

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No. 85 of 2013

1. Gokul S/o Late Pardeshi Ram, Aged About 47 Years,
2. Ahilya Bai D/o Late Pardeshi Ram, Aged About 45 Years,
- Both R/o Village- Jamdi, Tahsil Dongergarh, Distt. Rajnandgaon C.G.
3. Sukli Bai widow of late Pardeshi Ram, Aged About 77 Years,
4. Chandrika Bai widow of Kanhaiya Lal, Aged About 48 Years,
5. Santosh S/o Kanhaiya Lal, Aged About 48 Years,
6. Gayatri Bai D/o Kanhaiya Lal, Aged About 25 Years,
7. Kumari Mona, D/o Kanhaiya Lal Aged About 22 Years,
- No. 3 to 7 are R/o Village- Telitola, Tah. Doundilohara, Distt. Durg (C.G.)

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Versus

1. Prabhu Ram (Died) Through Lrs.
1. (a) Shyam Murari S/o Late Prabhu Ram Sinha, (Died) Through Lrs.
1. (a) (i) Gaurav @ Golu, S/o Late Shyam Murari Sinha, Aged about 26 Years,
1. (a) (ii) Kusum D/o Late Shyam Murari Sinha, Aged about 30 Years,
1. (a) (iii) Ku. Kamini D/o Late Shyam Murari Sinha, Aged about 28 Years,
1. (a) (iv) Saraswati Bai Wd/o Late Shyam Murari Sinha, Aged about 55 Years

All are R/o Shanti Nagar Patwari Baadi Kohka, Bhilai, District Durg (Chhattisgarh)

1. (b) Rajendra Kumar Aged about 54 Years S/o Late Prabhu Ram Sinha,
1. (c) Pawan Kumar Aged about 52 Years S/o Late Prabhu Ram Sinha,
1. (d) Devendra Kumar Aged about 50 Years S/o Late Prabhu Ram Sinha,
1. (e) Shashi Bhushan Aged about 48 Years S/o Late Prabhu Ram Sinha,
1. (f) Shushila Aged about 46 Years D/o Late Prabhu Ram Sinha,
1. (g) Koushilya Bai Aged about 44 Years D/o Late Prabhu Ram Sinha,
1. (h) Basanti Bai Aged about 75 Years Wd/o Late Prabhu Ram Sinha,

All R/o Village Shanti Nagar, Kohka, Bhilai (Patwari Badi), Tahsil And District Durg (Chhattisgarh)

2. State Of Chhattisgarh, Through The Collector, Durg, District Durg (Chhattisgarh)

---- Respondents

For appellants – Shri P.P. Sahu, Advocate.

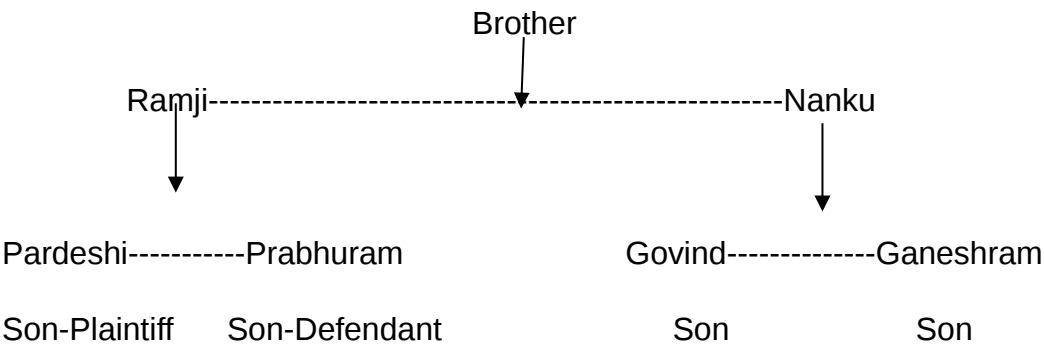
For Respondents No. 1 (a) (i) to 1 (a) (iv) and 1 (b) to 1 (h)–Shri B.P. Singh, Advocate.

For State/respondent No.2 – Shri Anil S. Pandey, G.A.

Hon'ble Shri Justice Goutam Bhaduri**Order****5/04/2016**

1. The instant appeal is against the order dated 27/11/2012 passed in Civil Appeal No.40-A/2012 by the Second Additional District Judge, Balod, District Durg whereby the judgement and decree passed by the Civil Judge, Class-II in Civil Suit No.8-A/2009 dated 10/08/2009 was affirmed.
2. The appeal is by the plaintiffs against the concurrent finding of fact. Brief facts are that a suit was filed initially by Pardeshi Ram (since deceased) that at village Telitola certain land bearing khasra Nos.38, 45, 92, 116, 117, 203, 216, 227, 228 admeasuring 2.48 hectares were recorded in the name of plaintiff and defendant No.1 i.e. Prabhuram. Both the plaintiff and the defendant No.1 are related as brothers and they are sons of Ramji. It was contended that the father of the plaintiff namely Ramji along with uncle of the plaintiff namely Nanku were living as a joint family and out of the property of joint family and income thereof in the year 1930 at Baigapara Durg house and plot were purchased. It was further pleaded that after death of Ramji, Nanku remained karta of the family. In the year 1952 a partition was affected in between plaintiff who was son of Ramji, defendant No.1 and their uncle Nanku and after such partition, plaintiff, defendant No.1 and their uncle Nanku continued joint possession in respect of the house at Baigapara Durg but in the year 1957 other brother of plaintiff i.e. defendant No.1 Prabhuram without knowledge and consent of the plaintiff sold the house to the sons of Nanku i.e. Govind and Ganesh Ram. It was further contended that when sale came to the notice of the plaintiff, a meeting was convened wherein it was settled that in respect of the land at village Telitola the defendant No.1 Prabhuram would not claim his share and therefore in consequence thereof plaintiff

