



2026:CGHC:17399

NAFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR****SA No. 385 of 2023**

1 - Smt. Saraswati Devi (Dead) Through Her Lrs.- Nil

1.1 - Prakash Narayan Tiwari S/o Sheshmani Tiwari, Aged About 62 Years R/o Village Khairi, Tahsil Baikunthpur, District Korea (Chhattisgarh)

1.2 - Prasiddha Narayan Tiwari S/o Sheshmani Tiwari, Aged About 45 Years R/o Village Khairi, Tahsil Baikunthpur, District Korea (Chhattisgarh)

1.3 - Chandrapratap Tiwari S/o Sheshmani Tiwari, Aged About 42 Years R/o Village Khairi, Tahsil Baikunthpur, District Korea (Chhattisgarh)

1.4 - Kripashankar Tiwari S/o Sheshmani Tiwari, Aged About 35 Years R/o Village Khairi, Tahsil Baikunthpur, District Korea (Chhattisgarh)

1.5 - Smt. Vidyavati W/o Shri Ramayan Mishra, D/o Sheshmani Tiwari, Aged About 52 Years R/o Nehru Nagar, Tahsil Riwa, District Riwa (M.P.)

1.6 - Vyas Narayan Tiwari S/o Sheshmani Tiwari, Aged About 50 Years R/o Village Khairi, Tahsil Baikunthpur, District Korea (Chhattisgarh)

1.7 - Smt. Ramadevi Wd/o Late Chandrashekhar Prasad Tiwari Aged About 55 Years R/o Village Khairi, Tahsil Baikunthpur, District Korea (Chhattisgarh)

1.8 - Pradeep Kumar Tiwari S/o Late Chandrashekhar Prasad Tiwari, Aged About 33 Years R/o Garhelpara Baikunthpur, District Korea (Chhattisgarh)

1.9 - Pramod Kumar Tiwari S/o Late Chandrashekhar Prasad Tiwari Aged About 30 Years R/o Garhelpara Baikunthpur, District Korea (Chhattisgarh)

1.10 - Smt. Arti W/o Rakesh Kumar Shukla, D/o Late Chandrashekhar, Aged About 28 Years R/o Odagi, Thana Bhairyathan, District Surajpur (Chhattisgarh)

**.Appellant(s)**

**Versus**

- 1** - Smt. Shanti Bai Wd/o Late Harihardhar (Dead) Through Her Lrs. Nil
- 1.1** - (A) Smt. Mungiya Bai W/o Ramlakhan Mishra (Since Dead), Nil
- 1.1.1** - Smt. Sushila D/o Jayprakash, Aged About 40 Years R/o Manendragarh Near Forest Naka, District Korea (Now District Mcb) Chhattisgarh.
- 1.1.2** - Smt. Chanchal Tiwari D/o Jayprakash, W/o Suryaprakash Tiwari Aged About 35 Years R/o Garhelpara, Baikunthpur, District Korea (Chhattisgarh)
- 1.1.3** - Shri Yogeshwar S/o Ramlakhan, Aged About 62 Years Caste- Brahman, R/o Manpur, Tahsil Baikunthpur, District Korea (Chhattisgarh)
- 1.1.4** - Chandrika Prasad S/o Ramlakhan, Aged About 60 Years Caste- Brahman, R/o Manpur, Tahsil Baikunthpur, District Korea (Chhattisgarh)
- 1.1.5** - Surendra Prasad S/o Ramlakhan, Aged About 60 Years Caste- Brahman, R/o Manpur, Tahsil Baikunthpur, District Korea (Chhattisgarh)
- 1.1.6** - Vijay Shankar S/o Ramlakhan, Aged About 60 Years Caste- Brahman, R/o Manpur, Tahsil Baikunthpur, District Korea (Chhattisgarh)
- 1.2** - (B) Narendra Kumar S/o Late Trishul Prasad, Aged About 40 Years Occupation Former, R/o Village Kakarha, Thana Raipur, Tahsil Tyonthar, District Riwa (M.P.)
- 1.3** - (C) Anil Kumar S/o Late Trishul Prasad, Aged About 35 Years Occupation Former, R/o Village Manpur, Tahsil Baikunthpur, District Korea (Chhattisgarh)
- 1.4** - (D) Bhagwat Prasad S/o Late Trishul Prasad Aged About 32 Years Occupation Former, R/o Village Kakarha, Post Chaura, Thana Raipur, Tahsil Tyonthar, District Riwa (M.P.)
- 1.5** - (E) Mangla Prasad S/o Late Trishul Prasad Aged About 28 Years Occupation Former, R/o Village Kakarha, Post Chaura, Thana Raipur, Tahsil Tyonthar, District Riwa (M.P.)
- 1.6** - (F) Smt. Shakuntala Devi W/o Lalji Mishra, Aged About 42 Years Occupation Former, R/o Village Devri, Post Khiuli, District Allahabad (U.P.)
- 1.7** - (G) Smt. Nirmala Devi W/o Krishnakant Shukla, Aged About 40 Years R/o Riwa (Behind The Chaurasiya Dharmakanta), District Riwa (M.P.)
- 1.8** - (H) Smt. Tara Devi, W/o Taulan Prasad Mishra, Aged About 35 Years Occupation Former, R/o Village Bhagesar, Post Bhagesar, District Allahabad (U.P.)

