



2026:CGHC:13089



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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPURJudgment reserved on 17-03-2026Judgment delivered on 19-03-2026**SA No. 493 of 2018**

1 - Santosh Dubey S/o Shri Banke Bihari Dubey Aged About 60 Years
R/o Village Saida, Tehsil Takhatpur, District- Bilaspur, Chhattisgarh.

2 - Banke Bihari S/o Shri Ram Khilawan Dubey Aged About 55 Years
R/o Village Saida, Tehsil Takhatpur, District- Bilaspur, Chhattisgarh.

3 - Sanjay Pandey S/o Shri Bahoram Aged About 50 Years R/o Village
Belsari, Tehsil Takhatpur, District- Bilaspur, Chhattisgarh.....(Defendants
No 6 To 8)

--- Appellant(s)**versus**

1 - Smt. Manorama Pandey Wd/o Late Shri Bhagwat Prasad Pandey
Aged About 65 Years R/o Village Seoni-Champa, District- Janjgir-
Champa, Chhattisgarh.

2 - Ishwari D/o Late Bhagwat Prasad Pandey Wife Of Rakesh Shastri,
R/o Nutan Colony Seepat Road, Old Sarkanda, Bilaspur, District
Bilaspur, Chhattisgarh.

3 - Nandani D/o Late Bhagwat Prasad Pandey Wife Of Ashwani Mishra,



R/o Bajrang Chowk Seepat Road, Tehsil And District- Bilaspur, Chhattisgarh.....(Defendants No. 1 To 3).

4 - Shri Naranjan Pandey S/o Late Shri Bhagwat Prasad Pandey Aged About 46 Years R/o Village Seoni, Tehsil Champa, District- Janjgir-Champa, Chhattisgarh.....(Plaintiff).

5 - Smt. Firtin Bai W/o Dashrath Sahu Aged About 50 Years R/o Seoni-Champa, Tehsil Champa, District- Janjgir-Champa, Chhattisgarh..... (Defendant No. 5).

6 - The State Of Chhattisgarh Through Collector, Janjgir-Champa, District- Janjgir-Champa, Chhattisgarh.

--- Respondent(s)

with

SA No. 461 of 2018

1 - Niranjana Pandey S/o Late Shri Bhagwati Prasad Pandey , Aged About 46 Years R/o Village Seoni, Tehsil Champa District Janjgir Champa Chhattisgarh., District : Janjgir-Champa, Chhattisgarh

---Appellant(s)

Versus

1 - Smt. Manorama Pandey Wd/o Late Shri Bhagwat Prasad Pandey , Aged About 66 Years R/o Village Saida, Tehsil And District Bilaspur Chhattisgarh.

2 - Ishwari , D/o Late Bhagwat Prasad Pandey, W/o Rakesh Shastri, R/o Nutan Colony Seepat Road, Old Sarkanda, Bilaspur District Bilaspur Chhattisgarh.



3 - Nandani , D/o Late Bhatgwat Prasad Pandey , W/o Ashwani Mishra,
R/o Bajrang Chowk Seepat, District Bilaspur Chhattisgarh.

4 - Firtin Bai W/o Dashrath Sahu Aged About 50 Years R/o Seoni, Tehsil
Champa District Janjgir Champa Chhattisgarh.

5 - Santosh Dubey Banke Bihari Dubey, R/o Village Saida, Tehsil And
District Bilaspur Chhattisgarh.

6 - Sanjay Pandey S/o Bahoran, R/o Village Belsari, Tehsil Takhatpur
District Bilaspur Chhattisgarh.

7 - Banke Bihari S/o Ram Khilawan Dubey, R/o Village Saida, Tehsil
And District Bilaspur Chhattisgarh.

8 - The State Of Chhattisgarh, Through Collector, Janjgir District Janjgir
Champa Chhattisgarh.

.... Respondent(s)

(Cause title is taken from CIS)

For Appellant(s) :

In SA No. 493 of 2018 : Mr. Pritam Tiwari, Advocate

In SA No. 461 of 2018 : Mr. M.D. Sharma, Advocate

For Respondents No. 1 to 3 : Ms. Seema Mishra, Advocate

For State : Mr. Malay Jain, Panel Lawyer

Hon'ble Shri Justice Bibhu Datta Guru

C A V Judgment

1. Since both the appeals assail the common judgment and decree and involve interconnected issues, they were heard and being disposed of by this common judgment.
2. The Second Appeal bearing SA No. 493 of 2018 has been filed by the defendant Nos. 6 to 8 and the Second Appeal bearing SA No.



461 of 2018 has been filed by the plaintiff under Section 100 of the Code of Civil Procedure, 1908, assailing the common impugned judgment and decree dated 20.06.2018 passed by the learned District Judge, Janjgir-Champa (C.G.) in Civil Appeal No. 21-A/2018 (*Niranjan Pandey vs. Manorama Pandey & Ors.*), Civil Appeal No. 23-A/2018 (*Santosh Dubey & Ors. vs. Manorama Pandey & Ors.*), whereby the civil appeals filed by the plaintiff and defendants No.6 to 8 were dismissed, affirming the judgment and decree dated 06.01.2018 passed by the learned Civil Judge, Class-I, Champa, District Janjgir-Champa (C.G.), in Civil Suit No. 202-A/2008 (*Niranjan Pandey vs. Manorama Pandey & Ors.*), whereby the suit filed by the plaintiff and the counter-claim filed by the defendant No.5 was dismissed and the counter-claim filed by the defendants No.1 to 3 was allowed. For the sake of convenience, the parties shall hereinafter be referred to as per their status before the Trial Court.

3. In the present case, it is admitted fact that the plaintiff is the son of defendant No.1 and brother of defendant Nos. 2 and 3, and that the entire suit land situated at Village Sivni and Village Kurda is recorded in the joint names of the plaintiff and defendant Nos. 1 to 3 in the revenue records as joint holders of ancestral property. It is further admitted that out of the suit land, the plaintiff has sold various portions by registered sale deeds in January, 2006 in favour of defendant Nos. 6, 7 and 8, and similarly, defendant No. 3 has also sold 0.91 acres of land from Khasra No. 601/2 in



favour of defendant No.5 by registered sale deed dated 13.06.2007.

4. The plaintiff instituted the suit seeking declaration of title, pleading *inter alia* that the suit land is recorded in the joint names of the plaintiff and Defendant Nos. 1 to 3, though a partition of the family properties had already been effected in the year 2000 by his father, Bhagwat Prasad Pandey. It was pleaded that, pursuant to the said partition, Defendant Nos. 2 and 3 were allotted separate land purchased in their names from one Ramlal vide registered sale deed dated 02.07.2001, along with cash consideration, and thus were not given any share in the joint family land. The remaining land was retained partly by the parents namely; Bhagwat Prasad and Manorama (Defendant No.1), and the balance was allotted to the plaintiff, upon which the parties are in possession of their respective shares. It was further pleaded that despite having knowledge of the said partition, Defendant Nos. 1 to 3 initiated revenue proceedings before the Tahsildar, Champa, wherein by order dated 10.04.2006, the matter was kept in abeyance directing the parties to seek adjudication of title from the competent Civil Court. It was also contended that during the pendency of the suit, Defendant No. 3 executed a registered sale deed dated 13.06.2007 in respect of part of the suit land, which is hit by Section 52 of the Transfer of Property Act and is not binding on the plaintiff. Accordingly, the plaintiff has sought declaration of his title over the suit land.



5. (a) *Per contra*, Defendant Nos. 1 to 3, in their written statement-cum-counter claim, denied the averments made in the plaint regarding the alleged partition and contended that no partition of the suit land and properties was ever effected by late Bhagwat Prasad. It was specifically pleaded that neither any land admeasuring 1.11 acres was purchased in the names of Defendant Nos. 2 and 3 nor any cash amount was paid to them as alleged. According to them, the suit land continues to be joint family property recorded in the revenue records in the names of all co-sharers. It was further contended that the plaintiff, with an intention to harass the defendants and deprive them of their lawful rights, has raised a false plea of exclusive title. Accordingly, they prayed for dismissal of the suit with costs and, by way of counter-claim, sought declaration of their joint ownership and partition of the suit property along with possession over their respective shares.

