

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 333 of 1997**

1. Santosh Kumar Tiwari, aged about 39 years,
2. Vinod Kumar Tiwari, aged about 25 years
3. Ravindra Kumar Tiwari, aged about 22 years

No.1 to 3 all sons of late Chhedilal Tiwari

4. Smt. Salindri Bai alias Salindi Bai, aged about 45 years, widow of Chhedilal Tiwari

No.1 to 4 all residents of village Sonpuri, Tahsil -Kota, Distt. Bilaspur

5. Smt. Usha Bai, aged about 43 years wife of Krishnawtar Brahman, R/o Village Belsari, Tah. Takhatpur, Distt. Bilaspur
6. Smt. Madhuri, aged about 35 years, wife of Arun Kumar Brahman, R/o of Village Seoni, Tahsil – Janjgir, Distt. - Bilaspur

---- Appellants

Versus

1. Smt. Meena Bai, aged about 45 years, widow of Motilal Gupta
2. Santosh Kumar alias Raju, aged about 24 years
3. Ranu Kumar, aged about 19 years
4. Ajay Kumar, aged about 17 ½ years
5. Vijay Kumar, aged about 16 years
6. Laxmi Narayan, aged about 14 years
7. Satya Narayan, aged about 12 years
8. Uma Kumari aged about 22 years
9. Janki Bai, aged about 11 years
10. Gudiya Bai, aged about 9 years

11. Guddu alias Rajesh, aged about 7 years

Nos. 2 to 7 and 11 all sons of late Motilal Gupta

Nos.8 to 10 all daughters of late Motilal Gupta

Nos.4 to 7 and 9 and 10 minors through guardian-ad-litem mother Smt. Meena Bai Gupta (Respondent No.1) widow of late Motilal Gupta

Nos.1 to 11 all residents of Juna Bilaspur, Tahsil and District Bilaspur (M.P.)

---- Respondents

For Appellants	:	Shri Ashish Surana, Advocate
For Respondents	:	None for respondents.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Judgment On Board

05/04/2018

This appeal is directed against impugned judgment and decree dated 27/02/1997 passed by the Fourth Additional District Judge, Bilaspur in Civil Suit No.66-A /1990 by which the appellant / plaintiff's (since dead) suit has been dismissed.

2. The plaintiffs filed a suit seeking declaration of title in respect of the house in dispute and also for a declaration that the defendant is a tenant of the house in dispute. The plaintiffs also prayed for a decree of arrears of rent and damages.

Plaintiff's suit was based on the pleadings *inter alia* that the house in dispute belonged to Chhedilal Tiwari, predecessor in title of plaintiff and after

his death, the appellants succeeded to the property as legal heirs. It was further pleaded that the property in dispute was jointly owned by Chhedilal / predecessor in title of the plaintiffs – Ramdulare, Ramjharokha and Ramnarayan, who were all brothers. According to the plaintiffs, the partition of joint property had taken place in the year 1966-67 and in that partition, the property in dispute was allotted to the share of Chhedilal. It was further pleaded that the defendant-Motilal was a money lender and in the past, he had been advancing loan to Ramjharokha and Ramnarayan both. A nominal sale deed was executed on 02/04/1968 by Ramnarayan in favour of Motilal / defendant as Ramnarayan had taken loan of Rs.800/- from Motilal. It was recorded on 03/04/1968 that once loan is repaid, Motilal will execute a sale deed in respect of the same property in favour of Ramnarayan. According to the plaintiff, later on, an agreement of partition was also recorded on 27/05/1970 amongst four brothers namely Chhedilal, Ramnarayan, Ramjharokha and Ramdulare which was also witnessed by defendant -Motilal and Motilal signed those documents.

Chhedilal filed a suit earlier for eviction of Motilal on the ground that there is no existing relationship of landlord and tenant. In that suit, relationship of land lord and tenant was not established and it was also held that the issue of title cannot be gone into in the land lord tenant suit, therefore, subsequently, suit is being filed. Therefore, suit is being filed for seeking declaration of title in respect of the suit property.

3. The defendant / Motilal came out with a plea in defence that though the

property in dispute earlier belonged to four brothers namely Chhedilal, Ramnarayan, Ramjharokha and Ramdulare but in a partition effected in the year 1966-67, the house in dispute fell to the share of Ramnarayan and Ramnarayan, by sale deed dated 02/04/1968, sold the house in dispute in favour of Motilal. He denied that the sale deed dated 02/04/1968 was only a nominal sale deed executed in a loan transaction.

4. On the basis of the pleadings of the parties, learned Trial Court framed issues.

5. Learned Trial Court, on the basis of oral and documentary evidence, recorded finding that the plaintiff failed to prove partition and that in the so called partition amongst four brothers, house in dispute was allotted to the share of the plaintiff. It also held that the sale deed dated 02/04/1968 was not a nominal sale deed and further that the plaintiffs are barred from challenging the legality and validity of the said sale deed. It also held that the signature of Motilal in agreement dated 27/05/1970 were obtained by fraud and the said agreement is void.

6. Learned counsel for the appellant argued that the Trial Court committed grave error in holding that the plaintiff failed to prove partition despite plaintiff having led not only oral but documentary evidence of partition having been effected in the year 1966-67. He contended that the registered sale deed dated 11/02/1986 (Ex.P/1) clearly records the factum of partition amongst four

brothers signed by them and duly proved. Chhedilal died but the plaintiffs who are successors of Chhedilal and one of the sons of plaintiff-Chhedilal i.e. Santosh Kumar (PW1) has clearly stated that in the partition, house in dispute was allotted to the share of Chhedilal. The other three brothers namely Ramnarayan, Ramjharokha and Ramdulare have also been examined as plaintiff's witness and all them have clearly deposed in evidence that in the partition effected amongst four brothers, house in dispute was allotted to the share of Chhedilal. Therefore, once all the family members who were parties to the partition, have stated that the house in dispute was given to Chhedilal as his share, the defendant / Motilal cannot dispute as he was not party to the partition as he is not one of the share holders and a person who is not the shareholder, could not dispute the manner in which the property was shared amongst the shareholders contrary to what has been stated by the share holders themselves. He would next submit that in so far as sale deed dated 02/04/1968 (Ex.P/15-A) [D/1] is concerned, plaintiff has led ample evidence to prove that Motilal had been lending money to Ramnarayan and Ramjharokha on number of occasions and they were under liability to repay the loan. The evidence in this regard, led by the plaintiff, has not been properly appreciated by the learned Trial Court. In any case, it is submitted, the said sale deed (Ex.P/15-A) [D/1] clearly shows that Ramnarayan has not sold any particular part of the joint property but only 1/4th share in the property. Therefore, the defendant could not claim as of right that he gets title over and above that part of the undivided share which he occupied as tenant because there is no recital in the sale deed, much less consensus of other share holders in the

property that what was sold to defendant - Motilal by Ramnarayan was that particular part of the property which was occupied as tenant by defendant / Motilal.

7. In this case, no one appeared on behalf of the respondents / defendants. The following points are raised for consideration in this appeal -

- a) Whether the plaintiffs have succeeded in proving partition of the joint family property.
- b) Whether the plaintiffs have succeeded in proving that in partition amongst four brothers, the house in dispute was allotted to the share of Chhedilal.
- c) Whether the defendant has proved from the oral and documentary evidence that the house in dispute was sold by Ramnarayan in his favour vide registered sale deed dated 02/04/1968.
- d) Whether sale deed dated 02/04/1968 was a nominal sale deed executed as security towards repayment of loan.

8. Before examining the pleadings, oral and documentary evidence on record towards determination of issue arising for consideration in this appeal, the background of the case is required to be stated.

9. Earlier, the plaintiff had filed a suit against the defendant seeking eviction on the plea that the plaintiff was the land lord and the defendant was

his tenant. Though suit was dismissed by the learned Trial Court holding that relationship of land lord and tenant was not established, on appeal being filed, the First Appellate Court allowed the appeal and the suit was decreed in favour of the plaintiff. Motilal, then preferred Second Appeal in the High Court of Madhya Pradesh. The appeal was allowed by the High Court vide its judgment dated 02/01/1986 (Ex.D/2). In the said judgment, it was held by the High Court that the plaintiff failed to prove that there exists relationship of land lord and tenant in as much as partition deed dated 27/05/1970 (Ex.P/1) was an unregistered document and therefore, inadmissible in evidence. It was also held that Ramnarayan executed a sale deed in favour of Motilal though sale deed (Ex.D/1) only speaks of 1/4th share of Ramanarayan in the property and not particularly the house accommodation. It was recorded that there is no evidence that defendant paid rent to the plaintiff after partition. The High Court held that under the facts and circumstances of the case, it is for the parties to get the share specified in the property, if so advised. However, the suit was not found to be maintainable. It was also observed that the question of title to the suit property cannot be decided in a suit based on the relationship of land lord and tenant, the successors in interest.

10. After the said judgment, Chhedilal, Ramnarayan, Ramjharokha and Ramdulare executed a partition deed dated 11/02/1986 (Ex.P/1) and thereafter, present suit came to be filed by the successors of Chhedilal which is, infact, based on title seeking a declaration to that effect in respect of the suit property.

11. As far as proof of partition is concerned, this Court finds that the plaintiffs have led not only specific pleadings but has also led overwhelming evidence to prove the factum of partition amongst four brothers namely Chhedilal, Ramdulare, Ramjharokha and Ramnarayan. In the plaint, it has been categorically averred in para 4 that a partition had taken place amongst Chhedilal and his brothers in the year 1966-67. As far as this fact is concerned, which has not been disputed by the defendant in para 4 of the written statement, what the defendant has stated that the partition was effected 3-4 years before i.e. before 1966-67. According to defendant's pleadings, the partition had taken place but not in the year as pleaded by the plaintiffs.

12. Chhedilal died prior to filing of the present suit. However, three of his brothers namely Ramdulare, Ramjharokha and Ramnarayan have been examined as plaintiffs' witnesses. Ramdulare (PW2) had deposed that a partition had taken place amongst four brothers in the year 1966 and it was an oral partition. In his cross examination, the witness has denied suggestion that partition had taken place four years prior to 1966.

13. Ramnayaran (PW3) has also stated in his evidence that an oral partition had taken place between the brothers in the year 1966-67 and has denied suggestion that partition was effected in the year 1962-63.

14. Ramjharokha (PW6) has also deposed in his evidence that a partition was effected between four brothers in the year 1966-67. He has denied suggestion given to him in his cross examination that the partition was effected in the year 1962-63.

15. The plaintiffs have also proved the registered deed executed amongst the successors in interest of Chhedilal and their three brothers namely Ramdulare, Ramjharokha and Ramnarayan, in which also, this fact has been mentioned. This deed has been duly proved by Santosh Kumar (PW1). Therefore, the evidence led by all the joint owners and their successors in interest is coherent that the oral partition had taken place amongst four brothers way back in the year 1966-67. The defendant - Motilal is an outsider. As against common stand taken by all the shareholders of the property that the partition was effected in the year 1966-67, the defendant / Motilal, except denying such partition, has failed to place on record any clinching evidence, oral or documentary in nature, to prove that partition had taken place in the year 1962-63, except suggestions being given to the aforesaid witnesses. Therefore, in these circumstances, this Court is of the opinion that the learned Trial Court fell in error in holding that the plaintiffs failed to prove the partition amongst themselves. It has to be noticed that the factum of partition has been proved from the oral evidence of Ramnarayan, Ramjharokha and Ramdulare who were three brothers in the partition proceedings with their fourth brother – Chhedilal. Learned Trial Court appears to be swayed from the fact that a subsequent deed dated 27/05/1970 (Ex.P/14) is not a

registered document. The effect of that document being unregistered would only be that it would not be inadmissible in evidence as proof of partition, however, the plaintiffs have led their evidence to prove partition amongst four brothers. When four out of three brothers have deposed in the Court that they had partitioned a joint family property amongst themselves in the year 1966-67, in the considered opinion of this Court, law does not require that it should be proved only by a registered document and not otherwise. The registered deed dated 11/02/1986 (Ex.P/1), on a close reading of its recital, only shows that it is merely a memorandum of partition having been effected in the past amongst four brothers. Once there is reliable oral evidence of partition amongst the joint holders of the property, the law does not require that it should be only by way of registered deed of partition.

