CGHC010004142005 2026:CGHC:37812

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HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 20.07.2026
Pronounced on 24.08.2026

FA No. 269 of 2005

1 - Ram Niwas Dewangan S/o Bharat Ram Aged About 45 Years R/o Palace Road, Raigarh Chhattisgarh.

... Appellant(s)

versus

1 - Late Shri Hem Kumar Dewangan (Died) Through Lrs

1(A) Prem Dewangan S/o Late Shri Hem Kumar Dewangan, Aged About 28 Years R/o Of Palace Road, Raigarh, Tahsil And District - Raigarh Chhattisgarh.

1(B) Gejendra Dewangan S/o Late Shri Hem Kumar Dewangan, Aged About 24 Years R/o Of Palace Road, Raigarh, Tahsil And District - Raigarh Chhattisgarh.

1(C) Rajendra Dewangan, S/o Late Shri Hem Kumar Dewangan, Aged About 29 Years R/o Of Palace Road, Raigarh, Tahsil And District - Raigarh Chhattisgarh.

2 - Smt. Dasmit (Dead and deleted) As Per Court Order Dt. 01-10-2019.

3 - Madavi (Dead) Through Lrs., As Per Court Order Dt. 01-10-2019.

3(A) - Jumuna (Died) Through Lr. As Per Court Order Dated 07-04-2026.

3.A.1 - Natwar Lal S/o Awadh Ram, Aged About 40 Years R/o Chandrapur, Distt. Sakti (C.G.)

KISHORE KUMAR DESHMUKH
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3(B) - Malti, W/o Bharat Lal, Aged About 42 Years R/o Sarangarh, Near Sarkari Khet Mitti Tel Tanker, Distt. Raigarh (C.G.)

3(C) - Pusia, W/o Gangalal Aged About 38 Years R/o Sarangarh,

Baasipash, Distt. Raigarh (C.G.)

3(D) - Kumari W/o Badal Aged About 32 Years R/o Sarangarh, Pratapganj, Distt. Raigarh (C.G.)

4 - Mst. Savitri W/o Munnu Ram Dewangan , R/o Turka Para, Tehsil And District - Raigarh Chhattisgarh.

5 - Mst. Geeta, W/o Anant Ram Koshta, R/o Pudurdih, Irrigation Colony, Ambikapur, District - Sarguja Chhattisgarh.

6 - Mst. Meera, W/o Balram Dewangan, R/o Bunglow Para, Raigarh, Tehsil And District - Raigarh Chhattisgarh.

---- Respondent(s)

For Appellant : Mr. Aditya Bhardwaj, Advocate

For Respondent 1-A,1-B & 6 : Mr. Mayank Gupta on behalf of Mr. Vaibhav A. Goverdhan, Advocates

Respondents No. 1(C), 3(A((1), 3(B), 3(C), 3(D),4 and 5 : None though served.

Hon'ble Shri Justice Narendra Kumar Vyas

CAV Judgment

1. This is plaintiff's first appeal filed under Section 96 of the C.P.C. challenging the judgment and decree dated 18.11.2005 passed by the learned Fourth Additional District Judge (F.T.C.), Fast Track Court, Raigarh (C.G.) in Civil Suit No. 10-A/2001 whereby the learned trial Court has dismissed the suit filed by the plaintiff for partition and separate possession.
2. The parties are referred to as described in the civil suit before the learned trial Court.
3. The brief facts as reflected from the plaint's averments are that the plaintiff filed a suit for partition, declaration and separate possession

of the property described in Schedule A, B and C on 18.02.1994 mainly contending that :-

3.A) The parties are Hindus governed by the Mitakshara School of Hindu Law. The father of the plaintiff and the defendant, Bharat Ram, had gone to a pilgrimage in the year 1986 and has not returned till date. Therefore, in terms of Section 108 of the Indian Evidence Act, Bharat Ram is presumed to be died. It is also the case of the plaintiff that the plaintiff and the defendant are two brothers and no partition has ever taken place between them. The plaintiff has five sisters, one of whom has since died. The remaining four sisters were married during the lifetime of their father after being provided with dowry and other customary marriage expenses by him according to his means. Therefore, the sisters are not members of the joint Hindu family for the purpose of the present suit, and as they have no interest in the joint family property, they are not necessary parties to the proceedings.

3.B) The present suit confined to partition of house situated at Palace Road, Raigarh as described in Schedules 'A' and 'B' and property situated at Ambikapur as described in Schedule 'C' which is purchased from the nucleus of the joint Hindu family property.

3.C) It is also the case of the plaintiff that the suit properties described in the schedules annexed to the plaint have all along remained under the joint ownership and joint possession of the plaintiff and the defendant. Owing to family disputes, the relations between the plaintiff and the defendant have deteriorated, and it has become

impossible for the plaintiff to continue in joint possession with the defendant. Accordingly, in September 1992, the plaintiff orally requested the defendant to partition the suit properties and allot one-half share to the plaintiff. As the defendant did not accede to the request, the plaintiff, through his Advocate, served a legal notice by registered post on 28.09.1993, but the defendant refused to accept the same which has necessitated the plaintiff to file a suit for partition and separate possession of the properties described in Schedule A,B and C of the plaint.

4. The legal representatives of defendant No.1 jointly filed their written statement denying the allegations made in the plaint mainly contending that :-

4.A) The plaintiff and the deceased Defendant No. 1 were real brothers, however, it is denied that the two brothers constituted a Hindu Joint Family and no partition had taken place between them. In fact, only the ancestral agricultural lands have not been partitioned and, even at present, the parties continue to hold and possess the same jointly as co-sharers. The plaintiff is the elder brother. The parties had five sisters, one of whom has died. Since the remaining four sisters have not been impleaded as parties to the suit, the suit is not maintainable. It is admitted that the properties were inherited from the father. However, it is denied that the suit properties described in the schedules annexed to the plaint have continued to remain under the joint ownership and possession of the plaintiff and the defendant. The suit properties had already been partitioned. Under such partition, the property

described in Schedule 'A' fell in the share of the defendant, whereas the property described in Schedule 'B', including the house thereon, fell in the share of the plaintiff and the property described in Schedule C has been purchased by the defendant from his own income derived from salary being a Government servant which is registered in the name of Smt. Dashmat Bai (wife of Hemkumar Dewangan).

4.B) Prior to the year 1982, there existed a single-room mud house on the land described in Schedule 'A'. The defendant had been in Government service at Raigarh since 1965. After his marriage in 1968, the defendant started residing with his family in the house situated at Schedule 'A' along with his father. During his lifetime, in the year 1970, the father, Bharat Ram, partitioned the properties between his two sons in accordance with their existing possession. He allotted the house described in Schedule 'A' to the defendant which was reconstructed by the defendant and the house described in Schedule 'B' to the plaintiff. Since then, the plaintiff and the defendant have been residing separately in their respective houses. At no point prior to the institution of the suit the plaintiff raised any objection to the construction of the said house. Therefore, the plaintiff is estopped by his own conduct from disputing the defendant's exclusive ownership and possession.

4.C) It has been further contended that since the parties are already in possession of their respective shares and the partition has already been effected, the present suit for partition is not maintainable. The plaintiff's claim is false, frivolous, and vexatious, therefore prayed

for dismissal of the suit.

5. The defendants No.3 and 6 filed their joint written statement denying the allegations made in the plaint mainly contending that the plaintiff separated from the family during the lifetime of his father and had been residing independently in a mud house for a long period on the basis of such family arrangement. Likewise, during his lifetime, the father had allotted a mud house to the deceased Defendant No.1. Thereafter, the deceased being a Government servant and having acquired sufficient income from his employment, constructed a permanent (pucca) house at his own expense, in which he resided. Defendants No. 3 and 6 were looked after and maintained by defendant No.1 during his lifetime, and they continue to visit and maintain relations with the family even now. The partition between the two brothers had already taken place, and the residential houses had also been partitioned. The plaintiff has not included all the joint family properties in the present suit. The agricultural land situated at Village Tarpali has not been included in the suit for partition and would pray for dismissal of the suit.

6. The defendant No. 4 filed separate written statement supporting the pleadings of plaintiff contending that the plaintiff and the defendant are in joint possession of the properties described in the schedules annexed to the plaint and no partition of the said properties has taken place till date. However, the agricultural land has already been partitioned by mutual arrangement, and both brothers are separately cultivating and possessing their respective portions. Defendant No. 5 did not file reply.

7. Learned trial Court on the pleadings of the parties framed as many as 5 issues and later considering the facts and circumstances of the case, framed 2 additional issues. The issues relevant for deciding the present lis are as follows :-

1. क्या वाद सूची अ और ब में वर्णित विवादित मकान उभय पक्ष के संयुक्त परिवार की अविभाजित संपत्ति है?

2. क्या वादी विवादित संपत्ति का विभाजन दो बराबर भागों में कर एक हिस्से का आधिपत्य प्राप्त करने का अधिकारी है?

3.अ. क्या उभय पक्ष के मध्य उनके पिता द्वारा सन 1970 में विवादित मकान का आपसी विभाजन कर वादसूचि अ में दर्शाया गया मकान प्रतिवादी को एवं वादसूचि ब में दर्शाया गया मकान वादी को प्रदान किया गया था?

ब. क्या प्रतिवादी ने वर्ष 1982 में इस प्रकार बटवारे में प्राप्त वादसूचि अ के विवादित मकान में एक लाख पांच हजार रू खर्च कर नया मकान बनाया है जिस पर वादी द्वारा कोई आपत्ति नही की गई?

6. क्या अनुसूची ''स'' मे दर्शित भूमि मकान संयुक्त परिवार के रूप में अर्जित सम्पत्ति होने से उसमें वादी का 1/2 हिस्सा है?

8. The learned Trial Court, upon due appreciation of the oral and documentary evidence available on record, dismissed the suit. Aggrieved by the said judgment and decree passed by the learned Trial Court, the plaintiff has preferred the present first appeal.

9. Learned counsel for the appellant vehemently criticized the judgment and decree passed by the learned trial Court and would submit that that learned trial Court has erred in not appreciating the fact that the property in question is in possession of joint family and a presumption ought to have drawn as this fact has not been rebutted by the defendants. He would further submit that the learned trial Court has also erred in considering the fact that the property in question is self acquired property though no such evidence has been led by the defendants and the fact that the defendant No. 1 was not present at the time of partition itself establishes that partition had never taken place. Just by residing separately, it cannot be presumed that the

property has been partitioned. Further, the defendant from the income of nucleus of the joint family has purchased a land at Ambikapur, as such he has also share in the property at Ambikapur. Therefore, the finding recorded by the learned trial Court suffers from illegality and perversity and on the basis of this perverse finding the judgment and decree has been passed which is liable to be set aside by this Court.

10. On the other hand, learned counsel for the respondents would submit that the judgment and decree passed by the learned trial Court is legal and justified and does not warrant interference by this Court. He would further submit that the partition was already effectuated in 1970. It has also come in the evidence of the Plaintiff (PW/1) itself that he came to know regarding land situated at Ambikapur that it has been purchased by the Defendant No.1. It has also come in the evidence of Laxman (PW/2) and Shyambandhu (PW/3) that the plaintiff is residing in the mud house since birth which reflects that the partition has already been done and the Schedule C property is self-acquired property. The learned trial Court after appreciating the evidence and material on record has rightly dismissed the suit as such, no interference is called for and would pray for dismissal of the appeal. To substantiate his contention he would refer to judgments of the Hon'ble Supreme Court in the case of **Rangammal Vs Kuppuswami and Another {2011 (12) SCC 220}** and **A.P. State Wakf Board Through Chairperson Vs Janaki Busappa and Others {2026 SCC Online SC 673}** and judgment of High Court of Patna in case of **Chhatradhari Mahton & Others Vs. Akleshwar Mahton and Others {1951 SC Online Pat 123}.**

11. I have heard learned counsel for the parties and perused the record of the Court below with utmost satisfaction.

12. On pleadings of the parties, material placed on record the point to be determined by this Court is :-

> "Whether the finding recorded learned trial Court that partition has taken place between the plaintiff and defendant and the property described in Schedule 'C' is a self-acquired property of defendant No.1, is legal and justified?"

13. To appreciate the point for determination, this Court has to briefly go through the evidence adduced before the trial Court.

14. From the admission of the plaintiff (PW/1) in the cross examination it is quite vivid that he resides in the mud house along with his father and also that the suit house described in Schedule A was a double storey building at the time of filing of the suit and he has also not raised objection when his brother has broken the mud house in the year 1982 and incurred the expenditure of Rs. 1,50,000/- in construction of the house after obtaining permission. His further admission that which house is pucca and which is katcha is not mentioned in the pattas and further considering the fact that the defendant No. 1 was in Government Service and also considering the amount spent on construction of the house from mud to pucca is detailed in the diary (Ex.D/1) which was written in the handwriting of the original defendant which clearly establishes that the property described in Schedule A was constructed by the funds generated by the Defendant No.1.

