

**(2002) 01 MP CK 0028**

**Madhya Pradesh High Court (Indore Bench)**

**Case No:** Second Appeal No. 444/82

Hiralal and Another

APPELLANT

Vs

Bhoja (dead) through L.Rs. and  
Others

RESPONDENT

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**Date of Decision:** Jan. 21, 2002

**Acts Referred:**

- Madhya Pradesh Land Revenue Code, 1959 - Section 178

**Citation:** (2002) 3 MPHT 252

**Hon'ble Judges:** A.K. Gohil, J

**Bench:** Single Bench

**Advocate:** Ravi Waghmare, for the Appellant; None, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

A.K. Gohil, J.

The appellants/defendants have filed this second appeal u/s 100 of the CPC against the judgment and decree dated 19-8-1982 passed by Additional Judge to the Court of District Judge, Mandleshwar in Civil Regular Appeal No. 9-A/82 whereby decreed the suit of the respondents/plaintiffs by setting aside the judgment and decree passed by Civil Judge, Class-II, Sendhwa which was passed on 23-2-1982 and whereby suit of the respondents/plaintiffs was dismissed for declaration of title and for partition and possession including mesne profits.

2. This appeal was admitted for final hearing on the following substantial questions of law :--

"(1) Whether respondent Nos. 2 to 8 daughters of original Bhumiswami Chinda had relinquished their share over the suit lands in the mutation proceedings before the revenue authorities ?

(2) What will be the effect of any such alleged relinquishment ?

(3) Whether the respondents are estopped from claiming title over the suit lands in view of the alleged relinquishment before the revenue authorities ?"

3. The brief facts of the case are that the plaintiffs, who are the son, one widow, and daughters of deceased Chinda, filed a suit against 3 defendants. Defendant No. 1 Ghudkibai who was also one of the widows of deceased Chinda as Chinda had two widows. Ghudkibai died during the pendency of the suit. Therefore, her name was deleted from the array of the title para of the plaint. The appellants/defendants are the purchasers of 4.46 acres of land out of Khasra Nos. 161/2 and 474/27/2 from Ghudkibai. The respondents/plaintiffs suit in nut-shell was that the deceased Chinda s/o Gangaji was having some ancestral property bearing Khasra No. 161 area 17.38 acres having land revenue of Rs. 59.77 and Khasra No. 474 area 0.44 acre having land revenue of Rs. 0.98 ps. The deceased Chinda died in the year 1969. After the death of deceased Chinda, at the instance Ghudkibai there was some partition between some of the heirs of Chinda before the Tehsil Court and a declaration was also sought in the suit that the aforesaid partition is not binding on the respondents/plaintiffs. The Trial Court dismissed the suit of the plaintiffs holding therein that the aforesaid lands were not ancestral properties. Thereafter the respondents/plaintiffs preferred an appeal which was allowed by the First Appellate Court and the First Appellate Court decreed the suit of the plaintiffs holding therein that the deceased Chinda was the Bhumiswami of the aforesaid land and the respondents/plaintiffs being the heirs of deceased Chinda are entitled for their share in the property and also for partition as they are having 1/8th share each in the property. Accordingly it was directed that leaving behind the share 1.11 acres the rest of the property be divided amongst the respondents/plaintiffs, against which the appellants/defendants have filed this second appeal which was admitted on the aforesaid substantial questions of law.

4. I have heard Shri Ravi Waghmare, learned Counsel for appellants/defendants and perused the record. None appeared for respondents.

5. The submission of learned Counsel for appellants is that there was an earlier partition between the respondent/plaintiff No. 1 Bhoja who is the son of the deceased Chinda and Ghudkibai who one of the widows of the deceased Chinda and the rest of the daughters and widow had relinquished their share in favour of Bhoja who is their brother and son. It was further submitted that the First Appellate Court has not considered this question that when respondent/defendant Nos. 3 to 8, who are the daughters of deceased Chinda, had relinquished their share in favour of the aforesaid Bhoja then the First Appellate Court ought not to have decreed the suit of the respondents/plaintiffs in toto, but have decreed the suit after consideration of the earlier partition and mutation before the Revenue Courts.

6. After considering the pleadings and evidence of the parties and the documents on record it is not in dispute that the deceased Chinda died on 19-1-1969 and this fact was found proved by the First Appellate Court on the basis of the document Ex.

P-1 which is a copy of the death certificate and which was not challenged by the appellants/defendants. It was further found that the deceased Chinda died after coming into force the Hindu Succession Act, 1956. It was also found proved that all the respondents/plaintiffs are the legal heirs of deceased Chinda. The First Appellate Court further found after appreciation of evidence that the aforesaid land was self acquired property of the deceased Chinda in which after his death all the respondents/plaintiffs being legal representatives of deceased Chinda are entitled for equal share u/s 8 of the Hindu Succession Act, and earlier there was no partition between the heirs, and the respondent Nos. 3 to 8 were not party before the Revenue Court, therefore, such a partition or mutation is not binding on them and the two heirs Bhoja and Ghudkibai alone cannot get and sell the property.

7. The First Appellate Court firmly recorded a finding that the respondent/plaintiff Nos. 3 to 8, who are daughters of the deceased, had not relinquished the property and their share in favour of their sole brother Bhoja. No document about the relinquishment of their rights in the property were produced. The First Appellate Court also came to the conclusion that statement of respondent No. 3 Kesharbai before the Tehsil Court on behalf of all the sisters was without authority of law and is not binding on them. Under such circumstances, the First Appellate Court did not recognise such a relinquishment in favour of brother by the sisters. The learned Counsel for appellants again reiterated the submissions that the aforesaid statement of Kesharbai will fall into the category of relinquishment of shares by the daughters in favour of their brother Bhoja. In the suit neither the copy of the application for partition or mutation which was filed before the Revenue Court was produced nor it was shown that all the daughters of deceased Chinda were made party before the Revenue Court or they were ever served by a notice or their statements were recorded to prove that they had given any such statement about the relinquishment of their share in the property. After appreciating the evidence on record 1 too find that the First Appellate Court was right in holding that there cannot be a relinquishment of the share in the property in such form without the execution of any registered conveyance as per the law or a valid partition through the Court. Therefore, the substantial questions of laws Nos. 1 and 2 as framed at the time of admission of this appeal are answered accordingly.

8. So far as question No. 3 whether the respondents are estopped from claiming title over the suit lands in view of the alleged relinquishment before the revenue authorities in concerned, since the appellants/defendants have failed to prove the alleged relinquishment before the revenue authorities by filing the necessary revenue papers there cannot be any estoppel against the respondents under the law for claiming their title over the suit lands. In this regard the First Appellate Court has rightly held that since the respondent/plaintiff Nos. 3 to 8 were not party in the partition or mutation proceedings made by the revenue authorities the same is not binding on them and they cannot be estopped claiming a partition in a suit applying rule of estoppel. Therefore, the First Appellate Court rightly recorded that there was

no case for relinquishment of their rights in the property before the Revenue Courts in favour of Bhoja as they were not party to the revenue proceedings in question. Thus, all the aforesaid three substantial questions of law framed by this Court at the time of admission of this appeal are answered accordingly and I find no force in the submissions of learned Counsel for appellants. Therefore, this appeal deserves to be dismissed.

9. In the last learned Counsel for appellants drew my attention on the point that the First Appellate Court has also committed an error in calculating 1/8th share of the respondents/plaintiffs over the property leaving the area of 1.11 acres. In fact including the deceased Ghudkibai this share should be 1/6th in the property of the deceased Chinda which has been described in the suit. The appellants/defendants who are purchasers of land from Ghudkibai can claim their right over the share of Ghudkibai. Accordingly the decree is modified to the extent that the revenue authority shall effect the partition of the aforesaid total land of 17.82 acres amongst the legal representatives of deceased Chinda including deceased Ghudkibai. The share of the deceased Ghudkibai shall be determined as 1/8th share, and the appellants/defendants shall be entitled for the share of the deceased Ghudkibai.

10. Accordingly this appeal fails and is hereby dismissed with the aforesaid modification with no order as to costs. A decree be drawn up accordingly. Record be returned.