

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 302 of 2016

1. Ahila Bai Wd/o Chinta Ram Dewangan, Aged About 55 Years
R/o Village Irai Khurd, Tahsil And District Rajnandgaon
Chhattisgarh
2. Hariram, S/o Late Chinta Ram Dewangan, Aged About 45 Years
R/o Village Irai Khurd, Tahsil And District Rajnandgaon
Chhattisgarh
3. Narayan, S/o Late Chinta Ram Dewangan, Aged About 42
Years R/o Village Irai Khurd, Tahsil And District Rajnandgaon
Chhattisgarh
4. Vishnu, S/o Late Chinta Ram Dewangan, Aged About 40 Years
R/o Village Irai Khurd, Tahsil And District Rajnandgaon
Chhattisgarh
5. Mahesh, S/o Late Chinta Ram Dewangan, Aged About 38 Years
R/o Village Irai Khurd, Tahsil And District Rajnandgaon
Chhattisgarh
6. Narendra, S/o Late Chinta Ram Dewangan, Aged About 35
Years R/o Village Irai Khurd, Tahsil And District Rajnandgaon
Chhattisgarh.....(Plaintiffs)

---- Appellants/Plaintiffs

Versus

1. Mangal @ Maniram S/o Late Ram Prasad Dewangan, Aged
About 48 Years R/o Shanti Nagar, Ward No. 4, Street No. 2,
Town, Tahsil And District Rajnandgaon, Chhattisgarh.....
(Defendant No. 1)
2. Santosh, S/o Khemu Ram Dewangan, R/o Village Irai Khurd, P.
H. No. & Revenue Circle Ghumka, Tahsil And District
Rajnandgaon, Chhattisgarh Present Ghasidas Nagar, Behind
Mourya Kirana Jamul, Bhilai, Tahsil And District Durg,
Chhattisgarh
3. Sanjay, S/o Late Khemu Ram Dewangan, R/o Village Irai Khurd,
P. H. No. & Revenue Circle Ghumka, Tahsil And District
Rajnandgaon, Chhattisgarh Present Ghasidas Nagar, Behind
Mourya Kirana Jamul, Bhilai, Tahsil And District Durg,
Chhattisgarh.....(Defendant No. 3)
4. Smt. Urmila, Wd/o Late Khemu Dewangan, R/o Village Irai
Khurd, P. H. No. & Revenue Circle Ghumka, Tahsil And District
Rajnandgaon, Chhattisgarh Present Ghasidas Nagar, Behind

Mourya Kirana Jamul, Bhilai, Tahsil And District Durg,
Chhattisgarh.....(Defendant No. 4)

5. State Of Chhattisgarh Through The Collector Rajnandgaon
(Chhattisgarh).....(Defendant No. 5)

---- **Respondents/Defendants**

For Appellants/Plaintiffs	:	Mr. Praveen Dhurandhar, Advocate
For State	:	Mr. Manish Nigam, Panel Lawyer

S.B.:Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

05/12/2016

Heard on admission.

1. This appeal is directed against impugned judgment and decree dated 05.05.2016 passed by the learned Lower Appellate Court by which the Lower Appellate Court, by reversing the judgment and decree of the trial Court has allowed the counter claim of the respondents/defendants and granted a decree in their favour.

2. The appellant/plaintiff filed a suit seeking a declaration and injunction against the respondents original defendants on the basis of a registered sale deed dated 24.02.1958 by which the land in dispute was purchased in the name of the plaintiff. The defendants set up a counter claim for partition of the land in dispute on the plea that it was part and parcel of joint family property. The plaintiff, however, did not pursue his claim and suit was dismissed for want of prosecution. In the counter claim also, though the plaintiff filed written statement, but did not lead any evidence. The learned trial Court, however, dismissed the counter claim holding that the defendants failed to prove their counter claim that the property in dispute was a joint family property. Aggrieved by the judgment and decree of the trial Court, the defendant Mangal@ Maniram filed an appeal. The learned Lower Appellate Court, relying upon the oral and documentary evidence led by defendant Maniram, held that the property in dispute was joint family property and granted

decree of partition, which has now been assailed in the second appeal by the original plaintiff.

3. Learned counsel for the appellants argued that the learned Lower Appellate Court committed gross illegality and perversity in recording a finding as against the registered sale deed dated 24.02.1958. He submits that the trial Court clearly held that the defendants in their counter claim, failed to prove that the plaintiff, at the time of purchase of the land in dispute vide registered sale deed, was minor. Therefore, in such a case, the burden was on the defendants to prove that the land in dispute was purchased from the funds of joint family and not the funds of the plaintiff alone so as to say that the property in dispute was purchased in the name of the plaintiff from the funds of joint family. It is also stated that the sale deed was not challenged.

4. In order to come to a conclusion that even though the land in dispute was purchased in the name of the plaintiff, in essence, it was a purchase of land out of the funds of the joint family, learned Lower Appellate has not only relied upon the oral evidence led by the defendants in support of their counter claim that the family of the plaintiff and defendants lived jointly but also on very important piece of documentary evidence Ex.D/6, an application dated 10.03.1977, filed before the Tahsildar by Chintaram, himself, in which he prayed that the land in dispute purchased by sale deed dated 24.02.1958 be registered in the name of all the holders jointly not only including the plaintiff but other members of the joint family. On conjoint reading of this documentary evidence with the oral evidence, the learned Lower Appellate Court has recorded a finding of jointness in respect of the property in dispute. Therefore, in these circumstances, I do not find any substantial question of law involved in this second appeal and the second appeal is dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge