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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

SA No. 382 of 2018

Makhan S/o. Late Tarachand Sahu, Aged About 55 Years R/o. Village Murmura, P.H. No. 16, Tahsil Chhura, Gariyaband, District Gariyaband Chhattisgarh.

... Appellant(s)

versus

1 - Bhog Bai W/o. Shivlal Sahu, D/o. Late Tarachand Sahu, Aged About 42 Years R/o. Tarrighat, Post And Tahsil Fingeshwar, District Gariyaband Chhattisgarh.

2 - Parvati W/o. Ishwar Sahu, D/o. Late Tarachand Sahu, Aged About 37 Years R/o. Devgaon, Post And Tahsil Rajim, District Gariyaband Chhattisgarh.

3 - Leelu Ram, S/o. Late Tarachand Sahu, Aged About 40 Years R/o. Village Murmura, P.H. No. 16, Tahsil Chhura, Gariyaband, District Gariyaband Chhattisgarh.....Respondent/defendant No. 2

4 - Urmila, W/o. Ramchand Sahu, D/o. Late Tarachand Sahu, Aged About 57 Years R/o. Village Birodar, Tahsil Chhura, District Gariyaband Chhattisgarh.....Respondent/defendant No. 3

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5 - State Of Chhattisgarh Through Collector, Gariyaband, District Gariyaband Chhattisgarh.....Respondent/defendant No. 4

.... Respondent(s)

(Cause title is taken from CIS)

For Appellant(s)	:	Mr. Sandeep Patel, Advocate
For Respondent/ State	:	Mr. Malay Jain, Panel Lawyer

Hon'ble Shri Justice Bibhu Datta Guru

Judgment on Board

06/04/2026

1. The present Second Appeal has been filed by the appellant/ defendant No.1 under Section 100 of the Code of Civil Procedure, 1908, assailing the impugned judgment and decree dated 11.05.2018 passed by the learned Additional District Judge, Gariyaband (C.G.) in Civil Appeal No. 13-A/2017 (Bhog Bai & Anr. vs. Makhan & Ors.), reversing the judgment and decree dated 27.07.2017 passed by the learned Civil Judge, Class-I, Gariyaband, District Gariyaband (C.G.), in Civil Suit No.04-A/2013 (Bhog Bai & Anr. vs. Makhan & Ors.), whereby the civil appeal filed by the plaintiffs was allowed. For the sake of convenience, the parties shall hereinafter be referred to as per their status before the Trial Court.

2. The plaintiffs have instituted the suit against the defendants seeking declaration of title, partition, possession and permanent injunction pleading *inter alia* that the suit land, bearing various Khasra numbers admeasuring total area 3.33 hectares, is the ancestral as well as self-acquired property of late Tarachand, and

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upon his death on 19.11.2011, the plaintiffs and defendants being his legal heirs, have jointly succeeded to the same and are recorded as co-owners in the revenue records. It is further pleaded that the plaintiffs and defendant Nos.1 to 3 are the sons and daughters of late Tarachand, born from his wedlock with two different wives, and therefore all parties have equal share in the suit property however, as the property remains undivided and the defendants are allegedly interfering with the plaintiffs' rights, the plaintiffs have sought declaration of their joint title along with defendants, partition of their respective shares, delivery of possession thereof, and issuance of permanent injunction restraining the defendants from causing any interference in their possession.

3. *(a) Per contra*, the original defendant No.1 Ramhin Bai (since deceased)- wife of Late Tarachand Sahu and her son defendant Leelu Ram, in their written statement, while denying the averments made in the plaint, have pleaded that the suit property is the ancestral property of late Tarachand and, after his death, the same was liable to be divided in equal 1/3rd shares among his sons Makhan, Leeluram and his widow Ramhin Bai; and thereafter, the 1/3rd share of Ramhin Bai was further liable to be divided into 1/6th shares among the plaintiffs and defendants. It is thus contended that the plaintiffs are not entitled to any relief as claimed and the suit is liable to be dismissed.

