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**(2019) 08 CHH CK 0070**

**Chhattisgarh High Court**

**Case No:** Second Appeal No. 95 Of 2006

Bajrang And Ors

APPELLANT

Vs

Pratap Singh Yadav  
And Ors

RESPONDENT

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**Date of Decision:** Aug. 9, 2019

**Acts Referred:**

- Code Of Civil Procedure 1908 - Section 100

**Hon'ble Judges:** Sanjay K. Agrawal, J

**Bench:** Single Bench

**Advocate:** Prafull Bharat, Shivali Dubey

**Final Decision:** Dismissed

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### **Judgement**

Sanjay K. Agrawal, J

1. The substantial question of law involved, formulated and to be answered in this second appeal preferred by the plaintiffs is as under:-

Whether the Court below, after holding that there was no partition between the plaintiffs and their father, was justified in holding that the land in

dispute fell into the share of Jhamu ?

(For the sake of convenience, parties would be referred hereinafter as per their status shown in the plaint before the trial Court.)

2. The suit property originally belonged to Jhamu. The plaintiffs are sons of Jhamu, defendant No.2 is Jhamu's daughter and defendant No.1 is his

grandson in whose favour Jhamu executed registered sale deed dated 1.9.95 (Ex.P-2) for cash consideration of â,1 10,000/- transferring his 2.59 acres

of land and thereafter Jhamu died on 10.4.96. Two plaintiffs, sons of Jhamu, filed a suit for declaring that sale made by their father in favour of their sister/defendant No.2 and their daughter's son defendant No.1 is null and void and they are entitled for declaration of title, permanent injunction and confirmation of possession.

3. The defendants filed their written statement and denied the averments made in the plaint and prayed for dismissal of suit and also made counter-claim for declaration of title and for possession after removing the encroachment made by the plaintiffs.

4. The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 9.7.2002, dismissed the suit

holding that 1.82 acres of land was self-acquired property of Jhamu and only 0.77 acre of land, which was ancestral property, was sold to defendants

No.1 and 2 though held that partition has not been taken place between two plaintiffs and their father Jhamu by metes and bounds. In appeal preferred

by the plaintiff, the first appellate Court affirmed the judgment and decree of the trial Court and also granted counter-claim made by defendants No.1

and 2. Questioning that judgment and decree, the appellants/plaintiffs preferred this second appeal under Section 100 of the Code of Civil Procedure,

1908, in which, substantial question of law has been formulated and set-out in the opening paragraph of this judgment.

5. Mr.Prafull Bharat, learned counsel for the appellants/plaintiffs, would submit that the trial Court is absolutely unjustified in holding that the land in

dispute fell in share of Jhamu after having held that no partition has been taken place between the plaintiffs and their father, as such, the judgment and

decree of both the Courts below deserve to be set aside and the suit be decreed.

6. None present for respondents No.1 and 2/defendants No.1 and 2 though served.

7. The trial Court while recording a finding on issue No.1 has clearly held that out of the property sold by Jhamu in favour of his daughter defendant

No.1 and grandson defendant No.2, 1.82 acres of land was self-acquired property of Jhamu and only 0.77 acre of land was was ancestral property

and total property which Jhamu held jointly was 10.76 acres. It was further held that sale was made for legal necessity clearly stating that money is

needed for maintaining joint family and for domestic work.

8. The fact remains that even if no partition has taken place, Jhamu sold total 2.59 acres in favour of defendants No.1 and 2 and out of which, 1.82

acres was self-acquired property of Jhamu and only 0.77 acre was ancestral property and he left 10.76 acres of land which was joint family property

and only small portion of ancestral property was sold that too for legal necessity and in favour of his daughter and maternal grandson. In view of that,

it cannot be concluded that the trial Court and the first appellate Court are unjustified in dismissing the suit. I do not find any illegality or perversity in

the finding recorded by two Courts below. The substantial question of law is answered in favour of the defendants and against the plaintiffs.

9. Accordingly, the second appeal deserves to be and is hereby dismissed leaving the parties to bear their own cost(s).

10. Decree be drawn-up accordingly.