16. This Court finds that the learned Trial Court has framed issue as to whether sale deed dated 02/04/1968 (Ex.P/15-A) [Ex.D/1] was a nominal sale deed or not.

17. In the considered opinion of this Court, even though the plaintiffs had come out with the plea that the sale deed dated 02/04/1968 was nominal in nature, which has been disputed by defendant / Motilal in his statement, this Could not be a subject matter of enquiry because the sale deed is said to be executed by Ramnarayan, who was not a party to the suit. The only limited issue which could be examined by the Court is whether by the said sale deed, the defendant has purchased that part of the house which he occupied as

tenant or any other part.

18. The sale deed dated 02/04/1968 (Ex.P/15-A) [Ex.D/1] has been executed by Ramnarayan in favour of Motilal, the defendant.

The recitals of the said sale deed reads "बैसुदा मकान का नक्शे का 1/4 हिस्सा बेच दिया". In the said sale deed, the length and breadth of the property has been shown, a part of which has been shown as "दुकान" (Shop) and a part has been shown as "मकान कच्चा" (house). If the recital as aforesaid are seen along with the map, use of the word "मकान" assumes importance. When the entire property has been shown in parts, one as shop and the other as house, the sale deed with recital "1/4th share of the house" refers to the residential part and not the shop. This has been the case of the plaintiff that the joint family property which consisted of the shop and house portion both, was partitioned amongst four brothers.

19. As to which part of the house of the joint family property fell to the share of four brothers could be best stated by only those brothers / joint holders, who partitioned the property amongst themselves.

20. In the plaint, the plaintiff has pleaded that in the partition amongst four brothers which was effected in the year 1966-67, partition was effected and Chhedilal was allotted his share as shown in the red portion of the map appended to the plaint. In the map appended to the plaint, the northern part

of the joint family property was allotted to the share of Chhedilal followed by share of Ramnarayan, then Ramdulare and thereafter, that of Ramjharokha from north to south. If this map is compared with sale deed (Ex.P/15-A) [Ex.D/1], it will be clear that the plot towards extreme north share in the property was allotted to Chhedilal. That has been shown in the sale deed as shop. All the witnesses of the plaintiffs namely Santosh Kumar (PW1), Ramdulare (PW2), Ramnarayan (PW3) and Ramjharokha (PW6) who are successors in interest of Chhedilal and three brothers - Ramnarayan, Ramjharokha and Ramdulare have stated in their evidence regarding the manner in which partition was effected amongst four brothers. Their evidence clearly proves that the plaintiffs' case that the part of the joint family property which constituted shop, was allotted to the share of Chhedilal. On this aspect, all the witnesses have remained coherent and firm. Suggestions being given to these witnesses in their cross examination that upon partition, the part claimed by Chhedilal was allotted to Ramnarayan, has been specifically denied.

In the matter of partition, which share was allotted to which of the share holders could be best stated by only those joint holders who partitioned the property amongst themselves. An outsider, who is not a member of the family, may not dispute this fact to say as to which share fell to the share of respective joint holders. The burden on the defendant was very high to prove otherwise. All through, the case of the defendant / Motilal has been that the shop which he was occupying as tenant was the one which was allotted to

Ramnarayan in partition, but this fact was not proved from any cogent evidence on record so as to dispute what has been emphatically stated before this Court by Ramnarayan, Ramjharokha and Ramdulare as also successor in interest Santosh Kumar (PW1), son of Chhedilal.

21. On the contrary, in view of the discussion which have been held herein above, it is clear that the sale deed dated 02/04/1968 (Annexure P/15-A) only intended to sell 1/4th share of Ramnarayan, which in view of above discussion, is proved to be as per the map appended to the plaint. According to this map, which shows the respective shares of all the four brothers, share of Ramnarayan is different and distinct from the share which was allotted to Chhedilal in the partition which was effected in the year 1966-67. True it is that defendant Motilal was inducted as tenant much prior to partition having been effected. It also cannot be disputed that Motilal was inducted as tenant in shop area. However, defendant / Motilal has failed to prove that the part of the joint family property which he occupied as tenant was the subject matter of sale under sale deed dated 02/04/1968. Once it is held that partition was effected prior to execution of sale deed dated 02/04/1968, the defendant cannot claim acquisition of title by virtue of sale deed dated 02/04/1968 in respect of that part of the joint family property which was allotted to Chhedilal prior to execution of sale deed dated 02/04/1968. Even if version of the defendant is accepted that partition had taken place in the year 1962-63, that means much prior to execution of sale deed dated 02/04/1968. Thus, viewed from any angle, partition amongst four brothers had taken place prior to

02/04/1968.

