

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 351 of 2016**

(Arising out of judgment dated 5-10-2016 passed by the 1st Additional District Judge, Janjgir, District Janjgir-Champa in civil suit No.21-A/2014.

1. Mohan Krishna S/o Late Ashok Kumar Sahu, Aged About 32 Years R/o Ward No.1 Akaltara, Tahsil Akaltara District Janjgir-Champa, Chhattisgarh(Defendant No.1)

---- Petitioner

Versus

1. Karuna Lata W/o Late Ashok Kumar Sahu, Aged About 54 Years(Plaintiff)
 2. Devendra Kumari D/o Late Ashok Kumar Sahu, Aged About 29 Years
 3. Mamta D/o Ashok Kumar Sahu, Aged About 35 Years
- All R/o Ward No.1 Akaltara, Tahsil Akaltara District Janjgir-Champa, Chhattisgarh(Defendant No. 2 & 3)
4. State Of Chhattisgarh, through Collector Janjgir District Janjgir-Champa, Chhattisgarh

---- Respondent

For Appellant	Shri Shakti Raj Sinha, Advocate
For Respondent No.1 & 2	Shri Govind Ram Miri, Advocate with Shri Basant Kaiwartya, Advocate
For Respondent/State	Shri Sameer Behar, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board**By****Prashant Kumar Mishra, J.****18/08/2017**

1. The defendant/appellant has preferred this appeal under Section 96 of the Code of Civil Procedure, 1908 (for short 'the CPC) to assail the legality and validity of the impugned decree whereby the trial Court has declared that the plaintiff and the defendants No.1 to 3 have 1/4th share each in the suit property bearing khasra No.120/45 area 0.14 acre and khasra No.120/32 area 0.08 acre, total area 0.22 acre, situated at Mauza Akaltara, PH No.7, Tahsil Akaltara, District Janjgir-Champa. The trial Court has also passed a decree restraining the defendants from evicting the plaintiff from the suit house without following due process of law.
2. Indisputably, the parties are in joint possession of the above stated suit land with superstructure/house built over a part of it mentioned as Schedule 'A' property in the plaint, which is also made part of the decree. One Ashok Kumar Sahu was the common ancestor having died on 7-3-2005 leaving behind the parties to jointly succeed the property, however, since the property was purchased in the name of the appellant by a

registered sale deed dated 27-3-1995, his name was recorded as owner of the suit property, which continued to be recorded even after the death of Ashok Kumar Sahu.

3. The plaintiff Karuna Lata, being widow of late Ashok Kumar Sahu (mother of the appellant herein), filed the present suit claiming 5/8th share in the property on the plea that during the life time of her husband Ashok Kumar Sahu the suit land was purchased jointly by them, however, the sale deed was registered in the name of their minor son Mohan Krishna. The plaintiff, therefore, claimed $\frac{1}{2}$ share during the life time of her husband Ashok Kumar Sahu and $\frac{1}{8}$ th share after his death, which come to 5/8th share. The plaintiff also stated that her only son Mohan Krishna and daughters Devendra Kumari & Mamta are entitled for $\frac{1}{8}$ th share each.
4. The defendant No.1 contested the suit on the plea that the suit land was purchased by him through his own income, which was provided by his uncle, who used to immensely love him, as the defendant No.1 was the only son in the entire family. The defendant No.1, thus, claimed ownership over the entire suit land and the superstructure standing thereon.

5. Both the parties have led oral evidence. In addition, the plaintiff has proved copy of the sale deed, maintenance khasra, etc. whereas the defendant No.1 has filed copy of the sale deed executed by the plaintiff in favour of Phool Bai on 20-3-2013 in relation to the land situated at village Raipura.
6. While the plaintiff was required to prove that she had contributed by providing one half of the sale consideration at the time of execution of the sale deed in favour of the defendant No.1, the defendant No.1 was required to prove that the sale deed was executed in his favour, as he had paid the entire amount from his own sources by arranging funds from his uncle Yadunath.
7. In order to prove that the plaintiff had one half share in the suit property during the life time of Ashok Kumar Sahu, as she had contributed by providing the sale consideration in that proportion, she has taken the plea that she had sold the land of village Raipura in favour of one Phool Bai, however, the said fact has not been proved by her by proving the execution of sale deed executed by her in favour of Phool Bai prior to purchase of suit land.

8. As a matter of fact, this sale deed has been presented by the defendant No.1 as Ex.D/1 from which it is proved that the sale deed was, in fact, executed on 20-3-2013 whereas the subject sale deed (Ex.P/1) pertaining to the suit land was executed on 27-3-1995 i.e. about 18 years back.
9. Similarly, the defendant No.1 was required to prove availability of funds from his own sources in terms of the plea taken in the written statement, however, his uncle Yadunath, examined as DW-3, has not stated that he had gifted funds to the defendant No.1, which was used by him for purchase of the suit land. Moreover, Khoji (DW-2), the vendor's brother, has stated that the entire sale consideration was paid to his brother by Ashok Kumar Sahu, father of the defendant No.1. Thus, the edifice on which the defendant No.1's case was built has fallen flat in absence of any evidence to prove availability of funds with him as on 27-3-1995 for purchase of the suit property. It is also to be seen that on that date the defendant No.1 was only aged about 13 years and was, therefore, not an earning member in the family. Since the defendant No.1 was not earning at that point of time, the burden was more heavy on him to prove that he had arranged the funds from other sources, which he has failed to prove.

10. In view of the nature and quality of evidence available on record wherein the plaintiff failed to prove her 5/8th share and the defendant No.1 failed to prove his exclusive ownership over the suit property, the trial Court is fully justified in holding that the plaintiff and the defendants No.1 to 3 have 1/4th share each in the suit property. Once the parties have been found to jointly own the property having 1/4th share each, the decree restraining the defendant No.1 to oust the plaintiff from the suit house without recourse of law is also fully justified.
11. For the foregoing, we do not find any substance in the appeal, which deserves to be and is hereby dismissed, leaving the parties to bear their own costs.

Sd/-

Judge
Prashant Kumar Mishra

Sd/-

Judge
Arvind Singh Chandel

Gowri