(b) The defendants Makhan & Urmila, who are the children of

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another wife of Tarachand namely; Mukhaiya Bai, in their written statement, while denying the plaint averments, have pleaded that after the death of late Tarachand, the names of his legal heirs were duly recorded and the suit property already stood partitioned on the basis of a mutual settlement arrived at in the presence of village elders, which was subsequently given effect to by the Tahsildar, Chhura vide order dated 06.03.2013 passed in Revenue Case No. 9-A/27/2012-13. It is further contended that in view of such prior partition and mutation, the plaintiffs are not entitled to claim equal shares. Ramhin Bai was not a legally wedded wife of Tarachand and, therefore, had no right to claim partition, being only entitled to maintenance; and that the plaintiffs had already relinquished their rights in the village meeting and accepted the arrangement, hence the present suit, seeking declaration, partition and possession afresh, is not maintainable and deserves to be dismissed.

4. After framing the issues and upon due appreciation of the oral as well as documentary evidence available on record, the learned Trial Court dismissed the suit filed by the plaintiffs, holding that the plaintiffs have failed to establish their claim over the suit property. Aggrieved by the said judgment and decree dated 27/07/2017, the plaintiffs preferred a First Appeal under Section 96 of the Code of Civil Procedure before the learned First Appellate Court. The learned First Appellate Court, on re-appreciation of the entire evidence on record, reversed the findings recorded by the learned

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Trial Court and allowed the appeal in favour of the plaintiffs vide impugned judgment. Hence, the present appeal by the defendant No.1, who is the son of Mukhaiya Bai.

5. (i) Learned counsel appearing for the appellant/defendant No.1 would submit that the impugned judgment and decree passed by the learned First Appellate Court is wholly unsustainable in law, inasmuch as the learned Appellate Court has reversed the well-reasoned judgment of the learned Trial Court without properly adverting to or dealing with the findings and reasons recorded therein while dismissing the suit. He submits that the learned First Appellate Court has failed to discharge its statutory duty by not independently appreciating the entire evidence on record and by not recording cogent reasons on each of the issues involved, thereby rendering the impugned judgment arbitrary and contrary to settled principles of law. Learned counsel further submits that the suit filed by the plaintiffs itself was not maintainable in the eyes of law, particularly in view of the admitted position that the suit property had already been partitioned amongst the parties and such partition had been duly acted upon and given effect to in the revenue records.

(ii) Learned counsel further contended that once a partition has been effected by consent of the parties, the same cannot be reopened in absence of any specific pleading and proof of fraud, coercion or undue influence. Learned counsel would contend that the plaintiffs, being daughters of late Tarachand Sahu, were

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present at the time of partition and had never raised any objection thereto at the relevant time, and thus, they are estopped from challenging the same at a belated stage. In support of his contention, learned counsel placed reliance upon the judgment passed by the Supreme Court passed in case of ***Ratnam Chettiar v. S.M. Kuppuswami Chettiar, reported in (1976) 1 SCC 214***, contending that a family partition, once effected and acted upon, attains finality and cannot be lightly disturbed. Hence he prayed that the impugned judgment and decree of the learned First Appellate Court be set aside.

6. I have heard learned counsel for the appellant on the question of admission, and the impugned judgments and decrees passed by the learned trial Court as also the learned First Appellate Court have been carefully examined.

7. In the present case, the learned Trial Court, while dismissing the suit, has primarily proceeded on the premise that a prior family partition dated 25.07.2011 had been effected between the parties and duly acted upon on the basis of revenue records. However, the learned First Appellate Court, upon re-appreciation of the entire oral as well as documentary evidence, has rightly found that though the parties were present at the time of such alleged partition, there is no material on record to establish that the plaintiffs, being daughters of late Tarachand, had relinquished their lawful share in the suit property. Even in the cross-examination before the Trial Court, the plaintiffs have only

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admitted their presence at the time of partition, but no evidence has been brought on record to show that they had consciously given up or relinquished their share. The learned First Appellate Court has rightly scrutinized the partition deed dated 25/07/2011 (Ex. D-8) and found that it does not indicate any relinquishment of the plaintiffs' share.

8. The learned First Appellate Court has further rightly applied the amended provisions of Section 6 of the Hindu Succession Act, 1956, as amended in the year 2005, which confers equal coparcenary rights upon daughters. In absence of any valid and lawful partition, as contemplated under law, or any cogent proof of relinquishment, the daughters cannot be deprived of their statutory share. The Appellate Court has, therefore, correctly held that the alleged partition, which neither specifies the shares of all co-sharers nor reflects distribution in accordance with law, cannot be treated as a valid partition so as to defeat the rights of the plaintiffs.

9. Furthermore, the plea raised by the learned counsel for the appellant that once a partition has been effected, it cannot be reopened, has rightly been rejected, inasmuch as such principle would apply only when the partition is shown to be lawful and binding upon all parties, including the daughters having statutory rights.

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10. In so far as the reliance placed by the learned counsel for the appellant on the judgment in ***Ratnam Chettiar*** (supra) is concerned, the same is clearly distinguishable on facts of the case at hand, as the said judgment pertains to a period prior to the amendment of 2005 in the Hindu Succession Act. In the present case, the rights of the daughters stand crystallized by virtue of the statutory amendment, and in absence of any proof of relinquishment or valid partition, their entitlement cannot be denied.

11. A careful analysis of the record demonstrates that the learned First Appellate Court has rightly and properly appreciated the evidence, applied the correct legal principles, and reversed the findings of the Trial Court. The Appellate Court's decision is based on a thorough examination of the evidence and settled legal presumptions regarding the nature of the transactions. The findings recorded by the learned First Appellate Court are just, proper, and well-reasoned, and the judgment and decree do not suffer from any error, illegality, or perversity. Accordingly, there is no ground to interfere with the same under Section 100 of the Code of Civil Procedure.

12. It is to be noted that the scope of interference in a Second Appeal under Section 100 of the Code of Civil Procedure is strictly confined to examination of substantial questions of law. Even in a case where the First Appellate Court has reversed the findings recorded by the Trial Court, interference is permissible only when

the findings of the First Appellate Court are shown to be perverse, based on no evidence, suffering from material irregularity, or involving a substantial error of law affecting the rights of the parties. Unless such infirmities are demonstrated, the findings of fact recorded by the First Appellate Court are binding in Second Appeal.

13. Even otherwise, the scope of interference in a Second Appeal under Section 100 of the Code of Civil Procedure is extremely limited. Interference is permissible only when the appeal involves a substantial question of law. Findings of fact recorded by the Courts cannot be interfered with unless such findings are shown to be perverse, based on no evidence, or contrary to settled principles of law.

14. In the present case, the learned First Appellate Court, after due appreciation of the pleadings and evidence available on record, recorded findings that the plaintiffs established their case. The Appellate Court has correctly evaluated the evidence and arrived at a conclusion consistent with law.

15. The questions sought to be raised in the present Second Appeal essentially relate to re-appreciation of evidence and challenge to the findings of fact recorded by the First Appellate Court. Such questions do not give rise to any substantial question of law within the meaning of Section 100 of the Code of Civil Procedure, unless it is shown that the findings are perverse or based on misreading

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of evidence.

16. Having heard learned counsel for the appellant and on perusal of the record of the case, I find absolutely no merit in this appeal, involving no question of law much less substantial question of law within the meaning of Section 100 of the CPC. In my view, the judgment and decree passed by the learned First Appellate Court appears to be just, proper and legal. The findings recorded are based on proper appreciation of evidence available on record and there is no illegality or perversity in the same and it does not call for any interference.

17. Consequently, the Second Appeal fails and is hereby dismissed, resulting in upholding the judgment and decree of the First Appellate Court.

Sd/-
(Bibhu Datta Guru)
Judge

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