

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on : 07.08.2018

Judgment delivered on : 07.09.2018

First Appeal No. 17 of 2009

- Mohammed Usman S/o Late Haji Sheikh Ahmed, aged about 57 years, R/o Near Munna Pan Thela, Baijnath Para, Raipur (Defendant- 2)

---- Appellant

Versus

1. Smt Ganga Bai, wife of Shri Ganesh Ram Satnami, aged about 40 years, resident of Ravigram, Telibandha, Raipur (Plaintiff)
2. Ramcharan Bharti, aged about 56 years S/o Late Sukhram Satnami R/o Devpuri, Via Pachpedi Naka, Raipur (Defendant- 1)
3. State Of C.G. Through the Collector, Raipur (Defendant- 3)

---- Respondents

For Appellant	: Shri BP Sharma and Shri Sameer Uraon, Advocates
For Respondent-1	: Shri HB Agrawal, Senior Advocate with Smt Prabha Sharma, Advocate.
For Respondent- 2	: None appears
For Respondent- 3/ State	: Ms M Asha, Panel Lawyer

Hon'ble Shri Justice Parth Prateem Sahu

CAV Judgment

1) By this instant appeal, the appellant challenged the validity and legality of impugned judgment and decree dated 27.11.2008 passed by learned 8th Additional District Judge (FTC), Raipur in suit No.18A/2007, whereby learned trial Court allowed the suit filed by plaintiff for cancellation of sale deed dated 29.05.2000 executed by defendant- 1 in favour of defendant - 2 and for possession of disputed property.

2) Brief facts necessary for disposal of this appeal are that respondent- 1/ plaintiff filed suit for cancellation of sale deed and possession of suit

property situated at village Jaunda, tehsil- Abhanpur, Patwari Halka No.155, Khasra No.446 Rakba- 1.445 hector of land. The aforementioned property is agricultural property. It was pleaded in her suit that the suit property is her father's property, namely, Sukhram Satnami, who died in the year 1989. After death of Sukhram, names of legal heirs including plaintiff was mutated in revenue records, but her brother / respondent- 2/ defendant- 1 was managing the suit property, succeeded from his father, as plaintiff was residing in her matrimonial house at Telibandha. When she came to village Jaunda in month of July, 2006, at that time, she revealed that her brother, defendant- 1 (Ramcharan) sold entire suit property without her knowledge and consent to defendant- 2/ appellant. She pleaded that as the property belongs to her father, she was having right for half share over the suit property. After getting knowledge of selling entire suit property by her brother, defendant- 1, plaintiff obtained required documents from the Revenue Department as well as from the Office of Registrar and filed a suit for cancellation of sale deed and also for possession of suit property.

3) Defendant- 2 (purchaser) after receiving notice of the suit, submitted written statement to the plaint and stated that the sale deed executed by defendant- 1 in his favour is valid. After enquiring about the ownership of property he purchased the suit property for valuable consideration. He further stated that revenue record shows that names of plaintiff and her sister Punibai were deleted from revenue records on 03.03.1993, whereas, he purchased the suit property on 29.05.2000. Defendant- 1

(Ramcharan) not made his appearance and not submitted his written statement to the plaint.

4) Learned trial Court on the basis of pleadings made by the respective parties, framed as many as five issues for consideration and after evaluating the documentary and oral evidence on record, decreed the suit and held that the sale deed dated 29.05.2000 is not binding on plaintiff and set aside the same to the extent of half share of the suit property. It is further held that the plaintiff is entitled to possession of half share of the suit property and granted liberty to defendant- 2 (purchaser) of suit property to file suit for general partition of the property within a period of six months from the date of judgment and decree and otherwise, the plaintiff will be entitled for possession of whole suit property.

5) Being aggrieved by the aforementioned judgment and decree passed by learned trial Court, defendant- 2 (purchaser) preferred this appeal on the ground mentioned therein that the plaintiff has not sought any relief for declaration of title and further submitted that learned trial Court gave equal share to the plaintiff by applying amended provisions of Section 6 of Hindu Succession Act, 1956.

