

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.282 of 2001**

1. Smt. Surjeet Khurana, W/o Shri Murarilal Khurana aged about 43 years, R/o Opposite Shiv Mandir, Lodhi Para, Station Road, Raipur, Distt. Raipur (Chhattisgarh)
2. Smt. Indaroutin Bai W/o Late Shri Mehtar Lodhi aged about 58 years, R/o In front of Balaji Petrol Pump, Bhanpur, Raipur, Distt. Raipur (Chhattisgarh).

---- Appellants**Versus**

- 1-A. Satish Janghel S/o Late Shri Suresh Kumar Janghel, R/o Ambedkar Chowk, Kavadi Dukan Ke pas, Gudiyari, Raipur (CG)
2. Kunti Bai aged about 36 years, D/o Late Bherolal Janghel, R/o Chagorabhata, Raipur (CG)
3. Smt. Devki Bai aged about 35 years, W/o Late Ramesh Janghel, R/o Near Baleshwari Mandir Dangania, Raipur (CG)
4. Neelkanth Janghel, aged about 12 years
5. Umashankar Janghel, aged about 8 years,

Respondents No.4 & 5 late Ramesh Janghel minor through guardian Plaintiff No.3, Plaintiffs 2 to 5 through Attorney Smt. Kumarbai W/o Suresh Kumar Janghel, Dangania, Raipur (CG)

---- Respondents

For Appellants	:	Mr.B.D.Guru and Mr.Rajendra Tripathi, Advocates
For Respondents	:	Mr.Ram Kumar Tiwari, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Judgment on Board****25/09/2018**

1. The substantial questions of law involved, formulated and to be answered by this Court in this defendants' second appeal are as under:-

“(A) Whether the Courts below erred in law in granting the decree for possession, in the facts and circumstances of the case ?”

(B) Whether the finding recorded by the Courts below that defendant No.2 alone has no authority to alienate the suit house, is perverse in the state of evidence on record ?”

[For the sake of convenience, the parties would be referred hereinafter as per their status shown in the suit before the trial Court]

The imperative facts required for determination of above-stated substantial questions of law are as under:-

2. The property was originally held by Chain Singh. He had three daughters namely Pardeshin Bai, Inderoutin Bai and Rajvati Bai. The plaintiffs are sons and daughters of Pardeshin Bai, whereas defendant No.2 is other daughter of Chain Singh. In the suit filed, it has been pleaded that the suit house was owned by Chain Singh and it was jointly recorded in revenue records in the names of Pardeshin Bai and Chain Singh. There is no partition among daughters of Chain Singh and it was in possession of the plaintiffs. The suit house was sold by defendant No.2 in favour of defendant No.1 by registered sale deed dated 8.8.97 and defendant No.1 forcefully took possession of the suit house. The plaintiffs filed a suit stating inter-alia that they are entitled for possession of the suit house and sale deed dated 8.8.97 is not binding on them and it is null and void to the extent of their share.

3. The plaint allegations were denied by the defendants by filing their written statement and defendant No.1 claimed to be bonafide purchaser.

4. The trial Court on the basis of pleadings of the parties framed as many as 10 issues and held that sale deed dated 8.8.97 executed by defendant No.2 in favour of defendant No.1 is not binding on the plaintiffs and further held that defendant No.1 is not bonafide purchaser and there is no partition between Pardeshin Bai and Inderoutin Bai, two daughters of Chain Singh, and both had undivided interest in the suit house and sale made by defendant No.2 in favour of defendant No.1 was without consent of Pardeshin Bai, therefore, sale deed dated 8.8.97 is not binding on the plaintiffs and granted decree of possession in favour of the plaintiffs along with damages.

5. On appeal being preferred by the defendants, the First Appellate Court affirmed the judgment and decree passed by the trial Court.

6. Questioning legality and validity of the judgment and decree passed by the First Appellate Court, this second appeal under Section 100 of the Code has been filed by the appellants/defendants, in which substantial questions of law have been framed by this Court, which have been set-out in the opening paragraph of this judgment.

7. Mr.B.D.Guru, learned counsel for the appellants/defendants, would submit that both the Courts below are absolutely unjustified in granting decree in favour of the plaintiffs, as such, substantial questions of law be answered in favour of the defendants and decree be set aside.

8. On the other hand, Mr.Ram Kumar Tiwari, learned counsel for the

respondents, would support the impugned judgment & decree.

9. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the records with utmost circumspection.

10. The trial Court has clearly recorded a finding that the property was joint family property of Pardeshin Bai and Inderoutin Bai, defendant No.2 and defendant No.2 has sold the said undivided property to defendant No.1 without consent of Pardeshin Bai and therefore, defendant No.1/purchaser cannot get possession of the property which she has purchased from defendant No.2.

10. It is well settled that purchasers of undivided share in a joint family property are not entitled to possession of the land what they have purchased (See M.V.S. Manikayala Rao v. M. Narasimhaswami¹).

11. In the matter of Ramdayal v. Manakla², Full Bench of the Madhya Pradesh High has clearly held that purchaser of an undivided interest of coparcenary property can only obtain under the sale an undivided interest of the alienating coparcener and a right to claim general partition by way of suit and purchaser of an undivided interest of coparcenary property have right to retain exclusive possession of coparcener property on the basis of sale in his favour. The said decision has been followed with approval by the Madhya Pradesh High

¹ AIR 1966 SC 470

² AIR 1973 Madhya Pradesh 222

Court in Maharu and others v. Dhansai and other respondents³.

Para 10 and 11 of Maharu's case (supra) states as under:-

“10. From the statement of law by the Full Bench it can no longer be a subject of debate that the present purchasers could only obtain under the sale an undivided interest of the alienating coparcener and a right to claim general partition by way of suit. The purchaser only steps into the shoes of the transferor and is invested with all the rights and is subject to all the disabilities of the transferor. He at best, is entitled to only joint possession with the non-alienating co-owners and if resisted he may recover joint possession by a suit. He is, in fact, only bound by the arrangements, if any, as to exclusive possession by different co-owners entered into, before he acquired the interest in the joint property. In this case there is nothing on record to show that his vendor, under a mutual arrangement amongst the coparceners was in exclusive possession of the land transferred by him. Even under the principles of Section 44 of the Transfer of Property Act the transferee from a co-owner acquires the transferee's right to joint possession or other common or part enjoyment of the property and to enforce a partition of the same and subject to the conditions and liabilities affecting, at the date of transfer, the share or interest transferred to him. The aforesaid section also only assures to transferee's right to joint possession or common enjoyment of the property but does not confer on the transferee any right to exclusive possession even where the transferor was in such a possession. There are a few cases such as Sukh Dev v. Pari, AIR 1940 Lahore 473-474 and Chanderbhan v. Jailal, AIR 1964 Punjab 435 which take a view that if there existed any arrangement inter se between the coparceners or co-owners under which one of them is in exclusive possession of a portion of joint property, a transferee from him, is entitled to enjoy the benefits of exclusive possession by virtue of the transfer in his favour.

11. In the instant case, however, there is no

³ AIR 1992 Madhya Pradesh 220

pleading of any such inter se arrangement between the coparceners. It is also not the case of the purchasers that the alienating member who placed them into possession, was in exclusive possession and enjoyment of the suit land sold in their favour. In a situation obtaining as in this case the purchasers, therefore, had only a right to remain in joint possession of the coparcenary property and to work out their rights by bringing a suit for general partition and claim in that suit allotment of the alienated property to the share of their vendor. The purchasers can claim no larger right than what their vendor, as member of the coparcenary, possessed.”

12. In the matter of Hardeo Rai v. Sakuntala Devi and others⁴ the Supreme Court has observed as under:-

“26. Thus, even a coparcenary interest can be transferred subject to the condition that the purchaser without the consent of his other coparceners cannot get possession. He acquires a right to sue for partition.”

13. In the matter of Gajara Vishnu Gosavi v. Prakash Nanasaheb Kamble and others⁵, the Supreme Court has held as under:-

“13. Thus, in view of the above, the law emerges to the effect that in a given case of an undivided share of a coparcener can be a subject-matter of sale/transfer, but possession cannot be handed over to the vender unless the property is partitioned by metes and bounds, either by the decree of a court in a partition suit, or by settlement among the co-shares.”

14. In the matter of Jai Singh and others v. Gurmej Singh⁶, the Supreme Court has laid down the principles relating to the inter se

4 (2008) 7 SCC 46

5 (2009) 7 SCC 444

6 (2009) 15 SCC 747

rights and liabilities of co-sharers and held as under:-

“9. It is to be noted that the subsequent Full Bench judgment in *Bhartu v. Ram Sarup*⁷, the earlier decision in *Lachhman Singh v. Pritam Chand*⁸ was distinguished on facts. The principles relating to the inter-se rights and liabilities of co-sharers are as follows:

(1) A co-owner has an interest in the whole property and also in every parcel of it.

(2) Possession of joint property by one co-owner is in the eye of law, possession of all even if all but one are actually out of possession. (3) A mere occupation of a larger portion or even of an entire joint property does not necessarily amount to ouster as the possession of one is deemed to be on behalf of all.

(4) The above rule admits of an exception when there is ouster of a co-owner by another. But in order to negative the presumption of joint possession on behalf of all, on the ground of ouster, the possession of a co-owner must not only be exclusive but also hostile to the knowledge of the other as, when a co-owner openly asserts his own title and denies, that of the other.

(5) Passage of time does not extinguish the right of the co-owner who has been out of possession of the joint property except in the event of ouster or abandonment.

(6) Every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar rights of other co-owners.

(7) Where a co-owner is in possession of separate parcels under an arrangement consented by the other co-owners, it is not open to any body to disturb the arrangement without the consent of others except by filing a suit for partition.

10. It is thus evident that when a co-sharer is in exclusive possession of some portion of the joint holding he is in possession thereof as a co-sharer

7 1981 PLJ 204

8 AIR 1970 P&H 304

and is entitled to continue in its possession if it is not more than his share till the joint holding is partitioned. Vendor cannot sell any property with better rights than himself. As a necessary corollary when a co-sharer sells his share in the joint holding or any portion thereof and puts the vendee into possession of the land in his possession what he transfers is his right as a co-sharer in the said land and the right to remain in its exclusive possession till the joint holding is partitioned amongst all co-sharers. ”

15. Following the principle of law laid down by the Supreme Court and the High Court of Madhya Pradesh in the above-stated judgments (supra), if the facts of the present case are examined, it is quite vivid that respondent No.1 herein/defendant No.1, who is purchaser of an undivided interest of coparcenary family property was not entitled to possession by purchase from defendant No.2 and therefore, the trial Court has rightly granted decree of possession in favour of the plaintiffs. In view of above finding, defendant No.2 had no right to alienate the suit house in favour of defendant No.1.

16. In view of aforesaid analysis, substantial questions of law are answered in favour of the plaintiffs and against the defendants. I do not find any merit in this second appeal. The second appeal deserves to be and is hereby dismissed. No cost(s).

17. A decree be drawn up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge