

HIGH COURT OF CHHATTISGARH, BILASPUR**First Appeal No. 21 of 2000****Judgment reserved on 10-8-2018****Judgment delivered on 27-8-2018**

1. Saiyad Abdul Hanif aged 52 years, S/o Late Shri Saiyad Abdul Wahed;
 2. Saiyad Abdul Rashid aged 40 years S/o Late Shri Saiyad Abdul Wahed (died deleted);
 - 2(a) Kursheed Saiyad Wd/o Saiyad Abdul Rashid, aged about 57 years;
 - 2(b) Saiyad Abdul Sajid S/o Saiyad Abdul Rashid, aged 37 years;
- Both R/o Nawapara, P.O. Nandourkhurd, Tahsil – Sakti, District Janjgir Champa (CG)
3. Saiyad Abdul Shahid aged 38 years, S/o Late Shri Saiyad Abdul Wahed;
 4. Saiyad Abdul Majid aged 30 years, S/o Late Shri Abdul Saiyad Wahed

Above all by faith Muslim resident of village Nawapara
P.O. Nandaurkhurd, Tahsil Sakti, District Janjgir Champa,
M.P. (Old District Bilaspur) (Now C.G)

---- Appellants**Versus**

1. Nagarmal aged 30 years son of Chameli bai
2. Kailash aged 28 years S/o Chamelibai
3. Sajan aged 22 years S/o Chamelibai
4. Vimala Devi aged 26 years, D/o Chamelibai
5. Laxmibai aged 24 years D/o Chamelibai
6. Dipak Kumar aged 21 years S/o Nagarmal
7. Vivek Kumar aged 19 years, S/o Nagarmal

Defendants No. 1 A to E and No. 2 and 3.

All by Caste Agrawal resident of town Sakti Ward No.6 Tah.
Sakti, District Janjgir Champa (MP) (Now CG)

---- Respondents

For Appellants	: Shri P.R. Patankar and Shri Vedant Bhelonde, Advocates
For Respondents	: Shri Vivek Tripathi, Advocate

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA**CAV Judgment**

1. This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decreed dated 5.10.1999, passed by the Additional District Judge, Sakti, Civil District Bilaspur (MP) (Now CG) in Civil Suit No. 10A/1992, wherein the said Court had dismissed the suit filed by the appellants for declaration of title over the land/Najul Plot No. 1040, area 0.16 decimal situated at Sakti, in which the house has been constructed bearing No. 60/2 and it is rented out to the deceased Satya Narayan in the year 1981 by Saiyad Abdul Wahed, who was father of the appellants, and for eviction and recovery of rent.

2. As per the appellants, the land in question is owned solely by Saiyad Abdul Wahed rented for Rs.40/- per month and it was acquired through sale deed, Ex. P/3. No other person was share holder of the property and one Abdul Wahab who was brother of Abdul Wahed, sold the land to one Chamelibai W/o Nagarmal. The present respondents are legal heirs of said Chamelibai. The sale deed is executed by a person who had no right over the property, therefore, the purchaser/respondents had no title over the property.

3. Per contra, the respondents pleaded that Saiyad Abdul Wahed has 4 brothers who were joint till the year 1944 and the suit property was purchased from joint fund of the family, therefore, Saiyad Abdul Wahed is not the sole owner as he has no personal fund to purchase the suit property/land.

4. Now, the core issue for consideration of this Court is whether the property in question is the property of Saiyad Abdul Wahed solely or some other persons having right over the property.

5. Learned counsel for the appellants submit that there is no document showing the joint family property before 1939. As per Ex.P3, the suit property is purchased by Saiyad Abdul Wahed in the year 1939 and there is no joint property/joint fund in the year 1939 or before the purchasing of the said property, therefore, theory of joint fund/property is beyond the record.

6. Ex.P1 is the record of right in which Saiyad Abdul Wahed is recorded as the sole owner of the property in question. As per Ex. P3, he has purchased the property through registered sale deed and he is the sole owner of the property. No record is produced before the trial Court to show that any property was joint amongst the brothers of Saiyad Abdul Wahed or any property was recorded in the name of their father or ancestors. It is clearly established through the document of acquiring title that Saiyad Abdul Wahed is the sole owner of the property and no other person is share holder of the same. Oral evidence adduced on behalf of the respondents side has no bearing with the title of the property in question because there is no record that the property in question is the property of ancestors of Saiyad Abdul Wahed or his brothers. The suit was filed before the trial Court for declaration of title, but the trial Court did not appreciate the evidence in its true perspective and evaluated the evidence as the suit is filed for eviction on the basis of tenancy.

7. When one Abdul Wahab who was nowhere title holder over the suit property, had executed the sale deed in favour of Chamelibai, the purchaser did not get any title over the property. Again, the respondents have acted illegally in denying the tenancy which was created by the sole landlord namely- Saiyad Abdul Wahed, therefore, they have no right to retain the property. As the possession of the respondents is permissive in nature as tenant, they cannot acquire title by adverse possession.

8. As there is no record of right of Abdul Wahab, it is established that the respondents were aware of the fact that Abdul Wahab has no right over the suit property even then they entered into agreement of sale and no rent was paid after filing of the suit. The trial Court has not focused on the main issue of title and it had misdirected itself and the finding of the trial Court is not based on proper appreciation of evidence in its true perspective regarding right of the property. By the said judgment/decreed, the trial Court had adjudicated the matter in favour of the respondents who are not title holders and therefore, finding of the trial Court has to be reversed. The judgment/decreed of the trial Court is liable to be and is hereby reversed.

9. The decree is passed in favour of the appellants and against the respondents as under:

(1) The respondents shall deliver the possession of the suit land/house of Najul Plot No. 1040 (including replaced number.), area 0.16 decimal situated at Sakti within two months.

(2) The respondents shall pay compensation of Rs.40/- (Rs. Forty) to the appellants from the date of filing of the suit i.e. 4.4.1992 till the date of vacating the said land/premises.

(3) The respondents shall pay cost of the suit to the appellants throughout.

(3) Pleaders' fee, if certified be calculated as per certificate or as per Schedule whichever is less.

(4) A decree be drawn up accordingly.

Sd/

**(Ram Prasanna Sharma)
JUDGE**

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