6) Learned counsel appearing for respondent- 1/ plaintiff submitted that her title was not disputed. Her name was entered in revenue records as co-sharer along with her brother, defendant- 1 as owner of suit property. Neither their relationship is in dispute nor defendant- 2 in his written statement raised any objection with respect to the relationship of plaintiff and defendant- 1 and also not disputed the nature of property as pleaded

in plaint. He further submitted that defendant- 2 in his written statement admitted the relationship between plaintiff and defendant- 1 and therefore, there is no requirement of seeking relief for declaration of title. He further argued that as the property is self acquired property of Sukhram, learned trial Court rightly held that the plaintiff is entitled for half share of the suit property and it rightly set aside the sale deed dated 29.05.2000. He further submitted that the judgement and decree passed by the learned trial Court is strictly in accordance with law and do not call for any interference.

7) Learned Panel Lawyer appearing for the State supported the impugned judgment.

8) I have heard learned counsel for the parties. Perused the records. From perusal of the plaint, it appears that it has been specifically pleaded that plaintiff and defendant- 1 are brother and sister and further that after death of Sukhram (father), name of plaintiff was also mutated in the revenue records along with defendant- 1, her brother. It is further pleaded that as there was equal share for plaintiff along with defendant- 1, the sale deed executed by defendant- 1 by sale of entire property recorded in name of her father without there being consent of the plaintiff is illegal.

9) Ganga Bai, plaintiff was examined as AW-1, who in her statement stated that suit property ie the subject matter of this appeal was recorded in her father's name, who died in the year 1989. Thereafter, on 30.06.1992 her sister- Punibai also died. She further stated in her evidence that her brother- Ramcharan only was doing agriculture activities

on the suit property. She, in support of her pleading during the course of recording her evidence got exhibited B-1 of year 1981-82 (Ex.P/1); Naksha map (Ex.P/2 & P/3) ; copy of Namantaran Panji (Ex.P/4); B-1 of year 2004-05 (Ex.P/5); Khasra Panchshala (Ex.P/6); Sale deed dated 29.05.2000 (Ex.P/7); Notice dated 18.08.2006 (Ex.P/8); Receipt (Ex.P/9 & P/10); Khasra Panchshala from 92-93 to 96-97 (Ex.P/11); Mutation records of Sukhram (Ex.P/12); and Namantaran Panji (Ex.P/13).

10) Other document Ex.P/13 placed on record is Namantaran Panji, dated 03.03.1993, wherein names of Gangabai (plaintiff) and Punibai and their signatures are also mentioned. In fact, prior to this date, Punibai died on 30.06.1992. Therefore, the entries made in revenue records deleting the names of Gangabai and Punibai, *prima facie* appear to be some entries made without proper procedure. It also appears that it was without knowledge of plaintiff.

11) The mutation entry dated 03.03.1993 only bears signature of Revenue Inspector and signature of Patwari along with witness of village. It is the Tahsildar who is competent authority to pass appropriate order of mutation after following procedure as provided 110 of Chhattisgarh Land Revenue Code. The appellant has not produced the order of Tahsildar or any document showing that the competent revenue authority followed the procedure nor any witness shown to be present was examined.

12) Even otherwise the contents of document would show that the Patwari mentioned that Ganga Bai and Punibai want to get their name to be deleted from revenue records. No reason was mentioned nor there is

endorsement that any application was filed by them for extinguishing their right in property in dispute.

13) From aforementioned lapses on the part of Revenue officers makes the entries of Ex.P/13 doubtful and cannot be relied upon as pleaded and stated by appellant that rights and interest of sisters was transferred in favour of Ramcharan.

14) The provisions of Section 17(b) also provides that the document extinguishing any right title or interest in immovable property of Rs.100/- or more value to be registered provided the document is exempted by State Government from registration by publishing in official Gazette. In instant case, no such material is available on record either transfer by registered document or any notification.

15) From perusal of Ex.P/1 it is evident that the suit property was recorded in the name of Sukharam in the year 1981-82 and it was granted to him under '*patta*'. In Mutation records of legal heirs of Sukharam (Ex.P/12) dated 19.07.1989, names of Ramcharan, Gangabai and Punibai were mutated by mentioning therein that their names are being mutated being legal heirs of Sukharam after death of Sukharam. In Ex.P/11, name of Gangabai along with Punibai was shown to be owner and possessor of the suit property. Other witness Suval (PW-2), aged about 70 years also stated that defendant- 1 and the plaintiff are real brother and sister. Further he stated that plaintiff was the elder daughter of Sukharam and after her father's death, she only maintained and brought up her younger brother (Ramcharan) and sister (Punibai). He also stated that Punibai