15. Further, from the evidence of wife of Defendant No.1 it is quite vivid

that the partition has taken place in 1970 by her father-in-law who called three persons namely Dharmu, Anand and Bhakti, and in front of them, he gave one mud house to the plaintiff and another to the defendant and also given Rs. 1000/--Rs. 1000/- to each of them as the defendant is able to prove that the partition has taken place in the family in the year 1970.

16. From the evidence recorded before the trial Court it is quite vivid that the defendant by sufficient material i.e. deposition of DW/2 and expenditure incurred in construction of property which was in his share was successfully able to prove that the partition has been taken place before the trial Court which has not been rebutted by the plaintiff. Coupled with the fact the admission of the plaintiff with regard to the agriculture land as admitted by the plaintiff's witness Savitri Bai (PW/4) regarding partition of the agriculture land clearly demonstrate that the partition has taken place in the family. The learned trial Court after appreciating the evidence, material on record has recorded its finding in paragraph 25 of the judgment that the father of the plaintiff and the defendant has done the partition in 1970. This finding is legal, justified and on proper appreciation of the evidence.

32. From the record it is also quite vivid that the plaintiff has taken plea of jointness of the Hindu Family, as such initial burden lies upon the plaintiff to prove that the property was joint Hindu Family property and when he is able to discharge his burden then only the burden can be shifted upon defendant No.1. The Hon'ble Supreme Court in case of **Shrinivas Krishnarao Kango vs. Narayan Devji Kango and**

Others {(1954) 1 SCC 544} wherein the Hon'ble Supreme Court has held in paragraph 11 as under:-

> 11. In Appalaswami v. Suryanarayanamurti {1947 SCC Online PC 42} in holding that the father had discharged the burden of proving that the acquisitions were his own, the Privy Council observed:
>
> > "The evidence establishes that the property acquired by the appellant under Exhibit A is substantially intact, and has been kept distinct. The income derived from the property and the small sum derived from the sale of part of it have been properly applied towards the expenses of the family, and there is no evidence from which it can be held that the nucleus of joint family property assisted the appellant in the acquisition of the properties specified in the schedule, to the written statement."
>
> Likewise, in the present -case all the ancestral Watan lands are intact, and are available for partition, and the small income derived from them must have been utilised for the maintenance of the members of the family. Whether we hold, as did the learned Judges of the High Court, that the plaintiff had failed to discharge the burden which lay on him of establishing sufficient nucleus, or that the defendants had discharged the burden of establishing that the acquisitions were made without the aid of joint family funds, the result is the same. The contention of the appellant that the findings of the Courts below are based on a mistaken view as to burden of proof and are in consequence erroneous, must fail.

33. Again the Hon'ble Supreme Court in its latest judgment in case of **Dorairaj vs. Doraisamy (Dead) Through Lrs and Other {2026 INSC 126}** in paragraph 29 has held as under :-

> 29. The principal contention by the Appellant before the High Court, and reiterated before us, is that the First Appellate Court erred in holding that the suit properties were joint family properties, particularly in the absence of what was described as an "income-bearing joint family nucleus". The High Court primarily placing its reliance on MLJ (II) 1976 225 (Pattusami Padayachi v. Mullaiammal and others); 1954 1 SCC 544 Shrinivas Krishnarao Kango v. Narayan Devji Kango and Ors. noted that proof of the mere existence of a joint family does not by itself render all properties as joint family properties, but equally, once it is established that ancestral properties yielding income existed and acquisitions were made during the continuance of the joint family, the burden shifts to the person

asserting self-acquisition.

34. Considering the law, evidence and finding recorded by the learned trial Court that the plaintiff is unable to discharge his burden regarding jointness of the property described in Schedules A and B of the plaint, I am of the view that the learned trial Court has rightly recorded its finding that the property described in Schedule C has been purchased from the self acquired income of defendant No.1. These findings do not suffer from perversity or illegality warranting any interference by this Court. Accordingly, the point for determination is answered against the appellant and in favour of the respondents.

35. Consequently, the First Appeal sans merit and it is dismissed.

36. A decree be drawn up accordingly.

Sd/-

(Narendra Kumar Vyas)
Judge

Deshmukh