courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 08/11/2025

(2019) 09 CHH CK 0069

Chhattisgarh High Court

Case No: Second Appeal No. 486 Of 2005

Bhagwati — APPELLANT

Vs

Daya Bai And Ors — RESPONDENT

Date of Decision: Sept. 12, 2019

Acts Referred:

- Code Of Civil Procedure 1908 - Section 96, 100

Hon'ble Judges: Sanjay K. Agrawal, J

Bench: Single Bench

Advocate: A.D. Kuldeep, Ravi Bhagat

Final Decision: Dismissed

Judgement

Sanjay K. Agrawal, J

1. Heard on admission and formulation of substantial question of law for determination in this second appeal preferred by the plaintiff under Section

100 of the CPC.

2. Mr. A.D. Kuldeep, learned counsel appearing for the appellant/plaintiff would submit that both the Courts below have concurrently erred in

dismissing the suit of the plaintiff by recording a finding that plaintiff has failed to prove that the suit property is the property of her deceased father

namely Mallu and therefore, she is not entitled for decree of partition and possession, which being perverse, gives rise to substantial question of law

for determination in this second appeal.

3. Plaintiff/appellant herein filed a civil suit for partition and possession against her sister and brother-in-law claiming that the suit property belonged to

her father namely Mallu and is not the self-acquired property of her sister and brother-in-law i.e. defendants, therefore, she is entitled for decree of

partition and possession.

4. Learned trial Court, after appreciating oral and documentary evidence on record, dismissed the suit of the plaintiff holding that plaintiff has failed to

prove that the suit property was the property owned by her father i.e. Mallu and rather the suit property is the self-acquired property of defendants

No. 1 and 2, as such, plaintiff is not entitled for decree of partition and possession. On appeal being preferred by the plaintiff under Section 96 of the

CPC, learned first appellate Court affirmed with the findings recorded by the trial Court and dismissed the appeal of the plaintiff.

5. Both the Courts below have concurrently held that plaintiff has failed to prove that the suit property belonged to her deceased father namely Mallu

and recorded a finding that the suit property is the self-acquired property of defendants No. 1 and 2, as such, plaintiff is not entitled for decree of

partition and possession which is a finding of fact based on material available on record which is neither perverse nor contrary to record and does not

give rise to any substantial question of law for determination in this second appeal.

6. The second appeal deserves to be and is accordingly dismissed in limine without notice to the other side. No order as to cost(s).