AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 187 of 2021

Reserved on : 04.01.2022

Delivered on : 28.02.2022

Murari Sahu, S/o Bisambhar Sahu, Aged About 35 Years, Village- Berlakala, Post- Gudheli, Tahsil- Berla, District- Bemetara (C.G.)

---- Appellant

Versus

1. Tarni Sahu, D/o Bisambhar Sahu, W/o Bhuwan Sahu, Aged About 40 Years, R/o Aanandgaon, Tahsil- Berla, District- Bemetara (C.G.)
2. Devmani, S/o Murari Sahu, Aged About 10 Years.
3. Digesh, S/o Murari Sahu, Aged About 8 Years.

   Since Defendant No. 2 & 3 are Minor, Through their Father Murari Sahu, S/o Bisambhar Sahu.

   Respondents No. 2 & 3 are R/o Village- Berlakala, Tahsil- Berla, District- Bemetara (C.G.)
4. Hemin Sahu, D/o Bisambhar Sahu, W/o Naresh Sahu, Aged About 38 Years, Village- Aanandgaon, Tahsil- Berla, District- Bemetara (C.G.)
5. State of Chhattisgarh, Through- Collector, District- Bemetara (C.G.)
6. Purinbai, Wd/o Bisambhar Sahu, Aged About 60 Years, Village- Berlakala, Tahsil- Berla, District- Bemetara (C.G.)

---- Respondents

For Appellant	:	Mr. Viprasen Agrawal, Advocate.
For Respondent No. 1	:	Mr. Harishankar Patel, Advocate.
For State/Respondent No. 5	:	Mr. Aditya Sharma, Panel Lawyer.

Hon'ble Shri Justice Narendra Kumar Vyas

C.A.V. JUDGMENT

1. Heard on admission.

2. The second appeal has been filed by the appellant/defendant

under Section 100 of the C.P.C. against judgment and decree dated 14.07.2021 (Annexure A/1) passed by District Judge, Bemetara, District- Bemetara (C.G.) in Civil Appeal No. 08A/2020 (Murari Sahu & others Vs. Tarni Sahu & others) affirming the judgment and decree passed by Second Civil Judge Class-II, Bemetara, District- Bemetara (C.G.) in Civil Suit No. 01-A/2017 on 24.12.2019 (Annexure A/2).

3. For the sake of convenience, the parties shall be referred to in terms of their status in Civil Suit No. 1- A/2017 which was filed for declaration of title partition and permanent injunction.

4. The brief facts, as reflected from the plaint averment, are that the plaintiff has filed Civil Suit No. 01-A/2017 before Second Civil Judge Class-II, Bemetara for declaration of title, partition of suit land situated at village Berlakala, Tahsil Berla, District Bemetara measuring about 3.43 hectare and for grant of permanent injunction. It has been contended that the plaintiff and defendants are Hindus and they are governed by Mitakshara Branch of Hindu Law and their grandfather of Ludu owned of the land situated at Village- Berlakala bearing Khasra Nos. 154, 395, 425, 490, 492, 488/5, 428, 652, 971/1 & 649 (total 10 plots total area admeasuring 3.43 Hectare) area admeasuring 1.75, 0.04, 0.01, 0.15, 0.16, 0.32, 0.03, 0.45, 0.02 & 0.50 Hectare respectively. After death of Ludu, the ancestral property was inherited to Moti & Bishambhar, sons of Ludu.

5. It has been further contended that plaintiff, defendant No. 1, defendant No.4 are the successors of Bisambhar and they are also entitled to inherent movable and immovable property of Bisambhar. The defendant No. 1 considering the fact that his father Bisambhar was suffering from paralysis, transferred the ancestral property in his name. His father expired in the year 2011. It has been further averred in the plaint that land bearing plot Nos. 971/2 area 0.02 Hectare, Khasra No. 154/1 area 0.75, Khasra No. 154/2, 395, 425, 428, 488/5, 490, 492, 649 & 652 area admeasuring 1.00, 0.04, 0.01, 0.03, 0.32, 0.15, 0.16, 0.50

& 0.45 respectively (total Khasra Nos. 11 area 3.43 Hectare) are also recorded in the name of Bisambhar, therefore, defendant No. 1 is entitled for 1/3rd share i.e. 1.14 Hectare and defendant No. 4 is also entitled for 1/3rd share i.e. 1.14 Hectare on partition. The plaintiff has requested for partition in December, 2016, which has been denied by the defendants, which has necessitated her to file the civil suit before the trial Court for grant of partition, possession and permanent injunction.

6. Defendants No. 1 to 3 have filed their written statement denying the allegation mentioned in the plaint contending that there is no description of the entire property, therefore, the civil suit for partition of joint Hindu family property is not maintainable. It has also been stated that Purin Bai, wife of Bisambhar, has not been arrayed, who is necessary party as she is also successor of movable and immovable property and in her absence, the suit is not maintainable. It has also been pleaded that father of defendant No. 1 has sold the property on 14.01.2011 to the defendants No. 2 and 3 when he was physically and mentally fit and prayed for rejection of the suit.

7. During pendency of this suit, widow of Bisambhar i.e. defendant No. 4-Hemin Sahu has been arrayed as defendant No. 4 on 20.01.2017. She has filed her written statement reiterating the same stand taken by defendant No. 1 and would submit that the plaintiff is not entitled for 1/3rd share of the suit property and prayed for rejection of the suit.

8. Learned trial Court after appreciating the pleadings of the parties, has framed as many as nine issues. Issue Nos. 1 & 2 are necessary issues for deciding issue raised in this appeal, therefore, they are being reproduced below:- The relevant issues framed by the trial Court are as under:-

(i) Whether the property situated at Village- Berlakala area admeasuring 3.43 Hectare is agricultural land and the same is joint property of undivided Hindu Family.

(ii) Whether the suit land was inherited by Motilal & Bisambhar after death of Ludu.

(iii) Whether defendant No. 1 has illegally transferred the suit land in his name for affecting the share of plaintiff No. 4.

(iv) Whether defendant No. 1 & 4 have 1/3rd share in the suit land.

9. The plaintiff to substantiate her averments in the plaint has examined herself as (PW-1), Harishchand (PW-2), Anandram Chouhan (PW-3) and exhibited documents Kishtabandi Khatouni for the year 2015-16 (Ex.P-1), Kishtabandi Khatouni of land belongs to Devmani, Digesh (Ex.P-2), Kishtabandi Khatouni for the year 2017-18 (Ex.P-3), Kishtabandi Khatouni for the year 2005-06 (Ex.P-4). The defendant to substantiate his averments in the written statement has examined himself as (DW-1), Sribati (DW-2), and exhibited documents registered sale-deed (Ex.D-1), Kishtabandi Khatouni for the year 2017-18 (Ex.D-2), Khasra for the Year 2017-18 (Ex.D-3), Map (Ex.D-4), Kishtabandi Khatouni for the Year 2017-18 of his son (Ex.D-5), Khasra for the Year 2017-18 (Ex.D-6), true copy of khasra No. 154/01 (Ex.D-7).

10. The plaintiff in her examination-in-chief has categorically stated that her father has inherited 20 acres of land from his father out of which 11.50 acres land has been sold, 3.43 hectare of land is left in which, she and her sister have equal share. It has also been stated that no partition has been taken place between brother and sisters. When she demanded for partition, her brothers have not maintained cordial relationship with her and she has not invited in family function. Harishchand (PW-2) & Anandram Chouhan (PW-3) have adduced same evidence which has been deposed by the plaintiff.

11. Defendant No. 1-Murari Sahu has examined himself as DW-1 wherein he has stated that when the land was handed over to him neither brothers, mother nor sisters have raised any objection and the land has been given to him as per their

consent, therefore, she has no right to claim partition over the property. The plaintiff has neither raised nor demanded for partition during lifetime of defendant's father. His father has absolute right in agricultural land and he is in possession of the land only. It has also been stated that the plaintiff has not properly valued the suit land. He has also admitted that his father has sold the land in his name and his grand son's name without any sale consideration. He has again admitted that no partition has taken place between him and his sister with regard to the ancestral property.