(b) Defendant No. 5 also filed a written statement-cum-counter-claim contending that the suit land originally belonged to Bhagwat Prasad, who during his lifetime had entered into an agreement to sell land bearing Khasra No. 601/2, admeasuring 0.91 acres, in favour of Defendant No. 5 for a consideration of Rs.1,36,500/-, out of which Rs.55,000/- was paid as earnest money. It was pleaded that due to the death of Bhagwat Prasad on 20.02.2004, the agreement could not be executed, however, subsequently, with the consent of Defendant Nos. 1 to 3, a registered sale deed was



executed on 13.06.2007 in favour of Defendant No. 5, followed by mutation in her favour on 17.02.2016. It was further contended that the appeal preferred by the plaintiff against such mutation was dismissed by the Sub-Divisional Officer, Champa. Accordingly, Defendant No. 5 claimed valid title over the said land and sought exclusion of the same from the suit property and declaration in her favour.

(c) Defendant Nos. 6 to 8, in their written statement, supported the case of the plaintiff and pleaded that after the partition, the suit land had fallen to the share of the plaintiff, from whom they have purchased the same by registered sale deeds after paying due consideration. It was further contended that their names have been duly mutated in the revenue records and loan books have also been issued in their favour. It was, however, stated that the appeal preferred by Defendant Nos. 1 to 3 before the Sub-Divisional Officer was allowed and a second appeal against the same is pending before the Additional Commissioner, Bilaspur. On these grounds, they prayed for dismissal of the claim insofar as it affects their purchased land.

6. (i) In reply to the counter-claim filed by Defendant Nos. 1 to 3, the plaintiff submitted that he had lawfully sold the suit land falling to his share in the partition to meet his bona fide needs, in accordance with prevailing practices. It was contended that such transfer was effected prior to the institution of the suit and,



therefore, is not hit by Section 52 of the Transfer of Property Act.

The plaintiff further denied that Defendant Nos. 1 to 3 are entitled to claim any share in the suit land and prayed for dismissal of their counter-claim.

(ii) Similarly, in reply to the written statement-cum-counter-claim of Defendant No. 5, the plaintiff denied any knowledge of the alleged transaction or agreement entered into by late Bhagwat Prasad and contended that the alleged agreement dated 23.06.2003 is forged and fabricated. It was further pleaded that the land bearing Khasra No. 601/2 had fallen to the share of the plaintiff in the partition and, therefore, the sale deed dated 13.06.2007 does not confer any right, title or interest upon Defendant No. 5. Accordingly, dismissal of the counter-claim was prayed for.

7. 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 plaintiff and allowed the counter-claim filed by the defendant Nos. 1 to 3, holding that the plaintiff has failed to establish his claim over the suit land. It was further held that the appellant and Defendant Nos. 1 to 3 are entitled to $\frac{1}{4}$ share each in the entire property of late Bhagwat Prasad and are competent to partition the same and obtain separate possession over their respective shares. As regards the counter-claim filed by Defendant No.5, the same was dismissed, while keeping intact her right to file a separate claim in the future



in case the suit land bearing Khasra No. 601/2, admeasuring 0.91 acres, falls within the shares of Defendant Nos. 1 to 3 after partition.

8. Aggrieved by the said judgment and decree dated 06/01/2018, the plaintiff as well as the defendants No.6 to 8 have preferred their respective Appeals bearing CA No.21-A/18 and CA No.23-A/18 respectively 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, affirmed the findings recorded by the Trial Court; both the appeals filed by the plaintiff and the defendant Nos.6 to 8 were dismissed by the impugned common judgment and decree. Hence, the present appeals.
9. Learned counsel for the appellants in both SA No. 493/2018 and SA No. 461/2018 would submit that both the learned Courts have erred both in law and on facts. Learned counsel would submit that the defendant Nos. 6 to 8/ appellants in SA No. 493/2018 are bonafide purchasers of portions of the suit land, having acquired the same from the plaintiff through registered sale deeds for adequate consideration, and their names have been duly recorded in the revenue records, yet the Trial Court and the First Appellate Court wrongly declined to protect their rights. Similarly, the plaintiff/ appellant in SA No. 461/2018 contends that the partition executed by late Bhagwat Prasad Pandey during his



lifetime in favour of the appellant and others was valid and lawfully effected, and both the Courts erred in declaring such partition invalid on the ground of alleged unequal division without any evidence or challenge having been raised. They further submit that the learned Courts wrongly disregarded the admitted facts of partition, misapplied the amended provisions of Section 6 of the Hindu Succession Act, 1956 to pre-existing partition, and also erred in rejecting crucial documents filed under Order 41 Rule 27 of the CPC, which were necessary for the discovery of truth and just adjudication. In light of these errors, they urged that the impugned judgment and decree be set aside, recognizing the lawful title, partition, and rights of the appellants over their respective shares in the suit land.

10. I have heard learned counsel for the parties 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.
11. In the case at hand, both the learned Trial Court as well as the learned First Appellate Court, upon thorough appreciation of the pleadings and the oral as well as documentary evidence on record, have concurrently held that the plaintiff has failed to prove the alleged partition of the suit property said to have taken place in the year 2000 during the lifetime of late Bhagwat Prasad. The Courts have consistently observed that mere separate residence,



separate mess, or independent business activities between the father and son do not constitute a valid partition in the eyes of law. In order to establish a lawful partition, it was incumbent upon the plaintiff to prove that all co-sharers, including the daughters, were present, had consented to the arrangement, and were allotted specific and identifiable shares. However, no such evidence has been brought on record. On the contrary, the plaintiff's own admissions and the testimony of his witnesses reveal that the alleged partition was neither witnessed by them nor supported by any documentary proof, and no clarity exists regarding distribution of specific portions of land. The Courts have thus rightly concluded that the alleged oral partition remains unproved.

12. It has been further concurrently held that the arrangement, if any, during the lifetime of Bhagwat Prasad was merely a family arrangement for convenience, whereby certain portions of land or means of livelihood were given to the plaintiff, without extinguishing the legal rights of other heirs. Significantly, no share was shown to have been allotted to the daughters, and in light of the amended provisions of the Hindu Succession Act, granting equal rights to daughters, such an arrangement cannot be treated as a binding partition. Accordingly, it has been held that after the death of Bhagwat Prasad, the plaintiff and defendant Nos. 1 to 3, being his legal heirs, continued to hold the suit property as joint co-owners, each entitled to $1/4^{\text{th}}$ share, with a right to seek partition and separate possession.



13. Both the Courts have also examined the validity of the sale transactions executed in favour of defendant Nos. 6 to 8 and have held that such transactions do not confer valid title in respect of joint family property where the consent of all co-sharers was not obtained. It has been found that either the plaintiff alone executed the sale deeds or that such transfers were made without the consent and participation of other co-owners, thereby rendering them ineffective against the shares of non-consenting co-sharers. The purchasers, being aware of the joint nature of the property and the absence of full consent, cannot claim protection as bona fide purchasers and are only entitled to claim such rights, if any, as may accrue to their vendor upon lawful partition, or seek appropriate remedies separately.
14. The learned First Appellate Court, upon reappreciation of the entire evidence, has affirmed the findings recorded by the Trial Court, reiterating that the plaintiff has failed to discharge the burden of proving prior partition and that the evidence on record does not support his claims. It has also been observed that certain counterclaims, particularly that of defendant No. 5, are barred by limitation. Consequently, the appellate Court has upheld the dismissal of the plaintiff's suit and confirmed the decree granting 1/4th share each to the plaintiff and defendant Nos. 1 to 3. In light of such concurrent findings based on proper appreciation of evidence and settled legal principles, no perversity, misreading of evidence, or substantial question of law arises so as to warrant



interference.

15. As far as contention of the appellants with regard to rejection of application under Order 41 Rule 27 of the CPC is concerned, the said application cannot be allowed as a matter of course, nor can additional evidence be introduced at the whim or convenience of a litigating party. In fact, the general principle is that the appellate Court should not travel outside the record of the trial Court. It is noteworthy to mention here that once trial had concluded and the decree was under challenged in an appeal, the appellants cannot be permitted to fill the gaps in their case by seeking to adduce further material to fortify the claim that was fundamentally flawed. {(See : **Gobind Singh and Ors. v Union of India and Ors. (Civil Appeal Nos.5168-5169 of 2011 decided on 9-3-2026)**}}
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. 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.
17. 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 failed to establish their case by placing cogent and sufficient material. The



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

18. 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.
19. 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.
20. 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.
21. 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 appellants herein. The judgments impugned passed by the learned trial Court as as well as by the learned First Appellate Court are just and proper and there is no illegality and infirmity at all.

22. 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 does not call for any interference.
23. Accordingly, both the Second Appeals fail and are hereby **dismissed** at the admission stage resulting in upholding of the judgment and decree of the trial Court as well as the Appellate Court.

Sd/-
(Bibhu Datta Guru)
Judge