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**(2018) 09 CHH CK 0100**

**Chhattisgarh High Court**

**Case No:** First Appeal No. 271 Of 2005

Chandra Prakash Gupta And Ors

APPELLANT

Vs

Rishi Kesh Gupta And Ors

RESPONDENT

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**Date of Decision:** Sept. 6, 2018

**Acts Referred:**

- Code Of Civil Procedure 1908 - Section 96

**Hon'ble Judges:** Ram Prasanna Sharma, J

**Bench:** Single Bench

**Advocate:** Manoj Paranjpe, Anurag Singh, R.K. Jaiswal

**Final Decision:** Allowed

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### **Judgement**

Ram Prasanna Sharma, J

1. This first appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against judgment/ decree dated 08.04.2005 passed by First

Additional District Judge, Durg (C.G.) in Civil Suit No. 7-A/2004, wherein the said court declared 7/24th share of respondent No. 1 in property mentioned in Schedule-C of the plaint.

2. As per case of respondent No. 1, property mentioned in Schedule-C is ancestral property and original owner of the said property was one

Makhanlal. He died on 03.08.1988 leaving behind three sons namely Surya Prakash Gutpa, Chandra Prakash Gutpa and Om Prakash Gupta and three

daughters namely Ratna Prabha Jain, Shashi Prabha Agrawal and Sneh Prabha Agrawal.

3. Respondent No. 1- Rishi Kesh Gupta who is son of Surya Prakash Gupta filed a suit for partition in which he mentioned that property mentioned in

Schedule- A & B of the plaint have already been partitioned, but property mentioned in Schedule-C is not partitioned. Property mentioned in Schedule-

C are land bearing Khasra No. 995/01 admeasuring 2.22 acres situated at village- Kasaridih, Patwari Halka No. 77, Tahsil & District- Durg (C.G.).

Movable property mentioned in Schedule-C and one house situated at Baniya Para, Durg within municipal area.

4. The core issue for consideration of this Court is whether the trial court addressed real issues between the parties in its true perspective.

5. No record of property mentioned in Schedule-C was filed before the trial court. The trial court has also not considered pleadings of other side that

partition already took place between the parties on 30.03.1982 and house situated at Baniya Para, Durg is recorded in the name of Chandra Prakash

Gupta and Om Prakash Gupta.

6. Again it is pleaded by other side that Chandra Prakash Gupta was recorded owner of agricultural land mentioned in Schedule-C and no cash or ornament is left to be partitioned.

7. It is clear from record of the trial court that the documents regarding property mentioned in Schedule-C was not produced before the trial court.

The trial court has also not considered pleadings of other side and without looking to the record, the trial court decided the issue in a very slipshod

manner. When record regarding land of village- Kasaridih and the house situated at Baniya Para, Durg was not available, it is not clear as to whether

the property is ancestral property or not.

8. Again it is not clear that on whose name the said property is recorded and on what basis such record is maintained. It is also not clear that any

movable property is available for partition and who is in possession of said movable property. The trial court has power to call for record from the

institution like revenue department and municipal corporation for deciding the issues, but record was not called for. It appears that the trial court has

not addressed the real issues between the parties and therefore, the matter requires reconsideration by the said court.

9. Accordingly, the appeal is allowed and the judgment and decree passed by the trial court is set aside. The case is remanded back to the trial court

for addressing real issues of the parties and decide the matter afresh.

10. Both the parties are directed to appear before the trial court on 25 th October, 2018 for further proceedings.