continued his possession in respect of the land and the property situated at village Telitola. It was further contended that despite that the defendant No.1 Prabhuram filed an application for partition of land before Naib Tehsildar in respect of Telitola wherein on the basis of application filed by the defendant land was directed to be partitioned by Naib Tehsildar which was further maintained by the SDO. Against such order the suit was filed by the plaintiff. In order to appreciate the facts the relation, geneological tree of the parties as shown in memo of appeal which is shown hereunder:-



3. Defendant No.1 Prabhuram denied the allegation of the plaint. It was specifically denied that from the joint income of the family the house was purchased at Baigapara by Ramji and Nanku. It was further stated that in the year 1984 the plaintiff and the defendant jointly purchased the land at village Telitola and therefore claim so made by the plaintiff is liable to be dismissed.

4. Trial court after evaluating the facts and the evidence dismissed the suit filed by the plaintiff. The said finding was further assailed before the first appellate court and the first appellate court too affirmed the finding of the trial court. Therefore, this second appeal.

5. Learned counsel for the appellants would submit that the house which was situated at Durg was transferred by way of an agreement and the photocopy of such agreement was placed on record before the trial

court. Since beneficiaries in such agreement were Govind and Ganesh Ram, they were called by the plaintiff as witness to adduce evidence. However, they did not turn up. He further submits that therefore an application under Section 73 of the Evidence Act was moved before the trial court so that the agreement which purports to transfer the house in favour of Govind and Ganesh Ram by Prabhuram exclusively without consent of Pardeshiram was sought to be proved. However, application and prayer was dismissed. Consequently, it caused failure of justice since application was necessary to prove the contention of the plaintiff. He further submits that in absence of such evidence, the right of the plaintiff was denied which he was legally entitled, therefore appeal may be admitted for hearing.

6. I have heard learned counsel for the appellants at length and perused the documents and the record.

7. Initially suit was filed by Pardeshiram against Prabhuram for declaration and permanent injunction. Statement of the plaintiff would show that plaintiff has contended that at village Telitola land is recorded in name of the plaintiff and his brother Prabhuram which was purchased from the joint family income by the father of the plaintiff Ramji along with his uncle Nanku. Further it is stated that in the year 1930 from the joint family income a house was purchased at Baigapara Durg and in the year 1952 a partition was affected in between Nanku and plaintiff as Ramji had died in the meanwhile. It was stated that by such partition property situated at Telitola devolved on the plaintiff and defendant along with the house at Baigapara. It is further stated that his brother namely Prabhuram had transferred the house exclusively without consent of Pardeshiram the plaintiff to Govind and Ganesh who are sons of Nanku and out of such

income property of 5 acres were purchased by defendant in the name of his wife. When this came to his notice a social meeting was convened and it was agreed by the defendant that he would not take any share in respect of the land situated at Telitola, though no written document was executed. Both name of the brothers continued in respect of the land at Telitola. Similar statement has been made by son of the plaintiff Gokul Prasad PW-2.

8. Perusal of the record would show that the suit which was based entirely on the fact that the house at Baigapara was sold exclusively by defendant in favour of Govind and Ganesh has not been proved by the document. The plaintiff has failed to produce any evidence to prove any document to show that Prabhuram had sold the property in favour of Govind and Ganesh Ram. Govind and Ganesh Ram who are beneficiaries i.e. purchasers could have been summoned, if necessary through coercive process by process of the court to establish such contention. However, the plaintiff failed in it's attempt.

9. Admittedly, there is no registered document and only on the basis of agreement such statement is made. Records would show that an application under Section 73 of the Evidence Act was also filed to establish and prove the signature of Prabhuram over such transfer deed but such transfer deed has not been exhibited and it is only an agreement that too a photocopy. The original agreement was not placed on record. Statement of the plaintiff in the cross examination also becomes relevant wherein it is stated that who has purchased the land at Baigapara he is not in known and he has not filed any document in this aspect. Further with respect to the description of the property i.e. surrounding of the house of Baigapara is also been denied. Therefore, fact to prove that Prabhuram

has exclusively sold the house at Baigapara to Govind and Ganesh Ram which was sub stratum of the entire suit has not been categorically established either by documentary evidence or by acceptable oral evidence. Therefore, in view of this, basis of the entire claim i.e. transfer deed has not been proved, it is left with that the pleadings are without any proof. Both the court below therefore have held that the plaintiff has failed to prove the fact that Prabhuram has sold the house of Baigapara is not been established cannot be faulted.

10. In the result, finding of fact of both the court below cannot be faulted with and no substantial question of law arises for consideration in this second appeal. Accordingly, it is dismissed at the motion stage itself.

Sd/-
(Goutam Bhaduri)
JUDGE