



2026:CGHC:19125



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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**SA No. 494 of 2016**

1 - Smt. Bodhni Bai Wd/o Late Biharilal, Aged About 52 Years
Occupation- Agriculture, R/o Village Sarkhi, Tahsil Abhanpur, District
Raipur, Chhattisgarh

2 - Jodhan S/o Late Satanand Sahu, Aged About 57 Years Occupation-
Agriculture, R/o Village- Darra, Tahsil Kurud, District Dhamtari,
Chhattisgarh

3 - Rupnarayan S/o Jodhan Sahu, Aged About 35 Years R/o Village-
Darra, Tahsil Kurud, District Dhamtari, Chhattisgarh

4 - Mukesh S/o Jodhan Sahu, Aged About 32 Years Occupation-
Agriculture, R/o Village- Darra, Tahsil Kurud, District Dhamtari, Civil And
Revenue District Dhamtari, ChhattisgarhDefendants

... Appellant(s)**versus**

1 - Smt. Jodhni Bai (Died) Through LRs As Per Hon'ble Court Order
Dated 18/03/2026

1(i) - Smt. Dhaneshwari W/o Hemant Kumar Aged About 30 Years
Resident Of Village- Theda, Tehsil Kurudh, Distt- Dhamtari (C.G.)



1(ii) - Ganeshwar S/o Late Mehttar Aged About 28 Years Village Darra, Tehsil- Kurudh Dist- Dhamtari (C.G.)

2 - Smt. Muna Bai W/o Bhuwanlal Sahu, Aged About 45 Years Occupation- Labour, R/o Village Nayapara, Tahsil Abhanpur, District Raipur, Chhattisgarh

3 - Smt. Kunti Bai W/o Dageshwar, Aged About 39 Years Occupation- Agriculture, R/o Village Kosmarra, Tahsil Bhakhara, District Dhamtari, Chhattisgarh

4 - Smt. Kumari Bai W/o Krishna Kumar, Aged About 37 Years Caste- Sahu, Occupation- Agriculture, R/o Village Semra, Tahsil Bhakhara, District Dhamtari, ChhattisgarhPlaintiffs

5 - State Of Chhattisgarh, Through District Collector Dhamtari, Chhattisgarh

.... Respondent(s)

(Cause title is taken from CIS)

For Appellant(s)	: Mr. B.P. Sharma, Advocate alongwith Mr. Pushp Kumar Gupta, Advocate
For Respective Respondents	: Mr. Adil Minhaj, Advocate
For Respondent/ State	: Mr. Malay Jain, Panel Lawyer

Hon'ble Shri Justice Bibhu Datta Guru

Judgment on Board

25/04/2026

1. The present Second Appeal has been filed by the appellant/ defendants under Section 100 of the Code of Civil Procedure, 1908, assailing the impugned judgment and decree dated 23.08.2016 passed by the learned Additional District Judge (F.T.C.), Dhamtari (C.G.) in Civil Appeal No. 25-A/2014 (Smt.



Jodhni Bai & Ors. vs. Smt. Bodhni Bai & Ors.), reversing the judgment and decree dated 30.06.2014 passed by the learned Civil Judge, Class-I, Kurud, District Dhamtari (C.G.), in Civil Suit No.11-A/2011 (Jodhni Bai & Ors. vs. Bodhni Bai & 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 in respect of the house situated at Village Darra (Patwari Halka No. 23) described in Schedule 'A', wherein they claim 1/2 share, and agricultural land situated at Village Dhooma bearing Khasra No. 228 admeasuring 0.74 hectares, wherein they claim 3/4 share, along with other lands detailed in the plaint schedule, pleading *inter alia* that the suit properties are ancestral in nature belonging to late Satanand and late Yashodabai, the parents of the parties governed by Hindu law. The plaintiffs and defendants are close relatives, the defendants having wrongfully taken exclusive possession and denied the plaintiffs' lawful share despite repeated demands and intervention of village elders, including on 10.10.2006 when time was sought but ultimately refused on 27.10.2006 by asserting self-acquisition, thereby constraining the plaintiffs to seek appropriate reliefs in respect of their lawful share in the suit property.



3. (i) *Per contra*, the defendants filed their written statement, contending that the plaintiffs and defendants are related to each other. Defendants No. 3 and 4 are major and the entries in their names have been made lawfully. It is submitted that the plaintiffs have exaggerated the total land area, as against the actual recorded land of about 7.06 acres in Village Darra, whereas the plaintiffs have wrongly claimed about 17.493 acres. It is further stated that the allegation regarding defendant No. 2 being of criminal nature is false, as he has already been acquitted by the competent Court in the criminal case. The defendants asserted that they are in lawful possession of the suit property and not the plaintiffs. It is further pleaded that there exists a settlement/ agreement dated 14.07.2005 executed on stamp paper between the parties recognizing shares in respect of land bearing Khasra No. 228, Village Dhooma, under which the plaintiffs have been in possession and cultivating the said land without objection. A further compromise dated 15.07.2005 executed at the Gram Panchayat also records the same arrangement, signed by the parties and witnesses, thereby establishing prior partition/ settlement between them. It is, therefore, contended that the plaintiffs are not entitled to seek partition or any relief in respect of the suit properties, which already stand settled by mutual agreement.
- (ii) Defendant No. 5/ State has not filed any written statement and the proceedings against it were *ex parte*.



