impugned judgment and decree passed by the first appellate Court reversing the judgment and decree of the trial Court and decreeing the suit of the plaintiffs for declaration of title, partition and possession.
2. Mr. Vivek Tripathi, learned counsel for the appellants/defendants, would submit that the first appellate Court went absolutely wrong in holding that plaintiffs are also entitled for decree for declaration of title, partition and possession over the 1/3 share of the suit property by recording a finding which is perverse and contrary to the record, as such, the second appeal deserves to be admitted by formulating substantial question of law in this regard.
3. The suit property was originally held by Rambharosh who had three sons namely Salikram, Shyamlal and Dukhiram. Plaintiffs and defendant No. 1 are the sons of Shyamlal. It is admitted

position on record that Rambharosh died on 20/03/1962 and his son and plaintiffs' and defendant No. 1's father namely Shyamlal had already died prior to Rambharosh. After the death of Rambharosh, partition took place in which defendant No. 1 was given 23.50 acres of land which was to be held by all the three sons of Shyamlal i.e. plaintiffs as well as defendant No. 1 but since defendant No. 1 was the eldest son, his name was recorded in the revenue records and thereafter, he refused to give any share to his brothers i.e. the plaintiffs which led to the filing of the suit for declaration of title, partition and possession by the plaintiffs.

4. Both the Courts below have clearly held that the suit property was received by defendant No. 1 in the partition held after the death of Rambharosh and learned first appellate Court has clearly held that the suit property was received by defendant No. 1 on behalf of all three brothers i.e. the plaintiffs and defendant No. 1 himself, therefore, the plaintiffs as well as defendant No. 1, all three of them are entitled for $1/3^{\text{rd}}$ share in

the suit property negating the plea of defendant No. 1 (now his Lrs.) that in partition, the suit land was given to him and plaintiffs had received movable property.

5. The finding recorded by learned first appellate Court that the suit property was the joint property of plaintiffs and defendant No. 1 and therefore, plaintiffs are also entitled for $1/3^{\text{rd}}$ share in the suit property is a finding of fact based on evidence available on record which is neither perverse nor contrary to the record and does not involve any substantial question of law for determination.

6. Accordingly, the second appeal deserves to be and is dismissed *in limine* without notice to the other side.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet