

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A. No. 157 of 2017**

1. Prem Singh S/o Nijam Singh, Aged About 65 Years R/o Village Gidhwa, Tahsil Daundilohara, At Present District Balod, Chhattisgarh(Defendant) **---- Appellant**

Versus

1. Aeram & Ors. S/o Nijam Sahu, Aged About 45 Years R/o Village Gidhwa, Tahsil Daundilohara, At Present District Balod, Chhattisgarh
2. Ubheram S/o Nijam Sahu, Aged About 42 Years R/o Village Gidhwa, Tahsil Daundilohara, At Present District Balod, Chhattisgarh(Plaintiffs)
3. Godawari Bai W/o Devilal Sahu (Died) Through Lrs
3 . (a) Dhaniram Male Age - 50 S/o Devilal Sahu, R/o Salhe Bazar, Tahsil Daundilohara, Distt. Balod, Chhattisgarh
3 . (b) Mukesh Male Age - 45 S/o Devilal Sahu, R/o Salhe Bazar, Tahsil Daundilohara, Distt. Balod, Chhattisgarh
3 . (c) Beniram Male Age - 43 S/o Devilal Sahu, R/o Salhe Bazar, Tahsil Daundilohara, Distt. Balod, Chhattisgarh
3 . (d) Smt. Keja Bai Female Age - 47 D/o Devilal Sahu, W/o Aatmaram, R/o Ranitarai, Tahsil Gunderdehi, District Balod, Chhattisgarh
3 . (e) Smt. Basanti Bai Female Age - 40 D/o Devilal Sahu, W/o Nirmal Kumar, R/o Riwigahan, Tahsil Daundilohara, District Balod, Chhattisgarh
4. Murahi Bai @ Bhagwantin Bai D/o Devilal Sahu, Aged About 53 Years W/o Ramprasad Sahu, R/o Chhuikhadan, Tahsil Dongargaon, Distt. Rajnandgaon, Chhattisgarh
5. Mangalbat @ Manglin Bai W/o Shatrughan Sahu, Aged About 50 Years R/o Bhothipar Khurd, Tahsil And District Rajnandgaon, Chhattisgarh
6. State Of Chhattisgarh, Through The Collector, Durg, Now District Balod, Chhattisgarh(Defendants) **---- Respondents**

For Appellant:

Shri R. S. Patel, Advocate.

For Respondent No. 6/ State:

Smt. Shobha Kashyap, Dy. G. A.

Single Bench: Hon'ble Shri Sanjay Agrawal, J
Order On Board

20.11.2017

1. Heard on admission.

2. This is the Appeal filed by defendant No. 1 Premsingh under Section 100 of the Code of Civil Procedure, 1908 against the judgment and decree dated 31.01.2017 passed by the 1st Additional District Judge, Balod in Civil Appeal No. 45-A/2014 by which, the lower appellate Court, while affirming the judgment and decree dated 06.01.2009 passed by the 1st Civil Judge, Class-II, Balod in Civil Suit No. 55-A/2007, has dismissed the Appeal.

3. The undisputed facts of the case are that the Plaintiffs Aeram and Ubheram being sons of one Nizam instituted a suit claiming declaration of title and injunction with regard to the suit property described in plaint para- 5 by claiming 1/3rd share each by submitting *inter alia* that these properties are purchased by their father Nizam, though it was purchased in the name of defendant No. 1 Premsingh. It is pleaded further that since the entire sale consideration was paid by their father Nizam, therefore, after the death of Nizam, they are entitled to claim over the suit property to the extent of 1/3rd share each.

4. Defendant No. 1 Premsingh has contested the aforesaid claim and denied very specifically that the suit property is the ancestral property and was purchased by his father Nizam. It is pleaded in the written statement that the suit property was purchased by him by virtue of two registered deeds of sale executed on 24.12.1960 and 02.07.1962 and has acquired ownership with regard to the suit property.

5. The trial Court, after considering the evidence led by the parties, has come to the conclusion that the entire suit property was purchased by their father Nizam. It held further that though the registered deeds of sale (Ex.D. 1 and Ex.D. 2) were executed in the name of defendant No. 1

Prem Singh but they were, in fact, purchased by his father Nizam and therefore, held that it was the ancestral property and not the self acquired property as alleged by defendant No. 1. It held further that though the oral partition was effected in 1987 but in that partition, daughters were not given any share, therefore, it was observed that plaintiffs and defendant Nos. 1 to 4 are entitled to claim 1/6th share each over the suit property. As a consequence, the trial Court has decreed the suit in part.

6. The aforesaid finding of the trial Court has been affirmed further in appeal preferred by defendant No. 1- Prem Singh.

7. Being aggrieved, defendant No. 1 Prem Singh has preferred this Appeal. Shri R. S. Patel, learned Counsel for the Appellant submits that the judgment and decree as passed by the Courts below by holding that the suit property was not the self acquired property of defendant No. 1 Prem Singh is apparently contrary to law. He submits further that the registered deeds of sale which were executed in this regard were not properly considered by Courts below and thereby arrived at a wrong conclusion by holding that it was purchased by the father, Nizam. He, therefore, submits that the judgment and decree as passed by the Courts below be set aside.

8. I have heard learned Counsel for the Appellant and perused the entire record carefully.

9. The main contention of defendant No. 1 Prem Singh in this appeal is that the suit property is his self acquired property. Under such circumstances, the burden was heavily upon him to establish the said fact that it was his self acquired property. However, perusal of the registered deed of sale executed on 29.12.1960 (Ex. D. 2) would show that defendant

No. 1 Premsingh was 14 years old when the property bearing the part of Khasra No. 468/1 admeasuring 3.06 hectares was purchased from one Munnalal Deshmukh and perusal of the another deed of sale which was executed on 02.07.1962 (Ex.D-1), two years thereafter, would therefore also show that the suit property bearing Khasra No. 469 admeasuring 2 acres was purchased when he was a minor. The defendant No. 1 himself has admitted in his evidence at para 7 that he was a minor when he purchased the property from Badri Prasad i.e. on 02.07.1962. Besides, the admission of Premsingh recorded before the Revenue Authority marked as Ex.P.15-A showing that this property was purchased by his father.

10. In view of the aforesaid fact, the Courts below have rightly come to the conclusion that the suit property was purchased by father Nizam in the name of defendant No. 1 Premsingh and is the ancestral property. This finding is a pure finding of fact based upon due and proper appreciation of the evidence led by the parties and can not be held to be perverse. The finding so recorded, therefore, deserves to be and is hereby affirmed.

11. In view of the foregoing discussions, I do not find any question of law, much less the substantial questions of law which arise for determination in this Appeal. Accordingly, the Appeal being devoid of merits is hereby dismissed at the admission stage itself. There shall be no order as to costs.

Sd/-

(Sanjay Agrawal)
JUDGE