

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 17-7-2018

Judgment delivered on 9-8-2018

FA No. 17 of 2000

- Krishna Kumar Tiwari s/o. Late Rameshwar Tiwari, aged 35 years, Cultivator, resident of Ramanujganj, Tehsil Pal, District Sarguja CG.

---- Appellant

Versus

1. Original respondent No.1 Bharat Prasad Tiwari died, through LR's.
1. (a) Ajay Kumar Tiwari s/o. Late Bharat Prasad Tiwari, 42 years.
(b) Vivek Kumar Tiwari, s/o. Late Bharat Prasad Tiwari, 39 years.
(c) Navin Kumar Tiwari s/o. Late Bharat Prasad Tiwari, 37 years.
Above three are residents of Ramanujganj, District Surguja (CG).
(d) Smt. Namrata Shukla d/o. Late Bharat Prasad Tiwari 43 years, w/o. Arun Shukla, Advocate r/o. Shrishti Vihar, Mangla, Bilaspur.
(e) Smt. Sarita Tripathi, d/o. Late Bharat Prasad Tiwari, 40 years, w/o. Shri Chandraprakash Tripathi, r/o. Village Tulapur, Post Jalapur, District Mirzapur (UP).
2. Smt. Shakuntala Devi, w/o. Radhraman Choubey, d/o. Late Rameshwar Pujari, aged about 39 years, occupation huse wife village Pipriol, Teh. Pal, District Sarguja.
3. Smt. Saraswati Devi, w/o. Shri Lalmanidhar Dubehy, d/o. Late Rameshwar Pujari, ccupation houswice, r/o. village Loto,PS Soh, Dist. Garhwa (Bihar).
4. Smt. Kalawati Devi, w/o. Kailash Mishra, d/o. Late Rameshwar Pujari, aged 37 years,occupation housewife, r/o. village Khoradih, PO Karma, District Sonbhadra (UP).
5. Smt. Vidyavati Devi, w/o. Shri Bharat Prasad Tiwari, aged 38 years. Occupation Houswife, r/o. Village Ramanujganj, Teh- Pal, District Sarguja (CG)/
6. The State of MP (Now CG) through Collector Sarguja, Ambikapur, District Sarguja (CG).

---- Respondents

For appellant	:	Mr. Prafull N. Bharat and Mr. A.K. Prasad, Advocates.
For respondents	:	Mr. B.P. Sharma and Mr. Arun Kumar Shukla, Advocates.
For respondent/State	:	Mr. Sameer Behar, PL.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. The appellant has preferred this appeal under Section 96 of the Code of Civil Procedure, 1908 against the judgment and decree dated 18-10-2000 passed by the District Judge, Ambikapur, District Surguja (CG) in Civil Suit No. 6-A/99 whereby the said court declared 1/5th share to appellant and respondents No. 1 to 4 in the property mentioned in Schedule A, B, C, D and E in the plaint, but dismissed the suit for partition for land mentioned in Schedule-F of the plaint.
2. As per the case of the appellant, the property in Schedule-F of the plaint is also joint Hindu Property, but the trial Court recorded its finding that the same is not the joint Hindu Family property which is erroneous as per evidence led before the trial Court. As the property is purchased out of income of the joint Hindu family, therefore, that property should also be declared as joint Hindu Family property and partition of the same be ordered.

3. On the other hand, learned counsel for the respondents No. 1 to 5 would submit that the property mentioned in Schedule-F is self-acquired property of respondent No.5 for consideration of Rs.40,000/- and it cannot be declared as joint Hindu Family property.
4. I have heard learned counsel for the parties and perused the record and judgment and decree passed by the trial Court.
5. The first question for consideration of this court is whether the property mentioned in Schedule-F is acquired out of joint Hindu Family Property. Rameshwar Pujari was father of the appellant and as per finding of the trial Court he died in the year 1962-1963. In Ex. D/9 which is assessment of tax it is mentioned that Rameshwar Pujari died in the month of September, 1963 and there is no reason against oral and documentary evidence to say that he died in some different year, therefore, it is established that Rameshwar Pujari died in the year 1962-63. As per evidence, Rameshwar Pujari was engaged in a business of grain merchant and after his death one Vishwanath was conducting the business as Manager but due to mismanagement the same business was closed in the year 1972. The business of grain was closed in the year 1972 and no one appeared before the trial Court to say that he was maintaining the account of grain business and there is no

document regarding income of the said business, therefore, it is not established before the trial Court that any regular income was accounted for the business or any savings are accounted for that business. In absence of oral and documentary evidence, it is not established that any money is saved out of grain business which may be termed to be a deposit in the joint Hindu family. On overall assessment of the evidence, it is not established that there was any balance amount regarding business of grain merchant.

6. It is alleged in the plaint by the appellant that the land area 42.83 hectare was joint property at village Lurgi and land area of 4.60 was joint property at village Leel Bandariya, but there is no oral or documentary record regarding regular cultivation of whole land. As per oral evidence of both sides, after marriage of respondent Bhagwat Prasad Tiwari, he was cultivating certain land and was in possession of certain land and again appellant was also cultivating some land which is mentioned in Ex.D/6 which is a report of spot inspection of Tahsildar, Ramanujganj. As per spot inspection, Bharat Prasad Tiwari was cultivating 7.303 hectare of land and Krishna Prasad was cultivating 8.592 hectare of land. It is also mentioned in Ex.D/6 other lands are not cultivated and there is nothing on record to show as to who was in possession of other land. It was infertile and there was no

income from the said land. Land separately cultivated by appellant and respondent Bharat Prasad Tiwari has no account regarding any income from the said property.

7. On overall assessment of the oral and documentary evidence, it is established that no one has accounted for income of cultivated land, therefore, it was not established that any income was accrued by any one from the said land. The trial Court has elaborately discussed the issue and recorded its finding that business of grain merchant was closed in the year 1972 and respondent No.1 and the appellant were cultivating some land separately from the year 1975. The finding of the trial Court is based on proper appreciation of evidence and this court has no reason to interfere with the same.
8. It is contended on behalf of the appellant that two demand drafts of Rs.5000/- each was given to the seller of the property which shows that the property in question is purchased out of income of joint Hindu family property.
9. In view of this court, there is no evidence regarding income of joint Hindu family property, on the contrary, parties were in separate possession of land and no one has clearly stated that income is earned from anyone from joint Hindu family, therefore, income of joint Hindu family is not established. Again there is no pleading regarding giving of two demand drafts to the seller

in the plaint. It is settled law that no amount of evidence could be looked into apart from pleading, therefore, argument on behalf of the appellant on this score must fail. The trial Court has given cogent reason as per evidence of brother of respondent No.6 namely Balwant Pandey that he helped for Rs.20,000/- to her, therefore, looking to the economic status of the parties, it can be inferred that brother of respondent No.6 has given Rs.20,000/- for consideration amount and the same is based on the evidence adduced before the trial Court and this court has no reason to record a different opinion. When brother of respondent No.6 entered into witness box, his evidence was sufficient for establishing that he provided money to his sister and non-examination of respondent No.6 will have no effect looking to the financial position of the parties as Rs.20,000/- of brother and Rs.20,000/- of gift is not huge amount which cannot be collected through gifts during life time. The finding of the trial Court is not liable to be interfered while invoking jurisdiction of the appeal.

10. Accordingly, decree is passed against the appellant and in favour of respondents No. 2 and 5 as under:
 - (I) The appeal is dismissed with cost.
 - (ii) Appellant to bear the cost of respondents No. 2 and 5.

- (iii) Pleader's fee., if certified, be calculated as per Schedule or as per certificate whichever is less.
- (iv) A decree be drawn up accordingly.

Sd/-
(Ram Prasanna Sharma)
JUDGE

Raju