

HIGH COURT OF CHHATTISGARH, BILASPUR

Civil Revision No.152 of 2016

Fekan Bai, W/o Shri Lakhan Kurmi, aged about 52 years, R/o Village Jinda, Tahsil Kawardha, Civil and Revenue District Kabirdham (CG).

---- Applicant

Versus

1. Holiram Chandrawanshi, S/o Shri Dhanush Chandrawanshi, aged about 55 years, R/o Village Gandai Khurd, Tahsil Bodla, Civil and Revenue District Kabirdham (CG).
2. State of Chhattisgarh, through the Collector, Kawardha, Civil and Revenue District Kabirdham (CG).

----Non-applicants

For Applicant : Mr. Vikas Shrivastava, Advocate
For Non-applicant No.1 : Mr. Ajit Singh, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Order On Board

27/02/2017

(1) The present applicant filed Civil Suit No.93-A/1987 against Fagni Bai and three others for declaration of title and declaration of registered sale deed dated 16.07.1973 null and void and not binding her.

(2) The trial Court by the order dated 21.07.1979 dismissed the said suit. Plaintiff-Fekan Bai preferred the first appeal before the first appellate Court challenging the judgment and decree of the trial Court. The first appellate Court by the judgment and decree dated 17.10.1992 allowed the appeal and decreed the suit in favour of the plaintiff. Non-applicant No.1-Shri Holiram Chandrawanshi/purchaser

herein filed the second appeal bearing Second Appeal No.01/1993 before this Court. This Court by the judgment dated 31.07.2012 dismissed the appeal and affirmed the judgment and decree of the first appellate Court. Now, on 24.09.2012 the subsequent purchaser namely Shri Holiramam/non-applicant No.1 filed civil suit for partition and permanent injunction, in which Fekan Bai is the defendant. She filed an application under Order 7 Rule 11 of the CPC that Shri Holiram has no cause of action and plaint is liable to be rejected. The trial Court, by its impugned order dated 10.08.2016 rejected the application filed by the applicant, which has been challenged in this revision under Section 115 of the Code of Civil Procedure.

(3) Mr. Vikas A. Shrivastava, learned counsel appearing for the applicant would submit that there is no cause of action in favour of plaintiff-Shri Holiram in filing the suit and as such, the suit is liable to be rejected. He would further submit that the trial Court has committed legal error in rejecting the application under Order 7 Rule 11 of the CPC.

(4) Mr. Ajit Singh, learned counsel appearing for non-applicant No.1-Holiram would submit that the trial Court is absolutely justified in rejecting the application.

(5) I have heard learned counsel appearing for the parties and perused the order impugned with utmost circumspection.

(6) In the second appeal preferred by Non-applicant No.1-Shri Holiram/subsequent purchaser, this Court in paragraphs No.14 & 16 observed as under:-

“14. It is settled law: a co-owner has no right to alienate, as his/her interest, any specific property in the joint family property as no co-owner can before partition claim any such property as his/her own; and if he does alienate, the alienation is valid to the extent only of his own interest in the alienated property. If the purchase of the undivided interest has obtained possession, the non-alienating co-owner is entitled to sue for and recover possession of the whole of the property for the benefit of the joint family including vendor. The purchaser is not entitled in such suit to an order for partition, either of the specific property sold to him or of the joint family properties in general; he must, if he wants to realize his vendor's interest, bring a suit of his own for a general partition. Where as suit therefore, is brought by the non-alienating co-owner for possession, the proper decree to be passed would be an order directing the purchase to deliver possession to the plaintiffs of the whole property, and declaring that the purchase is entitled to a declaration that he has acquired the undivided interest of his vendor in the property and that he is entitled to take proceedings to have that interest ascertained by partition.

{Please see Ram Das V. Sita Bai and Others (JT 2009 (8) SC 224), M.V.S. Manikayala Rao v. Narasimhaswami & Ors. (AIR 1966 SC 470) & Sidheshwar Mukherjee v. Bhubneshwar Prasad Narain Singh & Ors.(AIR 1953 SC 487).

16. True, plaintiff cannot be declared as owner of entire suit property, inasmuch as, for want of partition plaintiff along with legal representatives of Phagni Bai and Badra Bai shall hold the property as co-owner and it is also true that would be plaintiff's

exact share in the suit property being a co-owner to the extent of half of the share in the suit property and being purchaser from Rupabai shall be determined only in a suit for partition. However, in view of settled law as mentioned hereinabove, she is entitled to recover possession of the suit property from defendant No.2 for the benefit of all co-owners. The right of purchaser if they want to realize their vendor's interest, is to bring a suit of their own for a general partition and the other substantial questions of law framed are also answered accordingly.

(7) Thus, this Court has clearly held in the above-stated second appeal in which the applicant and non-applicants both were parties that the right of purchaser if they want to realize their vendor's interest, is to bring a suit of their own for a general partition. Thus, it cannot be held that plaintiff -Holiram has no cause of action in filing the suit.

(8) After hearing learned counsel appearing for the parties, I do not find any jurisdictional error in the impugned order warranting interference by this Court under its revisional jurisdiction.

(9) Accordingly, the civil revision being devoid of substance is liable to be and is hereby dismissed.

Sd/-

(Sanjay K. Agrawal)
Judge

L/-