



2026:CGHC:8391

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

SA No. 11 of 2020

1 - Gendlal Khobragade S/o Anandram Aged About 48 Years
Agriculturist, R/o Village Kalyanpur, Tahsil Dongargarh, District
Rajnandgaon Chhattisgarh (Defendants), District : Rajnandgaon,
Chhattisgarh

2 - Jitendra Khobragade S/o Gambhir Aged About 34 Years
Agriculturist, R/o Village Kalyanpur, Tahsil Dongargarh, District
Rajnandgaon Chhattisgarh, District : Rajnandgaon, Chhattisgarh

... Appellants

versus

Santosh S/o Budhram Aged About 46 Years R/o Village Kalyanpur
Tahsil Dongargarh, District Rajnandgaon Chhattisgarh (Plaintiff),
District : Rajnandgaon, Chhattisgarh

... Respondent(s)

(Cause title taken from CIS)

For Appellants : Shri Parag Kotecha, Advocate.

For Respondent(s) : Shri B.P. Gupta, Advocate

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ANWAR

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Hon'ble Shri Justice Bibhu Datta Guru

Judgment on Board

17/02/2026

1. The present Second Appeal has been filed by the defendants/ appellants under Section 100 of the Code of Civil Procedure, 1908, assailing the impugned judgment and decree dated 20.11.2019 passed by the learned Additional District Judge, Dongargarh, District Rajnandgaon (C.G.) in Civil Appeal No. 17A/2018 (Gendlal & Another vs. Santosh), whereby the civil appeal filed by the appellant/ defendants was partly allowed while reversing the judgment and decree dated 30.06.2018 passed by the learned Civil Judge, Class-I, Dongargarh District Rajnandgaon (C.G.), in Civil Suit No. 50A/2012 (*Santosh vs. Gendlal & Another*), whereby the suit filed by the plaintiff has been allowed in part and the counter-claim filed by the defendants was dismissed.
2. For the sake of convenience, the parties shall hereinafter be referred to as per their status before the Trial Court.
3. It is pertinent to mention here that against dismissal of civil appeal No.18-A/2018 the plaintiff has also preferred Second

Appeal No. 56/2020 (Santosh vs. Gendlal & Another) which has already been admitted by this Court on 02.02.2026 and is directed to be listed separately for final hearing.

4. (a) The plaintiff has filed the suit against the defendants seeking compensation and a decree of permanent injunction in respect of land bearing Khasra No. 166, admeasuring 0.08 acre, situated at Village Kalyanpur, Tahsil Dongargarh, District Rajnandgaon (C.G.), pleading inter alia that the suit property comprises land bearing Khasra No. 166, admeasuring 0.08 acre, situated at Village Kalyanpur, Tahsil Dongargarh. The detailed description of the property is provided in Schedule 'A' appended to the plaint and forms part thereof. The said property is ancestral in nature and devolved upon the plaintiff Santosh by way of succession. Being ancestral property, the names of the plaintiff, his mother Shantibai, brothers Subhash and Rupesh, and sister Latabai are duly recorded in the revenue records. The plaintiff, being the head of the family, has instituted the suit on behalf of his family members.

(b) It is pleaded that when the plaintiff and his family commenced construction of a residential house over approximately half portion of the suit land, Defendant No. 1,

Gendalal, filed an application for mutation before the Tahsildar, Dongargarh, registered as Case No. 7531/6/2011-12. Upon service of notice, the plaintiff filed objections, and by order dated 28.08.2012, the Tahsildar dismissed the said mutation proceedings on merits.

(c) The plaintiff further submits that he and his family have been in possession of the suit property since birth, and their names were recorded in the revenue records after the death of his father, Budhram. During excavation of the foundation on 15.06.2012, Defendant No. 1 allegedly interfered by filling the foundation with soil and assaulting the plaintiff's family members, whereupon a report was lodged at Police Station Dongargarh. Subsequently, on 05.09.2012, Defendant No. 2 and others allegedly demolished the chhajja/lintel of the house under construction, and again on 25.09.2012, the boundary wall was damaged, for which complaints were duly lodged. It is contended that the defendants are continuously interfering with the peaceful possession and construction activities of the plaintiff and have caused damage amounting to Rs. 10,000/- towards construction material and labour. The cause of action first arose on 15.06.2012 and subsequently on

05.09.2012 and 25/26.09.2012, and continues due to persistent interference.

5. (A) *Per contra*, defendants, in their written statement, have denied the averments of the plaint and contended that the plaintiff and Defendant No. 1 belong to the same ancestral lineage. The suit land fell to the respective predecessors of the plaintiff and Defendant No. 1 in an oral family partition, pursuant to which both parties have been in possession of their respective half shares for over 100 years. It is contended that Schedule 'A' is incorrect and that the plaintiff has filed the present suit by suppressing material facts and seeking to take undue advantage of an error in the revenue records, wherein separate accounts were not properly recorded. The defendants assert that Defendant No. 1 has title and possession over approximately half of the suit land (about 0.04 acre / 4.5 decimals), where he has long been in settled possession with a bari and threshing floor since the time of his forefathers.

(B) The plaintiff had earlier applied for demarcation before the Tahsildar, Dongargarh, and pursuant thereto, demarcation was carried out on 14.02.2012, which allegedly confirmed

possession of both parties over their respective portions. Despite this, the plaintiff allegedly attempted to dispossess Defendant No. 1 forcibly and initiated construction after damaging the defendant's bari boundary.

(C) Along with the written statement, defendants No.1 & 2 also filed a counter-claim, pleading that the suit property originally belonged to Motilal, whose sons Hiralal and Hiranman partitioned the land orally, whereby approximately 4.50 decimals fell to Hiralal (predecessor of Defendant No. 1, Gendalal) and 3.50 decimals to Hiranman (predecessor of the plaintiff). Since then, both branches have remained in separate possession of their respective shares.

(D) It is contended that due to an error in the revenue records, separate accounts were not recorded, and the plaintiff is attempting to take undue advantage of such mistake. Defendant No. 1 and his predecessors have been in peaceful possession of about 4.50 decimals, and the plaintiff allegedly trespassed upon the said portion by demolishing the boundary and digging foundation. The defendants have valued the counter-claim at Rs. 5,000/- and seek declaration of title over 4.50 decimals, permanent injunction, damages of Rs.

1,000/-, costs, and other appropriate reliefs..

6. (i) The reply filed by the plaintiff to the counter-claim, in brief, is that Hiranman was the elder son of Motilal, and due to an inadvertent error in the genealogy, certain names were incorrectly shown or omitted. The suit property, bearing Khasra No. 166 (formerly Khasra No. 144 prior to renumbering in 1966-67), admeasuring 8.00 decimals, is ancestral property which, in the family partition, fell exclusively to the share of Hiranman. It is contended that the partition between Hiralal and Hiranman was effected by allotment of entire khasra numbers and not by fractional division of any single khasra. The suit land formed part of Hiranman's share and devolved upon the plaintiff by succession. The plaintiff is in lawful and physical possession thereof and has constructed a residential house on the land, replacing an old structure existing prior to 1976-77.

(ii) The plaintiff denies that he ever encroached upon or demolished any portion under the defendants' possession and asserts that the alleged demarcation was erroneous. It is further submitted that the defendant has no right, title, or possession over the suit property. The defendant's own

pleadings admit that Hiralal received only 3.50 decimals, and therefore the claim for declaration over 4.50 decimals is untenable.

7. After framing the issues and appreciating the oral and documentary evidence on record, the learned Trial Court partly decreed the plaintiff's suit and dismissed the counter-claim of the defendants. The Trial Court held that Defendant No. 1 failed to produce any revenue record to substantiate his claim of ancestral possession over 0.04 acre of the suit land and, in cross-examination, admitted the absence of such documents. The revenue records established that Khasra No. 166, admeasuring 0.08 acre, was originally recorded in the name of the plaintiff's grandfather and presently stands recorded in the names of the plaintiff and his family members as owners in possession. As the defendants failed to prove that any portion of the land had fallen to their share in partition, they were held not entitled to declaration of title, permanent injunction, or compensation.
8. Aggrieved thereby, the plaintiff preferred Civil Appeal No. 18-A/2018 (Santosh vs. Gendlal & Another) and defendants preferred Civil Appeal No. 17-A/2018 (Gendlal & Another vs.

Santosh) before the learned First Appellate Court. The First Appellate Court by the impugned common judgment and decree dismissed the appeal filed by the plaintiff as also dismissed the civil suit whereas partly allowed the appeal filed by the defendants. While passing the impugned common judgment and decree the Appellate Court held that since the defendants' documents indicated possession over half of the suit land, it was incumbent upon the plaintiff to seek declaration of title and possession, which he failed to do. The Court further held that the suit was bad for non-joinder of necessary parties, as the land was recorded in the names of the plaintiff's mother and siblings who were not impleaded. With regard to the counter-claim, the First Appellate Court held that the defendants failed to establish the alleged oral partition or their title. No mutation had been effected in their favour for nearly 100 years, and the mutation application filed by Defendant No. 1 was rejected and remained unchallenged.

9. Being aggrieved by the aforesaid common judgment and decree of the First Appellate Court, both parties have separately preferred the Second Appeals before this Court. At present, this Court is hearing Second Appeal No. 11/2020,

preferred by the defendants. Second Appeal No. 56/2020, preferred by the plaintiff, is an admitted appeal and is pending before this Court for final hearing.

10. (I) Learned counsel for the appellant/defendants submits that the findings recorded by the learned Trial Court as well as the learned First Appellate Court are contrary to the pleadings and evidence on record and have resulted in serious miscarriage of justice. It is contended that Late Motilal was the absolute owner of the suit property and had two sons, namely Hiralal and Hiranman. The defendants claim through Hiralal, whereas the plaintiff claims through Hiranman. Hence, the property ought to have been partitioned in equal shares between the two branches, entitling the defendants to half share in the suit property.

(II) Learned counsel further submits that the demarcation report (Ex. D/5) clearly establishes continuous possession of the defendants over half portion of the suit land; however, the learned Trial Court as well as the learned First Appellate Court erred in not granting declaration of title and permanent injunction in favour of the defendants. It is also argued that the learned First Appellate Court dismissed the appeal and

affirmed the judgment of the learned Trial Court without recording specific findings on each issue framed by the Trial Court, thereby rendering the impugned judgments and decrees unsustainable in law. Accordingly, it is prayed that the impugned judgments and decrees be set aside and the counter-claim of the defendants be decreed.

11. 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.
12. The defendants, by way of counter-claim, asserted title over 0.04 acre of land out of Khasra No. 166 on the basis of an alleged oral partition said to have taken place between Hiralal and Hiranman more than 100 years ago. The burden to establish such partition and consequential title squarely lay upon the defendants. However, except for oral testimony of Defendant No. 1 and his supporting witnesses, no cogent documentary evidence has been produced to prove that any definite portion of the suit land had fallen to the share of their predecessor in the alleged partition.
13. This Court further finds that, despite the plea of long-standing

partition and continuous possession, neither the defendants nor their predecessors took any steps for mutation of the suit land in their favour for nearly a century. The mutation application filed before the Tahsildar, Dongargarh was rejected by order dated 28.08.2012 (Ex. D-7), and the said order was never assailed before any competent forum. The said circumstance materially weakens the claim of lawful title based on partition.

14. The learned First Appellate Court, being the final Court of fact, has re-appreciated the evidence and recorded a clear finding that the defendants failed to prove the alleged partition and their entitlement to declaration of title. The said finding is based on proper appreciation of evidence and correct application of law relating to burden of proof. No perversity, illegality, or substantial error of law is demonstrated so as to warrant interference under Section 100 of the Code of Civil Procedure.
15. The conclusions reached by the First Appellate Court are neither perverse nor contrary to law and are based on proper appreciation of evidence. No substantial question of law arises for consideration in this second appeal.

16. 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. The findings of fact recorded by the first appellate Court cannot be interfered with unless such findings is shown to be perverse, based on no evidence, or contrary to settled principles of law.
17. In the present case, the First Appellate Court has recorded finding, on the basis of evidence available on record, that the appellant/defendant failed to establish his case by placing cogent and sufficient material. The appellant has failed to demonstrate any perversity, illegality, or misapplication of law in the finding so recorded.
18. The questions sought to be raised in the present Second Appeal does not give rise to any substantial question of law within the meaning of Section 100 of the Code of Civil Procedure.
19. It is well established that when there is a finding of fact, unless it is found to be perverse, the Court should not ordinarily interfere with the said finding.

20. Be that as it may, the argument advanced by learned counsel for the appellant and the proposed question of law cannot be regarded as satisfying the test of being 'substantial question of law' within the meaning of Section 100 of CPC. These questions, in my view, are essentially question of facts. The appellant failed to raise any substantial question of law which is required under Section 100 of the CPC in. In any event, the Second Appeal did not involve any substantial question of law as contemplated under Section 100 of the CPC, no case is made out by the appellant herein. The judgment impugned passed by the learned First Appellate Court is just and proper and there is no illegality and infirmity at all.
21. Accordingly, the present appeal is liable to be and is hereby **dismissed**.

SD/-

(Bibhu Datta Guru)
Judge

Shoaib