

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 359 of 2015

1. Shriram, son of Late Dhobi Sai Aged About 35 Years R/o Village Jurgum Tahsil Baicha, Jashpur, Civil & Revenue District Jashpur Chhattisgarh
 2. Umesh, son of Late Dhobi Sai Aged About 30 Years R/o Village Jurgum Tahsil Baicha, Jashpur, Civil & Revenue District Jashpur Chhattisgarh
- Appellants**

Versus

1. Chandan Sai, S/o Shri Ruyeeta Aged About 50 Years R/o Village Jurgum, Tahsil Bagicha, Jashpur, Civil & Revenue District Jashpur Chhattisgarh
2. Mutki Bai Widow of Late Kashinath Aged About 40 Years R/o Village Jurgum Tahsil Baicha, Jashpur, Civil & Revenue District Jashpur Chhattisgarh
3. Shivprasad S/o Late Kashinath Aged About 30 Years R/o Village Jurgum Tahsil Baicha, Jashpur, Civil & Revenue District Jashpur Chhattisgarh
4. State of Chhattisgarh through the District Collector, Jashpur Nagar Distt. Jashpur Chhattisgarh
5. Shripaai Sai S/o Shri Chandan Sai Aged About 45 Years R/o Village Latori, Tahsil Surajpur, Jashpur, Civil & Revenue District Jashpur Chhattisgarh
6. Mu. Okilmati W/o Late Jagat Sai Aged About 55 Years R/o Village Jurgum Tahsil Baicha, Jashpur, Civil & Revenue District Jashpur Chhattisgarh
7. Narayan @ Narendra S/o Late Jagat Sai Aged About 24 Years R/o Village Jurgum Tahsil Baicha, Jashpur, Civil & Revenue District Jashpur Chhattisgarh
8. Prity, daughter of Late Jagat Sai Aged About 21 Years R/o Village Jurgum Tahsil Baicha, Jashpur, Civil & Revenue District Jashpur Chhattisgarh
9. Minor Amrita D/o Late Jagat Sai Aged About 15 Years Minor Through Natural Guardian Respondent No, 6 Nother Mu. Okilmati R/o Village Jurgum Tahsil Baicha, Jashpur, Civil & Revenue District Jashpur Chhattisgarh
10. Minor Muniya D/o Late Jagat Sai Aged About 9 Years Minor Through Natural Guardian Respondent No, 6 Nother Mu. Okilmati R/o Village Jurgum Tahsil Baicha, Jashpur, Civil & Revenue District Jashpur Chhattisgarh
11. Minor Khaula Aged About 7 Years Minor Through Natural Guardian Respondent No, 6 Nother Mu. Okilmati R/o Village Jurgum Tahsil Baicha, Jashpur, Civil & Revenue District Jashpur Chhattisgarh

12. Mugal Sai S/o Shri Sahdev Aged About 48 Years R/o Village Jurgum Tahsil Baicha, Jashpur, Civil & Revenue District Jashpur Chhattisgarh
 13. Aadi Sai S/o Shri Sahdev Aged About 45 Years R/o Village Jurgum Tahsil Baicha, Jashpur, Civil & Revenue District Jashpur Chhattisgarh
 14. Suresh Sai S/o Shri Sahdev Sai Aged About 40 Years R/o Village Jurgum Tahsil Baicha, Jashpur, Civil & Revenue District Jashpur Chhattisgarh
 15. Ramesh Sai S/o Shri Sahdev Sai Aged About 37 Years R/o Village Jurgum Tahsil Baicha, Jashpur, Civil & Revenue District Jashpur Chhattisgarh
- Respondents**

For the appellants	:	Mr. A. N. Bhakta, Advocate
For Respondents	:	
1 to 3 & 5 to 15	:	Mr. Mr. M.K. Sinha, Advocate
For Respondent No.4	:	Mr. Anil S. Pandey, Govt. Adv.

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

25.02.2016

1. This appeal is against the judgment and decree dated 16.02.2015 passed in Civil Appeal No.4-A/2014 by the First Additional District Judge, Jashpur Nagar, District Jashpur whereby the judgment and decree passed on 04.02.2013 in Civil Suit No.10-A/2010 has been affirmed.
2. The suit was filed by plaintiff Dhobi Sai (since deceased) on the ground that late Prem Sai was given land by Sanman Singh who was Diwan of Jashpur State. The total land of 14.75 acres bearing Khasra Nos.667, 668, 133, 411, 880, 884 was given to Prem Sai. It was further pleaded that Dhobi Sai the plaintiff and father of Chandan Sai defendant No.1 namely Parsan died of diseases during life time of Prem Sai. Subsequently after death of Prem Sai according to the State custom of Jashpur, the suit land was fallen to the share of eldest son namely Ruyeeta Kanwar wherein Defendant No.2 Kashinath along-with plaintiff Dhobi Sai had a joint

ownership. It was further pleaded that Prem Sai during his life time had partitioned his properties of land and Dhobi Sai came into possession of his property which was given to him by way of partition and was cultivating the said land. After death of Ruyeeta, defendant No.1 Chandan Sai s/o Ruyeeta got his name recorded in the revenue records by fraud and the share of Dhobi Sai which was given on partition by Prem Sai to the plaintiff was disputed. Therefore, the suit was filed as per the lands shown in Schedule A. So far as it relates to disputed land of 14.75 acres, Dhobi Sai and defendant No.2 Kashinath own half of the share and the declaration and possession was claimed for.

3. The defendant Chandan Sai contested the suit and stated that the property described in Schedule A of the plaint never belonged to Prem Sai and it was actually the property of Ruyeeta who is the father of Chandan. It was further stated that the said land had devolved on defendant by lease executed in their favour in the year 1951 and it is different from the ancestral property. It was, therefore, contended that in suit property, Dhobi Sai was never given possession of the land since it was not a part of ancestral property. It was further stated that plaintiff Dhobi Sai and ancestor of defendants namely late Parsan had acquired 24 acres of land and it was divided equally among all the three sons and each son got 8 acres of land.
4. Learned counsel for the applicant submits that the trial Court on the basis of evidence and pleadings dismissed the suit which was further affirmed in appeal by the lower appellate Court. Hence this second appeal before this Court.
5. Learned counsel for the appellants would submit that the finding arrived at by the Courts below are completely

perverse and the court should have held that the disputed property of 14.75 acres of land bearing Khasra Nos. 133, 411, 667, 668, 880 & 884 total 6 Khasra numbers was also a part of the joint property acquired by Prem Sai and would submit that the finding is, therefore, completely illegal.

6. Perused judgment and decree of both the courts below. The primary question in respect of the suit property was that whether the suit property was fallen in the name of Ruyeeta being the elder son according to the custom of erstwhile State or it was individual property.
7. Plaintiff witness Shriram had stated that late Parsan father of plaintiff died during the life time of Prem Sai, their grand father and therefore, the property had devolved in the name of Ruyeeta according to custom being the eldest survival son and after death of Ruyeeta, defendant Chandan by fabricating documents got his name recorded in the revenue records. The document Ex.P-4 is examined which is a Jamabandi of 1927-1928. It would show that 10 pieces of lands total admeasuring 24.20 acres were recorded in the name of Parson son of Prem Sai. As against this, defendant has produced the document Ex.D-1 which purports that on 19.05.1952, the disputed lands bearing Khasra No. 133, 411, 667, 668, 880, 884 admeasuring 14.75 acres was granted to Ruyeeta Kanwar by lease.
8. Plaintiff witness Recha admitted the fact that when Ruyeeta was granted lease, Parsan was alive and 14 acres and 75 decimals of land were given on lease to Ruyeeta. It is further admitted that thereafter Ruyeeta was in possession of the land and after Ruyeeta, his son Chandan started cultivating the said land and the said land was never subject of partition between the parties. According to Ex.P-4, the land was

recorded in the name of Parsan son of Prem Sai in the year 1927-1928 wherein Ruyeeta, Dhobi Sai and Kashinath were granted equal share of land and no dispute arose. The contention of plaintiff that though Ruyeeta being eldest son was granted the land but it was the joint property which was recorded solely in the name of Ruita has not been clearly established as against this the documentary evidence Ex.D-1 goes to show that the land was entirely given on lease to Ruyeeta. Therefore the plaintiff has failed to establish the fact that the disputed land of 14.75 acres was a joint property and was only recorded in the name of Ruyeeta.

9. Further perusal of Ex.D-3 would show that it is record of right that the joint property of 24.20 acres was recorded in the name of Chandan son of Ruyeeta; Kokdo son of Parsan and Dhobi Sai son of Parsan as per the Jamabandi of 1954-1955. Therefore, the reading of oral and documentary evidence would show that the joint property of 24.20 acres was subsequently divided among three sons which is fortified by Ex.P-3. A perusal of Ex.D-1 clearly shows that the disputed land of 14.75 acres was granted to Ruyeeta in the year 1952 which is further corroborated by Ex.D-7, D-8 to D-11 which records the names of legal heir i.e., Chandan whereas the name of Dhobi Sai was not recorded at any point of time. This goes to show that Dhobi Sai was not in possession of the land at any point of time.

10. The entire claim which is made by Dhobi Sai, the original plaintiff that disputed property of 14.75 acres of land bearing Khasra Nos. 133, 411, 667, 668, 880 & 884 total 6 Khasra numbers was also a part of the joint property acquired by Prem Sai cannot be allowed to sustain in view of the fact that Ex.D-1 the document of lease shows that the

disputed land which was granted on lease in favour of Ruyeeta has not been negated and subsequent entries in the revenue records also fortify this fact that the land was exclusively granted to Ruyeeta which was subsequently fallen to Chandan and thereafter to his legal heirs. Consequently the finding of fact of both the courts below cannot be faulted with.

11. In the result, no substantial question of law arises for consideration in this appeal and it is dismissed at the motion stage itself.

Sd/-
GOUTAM BHADURI
JUDGE