12. Learned trial Court after appreciating the evidence and material placed on record has decided issue No. 1 in favour of the plaintiff and held that the suit property has been received by father of the defendant No. 1 & 2 after death of their grandfather. It has been recorded that the suit land has been deliberately recorded in name of defendant No. 1 and it has also been recorded that the defendant is interfering in the land possessed by the plaintiff while granting decree of partition of the suit land. Learned trial Court has decreed the suit and has held that plaintiff, defendant No. 1, 4 and 6 are entitled to get ¼ shares in the suit property. It has also been held that the land which has been recorded in the name of defendant No. 2 and 3 shall be part of ¼ share of defendant No. 1 which he is entitled to get as per the judgment and decree. It has been further directed that the proceeding before revenue court under Order 20 Rule 18 of the C.P.C. be initiated for partition and possession of the suit land. It has been further directed that defendant No. 1, 2, 3, 4 and 6 shall not interfere in the possession of the plaintiff.

13. Being aggrieved with the judgment and decree passed by the trial Court, the defendant has preferred first appeal before learned District Judge, Bemetara, District- Bemetara (C.G.) as Civil Appeal No. 08A/2020 (Murari Sahu & others Vs. Tarni Sahu & others) mainly contending that the learned trial Court has not appreciated the evidence and material placed on record, as

such, the same is liable to be rejected by this Court. It has also been stated that the plaintiff has filed the suit without giving description of the entire property, which has to be partitioned, as such, the suit is not maintainable. It has also been stated that the ancestral property has already been sold, therefore, the suit is not maintainable without impleading the purchaser and would pray for setting aside judgment and decree passed by learned trial court.

14. Learned First Appellate Court vide its judgment and decree dated 14.07.2021 has dismissed the appeal, learned appellate Court while dismissing the appeal has recorded a finding that learned trial Court after appreciating the entire evidence, material on record has passed the reasoned order which does not warrant any interference in the appeal.

15. The appeal is listed for admission since the plaintiff has filed caveat, therefore, Mr. Harishankar Patel, Advocate entered appearance before this Court.

16. Learned counsel for the appellant would vehemently argue that the learned trial Court has committed illegality and irregularity in decreeing the suit as description of the entire property has not been given in the plaint and when the entire property has not been described, the suit is not maintainable. In support of his submission he placed reliance on the judgment passed by the Coordinate Bench of this Court in **Ram Gopal Vs. Jagdish Prasad**[1], wherein it has been held that a suit for division of a portion of the family property cannot lie as a suit for partial partition is not maintainable. The suit for partition of family property must embrace all the joint family property. He would further submit that the substantial question of law is involved in this appeal, therefore, the appeal deserves to be admitted at this stage. He would propose the following substantial question of law to be determined by this Court

(1) Whether plaintiffs civil suit is maintainable in absence of

1 2015 (1) CGLJ 466

the sufficient description of complete properties of the Bisambhar, especially when Order 2 Rule 2 C.P.C. envisages that suit to include the whole claim.

(2) Whether both the courts below are justified in holding that plaintiff is entitled for 1/4th share, specially when it has been held that Bisambhar was not willing to give his property to his daughter.

17. On the other hand, learned counsel for plaintiff would submit that both the Courts below have rightly appreciated the provisions of law and the facts applicable to the present case. He would further submit that the defendant has also not given details of the property, which have not been included in the partition suit. He would refer to the judgment passed by Hon'ble the Supreme Court in **Prahlad Pradhan & others Vs. Sonu Kumhar & others**[2]. He would further submit that the learned trial Court has rightly passed the judgment and decree which has been affirmed by the appellate Court as such there is no substantial question of law involved in the appeal and appeal is liable to be dismissed at the admission stage itself.

18. I have heard learned counsel for the parties and perused the documents placed on record with utmost satisfaction.

19. Contention of learned counsel for the appellant that the learned trial Court has committed illegality without claiming for partition of entire property owned by father of defendant No. 1 & 2, is not tenable in light of judgment passed by Hon'ble Supreme Court in case of **Kenchegowda (Since Deceased) by Legal Representatives Vs. Siddegowda Alias Motegowda**[3], wherein it has been held that the suit for partial partition, when all the joint family properties neither made the subject matter of the suit nor the co-shares have been impleaded, is maintainable.

