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HIGH COURT OF CHHATTISGARH AT BILASPUR

SA No. 508 of 2017

1. Omkar S/o Jhumuk Dehare, Aged About 43 Years Occupation Labour, R/o Village Faree, P. O. Beejabhat, P. H. No. 31, P. S. Tahsil Districrt Bemetara Chhattisgarh., Chhattisgarh

2. Vijay, S/o Jhumuk Dehare, Aged About 41 Years Occupation Labour, R/o Village Faree, P. O. Beejabhat, P. H. No. 31, P. S. Tahsil Districrt Bemetara Chhattisgarh.

... Appellant(s)

versus

1. Jhumuk Died Through Legal Heirs-

1.a - Smt. Suruj Bai (Died And Deleted) As Per Honble Court Order Dated 04-02-2026.

1.b- Smt. Kamla Bai, D/o Late Jhumuk Dahare, Aged About 62 Years W/o Shri Ubaran Chaturvedi, R/o Village Daganiya, P. O. Devkar, Tahsil Berla, District Bemetara Chhattisgarh.

1.c- Smt. Vimla Bai, D/o Late Jhumuk Dahare, W/o Shri Ferha Barmatwan, R/o Village Yongikhapri, P. O. Devkar, Tahsil Berla, District Bemetara Chhattisgarh.

1.d - Smt. Satwantin Bai, D/o Late Jhumuk Dahare, Aged About 40 Years W/o Shri Chandrahas, R/o Village Sirsa, Post Deverbeeja, Tahsil And Districrt Bemetara Chhattisgarh.

2. Kumar, S/o Late Shri Jhumuk Satnami, Aged About 50 Years Occupation Cultivator, R/o Village Faree, P. O. Beejabhat, P. H. No. 31, P. S. Tahsil Districrt Bemetara Chhattisgarh. , District :

Bemetara, Chhattisgarh

3. Dhruw Kumar, S/o Late Shri Jhumuk Satnami, Aged About 47 Years R/o Village Faree, P. O. Beejabhat, P. H. No. 31, P. S. Tahsil District Bemetara Chhattisgarh. , District : Bemetara, Chhattisgarh

4. Sanjay, S/o Shri Druw Kumar Satnami, Aged About 21 Years Occupation Student, R/o Village Faree, P. O. Beejabhat, P. H. No. 31, P. S. Tahsil District Bemetara Chhattisgarh. , District : Bemetara, Chhattisgarh

5. State Of Chhattisgarh, The Collector, Bemetara, District Bemetara, Chhattisgarh, District : Bemetara, Chhattisgarh

... Respondent(s)

For Appellant(s)	:	Mr. R.S. Patel, Advocate
For Respondent No. 1b, 1c & 1d	:	Mr. Kartik Kathuria on behalf of Mr. Kshitij Sharma, Advocate
For Respondent No. 5/ State	:	Mr. Lekhram Dhruv, P.L.

Hon'ble Shri Bibhu Datta Guru, Judge
Judgment on Board

27.02.2026

1. The plaintiffs/ appellants have preferred this second appeal under Section 100 of the Code of Civil Procedure, 1908 (for brevity CPC) against the judgment & decree dated 22.06.2017 passed by the Learned Additional District Judge, Bemetara in Civil Appeal No. 02-A/2017 (Omkar & Anr. Vs. Jhumuk & Ors.) affirming the judgment and decree dated 12.01.2016 passed by the Trial Court in Civil Suit No. 49A/2014 (Omkar & Anr.

Vs. Jhumuk & Ors.) whereby the learned trial Judge has dismissed the suit of the plaintiffs/ appellants. For the sake of convenience, the parties would be referred as per their status before the learned trial Court.