22. In view of above, this Court is inclined to reverse the finding recorded by the Trial Court with regard to proof of partition amongst four brothers namely Chhedilal, Ramdulare, Ramjharokha and Ramnarayan and also holds that in the partition effected amongst aforesaid four brothers, the property as shown in the attached map to the plaint was partitioned and share claimed by Chhedilal was allotted to him and further that the respondent / tenant was occupying as tenant, the allotted share of Chhedilal.

23. Subsequently, it has also to be held that the house in dispute in the present case and the share of Ramnarayan sold to defendant / Motilal vide sale deed 02/04/1968 are different and that the defendant has failed to prove that 1/4th share of Ramnarayan, as stated in the sale deed dated 02/04/1968 was that part of the house which is presently occupied by him and not allotted to Chhedilal as his share upon partition.

24. In so far as issue whether the sale deed dated 02/04/1968 was nominal sale deed or an out right sale, in the considered view of this Court, this issue is to be left open though it has been asserted by the plaintiff and denied by the defendant that transaction dated 02/04/1968 was a nominal sale deed against Ramnarayan who executed the said sale deed because Ramnarayan is not party in the suit. Ramnarayan would be a necessary party to the issue as to whether sale deed dated 02/04/1968 was a nominal sale deed or an out right sale. As Ramnarayan is not a party in the present suit, that issue is left open.

25. As far as claim of payment of rent is concerned, the plaintiff in his pleadings has pleaded that the plaintiff has not been paid rent by the defendant since July, 1970. According to the plaintiff, rent was Rs.25/- per month. Santosh Kumar (PW1), however, has not stated in his evidence that rent from July, 1970 was not paid by Motilal to Chhedilal and thereafter, to his sons / plaintiffs. Ramdulare (PW2) and Ramnarayan (PW3) and Ramjharokha (PW6) who are brothers of late Chhedilal and uncles of plaintiff - Santosh Kumar (PW1) and others, have also not stated regarding non-payment of rent. There is no evidence to prove the plaint allegations that the defendant / Motilal has not paid rent of the disputed premises. It has to be noted that defendant's case is that he has purchased 1/4th share of Ramnarayan in the disputed property. Therefore, no decree of arrears of rent can be granted.

26. Plaintiffs have prayed for decree of eviction. The parties did not dispute that at the time when the suit was filed in the matter of eviction of tenant, they were governed by provisions contained in M.P. Accommodation Control Act, 1961 wherein the tenant has statutory protection against eviction and the land lord can seek eviction of tenant only on those grounds which have been specified in Section 12 of the Act.

27. At the time when this appeal is being decided, the Accommodation Control Act, 1961 has been repealed and new Rent Control Act, 2011 has come into force. A land lord can seek eviction of tenant only in accordance with the provisions contained in the Rent Control Act, 2011.

28. Considering that at the time of filing of suit, the land lord could seek eviction of tenant only on any one or more grounds specified in Section 12 of the Act of 1961 and none of those grounds have been pleaded in the case to seek eviction, even if it is held that the plaintiffs are entitled for declaration of their title in respect of the disputed property and thereby the defendant is liable to pay the rent of the disputed premises to the appellant, decree of eviction cannot be granted in this suit.

29. In the result, the appeal is partly allowed. It is declared that in the partition amongst four brothers namely Chhedilal, Ramdulare, Ramjharokha and Ramnarayan, the disputed property (shop), presently occupied by the defendant was allotted to the share of Chhedilal and therefore, the plaintiffs being successors in interest of Chhedilal are joint owners of the disputed shop.

The plaintiffs are not entitled to decree of arrears of rent or decree of eviction against the defendant. Let decree be drawn accordingly.

Sd/-
(Manindra Mohan Shrivastava)
Judge