

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No.9 of 2011**

1. Shiv Mangal Singh, S/o Dhaneshwar Singh, aged 43 years
2. Dadu Singh, S/o Dhaneshwar Singh, aged 39 years
3. Balram Singh, S/o Dhaneshwar Singh, aged 37 years
4. Sonkaliya, W/o Dhaneshwar Singh

All R/o Village Masanki, Petripara, Tehsil Surajpur (C.G.)

----- Appellants

Versus

1. Umashanker Prasad Sharma, S/o Jamuna Prasad Dubey, aged 80 years, Occupation Agriculturist, R/o Surajpur, Village Sighma, Tahsil Surajpur, District Surguja (C.G.)
2. Kanhaiya Dubey, S/o Dayashankar Dubey, aged 34 years, Occupation Agriculturist & Labour, R/o Surajpur, Tahsil Surajpur, District Surguja (C.G.)
3. Ku. Shankuntala, D/o Dayashankar Dubey, aged 30 years, Occupation Agriculturist & Labour, R/o Surajpur, Tahsil Surajpur, District Surguja (C.G.)
4. State of Chhattisgarh, through Collector, Surguja, Ambikapur (C.G.)

----- Respondents

For Appellants	Dr. N. K. Shukla, Senior Advocate along with Ms. Ritu Mishra, Advocate
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For Respondent-State	Mr. R. K. Bhagat, Dy. GA
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Hon'ble Justice Shri Sanjay K. Agrawal

Order On Board

17/02/2021

1. Heard on admission and formulation of substantial question of law in the second appeal preferred by the appellants/defendants. By the impugned judgment and decree dated 05.05.2010 passed by the Second Additional District Judge (FTC), Surajpur in Civil Appeal No.2A/2007, the First Appellate Court has affirmed the judgment and decree of the Trial Court dated 25.01.2007 passed by the Civil Judge, Class-I, Surajpur, District Sarguja in Civil Suit No.160A/2004, by which the Trial Court has decreed the suit of the plaintiffs in part.

2. Dr. Shukla, learned Senior counsel for the appellants/defendants, would submit that both the Courts below have grossly erred in concurrently holding that Sundar Singh had right and title to alienate the suit property to the extent of one half in favour of the plaintiffs vide sale deed dated 09.03.1966 (Ex-P-2) by recording a finding perverse to the record. As such, the appeal be admitted for hearing by formulating substantial question of law.
3. I have heard learned counsel for the appellants, considered his submissions made herein-above and also went through the records with utmost circumspection.
4. The suit property was originally held by Bhola Singh. He had two sons namely Dhaneshwar Singh and Sundar Singh. The plaintiffs are the purchasers from Sundar Singh vide Ex-P-2 dated 09.03.1966, whereas the defendants are the legal heirs of Dhaneshwar Singh. The plaintiffs filed a

suit for declaration and possession claiming that they purchased 24.86 acres of the suit property from Sundar Singh, therefore, they are the title holder of the suit property and entitled for possession of the suit land from the defendants, whereas the stand of the defendants was that the suit property was held by Dhaneshwar Singh and Sundar Singh jointly, therefore, Sundar Singh had no right and title to alienate the suit property in favour of the plaintiffs.

5. The Trial Court after appreciating the oral and documentary evidence available on record decreed the suit in part holding that the suit property was originally held by Bholi and he had two sons namely Sundar Singh and Dhaneshwar Singh, the father of the defendants, and the plaintiffs have purchased the suit property from Sundar Singh, therefore, the plaintiffs are only entitled for half of the suit property i.e.

12.41 Acres of land to the extent of Sundar Singh's share and they are the title holder to that extent and half of the suit property is held by Sundar Singh's brother Dhaneshwar Singh, the father of the defendants, and further held that the plaintiffs can get possession of the suit property by filing a suit for partition or by any other remedy available in accordance with law. That judgment of the Trial Court has also been affirmed by the First Appellate Court, against which this second appeal has been filed.

6. The finding recorded by the two Courts below that the suit property is jointly held by both the brothers Sundar Singh and Dhaneshwar Singh (father of the defendants) and the plaintiffs would get only half share in the suit property i.e. 10.41 acres of land to the extent of share of Sundar Singh is a pure and simple finding of fact based on the material available on record.

As such there is no illegality or perversity in the judgment and decree passed by the two Courts below.

7. I do not find any substantial question of law involved in this second appeal so filed by the appellants/defendants. It deserves to be and is hereby dismissed in *limine* without notice to the other side. No order as to cost (s).

Sd/-
Sanjay K. Agrawal
Judge

Nirala