2 - State Of Madhya Pradesh (Now State Of Chhattisgarh) Through The Collector Korea (Chhattisgarh)

3 - Ramlakhan Mishra S/o Rammanorath Mishra, Aged About 53 Years Caste-Brahman R/o Village Khairi, Thana Patna, Tahsil Baikunthpur, District Korea (Chhattisgarh)

4 - Kamleshwar Prasad S/o Late Ramlakhan, Aged About 40 Years R/o Village Manpur, Thana Patna, Tahsil Baikunthpur, District Korea (Chhattisgarh)

**Respondent(s)**

**(Cause-title taken from Case Information System)**

---

For Appellants(s) : Mr. Bhuvneshwar Singh, Advocate

For Resp No.2 : Mr. Lekhram Dhruw, PL

---

**Hon'ble Shri Justice Bibhu Datta Guru**

**Judgment on Board**

**16/04/2026**

1. The present Second Appeal has been preferred under Section 100 of the Code of Civil Procedure, 1908 by the plaintiff/appellant, calling in question the judgment and decree dated 09.05.2023 passed in Civil Appeal No. 03-A/2019 (*Smt. Saraswati Devi through LRs v. Smt. Shanti Bai through LRs*) by the learned Additional District Judge, Baikunthpur, District Koriya (C.G.), whereby the appeal preferred by the plaintiff/appellant has been dismissed and the judgment and decree dated 09.05.2023 passed in Civil Suit No. 26-A/2017 (*Smt. Saraswati Devi through LRs v. Smt. Shanti Bai through LRs*) by the learned I Civil Judge, Class I, Baikunthpur, District Koriya (C.G.), dismissing the suit of the plaintiff/appellant, has been affirmed.
2. For the sake of convenience, the parties shall hereinafter be referred to as per their status before the Trial Court.

3. (a) The plaintiff instituted a civil suit seeking declaration of title and partition in respect of the lands described in Schedule 'A' and 'B' appended to the plaint, situated at Village Khairi and Village Manpur, District Koriya (C.G.), comprising Village Khairi Khasra Nos. 58 (0.19 hec.), 67 (0.29 hec.), 68 (0.63 hec.), 80 (1.28 hec.), 111 (1.73 hec.), 129 (1.39 hec.), 138 (0.26 hec.), 166 (1.13 hec.) and 175 (0.58 hec.), total 9 plots admeasuring 7.48 hec., and Village Manpur Khasra Nos. 195 (0.16 hec.), 197 (0.24 hec.), 200 (1.43 hec.) and 234 (0.24 hec.), total 4 plots admeasuring 2.27 hec., along with consequential relief of declaration that various alienations, including gift deeds and will dated 15.07.1994, are null and void, and for permanent injunction restraining the defendants from interfering with the suit property and from proceeding before the revenue authorities. It was pleaded that the suit lands form part of joint family/ancestral properties of late Harihardhar, who was the recorded holder of extensive lands in Villages Khairi, Manpur and Murma, and upon his death, the properties devolved upon his widow Shanti Bai (Defendant No.1) and daughter-in-law Khuduwa Bai, and that the plaintiff, being one of the daughters, is entitled to 1/2 share therein.
- (b) It was further the case of the plaintiff that although certain arrangements and partitions took place after the death of late Harihardhar, she was not included in the alleged partition said to have been effected in the year 1952 and/or subsequently in 1972–73, and she was denied her lawful share. According to the plaintiff, at the time of her marriage she was given some land, however, the same was not in lieu of her complete share, and assurances were given by Shanti Bai (Defendant

