



2026:CGHC:12439



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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**SA No. 304 of 2019**

Kheman Bai @ Khom Kunwar (Died) Through Legal Heirs

1. Horilal S/o Late Ajit Ram Sahu Aged About 50 Years R/o Village Kargikala, Tahsil Kota, District- Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

2 - Prakash Kumar S/o Late Ajit Ram Sahu Aged About 44 Years R/o Village Kargikala, Tahsil Kota, District- Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

3 - Ramesh Kumar S/o Late Ajit Ram Sahu Aged About 40 Years R/o Village Kargikala, Tahsil Kota, District- Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

4 - Sitaram Sahu S/o Late Ajit Ram Sahu Aged About 36 Years R/o Village Kargikala, Tahsil Kota, District- Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

5 - Smt. Pratima Sahu Wd/o Late Radheshyam Sahu Aged About 30 Years R/o Village Kargikala, Tahsil Kota, District- Bilaspur,



Chhattisgarh., District : Bilaspur, Chhattisgarh

6 - Praveen Kumar Sahu S/o Late Radheshyam Sahu Aged About 6 Years Minor Through Legal Guardian Mother Smt. Pratima Sahu, Wd/o Late Radheshyam Sahu, R/o Village Kargikala, Tahsil Kota, District- Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

7 - Smt. Geeta Sahu W/o Balmukund Sahu Aged About 51 Years D/o Late Ajitram Sahu, R/o Village Kargikala, Tahsil Kota, District- Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

8 - Smt. Raj Kumar Sahu W/o Shiv Prasad Sahu Aged About 48 Years D/o Ajitram Sahu, R/o Quarter No. 160, Yadunandan Nagar Tifra, Tahsil And District- Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

9 - Smt. Shiv Kumari Sahu W/o Vyas Narayan Sahu Aged About 46 Years D/o Late Ajit Ram Sahu, R/o Village Dhurabhatha, Tahsil Korba, District- Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

... Appellants

versus

1 - Johan Lal Sahu S/o Bhondhu Sahu Aged About 60 Years R/o Village Mopka, Tahsil And District- Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh



2 - Dashrath Sahu S/o Bhondu Sahu Aged About 57 Years R/o Village Mopka, Tahsil And District- Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

3 - Gokul Sahu S/o Bhondu Sahu Aged About 52 Years R/o Village Mopka, Tahsil And District- Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

4 - Gajadhar Sahu S/o Late Mohan Lal Sahu Aged About 42 Years R/o Village Madai, Khamhariya, Tahsil Masturi, District- Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

5 - Gulab Sahu S/o Late Mohan Lal Sahu Aged About 40 Years R/o Village Madai, Khamhariya, Tahsil Masturi, District- Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

6 - Uttam Sahu S/o Late Mohan Lal Sahu Aged About 36 Years R/o Village Madai, Khamhariya, Tahsil Masturi, District- Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

7 - Rukmin Bai Sahu W/o Bahoran Sahu Aged About 50 Years D/o Late Mohan Lal Sahu, R/o Village Madai, Khamhariya, Tahsil Masturi, District- Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

8 - Smt. Meena Sahu D/o Late Mohan Lal Sahu Aged About 38 Years Houswife, R/o Village Tekari, Tahsil Masturi, District- Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh



9 - Hemini @ Hemin Bai Sahu W/o Late Sunder Lal Sahu Aged About 63 Years D/o Late Bhondu Sahu, Housewife R/o Village Karagikala, Tahsil Kota, District- Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

10 - Rahi Bai Sahu D/o Late Bhondu Sahu Aged About 55 Years Housewife R/o Village Karagikala, Tahsil Kota, District- Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

11 - Mathura Bai Sahu W/o Santosh Sahu Aged About 50 Years D/o Bhondu Sahu, Housewife R/o Village Karagikala, Tahsil Kota, District- Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

12 - State Of Chhattisgarh Through Its Collector, Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

... Respondent(s)

(Cause title taken from CIS)

For Appellants	: Shri S.B. Pandey, Advocate
For Respondent Nos. 2, 7, 8, 10 & 11	: Shri Jayed Ziya Ali, Advocate appears on behalf of Shri Arvind Shrivastava, Advocate
For Respondent/State	: Shri Lekhram Dhruv, Panel Lawyer.