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 30/06/2014, 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 Trial Court and allowed the appeal in favour of the plaintiffs vide impugned judgment. Hence, the present appeal by the defendants.
5. (a) Learned counsel for the appellants/defendants submits that the impugned judgment and decree passed by the learned First Appellate Court is wholly unsustainable in law and on facts, as the said Court has failed to record findings on all the issues framed by the learned Trial Court and has reversed a well-reasoned judgment without proper appreciation of evidence on record. He submits that the First Appellate Court has exceeded its jurisdiction in disturbing the findings of the Trial Court despite there being no perversity or misreading of evidence, and has failed to assign cogent reasons for such reversal. According to learned counsel, Ex.D-1 is the alleged consent of partition, and the Trial Court, upon due appreciation of evidence, including the testimony of DW-2, has rightly held that the said document evidences consent



of the parties and establishes that partition had already been effected, which cannot be reopened at a later stage. He further submits that once such partition has been acted upon and accepted, the same attains finality.

(b) By placing reliance upon the judgment of the Supreme Court in ***Ratnam Chettiar & Ors. vs. S.M. Kuppuswami Chettiar & Ors. reported in (1976) 1 SCC 214***, learned counsel submits that once a document has been admitted in evidence and duly proved without objection, the Appellate Court could not have reversed the said finding on mere conjectures. He thus contends that the findings recorded by the First Appellate Court regarding Ex.D-1 are perverse and unsustainable in law. It is further submitted that the First Appellate Court has failed to appreciate the effect of the prior partition/ settlement between the parties and the documentary evidence, including Ex.D-1, and has erroneously reopened the issue of partition already acted upon between the parties.

(c) Learned counsel further contends that the First Appellate Court has erred in law in unsettling an already effected partition in absence of any allegation of fraud or misrepresentation. He submits that after execution of the *sahmati patra* (Ex.D-1) and long-standing possession and enjoyment of the parties thereunder, the plaintiffs were not entitled to seek partition afresh. He would also contend that the First Appellate Court has wrongly ignored the admissibility and legal effect of Ex.D-1 despite no



objection having been raised at the time of its exhibition. He further submits that the benefit of the Hindu Succession (Amendment) Act, 2005 cannot be invoked in derogation of a prior family settlement. In support of his contention, learned counsel placed reliance upon the judgment of the Supreme Court in the matter of ***Venkatesh Construction Company vs. Karnataka Vidyuth Karkhane Limited reported in (2016) 4 SCC 119.***

6. I have heard learned counsel for the appellants 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, upon appreciation of the oral and documentary evidence, recorded a finding that a prior partition had taken place between the parties, particularly in respect of land bearing Khasra No. 228 situated at Village Dhooma, and relied upon Ex.D-1 (sahmati patra) along with the revenue entries (Ex.P-1) to hold that the plaintiffs had already received their share. On such basis, it was concluded that the plaintiffs were not entitled to seek partition again or claim injunction, and accordingly the suit was dismissed.
8. However, the learned First Appellate Court, on reappraisal of the entire evidence, has reversed the said finding by holding that Ex.D-1 has not been duly proved in accordance with law. It has been specifically observed that the plaintiffs have denied the



execution of Ex.D-1 and, despite the defendants leading evidence in support thereof, the same suffers from material contradictions and inconsistencies, thereby rendering the document unreliable. In such circumstances, the First Appellate Court has rightly held that the alleged partition based on Ex.D-1 is not established. It has further been held that mere revenue entries would not prove possession, particularly when the plaintiffs have consistently asserted that they were not in possession of the suit property.

9. In view of the above, this Court finds that the learned First Appellate Court has rightly reversed the findings of the Trial Court, as the conclusion regarding prior partition was not supported by cogent and reliable evidence. In absence of proof of a valid and binding partition, the plaintiffs cannot be denied their lawful share in the ancestral property, and the findings recorded by the First Appellate Court do not suffer from any perversity or illegality warranting interference.
10. It is further observed that the judgments relied upon by the counsel for the appellants are not applicable to the facts of the present case. The reliance placed on such precedents proceeds on the footing that the document in question was duly proved and accepted without objection; however, in the present case, Ex.D-1 itself has not been proved in accordance with law and its execution has been specifically denied by the plaintiffs, coupled with material contradictions in the defence evidence. In absence of proof of a valid and binding document evidencing partition, the



ratio of the said judgments does not advance the case of the appellants and is clearly distinguishable on facts.

11. A careful analysis manifests that the First Appellate Court has correctly evaluated the evidence, giving due weightage to the admissions and the material facts, and has arrived at a conclusion consistent with law. The Appellate Court's decision is based on proper appreciation of evidence and settled legal presumptions regarding the nature of transactions. The findings recorded by the learned First Appellate Court are just, proper, and based on a careful examination of evidence. The judgment and decree of the First Appellate Court do not suffer from any error, illegality, or perversity, and accordingly, there is no ground to interfere with the same under Section 100 of the Code of Civil Procedure.
12. At the outset, 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 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



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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

\$. Bhilwar