

(2018) 09 CHH CK 0400
Chhattisgarh High Court
Case No: Second Appeal No. 500 Of 2004

Baccharaj And Ors

APPELLANT

Vs

Bhagrasiya And Ors

RESPONDENT

Date of Decision: Sept. 26, 2018

Acts Referred:

- Code Of Civil Procedure 1908 - Section 100

Hon'ble Judges: Sanjay K. Agrawal, J

Bench: Single Bench

Advocate: A. K. Prasad, Arun Sao

Final Decision: Dismissed

Judgement

Sanjay K. Agrawal, J

1. This is defendants' second appeal under Section 100 of the Code of Civil Procedure, 1908 questioning the judgment and decree passed by the First

Appellate Court whereby the First Appellate Court has affirmed the judgment and decree of the trial Court decreeing the suit for declaration of title

and partition and separate possession in respect of Schedule- A of the property.

2. The plaintiffs / respondents herein filed a suit for partition and separate possession in respect of agricultural land described in Schedule-A of the

property. It was the case of the plaintiffs that the said property was self acquired property of Bishramdas who had three sons namely - Baccharaj,

Sonsai and Faleshwar and one daughter Bhagrasiya. It is further their case that after the death of Bishramdas they have succeeded the property

though the property was recorded in the names of three sons in the revenue records and they were separately possessing the different portions of the

suit land but no partition had taken place so far as the suit property is concerned by metes and bounds. It was opposed by the defendants by filing written statement and it was pleaded that the partition has already taken place among the three brothers and Bhagrasiya is not entitled as the ornaments and cash were already given to her.

3. The trial Court decreed the suit holding that Baccharaj (Defendant No. 1), Faleshwar (Plaintiff No. 2) and Bhagrasiya (Plaintiff No. 1) are the owner of the suit land and each of them are entitled for 1/3 share in the suit property and the sale deed executed by defendant No. 1 in favour of defendant No. 5 on 03.09.2001 is illegal against the interest of plaintiff No. 1 and 2 and the same is not binding. The said finding has been affirmed by the First Appellate Court.

4. The trial Court as well as the First Appellate Court have concurrently held that no partition has taken place in metes and bounds between Baccharaj, Faleshwar and Bhagrasiya and each of them are entitled for 1/3 share in the suit property. The said finding recorded by the two Courts below holding that no partition has taken place between the parties is a finding of fact based on evidence available on record in which I do not find any perversity or illegality.

5. Accordingly, the second appeal deserves to be and is hereby dismissed in limine. No cost(s).