Hon'ble Shri Bibhu Datta Guru, Judge

Judgment on Board

16.03.2026



1. By the present appeal under Section 100 of the CPC, the appellants/plaintiffs challenging the impugned judgment and decree dated 10.12.2018 passed by the Learned 9th Additional District Judge, Bilaspur Distt- Bilaspur (C.G.) in Civil Appeal No. (A) 85/2018 (Khemana Bai (died) through Legal heirs vs. Johanlal & Others) arising out of the judgment and decree dated 18.04.2018 passed by the learned Civil Judge, Class- II, Bilaspur, District Bilaspur (C.G.), in Civil Suit No. 23-A/11(Khemana Bai (died) through Legal heirs vs. Johanlal & Others). For the sake of convenience, the parties would be referred as per their status before the learned trial Court.
2. The present suit has been instituted by the plaintiffs seeking declaration of title and partition in respect of land situated at Village Mopka, P.H. No. 132, R.N.M., Tahsil and District Bilaspur, bearing Khasra Nos. 420, 666, 667/2, 1424, 1637 and 1777, having area 0.59, 0.22, 0.04, 1.51, 0.55 and 1.19 acres respectively, total 4.10 acres (hereinafter referred to as the suit land).
3. It is undisputed that the original plaintiff and defendants No. 9 to 11 are the daughters of late Bhondhu, while defendants No. 1 to 3 and late Mohanlal are the sons of late Bhondhu.



Defendants No. 4 to 8 are the sons and daughters of late Mohanlal, who was also the son of late Bhondu. Thus, late Bhondu had four sons and four daughters. Late Bhondu died on 30.06.1991.

4. The case of the original plaintiff is that after the death of her father, the suit land devolved upon all the legal heirs and both parties remained in possession and cultivated the land jointly. The plaintiff was allegedly receiving five bags of paddy annually as her share until the year 2004, after which the defendants stopped giving her share. When she demanded partition, the defendants refused in June 2005. On inquiry from the Patwari, she came to know that defendants No. 1 to 3 and late Mohanlal had allegedly got mutation (fauti entry) recorded in their favour without informing her. The plaintiff further stated that upon learning about the mutation, she filed an appeal before the Sub-Divisional Officer, Bilaspur in Revenue Appeal No. 185-A-6/03-04, seeking entry of her name along with her brothers in the revenue records. The said appeal was dismissed by order dated 23.05.2006, with liberty to approach the Civil Court.



5. According to plaintiff that since late Bhondu had four sons and four daughters, the suit property devolved upon all of them by inheritance. Therefore, under the provisions of the Hindu Succession Act, she is entitled to declaration of her title and 1/8th share in the suit land. Defendant No. 12 (State of Chhattisgarh) has been impleaded only as a formal party and no relief is claimed against it.
6. The Defendants No. 2 to 9 and 11 filed written statement denying the plaint allegations. They contend that the suit land originally stood in the name of late Bhodu Ram prior to 20.06.1990, and during his lifetime he executed partition deeds dated 02.11.1979 and 28.09.1989, whereby he distributed his self-acquired properties among his sons. Based on such partition, mutation orders were passed on 30.12.1980 and 20.06.1990, and separate revenue accounts were created.
7. According to the defendants, after partition the respective sons became exclusive owners of different portions of land. Since the property had already been partitioned during the lifetime of late Bhodu, the plaintiff has no right or share in the suit property. The defendants further submit that the plaintiff had knowledge of the partition and separate possession since



1979, as the brothers had been living separately and social customs such as festivals and ceremonies were also performed separately. It is also contended that no fauti mutation was done after the death of Bhodu, and the plaintiff's appeal before the SDO was rejected as the land was not recorded in Bhodu's name at that time. It is also pleaded that the cause of action arose in 1979, when the partition took place, and the revenue records were finally separated in 1990, whereas the suit was filed in 2007. Hence, the suit is barred by limitation. The defendants further contended that the valuation of the suit and court fee is incorrect. Since the plaintiff has sought partition claiming 1/8th share, the suit ought to be valued accordingly and proper court fee paid. It is stated that the value of the property is approximately Rs. 20,00,000, and appropriate court fee must be paid.