died in year 1992. One more witness Punitram (PW-3) specifically stated the relationship of plaintiff and defendant- 1 that they are children of late Sukhram and the suit property also belongs to Sukhram. The relationship and also the mutation of names of Gangabai, Punibai in revenue records as successors was further stated by one Ganesh Ram Ratrey (PW-4). The evidence of plaintiff's witnesses remained un-corroborated on the point of her relationship with defendant- 1 her brother, she being daughter of Sukhram and also that her name was entered in revenue records being one of the legal heirs of late Sukhram, along with defendant- 1.

16) From aforementioned facts and material available on record, it is undisputed that plaintiff is daughter of Sukhram and she being legal heir, her name was recorded as one of the co-sharer in revenue records along with defendant- 1 (Ramcharan), her brother and sister Punibai. The relationship was also proved by PW-2 and PW-3 in their evidence and also admitted by defendant. Therefore, once the name of plaintiff is recorded in revenue records as successor and legal heir and her title is not disputed by any of the parties, specifically by defendant- 2, she is not required to seek relief of declaration of title. But the relief which she can claim is, only with regard to the cancellation of sale deed and possession of the suit property. Even the defendant had not raised any ground in written statement with regard to maintainability of suit for want of relief of declaration and therefore, also appellant is precluded to raise this plea at appellate stage.

17) Defendant- 2 in his written statement also not denied the relationship and mutation entries made in revenue records. But he only stated that subsequently, their names were deleted from revenue records with their consent (Gangabai and Punibai) and mentioned in Ex.P/13. The plaintiff filed death certificate of Punibai Ex.P/14 in which date of death of Punibai is mentioned as 30.06.1992 and the same death certificate was also filed by defendant- 2 as Ex.D/7. The entry made in register by virtue of the order passed by authority (Ex.D/6) which was not challenged nor produced any evidence with respect to date of death of Punibai. In present case even if date of death is ignored, Ramcharan was not having any right to sell entire co-parcenary property alone.

18) Hon'ble Supreme Court in **Anathula Sudhakar Vs P Buchi Reddy (dead) by LRs and others** reported in **(2008) 4 SCC 594**, while laying the principles in the suit for declaration and possession held in paragraph 14 as under:

"14. We may however clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to plaintiff's title raises a cloud on the title of plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown. An action for declaration, is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient. Where the plaintiff, believing that defendant is only a trespasser or a wrongful claimant without title, files a mere suit for injunction, and

in such a suit, the defendant discloses in his defence the details of the right or title claimed by him, which raises a serious dispute or cloud over plaintiff's title, then there is a need for the plaintiff, to amend the plaint and convert the suit into one for declaration. Alternatively, he may withdraw the suit for bare injunction, with permission of the court to file a comprehensive suit for declaration and injunction. He may file the suit for declaration with consequential relief, even after the suit for injunction is dismissed, where the suit raised only the issue of possession and not any issue of title. "

19) From perusal of aforementioned guideline, it is clear that when the title of any person is not in dispute, he /she is not required to seek relief of declaration of title, but only the relief for possession or any other like cancellation of sale deed in present case is sufficient.

20) Learned trial Court while assessing the share of plaintiff in suit property, held that as the plaintiff and defendant- 1 mutated their names in records as successors and therefore, they are entitled for half of the share over the suit property.

21) To appreciate the argument raised by learned counsel for appellant that learned trial Court by applying the amended Hindu Succession Act, 1956 which came in the year 2005, wrongly awarded half share to the plaintiff, documents exhibited by the respective parties are required to be considered minutely. From bare perusal of Ex.P/1, which is copy of revenue record, recorded in the name of Sukhram, who was father of plaintiff and defendant- 1 in which it has been mentioned that Sukhram was holding the land in dispute on "*patta*". From perusal of the said document, it is clear that the suit property is not ancestral property, rather

it is self acquired property of Sukharam. Though learned trial Court not specifically held that plaintiff is entitled half share of the suit property, as the property is self acquired by Sukharam, nonetheless the entitlement of share of plaintiff held by court below is not illegal. More so, when Punibai died on 30.06.1992, which has also been proved by filing her death certificate vide Ex.P/14.