20. Hon'ble the Supreme Court in **B.R. Patil Vs. Tulsa Y. Sawkar &**

2 2020 SAR (Civ) 74
3 (1994) 4 SCC 294

others[4], has held as under:-

> "10. This is the state of the pleading and evidence in support of the existence of the property other than what has been scheduled by the plaintiffs and for which partition is sought. It is true that the law looks with disfavor upon properties being partitioned partially. The principle that there cannot be a partial partition is not an absolute one. It admits of exceptions. In Mayne's' Treatise on Hindu Law & Usage'17thEdition, Paragraph 487, reads as follows:
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> "487. Partition suit should embrace all property – Every suit for a partition should ordinarily embrace all joint properties. But this is not an inelastic rule which admits circumstances of a particular case or the interests of justice so require. Such a suit, however, may be confined to a division of property which is available at the time for an actual division and not merely for a division of status. Ordinarily a suit for partial partition does not lie. But, a suit for partial partition will lie when the portion omitted is not in the possession of coparceners and may consequently be deemed not to be really available for partition, as for instance, where part of the family property is in in the possession of a mortgagee or lessee, or is an impartible Zamindari, or held jointly with strangers to the family who have no interest in the family partition. So also, partial partition by suit is allowed where different portions of property lie in different jurisdictions, or are out of British India. When an item of property is not admitted by all the parties to the suit to be their joint property and it is contended by some of them that it belongs to an outsider, then a suit for partition of joint property excluding such item does not become legally incompetent of any rule against partial partition."
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> 11. In the facts of this case having noticed the state of the pleadings and the evidence,we are of the view that the interest of justice lies in rejecting the appellant's contention. The appellant has not been able to clearly establish the exact extent or identity of the property available by way of ancestral property. Despite claiming to having documents relating to the properties and admitting to having no difficulty to produce them, he does not produce them. He is unable to even give the boundaries. It is obvious that he does not claim to be in possession of the said properties even if it be as a

4 Civil Appeal No (S). 2652-2654 of 2013 (Decided on 09.02.2022)

co-owner on the basis that it is ancestral property. His evidence discloses that in reality and on the ground these properties could not be said to be actually available for the parties to the present suit to lay claims over them. Properties not in the possession of co-sharers/coparceners being omitted cannot result in a suit for the partition of the properties which are in their possession being rejected.

12. The case that is set up by the plaintiffs and which is sought to be drawn upon by the appellant is that the grandfather of the appellant had two sons, including his father and since there was this extent of property which is spoken by and since that is not included,it would be contrary to public interest also to deprive the other sharer in the joint family,namely,the brother of the appellant's father an opportunity to appear in the suit and establish that the plaint schedule properties were acquired with the help of joint family funds in which they also had a share. We must notice that while it is true, there is no document produced by which it can be established that there was a partition by which the properties stood allotted to the father's brother of the first appellant. The case which has been set up apparently is more of the nature of an arrangement between the parties by which the appellant's grandfather allotted the property to his other son (appellant's uncle). DW3,who is the 2nddefendant, speaks of a relinquishment by his father.

13. There is the uneducated brother of appellant's father who was into agriculture who was given the property in question and the appellant's father went on to become a successful advocate and pursued with success also a career in politics. It may have so happened that the said property which is targeted by the appellant may be property in which Sh. R.M. Patil has abandoned his rights. We would not wish to go further into this matter,noticing the aspect of the matter already discussed. Therefore, this appears to be a case where finally before the Court,there is dearth of material to establish both the extent and the identity of the so-called joint family property which is not included in the plaint. Interestingly, the other branch has not come forward with any complaint despite the fact that this is a litigation of the year which commenced in the year 2003. No doubt, they have not been made parties and we need not make any observation in this regard. If the finding that the plaint schedule properties are the separate properties of R.M. Patil

is invulnerable that would conclusively rule out the need to implead the appellant's uncle or his successor in interest. Suffice it to say in the facts of this case, we do not think that the appellant should be permitted to persuade us to non-suit the plaintiffs on this ground.

14. Yet another aspect which we cannot overlook is that the plaintiffs have proceeded to institute the suit on a particular cause of action. As pointed out by Mr. S. N. Bhat, learned senior counsel,the appellant could not have brought the present suit till the year, 1977 when Sh. R. M. Patil was alive. This is for the reason that the cause of action for the present suit is based on the rights of the plaintiff to the separate and self acquired properties of Sh. R. M. Patil. The parties do not have any birth right in the said properties and they could not have brought a suit based on such a right. The cause of action arose therefore only upon his death and on the basis of intestatesuccession plaintiff shave brought the present suit. A suit for partition in regard to ancestral property/joint family property on the other hand would be premised on birth right.

15. In this regard we may notice two aspects. Order II Rule 3 of the Code of Civil Procedure, 1908 reads as follows:

"3. JOINDER OF CAUSES OF ACTION.-

(1) Save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit.

(2) Where causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit."

16. Order I Rule 3 speaks about the persons who may be made parties. Interpreting these rules, this Court in Iswar Bhai C. Patel alias Bachu Bhai Patel v. Harihar Behera and Another1held inter alia as follows:

"14.These two provisions, namely, Order 1 Rule 3 and Order 2 Rule 3 if read together indicate that the question of joinder of parties also involves the joinder of causes of action. The simple 1AIR 1999 SC 1341 principle is that a person is made a party in a suit because there is a cause of action against

> him and when causes of action are joined, the parties are also joined."
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> On the cause of action in this case, there is no warrant to complain against the non-impleadment of the appellant's uncle or his successors in interest. We may also point out that Order II Rule 3 does not compel a plaintiff to join two or more causes of action in a single suit. The failure to join together all claims arising from a cause of action will be visited with consequences proclaimed in Order II Rule 2. Order II Rule 3 permits the plaintiff to join together different causes of action. No doubt it is a different matter that if there is a misjoinder of causes of action, the power of the court as also the right of the parties to object are to be dealt with in accordance with law which is well settled.
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> 17. The Code of Civil Procedure indeed permits a plaintiff to join causes of action but it does not compel a plaintiff to do so. The consequences of not joining all claims arising from a cause of action may be fatal to a plaintiff and we are not in this case to predicate for what would happen in a future litigation. That would at any rate not advance the case of the appellant. Hence for all these reasons, we are of the view that contention of the appellant, must fail.
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> 18. We have no quarrel with the proposition that the non-joining of necessary parties is fatal but in the facts of this case,on the cause of action which is projected in the plaint and the schedule of properties which has been made by the plaintiffs,we would not think that the non-joinder of the uncle of the appellant or his legal representatives would imperil the suit filed by the plaintiffs."

21. From the records, it is quite vivid that during pendency of the suit defendant No. 6- Purinbai, mother of plaintiff, defendants No. 1 & 4 have been impleaded, as such, all the co-sharers were made parties to the suit. It is also evident from the record that the defendant No. 1 has not described in his written statement which property was not included for partition in the suit filed before the trial court which was incumbent on the part of the defendant to plead and prove by recording evidence which property is to be partitioned is not included in the plaint.

22. Learned trial Court after appreciating the pleading, evidence,

material on record and considering the pleading that the defendants have nowhere pleaded that which property is left over for partition and even in the evidence also the defendant No. 1 has not mentioned about the property which has been left out. Very vague averments have been made in the plaint also. In absence of specific description left out property, the learned trial Court has not committed any illegality and rightly decreed the suit, therefore, the finding recorded by the learned trial Court is legal, justified and in accordance with the law laid down by Hon'ble the Supreme Court in **B.R. Patil (Supra)**, as such there no substantial question of law arises for consideration before this Court as proposed by learned counsel for the appellant.

23. Learned counsel for the appellant would submit that since the plaintiff has not included the whole claim, therefore, the suit is not tenable in view of provisions contained in Order 2 Rule 2 of C.P.C., which reads as under:-

> "**Suit to include the whole claim.-** (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.
>
> **(2) Relinquishment of part of claim-** Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim he shall not afterwards sue in respect of the portion so omitted or relinquished.
>
> **(3) Omission to sue for one of several reliefs-** A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted."

24. Hon'ble the Supreme Court while interpreting the provisons of Order 2 Rule 2 CPC in case of **Alka Gupta Vs. Narender Kumar Gupta**[5], has held at paragraph 13 to 14 as under:-

> 13. This Court in *Gurbux Singh v. Bhoora Lal* [AIR 1964 SC 1810] held :

5 (2010) 10 SCC 141

> "6. In order that a plea of a bar under O. 2, R. 2(3), Civil Procedure Code should succeed the defendant who raises the plea must make out (1) that the second suit was in respect of the same cause of action as that on which the previous suit was based; (2) that in respect of that cause of action the plaintiff was entitled to more than one relief; (3) that being thus entitled to more than one relief the plaintiff without leave obtained from the Court omitted to sue for the relief for which the second suit had been filed. From this analysis it would be seen that the defendant would have to establish primarily and to start with, the precise cause of action upon which the previous suit was filed for unless there is identity between the cause of action on which the earlier suit was filed and that on which the claim in the latter suit is based there would be no scope for the application of the bar."
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> Unless the defendant pleads the bar under Order 2 Rule 2 of the Code and an issue is framed focusing the parties on that bar to the suit, obviously the court can not examine or reject a suit on that ground. The pleadings in the earlier suit should be exhibited or marked by consent or at least admitted by both parties. The plaintiff should have an opportunity to explain or demonstrate that the second suit was based on a different cause of action.
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> 14. In the instant case, the respondent did not contend that the suit was barred by Order 2 Rule 2 of the Code. No issue was framed as to whether the suit was barred by Order 2 Rule 2 of the Code. But the High Court (both the trial bench and appellate bench) have erroneously assumed that a plea of res judicata would include a plea of bar under Order 2 Rule 2 of the Code. Res judicata relates to the plaintiff's duty to put forth all the grounds of attack in support of his claim, whereas Order 2 Rule 2 of the Code requires the plaintiff to claim all reliefs flowing from the same cause of action in a single suit. The two pleas are different and one will not include the other. The dismissal of the suit by the High Court under Order 2 Rule 2 of the Code, in the absence of any plea by the defendant and in the absence of an issue in that behalf, is unsustainable."

25. Hon'ble the Supreme Court in **Pramod Kumar & another Vs. Zalak Singh & others**[6], has held at paragraph 25 to 27 as

6 (2019) 6 SCC 621

under:-

> “25. Still further, in paragraph 63, the Court has proceeded to conclude as follows: [(*Mohd. Khalil Khan v. Mahbub Ali Main)* 1948 SCC OnLine PC 44]
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> “63. The plaintiffs’ cause of action to recover the properties consists of those facts which would entitle them to establish their title to the properties. These facts are the same with respect to both properties, these being, that Rani Barkatunnissa was the owner of the properties; that she died on 13t-2-1927, that she was a Sunni by faith and that they are her heirs under the Muhammadan law.....Having regard to the conduct of the parties their Lordships take the view that the course of dealing by the parties in respect of both properties was the same and the denial of the plaintiffs’ title to the Oudh property and the possession of the Shahjahanpur property by the defendants obtained as a result of that denial formed part of the same transaction. On this question, the learned Judges of the High court have expressed their opinion in two places in their judgment as follows: [(*Mohd. Khalil Khan v. Mahbub Ali Mian*) 1941 SCC OnLine All 73]
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> “In the case before us the trespass on title or slander of title in the case so far as the Oudh suit was concerned was not distinct and different either in point of time or in point of character from the trespass on possession in the case of the Shahjahanpur property…..
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> 26. Again, it is stated as follows: [(*Mohd. Khalil Khan case*)]
>
> “.....Here in the present case we find that the two trespasses, one on the Shahjahanpur property and the other on the Oudh property were similar in character and formed part of the same transaction and the evidence to prove the facts which it was necessary for the plaintiffs to prove… was the same and the bundle of essential facts was also the same.”
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> 27. At this juncture, we may advert to Order II Rule 2, which reads as follows:
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> “2. **Suit to include the whole claim**- (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the

jurisdiction of any Court.

(2) **Relinquishment of part of claim**- Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) **Omission to sue for one of several reliefs**– A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted."

26. From the entire material place on record, it is quite clear that no foundation to attract the provision under Order 2 Rule 2 of the C.P.C. has been led before the trial Court by describing which property has been left out for partition in the suit and even no issues have been framed by the trial Court on the submission made by learned counsel for the appellant. In fact, these issues have been raised for the first time in the Second Appeal which are also not permissible, as such no substantial question of law is required to be answered by this Court.

27. The findings recorded by the learned Courts below are concurrent findings of fact and even the appellant is unable to point out which finding of the fact recorded by the trial Court is bad in law, recorded dehors the pleading or it was based on no evidence or it was based on misleading of the material documentary evidence or it was recorded against the provisions of law. Considering on the facts, I am of the view that there is no substantial question of law involved in this appeal as it is concurrent finding of fact, which is neither perverse nor suffers from non-application of mind, therefore, second appeal is liable to be dismissed at the admission stage itself. No order as to costs.

28. A decree be drawn up accordingly.

Sd/-
(Narendra Kumar Vyas)
Judge

Arun