

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 410 OF 2016**

Premchand S/o Uttar Lodhi, Aged About 32 Years R/o- Village- Badhaitola,
Police Station And Tehsil- Khairagarh, District- Rajnandgaon, (Chhattisgarh)

---- Appellant**Versus**

1. Sukhchain S/o Sakharam Lodhi, Aged About 80 Years R/o- Village- Badhaitola, Police Station & Tehsil- Khairagarh, District- Rajnandgaon, (Chhattisgarh)
2. Ujendra, S/o Uttar Lodhi, Aged About 34 Years R/o- Village- Badhaitola, Police Station & Tehsil- Khairagarh, District- Rajnandgaon, (Chhattisgarh)
3. Smt. Balbir, W/o Gurudeep Singh Bhatia, Aged About 44 Years R/o- Sandeep Sadan, Pulgaon Naka, Durg, Tehsil And District- Durg, (Chhattisgarh)
4. Smt. Gurusharan Kaur, W/o Sardar Preetpal Singh Bhatia, R/o- Ganjpara, Durg, Tehsil And District Durg, (Chhattisgarh)
5. State Of Chhattisgarh, Through Collector, Rajnandgaon, Tehsil And District- Rajnandgaon, (Chhattisgarh)
6. Uttar, S/o Sukhchain Lodhi, Aged About 59 Years R/o- Village- Badhaitola, Police Station & Tehsil- Khairagarh, District- Rajnandgaon, (Chhattisgarh)

---- Respondents

For Appellant	:	Mr. Ranbir Singh Marhas, Advocate.
For Respondent No.1	:	Mr. Abhishek Pandey, Advocate.
For Respondent No.5/State	:	Mr. V.B. Singh, Panel Lawyer.

Hon'ble Shri Justice Sanjay Agrawal**Judgment On Board****24/04/2017**

1. This is an appeal filed by defendant No. 2/appellant Premchand under Section 100 of the Code of Civil Procedure, 1908 against the judgment and decree dated 11/05/2016 passed by the Additional District Judge, Khairagarh District Rajnandgaon (C.G.) in Civil Appeal No. 13-A/2014, by which, the appellate Court while affirming and modifying the judgment and decree dated

13/03/2014 passed by the Civil Judge Class-I, Khairagarh, District Rajnandgaon in Civil Suit No. 20-A/2011 has dismissed the appeal.

2. The undisputed facts of the case, are that, the plaintiff Sukhchain has instituted a suit claiming declaration that the orders passed by the Revenue Authorities on 28/11/2006 and 23/11/2009 respectively by the Naib Tahsildar, Khairagarh and Sub Divisional Officer, Khairagarh be declared as null and void by submitting, *inter alia*, that the suit property was purchased by him by virtue of registered deed of sale dated 10/05/1965 purported to have been executed by one Danjang Bahadur in his favour. It is pleaded further that since the property in question bearing Khasra No. 1046/1, area 7.70 acres was his self acquired property, therefore, orders as passed by the Revenue Authorities while exercising the powers under Section 178 of the C.G. Land Revenue Code, 1959 (hereinafter referred to as 'Code, 1959') by Revenue Authorities are not at all sustainable and deserves be declared as null and void.

3. The defendant, including present defendant No. 2/appellant, has contested the claim mainly on the ground that the property in question, though purchased in the name of Sukhchain, was in fact purchased from the income of the joint family property, therefore, the same can not be held to be the self acquired property of Sukhchain. It is contested further on the ground that since the property was an ancestral property and therefore, the Revenue Authorities have rightly passed the partition orders dated 28/11/2006 and 23/11/2009 respectively while exercising the powers enumerated under the said provision of the Code, 1959.

4. The trial Court by considering the evidence led by the parties has come to the conclusion that the property in question was the self acquired property of the plaintiff Sukhchain. As a consequence, the trial Court has held that the orders as

passed by the Revenue Authorities cannot be held to be sustainable and, in consequence decreed the plaintiff's claim.

5. The aforesaid finding with regard to the nature of the property in question has been affirmed by the lower appellate Court in an appeal preferred by the defendants.

6. Being aggrieved the defendant No.2/appellant has preferred this appeal.

7. Mr. Ranbir Singh Marhas, the learned counsel for the appellant submits that the finding as recorded by the Courts below are not at all sustainable as the property in question, though purchased in the name of plaintiff Sukhchain but was not his self acquired property. He submits further that since the suit property was purchased from the income of the joint family property, therefore, it was the ancestral property and the Revenue Authorities, vide its order dated 28/11/2006 and 23/11/2009 have rightly passed the orders while allowing the application filed by defendant No. 1 (Uttar) under Section 178 of the Land Revenue Code, 1959. He further submits that the lower appellate Court while allowing the application under Order 41 Rule 27 of Code of Civil Procedure, 1908 by taking the registered deed of sale dated 10/05/1965 on record ought to have provided sufficient opportunity for its rebuttal. However, the lower appellate Court while allowing the said application has erred in not permitting the present appellant to controvert the same and therefore, the judgment and decree passed by the lower appellate Court deserves to be set aside.

8. I have heard learned counsel for the appellant and perused the entire record carefully.

9. This is the case, where the plaintiff Sukhchain has instituted a suit on the premises that since the suit property is his self acquired property as he purchased the same on the strength of registered deed of sale, dated

10/05/1965 from one Danjung Bahadur, therefore, orders passed by the Naib Tahsildar, Khairagarh on 28/11/2006, affirming further by the Sub-Divisional Officer (Revenue), Khairagarh on 23/11/2009 are declared to be null and void.

10. The defendants have contested the aforesaid claim by submitting that the suit property was purchased from the income of the joint family property, therefore, it is not the plaintiff's self acquired property though it was purchased in his name under the registered deed of sale, dated 10/05/1965. The burden to establish this fact under such circumstances, was heavily upon the defendants. However, none of the documents have been produced by the defendant in order to establish the fact that it was purchased from the income of the joint family property. It is true that the lower appellate Court while allowing the application filed under Order 41 Rule 27 by taking the alleged registered sale deed on record ought to have provided an opportunity to the defendant No. 2/appellant for controverting the same, but from perusal of the pleadings of the parties would reveal that the execution of the alleged sale deed was, in fact, not in dispute and, therefore, if any procedural defect is committed by the appellate Court in this regard, the same cannot be held to be perverse one. The findings so recorded by the Courts below with regard to the nature of the suit property was based upon proper appreciation of the evidence of the parties. The said finding is a pure finding of fact and cannot be held to be a perverse one. Therefore, findings of the Courts below deserves to be and are hereby affirmed.

11. In view of the foregoing discussions, I do not find any question of law, much less the substantial question of law involved in this appeal. Consequently, the appeal being devoid of merit is hereby dismissed at admission stage itself. There shall be no order as to costs.

Sd/-
(Sanjay Agrawal)
Judge