No.1) and other family members that her share would be adjusted out of the share allotted to Shanti Bai (Defendant No.1). It was alleged that Shanti Bai (Defendant No.1), who had become old and was suffering from serious illness and mental infirmity, was taken under the control of defendant No.2 Ramlakhan Mishra, who obtained a power of attorney in his favour and, taking undue advantage of her condition, got various gift deeds executed in favour of his wife and sons, including transfer of land out of Khasra No. 138 admeasuring 0.200 hec. and Khasra No. 144 admeasuring 0.040 hec., and also procured a will dated 15.07.1994 in favour of defendant No.5, thereby transferring portions of the suit property. The plaintiff challenged these documents as illegal, void and not binding on her on the ground that the property was joint and Shanti Bai had no exclusive right to alienate the same, and further that the said documents were obtained by fraud, misrepresentation and without free consent.

(c) The defendants, in their written statements, denied the plaintiff averments and contended that the suit properties were the self-acquired properties of late Harihardhar, who had acquired the lands through settlement during the erstwhile regime and was the exclusive owner thereof. It was pleaded that during his lifetime, he had already allotted land to the plaintiff by way of patta dated 13.03.1950 comprising about 32 acres (approximately 13 hec.) in Village Khairi, and that the plaintiff has been in possession and enjoyment of the same ever since. It was further contended that after his death, a family partition was effected through a Panchayat decision dated 21.10.1952, in which all heirs were

allotted their respective shares and separate possession was delivered, and the said arrangement was never challenged by the plaintiff. According to the defendants, Shanti Bai (Defendant No.1) was the absolute owner of the property falling to her share and was competent to deal with the same, and she executed registered gift deeds, including those dated 19.02.1992 in respect of land admeasuring about 0.40 hec. from Khasra No. 197 and dated 01.02.2001 in respect of land admeasuring about 0.240 hec. from Khasra Nos. 138 and 144, as well as a will dated 15.07.1994, in favour of the defendants out of her free will and while in a sound disposing state of mind, and the said transactions have been duly acted upon, with mutation entries recorded in the revenue records.

(d) The defendants further pleaded that the plaintiff has suppressed material facts regarding the earlier partition, allotment and revenue entries, and has filed the suit after an inordinate delay with an intention to disturb long-settled possession. Objections were also raised regarding limitation, non-joinder of necessary parties and improper valuation of the suit. It was asserted that since the year 1952 the parties have been in separate possession over their respective shares and, in any event, the defendants have perfected their title by long and continuous possession. In support of their respective cases, the plaintiff examined five witnesses, whereas the defendants examined six witnesses, and both parties adduced documentary evidence including revenue records, settlement entries, alleged partition documents, registered gift deeds and the will.

4. On the basis of the pleadings of the parties and the material available on record, the learned Trial Court framed the necessary issues for adjudication. While deciding the issues relating to title and entitlement of the plaintiff to 1/2 share in the suit property, the learned Trial Court held that the plaintiff has failed to establish that the suit property is ancestral/coparcenary property or that any enforceable right had accrued in her favour therein. It was further held that the evidence on record indicates that late Harihardhar had acquired the suit lands through settlement/raiyati rights and had effected separate allotments during his lifetime, which stood reflected in revenue records. The learned Trial Court further held that the plea of alleged subsequent partition and assurance set up by the plaintiff was not proved by any specific pleadings or cogent evidence regarding the date, manner or actual implementation thereof. It was also held that the plaintiff failed to successfully challenge the registered gift deeds and will executed by Smt. Shanti Bai, as no reliable evidence was adduced to prove fraud, undue influence or lack of free consent. Accordingly, the learned Trial Court concluded that the plaintiff failed to establish her entitlement over the suit property and dismissed the suit for declaration of title and partition.
5. Aggrieved by the judgment and decree passed by the learned Trial Court, the plaintiff preferred a first appeal before the learned First Appellate Court. The learned First Appellate Court, upon re-appreciation of the entire evidence available on record, affirmed the findings recorded by the learned Trial Court. Hence, the present Second Appeal has been filed

by the plaintiff/appellant.