2. The plaintiffs preferred the present suit seeking declaration of co-ownership, partition, possession and permanent injunction pleading inter alia that the plaintiffs and defendant Nos. 1 to 4 are Hindus governed by the Mitakshara School of Hindu Law (Banaras branch). Defendant No. 1, Jhumuk, has four sons, namely Omkar (plaintiff No. 1), Vijay (plaintiff No. 2), Kumar (defendant No. 2), Dhruw kumar (defendant No. 3) whereas Sanjay (defendant No. 4) is the son of Dhruw Kumar. According to the plaintiffs, about 20 years prior to the institution of the suit, defendant No. 1 effected a partition of the suit property and allotted shares to the plaintiffs and defendant Nos. 2 and 3. Pursuant to the said partition, the plaintiffs received 38 decimals of "Bhata" land, which they claim to have developed and made cultivable through their own efforts. The suit land is stated to be ancestral property, and after partition the plaintiffs have been in possession and cultivating their respective shares. It is further pleaded that defendant No. 1 had earlier sold land in

excess of his share and, with an intention to adversely affect the plaintiffs' share, in collusion with his son defendant No. 3 and grandson defendant No.4, executed a registered sale deed dated 23.05.2012 in favour of defendant No. 4 without any consideration. The said sale deed is alleged to be not binding upon the plaintiffs. It is also averred that the revenue records stood in the name of defendant No. 1, who misused the same to execute the sale deed. The cause of action is stated to have arisen on 25.12.2012 when the plaintiffs went to the suit land to prepare it for cultivation and defendant Nos. 1, 3 and 4 interfered with their possession. Thus the suit was filed.

3. Defendant Nos. 1 and 4 filed their written statement supported by affidavit. Apart from admitting the admitted facts, they pleaded that other family members, namely Smt. Suraj Bai, Kamla Bai, Vimla Bai and Satvanti Bai, have not been impleaded as parties to the suit, and therefore the suit is bad for non-joinder of necessary parties. It is specifically denied that defendant No. 1, Jhumuk, had effected any partition among his four sons or that any share of the suit land was allotted to the plaintiffs. It is contended that defendant No. 1 remained the exclusive owner and in

possession of the suit land. On the strength of his ownership and possession, defendant No. 1 is stated to have lawfully executed a registered sale deed dated 23.05.2012 in favour of his grandson, defendant No. 4, thereby transferring the suit land. After execution of the said sale deed, defendant No. 4 is claimed to be in lawful possession and enjoyment of the suit property. The defendants have alleged that the suit has been filed on false and baseless grounds and have prayed for dismissal of the suit.

4. Defendant No. 2 filed his written statement supported by affidavit, admitting the entire averments made in the plaint. He has pleaded that he is also entitled to a share in the suit property in the same manner as the plaintiffs and has prayed that similar relief be granted in his favour.
5. Defendant No. 3 also filed his written statement supported by affidavit, admitting the averments made in the plaint. He has stated that although the suit land was recorded in the name of defendant No. 1, Jhumuk, the same was given to the plaintiffs and defendant Nos. 2, 3 and 4 for their maintenance and livelihood. It is further pleaded that defendant No. 1 had earlier sold certain family property and, out of the sale proceeds,

purchased 1 acre and 70 decimals of land, which is in possession of the plaintiffs and defendant No. 3. The said land is also fragmented. Defendant No. 3 has denied any collusion with defendant Nos. 1 and 4 and has stated that defendant No. 4 does not visit their house. According to him, defendant No. 1 has been maintaining and bringing up defendant No. 4 since childhood. It is also contended that the suit land includes additional house-site (Makan Bari) land, the adjustment of which has not been reflected in the plaint. On these grounds, a prayer has been made for dismissal of the suit.

6. On the pleadings of the parties, the learned trial Judge framed as many as 6 issues and given opportunity to the parties to adduce evidence, both oral and documentary and after a full fledged trial, the learned Trial Court, held that although it stood admitted that the suit property was ancestral in nature and that no written document of partition existed, the plaintiffs failed to establish the alleged partition said to have taken place 20 years earlier. The evidence on record revealed that there was no documentary proof or independent witness to substantiate the plea of partition, and even the plaintiffs admitted in cross-examination that they

were cultivating the land as per a family arrangement made by their father. The Court observed that a family arrangement cannot be equated with a legal partition. The trial Court further held that though defendant No. 1 (Jhumuk) admitted that the suit land was ancestral property and that he had executed the sale deed dated 23.05.2012 in favour of defendant No. 4 without monetary consideration, the plaintiffs failed to disclose the complete details of the joint family properties. It was admitted that other ancestral and joint family lands, including 1.60 acres and additional properties standing in the name of defendant No. 1, were not included in the suit. In a suit for declaration and partition, it was incumbent upon the plaintiffs to furnish complete particulars of all joint family properties to enable proper determination of shares. The non-joinder of the plaintiffs' sisters and mother was also noted as a defect affecting the maintainability of the suit. The Court held that in the absence of clear pleadings and cogent evidence regarding the total extent of joint family property, it could not be determined whether defendant No. 1 had transferred only his share or land in excess of his share. The plaintiffs also failed to prove exclusive possession over 1/4th share or to substantiate their plea that the impugned sale deed was not binding upon

