

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No.217 of 2011

- Ram Subhag, S/o Late Ramdhani Sahu, aged about 70 years, Occupation Agriculturist, R/o Village Targawan, Tahsil Baikunthpur, District Korea (C.G.)

----- Appellant

Versus

1. Ramdulare, S/o Late Ramdhani Sahu, aged about 65 years, Occupation Agriculturist, R/o Village Taragawan, Tahsil Baikunthpur, District Korea (C.G.)

2. Legal heirs of Late Jagat Narayan Dubey

2A. Savitri Devi, W/o Late Jagat Narayan Dubey, aged about 48 years

2B. Vikas Kumar, S/o Late Jagat Narayan Dubey, aged about 25 years

2C. Kumari Alka, D/o Late Jagat Narayan Dubey, aged about 23 years

2D. Kumari Nidhi, D/o Late Jagat Narayan Dubey, aged about 21 years

2E. Sriram, S/o Late Jagat Narayan Dubey, aged about 19 years

All 2A to 2E are R/o Village Saradi, Thana Charcha, Tahsil Baikunthpur, District Korea (C.G.)

Through Special Power of Attorney Gulab Dubey, S/o Kedar Nath Dubey, aged about 70 years, Caste Brahman, Occupation Agriculturist, R/o Village Saradi, Thana Charcha, Tahsil Baikunthpur, District Korea (C.G.)

3. State of Chhattisgarh, through Collector, Korea, Baikunthpur (C.G.)

----- Respondents

For Appellant	Mr. Sanjay Patel, Advocate
For Respondent-State	Mr. Jitendra Pali, Dy. AG

Hon'ble Justice Shri Sanjay K. Agrawal

Order On Board

09/02/2021

1. Heard on admission and formulation of substantial question of law in the second appeal preferred by the appellant/plaintiff, whereby the First Appellate Court has dismissed the appeal preferred by the appellant/plaintiff vide judgment and decree dated 08.04.2011 passed by the learned First Additional District Judge, Manendragarh, Baikunthpur, District Korea (C.G.) in Civil Appeal No.49A/2010 affirming the judgment dated 29.09.2007 and decree dated 03.10.2007 of the Trial Court passed by the learned Second Civil Judge Class-I, Baikunthpur, District Korea (C.G.) in Civil Suit No.24A/2005 dismissing the suit filed by the appellant/plaintiff.
2. Mr. Patel, learned counsel for the appellant/plaintiff, would submit that both the Courts below have grossly erred in concurrently holding

that the partition has taken place between the parties in the life time of Ramdhani, the father of the plaintiff and defendant No.1, by recording a finding perverse to the record, as such appeal be admitted for hearing by formulating substantial question of law.

3. I have heard learned counsel for the appellant, considered his submissions made herein-above and also went through the records with utmost circumspection.
4. The suit property was originally held by Ramdhani Sahu and Ramdulare, who died during pendency of the civil suit. The plaintiff and defendant No.1. are the brothers and sons of Ramdhani Sahu. The plaintiff brought a suit for declaring title, partition and separate possession claiming that he is entitled for half share of the suit property, in which the defendant No.1 has taken a plea that the partition has already taken place between the parties, therefore, the plaintiff is not entitled for title, partition and separate possession.
5. The Trial Court after appreciating the oral and

documentary evidence available on record framed as many as 6 issues and categorically recorded a finding that the partition has already taken place between the plaintiff and defendant No.1 during the life time of their father Ramdhani and they are in separate possession of the same and that judgment and decree of the Trial Court has also been affirmed by the First Appellate Court.

6. The finding recorded by the two Courts below that the partition has already taken place between the plaintiff and the defendant No.1 during the life time of their father Ramdhani Sahu is a finding of fact based on the material available on record, as such there is no 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 appellant/plaintiff. 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