8. Defendants No. 1, 10 and 12 have remained ex parte and have not filed any written statement.
9. After appreciating the evidence available on record and after framing the issues, the learned trial Court by the judgment and decree dated 18.04.2018 dismissed the suit of the plaintiffs. Thereagainst, the Civil Appeal preferred by the



plaintiffs has been dismissed vide the impugned judgment and decree by the learned First Appellate Court. Thus, this appeal.

10. While dismissing the suit by the learned trial Court as well as the First Appeal by the learned First Appellate Court, it has categorically been observed that the plaintiff failed to prove that the suit property was ancestral. The evidence showed that late Bhondu had already partitioned his self-acquired property among his sons during his lifetime, therefore the plaintiff had no 1/8th share in the suit land. Accordingly, the suit for declaration and partition was dismissed, though the Court held that the suit was within limitation and properly valued.
11. Learned counsel for the appellants submits that the judgments and decrees passed by both the Courts are erroneous and contrary to the material available on record. It is contended that the Courts failed to properly appreciate the evidence and wrongly ignored the fact that the suit property was ancestral property of late Bhondu and that the alleged partition was not binding upon the plaintiff, as her name was never recorded in the revenue records. It is further submitted



that the findings recorded by the Courts suffer from misreading of evidence and non-consideration of relevant admissions of the parties. Hence, according to the learned counsel, the impugned judgments give rise to substantial questions of law and the present second appeal deserves to be admitted for consideration.

12. I have heard learned counsel for the appellants, perused the material available on record.
13. The present second appeal has been preferred against the concurrent judgments and decrees passed by both the Courts whereby the suit filed by the plaintiffs for declaration of title and partition has been dismissed.
14. From the perusal of the plaint, it is evident that the plaintiffs had not specifically pleaded that the suit property was ancestral property, nor was any foundation laid in the pleadings as to how the property devolved upon late Bhondu and how the plaintiffs acquired a share therein. In absence of such pleadings, the plaintiffs also failed to adduce cogent evidence to establish that the suit property was ancestral in nature.



15. The Trial Court, upon appreciation of the oral and documentary evidence on record, recorded a finding that late Bhondu had already effected partition of his self-acquired property among his sons during his lifetime and the revenue records were mutated accordingly. Consequently, it was held that the plaintiffs were not entitled to declaration of title or to claim 1/8th share in the suit property and the suit was dismissed. The First Appellate Court, after re-appreciating the evidence on record, affirmed the findings recorded by the Trial Court and dismissed the appeal.
7. 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. Concurrent findings of fact recorded by both 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.
8. In the present case, both the Trial Court and the First Appellate Court have concurrently recorded findings, on the basis of evidence available on record, that the appellants/plaintiffs failed to establish their case by placing cogent and sufficient



material. The appellants have failed to demonstrate any perversity, illegality, or misapplication of law in the findings so recorded.

9. The questions sought to be raised in the present Second Appeal essentially relate to re-appreciation of evidence and challenge to concurrent findings of fact. Such questions do not give rise to any substantial question of law within the meaning of Section 100 of the Code of Civil Procedure.
10. It is well established that when there is a concurrent finding of fact, unless it is found to be perverse, the Court should not ordinarily interfere with the said finding.
11. In the matter of ***State of Rajasthan and others Vs. Shiv Dayal and another***, reported in ***(2019) 8 SCC 637***, reiterating the settled proposition, it has been held that when any concurrent finding of fact is assailed in second appeal, the appellant is entitled to point out that it is bad in law because it was recorded *de hors* the pleadings or based on misreading of material documentary evidence or it was recorded against any provision of law and lastly, the decision is one which no Judge acting judicially could reasonably have reached.



12. 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 appellants 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 appellants herein. The judgments impugned passed by the learned trial Court as well as First Appellate Court are just and proper and there is no illegality and infirmity at all.
13. Accordingly, the present appeal is liable to be and is hereby **dismissed.**

Sd/-

(Bibhu Datta Guru)
Judge