them. The precedents relied upon by the plaintiffs were held to be distinguishable on facts. Consequently, the trial Court concluded that the plaintiffs failed to prove their entitlement to declaration of title, partition, possession, and permanent injunction over the suit land. Accordingly, the suit was dismissed, holding that the plaintiffs had not succeeded in proving the issues in their favour on the touchstone of preponderance of probabilities.

7. Against the judgment and decree passed by the trial Court the plaintiffs/ appellants have preferred first appeal before the First Appellate Court which has been dismissed vide judgment and decree impugned herein affirming the findings of the trial Court. Aggrieved by the judgment and decree passed by the First Appellate Court, the present Second Appeal has been filed by the plaintiffs.

8. Learned counsel for the appellant submits that the Courts below have erred in law and on facts in dismissing the suit. It is contended that the admission of respondent No. 1 that no consideration was paid by respondent No. 4 clearly renders the sale deed dated 23.05.2012 void and not binding, which aspect has not been properly appreciated. It is further submitted that

partition had already taken place prior to 2004 and, in view of the proviso to Section 6 of the Hindu Succession Act as amended in 2005, such prior partition could not be disturbed.

9. I have heard learned counsel for the parties, perused the material available on record.

10. This Court finds no substance in the aforesaid submission. The learned first appellate Court, after independently re-appreciating the entire oral and documentary evidence, affirmed the findings of the trial Court. It was observed that the plaintiffs/appellants had produced only one document, namely the registered sale deed (Ex.P/1), and had not filed any revenue records to establish that the suit land continued to be recorded as joint family property or that it had fallen to their share in the alleged partition. The Court noted that despite claiming declaration, partition and co-ownership in respect of immovable property, the appellants failed to produce khasra entries, mutation records or any documentary proof to show the nature and status of the property. The appellate Court further recorded that the appellants themselves admitted in cross-examination that partition had taken place about 20 years prior and that they were cultivating their respective shares.

However, they failed to disclose what specific lands were allotted to them or to their father in such partition. It was also admitted that 1.60 acres of land stood separately recorded in their names, which was not included in the suit. In such circumstances, the appellants could not establish that the land sold by defendant No. 1 formed part of their share or remained joint property on the date of sale.

11. With regard to sale consideration, the Court held that once partition was admitted and the land stood recorded in the exclusive name of defendant No. 1 on the date of sale, the adequacy or mode of payment of consideration was not decisive. The registered sale deed dated 23.05.2012 carried presumption of validity, and the vendor had stated that he had sold his own share. In absence of contrary documentary evidence, the appellants failed to dislodge such presumption. The non-production of relevant revenue records invited an adverse inference under Section 114 of the Evidence Act. The Court also noted that the appellants had not impleaded all necessary parties, including their sisters, despite claiming the property to be ancestral and joint. On the overall assessment of probabilities, the appellate Court held that the appellants failed to prove

their entitlement to declaration, partition, possession and injunction. Consequently, the appeal under Section 96 CPC was dismissed and the judgment and decree dated 12.01.2016 passed by the trial Court were affirmed.

12. 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.
13. 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/ defendants 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.
14. 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.

15. 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.
16. 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.
17. Be that as it may, the argument advanced by learned counsel for the appellants 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 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 judgments impugned passed by the learned trial Court as well as by the learned First Appellate Court are just and proper and there is no illegality and infirmity at all.

18. Having heard learned counsel for the appellants and on perusal of the record of the case and in view of the above settled legal proposition, 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 both the Courts appear 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 they do not call for any interference.

19. Consequently, the Second Appeal fails and is hereby **dismissed** in *limine* resulting in upholding of the judgment and decree of the trial Court as well as the Appellate Court.

Sd/-
(Bibhu Datta Guru)
Judge