

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A. No.219 of 2011**

Tirath Prasad S/o Late Kishun Prasad,, R/o Village Pratappur, District Surguja

----Appellant**Versus**

1. Ghurni Devi, D/o Late Kishun Prasad, aged about 55 years, Caste-Kayasth, Resident of Village Pratappur Tahsil Ambikapur, District Surguja (CG)

2. State Of Chhattisgarh Through Collector Ambikapur, District Surguja

-----Respondents

For Appellant:

Shri Arvind Sinha, Advocate.

For State/Respondent No.2:

Shri Sanjeev Pandey, Government Advocate.

Single Bench:Hon'ble Shri Sanjay Agrawal, J
Order On Board**12.4.2017**

1. Heard on admission.

2. This is the Plaintiff's Appeal against the judgment and decree dated 4.3.2011 passed by the 3rd Additional District Judge (FTC), Surguja (Ambikapur) in Civil Appeal No.23-A/2009 by which the appellate Court, while affirming the judgment and decree passed by the trial Court, has dismissed the Appeal.

3. The undisputed facts of the case are that the Plaintiff Tirath Prasad instituted a suit for declaration of title and injunction with regard to the property in question bearing Khasra No.94/1 and 268 admeasuring 1.28 and 1.94 acres respectively situated at village Pratappur, Tahsil Ambikapur. It is pleaded in the Plaint that the suit property which is described in Plaint Schedule-A is his self-acquired property as he has purchased the same from his uncle namely

Laxmi Prasad from his own income by virtue of a registered sale deed dated 05.06.1969 in the name of his mother namely Smt Guthari Devi. It is pleaded further that Defendant No.1-Ghurni Devi, the sister of the Plaintiff has obtained the revenue papers recorded in her name without his knowledge and therefore, he applied for mutation of his name in the revenue papers before the Tahsildar, Ambikapur. However, the Tahsildar, Ambikapur has rejected his application vide order dated 13.11.1998, affirmed further by the S.D.O vide his order dated 25.11.1999. It is submitted further that on the basis of the revenue papers, Defendant No.1 is trying to alienate the property in question to someone else. Therefore, the Plaintiff has been constrained to file the suit in the instant nature and prayed for exclusive ownership with regard to the suit property and alternatively claimed for the declaration of half share of the suit property.

4. The Defendant No.1 has contested the aforesaid claim and stated that the Plaintiff is not the owner of the property as claimed by him. It is contested further on the ground that the property in question was purchased by their mother namely Guthari Devi by virtue of the registered deed of sale dated 05.06.1969 and therefore, the Plaintiff alone cannot be held to be the exclusive owner of the suit property. It is pleaded further that by virtue of the family arrangement, the suit property has fallen in her share and therefore, she alone is the owner of the property in question and even otherwise, she has prescribed her right by way of adverse possession.

5. The trial Court, after considering the evidence led by the parties, has come to the conclusion that the Plaintiff is not the exclusive owner of the property in question as he failed to establish the fact that he purchased the said property in the name of his mother by providing entire sale consideration.

The trial Court further held while entertaining issue No.6 that Defendant No.1 has not perfected her right title or interest by virtue of adverse possession and accordingly, the claim as made by the Plaintiff was dismissed by the trial Court by its judgment and decree dated 05.09.2009.

7. Being aggrieved with the aforesaid finding of the trial Court, the Plaintiff-Tirath Prasad has preferred an Appeal under Section 96 of the Code of Civil Procedure, 1908. The appellate Court has also come to the conclusion by considering the evidence of both the parties and also by examining the registered deed of sale dated 05.06.1969 (Ex.P-4) that the Plaintiff alone is not the owner of the property in question as the same was purchased by his mother namely Guthari Devi. While affirming the finding of the trial Court, the appellate Court has observed in paragraph-20 of its judgment that the suit property has come in the share of Defendant No.1 by virtue of the family arrangement in which the Plaintiff has no share.

8. Being aggrieved with the aforesaid finding of the Courts below, the Plaintiff has preferred this Appeal. Shri Sinha, learned Counsel for the Appellant submits that the findings as recorded by the Courts below are apparently contrary to the facts available on record as the property was purchased by the Plaintiff alone though it was mentioned in the sale deed only in the name of his mother Smt Guthari Devi. He further submits that the specific finding as given by the trial Court with regard to the adverse possession was neither considered nor reversed by the lower appellate Court and yet the appellate Court at paragraph-20 of its judgment, has observed that by virtue of the family arrangement, the property in question described in Plaintiff Schedule-A has come in the share of his sister i.e. Defendant No.1. He therefore submits that the findings as recorded by the Court below deserves to

be set aside.

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

10. The Plaintiff/Appellant Tirath Prasad has instituted a suit mainly on the ground that he is the exclusive owner of the property in question described in Plaint Schedule-A as he purchased the same by providing the entire sale consideration though it was recorded only in the name of his mother. With regard to the said issue, the trial Court as well as the lower appellate Court has considered the evidence of both the parties and that upon its due consideration came to the conclusion that the Plaintiff has failed completely to establish this fact that he alone has purchased the suit property from his own income by virtue of the alleged registered deed of sale dated 05.06.1969 (Ex.P-4). The said finding is a pure finding of fact and cannot be held to be a perverse one. Accordingly, the same deserves to be and is accordingly affirmed.

11. As far as the observation as made by the lower appellate Court in paragraph-20 of its judgment is concerned, the same is liable to be set aside as no issue in this regard was made by the trial Court nor any proper and cogent evidence has been led in this aspect. Besides, the trial Court has observed while entertaining issue No.6 that Defendant No.1 has not perfected her right or interest by virtue of adverse possession and such a finding was neither discussed nor reversed by the lower appellate Court and yet has observed at paragraph-20 of its judgment that by virtue of the family arrangement, the suit property has fallen in the share of Defendant No.1. This finding of the lower appellate Court cannot be held to be a proper finding and is therefore set aside.

12. In view of the foregoing discussions, the Appeal is devoid of merit as no question of law, much less the substantial question of law is involved. Accordingly, the instant Appeal is dismissed at admission stage itself. It is however made clear that if any of the parties institute a suit for partition, the same may be considered and decided in accordance with law.

13. There shall be no order as to costs.

Sd/-

(Sanjay Agrawal)
JUDGE

Priya