6. Learned counsel for the appellants submits that both the Courts have erred in law in upholding the alleged Family Partition dated 21.10.1952 (Exbt. D-1) as valid, despite the fact that there is no reliable evidence of antecedent joint family nucleus or legally established coparcenary in respect of the suit property. It is contended that the finding regarding partition is based merely on revenue entries and settlement records, which do not confer or extinguish title. It is further submitted that both the Courts have wrongly held that the suit properties are the self-acquired properties of late Shanti Bai (Defendant No.1), without any proof of independent acquisition. In absence of such proof, the Courts have failed to appreciate that the property retained its ancestral character, thereby entitling the appellants to their lawful share. Learned counsel further assails the concurrent findings upholding the Gift Deeds and Will Deed executed by late Shanti Bai, submitting that once the property is not self-acquired, the alleged unilateral alienations are void and cannot defeat the rights of co-sharers. It is also contended that the Courts have wrongly treated the unchallenged mutation and settlement entries as conclusive proof of title, ignoring the settled law that mutation entries are only fiscal in nature and do not determine ownership. On these grounds, it is urged that the findings recorded by both the Courts suffer from perversity and substantial questions of law arise for consideration in the present Second Appeal.
7. I have heard learned counsel for the appellant on the question of admission and have carefully perused the impugned judgments and

decrees passed by both the Courts as well as the material available on record.

8. At the outset, it is to be noted that the jurisdiction of this Court under Section 100 of the Code of Civil Procedure is confined to the examination of substantial questions of law. Interference with concurrent findings of fact recorded by the learned Trial Court and affirmed by the learned First Appellate Court is permissible only where such findings are shown to be perverse, based on no evidence or suffering from an error of law.
9. In the present case, the finding that the plaintiffs have failed to establish that the suit property is ancestral or joint family property is based on proper appreciation of both oral and documentary evidence available on record. The burden to prove the existence of a joint family nucleus and to establish the ancestral character of the property squarely lay upon the plaintiffs; however, the same has not been discharged by leading cogent, reliable or convincing evidence. On the contrary, the material available on record indicates that the lands in question were acquired by late Harihardhar in his own right and were recorded in his name during settlement proceedings, and there is no evidence to show that the same were inherited from his predecessors. The evidence of the witnesses also supports the position that late Harihardhar was declared owner of the lands during settlement, thereby negating the plea of the plaintiffs that the suit properties are ancestral in nature.
10. It has further been concurrently found that the Family Partition dated

21.10.1952 (Exbt. D-1) was duly acted upon by the parties and finds reflection in the subsequent revenue records. The mutation entries arising therefrom remained unchallenged for a long period. Though it is well settled that mutation entries do not by themselves confer title, in the present case, such entries have been considered only as a corroborative circumstance lending support to the conclusions drawn on the basis of other evidence on record.

11. It has also been consistently held that late Shanti Bai (Defendant No.1) was the recorded holder of the suit property, and there is no material on record to establish that she held the same in a representative capacity on behalf of any joint family. In absence of proof of joint ownership or coparcenary interest, the conclusion that she was competent to deal with the property in her own right does not suffer from any legal infirmity.
12. Insofar as the validity of the Gift Deeds and the Will executed by late Shanti Bai (Defendant No.1) is concerned, the findings recorded indicate that their execution has been duly proved in accordance with law. No material has been brought on record to demonstrate any suspicious circumstances, lack of testamentary capacity, or any illegality in the execution of the said documents so as to render them invalid.
13. The contention that mutation entries have been treated as conclusive proof of title is also not borne out from the record. A careful reading of the findings would show that the Courts have arrived at their conclusions on a cumulative appreciation of the entire evidence on record, and not on the basis of revenue entries alone.

14. The arguments advanced on behalf of the appellant essentially seek re-appreciation of evidence and substitution of this Court's view for that concurrently taken by both the Courts, which is impermissible in a Second Appeal.
15. It is well settled, as reiterated by the Supreme Court in *State of Rajasthan and Others v. Shiv Dayal and Another*, (2019) 8 SCC 637, that interference in second appeal with concurrent findings of fact is permissible only when such findings are shown to be based on misreading of material evidence, contrary to pleadings, or such as no reasonable judicial mind could have arrived at. The appellant has failed to demonstrate that the findings recorded by the Trial Court and the First Appellate Court suffer from any such infirmity.
16. In view of the aforesaid discussion, this Court is of the considered opinion that no substantial question of law arises for consideration in the present Second Appeal. The findings recorded are based on proper appreciation of evidence and do not suffer from any perversity or illegality warranting interference under Section 100 CPC.
17. Consequently, no substantial question of law arises for consideration in this appeal. The Second Appeal, being devoid of merit, is hereby dismissed at the admission stage itself.

Sd/-  
**(Bibhu Datta Guru)**  
Judge