22) Now the question arises for consideration is what right is available to the purchaser of co-parcenary property.

23) The defendant- 1 could not have transferred title better than what he himself have, as it is evident that on the date of transfer there were two co-parceners and therefore, defendant- 1 could not have transferred more than half of the property in dispute and without consent of other co-owner.

24) Hon'ble Supreme Court considered the rights of purchaser enjoying the property in **MVS Manikayala Rao Vs M Narasimhaswami**, reported in **AIR 1966 SC 478** and held as under:

"(5) As earlier stated the High Court held that Art.144 applied. The application of this article seems to us to present great difficulties to some of which we like to refer. That article deals with a suit for possession of immovable property or any interest therein not otherwise specially provided for and prescribes a period of twelve years commencing from the date when the possession of the defendant becomes adverse to the plaintiff. This article obviously contemplates a suit for possession of property where the defendant might be in adverse possession of it as against the plaintiff. Now, it is well settled that the purchaser of a co-parcener's undivided interest in joint family property is not entitled to possession of what he has purchased.

His only right is to sue for partition of the property and ask for allotment to him of that which on partition might be found to fall to the share of the coparcener whose share he had purchased . His right to possession "would date from the period when a specific allotment was made in his favour": *Sidhesheshwar Mukherjee Vs Bhubneshwar Prasad Narain Singh* 1954 SCR 177 at P.188 (AIR 1953 SC 487 at P.491). It would, therefore, appear that Sivayya was not entitled to possession till a partition had been made. That being so, it is arguable that the defendants in the suit could never have been in adverse possession of the properties as against him as possession could be adverse against a person only when he was entitled to possession. Support for this view may be found in some of the observations in the Madras Full Bench case of *Vyapuri Vs Sonamma Boi Ammani*, ILR 39 Mad 811: (AIR 1916 Mad 990 (2)FB. "

25) The law laid down in above case was reiterated in **Ramdas Vs Sitabai** reported in **2009 (7) SCC 444** in paragraphs 16 and 22 as under:

"16. It is settled law under the Transfer of Property Act 1882 Act, that a purchaser cannot have a better title than what his vendor had. The possession which is claimed by the Defendant No. 3-Ramdas (the appellant herein) in respect of the entire land bearing Gat No. 19 area admeasuring 2.56H of Mouza Padoli was also illegal and without proper sanction of law. So long as the property is joint and not- partitioned, defendant no. 3-Ramdas (appellant herein) is not entitled to get possession of the said land. Even otherwise, the appellant herein having purchased the land from defendant No.1- Sudam could be entitled to be declared at the most to the extent of half-share of the said piece of land having stepped into the shoes of his vendor and could not have asked for and claimed ownership and possession over the entire land of Gat No. 19 admeasuring 2.56 H.

22. The appellant herein has further claimed relief on the ground of equity. However, we do not find any reason to hold in favour of the appellant even on the ground of equity as the appellant herein himself is responsible for his act in purchasing undivided share in a part of the suit property without the knowledge and consent of the co- sharer. Besides, indisputably and as held by the Trial Court, the land in Gat No. 19 is extremely valuable and, therefore, the question of equity does not arise as we would be doing injustice to one having title and ownership if we accept the prayer of the appellant."

26) Hon'ble Supreme Court in **Gajara Vishnu Gosavi Vs Prakash Nanasaheb Kamble and others** reported in 2009 (10) SCC 654 held in paragraphs 11,12 and 13 as under:

"11. In a recent judgment in **Ramdas vs. Sitabai** reported in **(2009) 7 SCC 444** to which one of us (Dr. B.S. Chauhan J.) was a party, placing reliance upon two earlier judgments of this Court in **M.V.S. Manikayala Rao vs. M. Narasimhaswami & Ors.**, reported in **AIR 1966 SC 470**; and **Sidheshwar Mukherjee Vs Bhubneshwar Prasad Narain Singh & Ors** reported in **AIR 1953 SC 487**, this Court came to the conclusion that a purchaser of a co-parcener's undivided interest in the joint family property is not entitled to possession of what he had purchased. He has a right only to sue for partition of the property and ask for allotment of his share in the suit property.

12. There is another aspect of the matter. An agricultural land belonging to the coparceners/co-sharers may be in their joint possession. The sale of undivided share by one co-sharer may be unlawful/illegal as various statutes put an embargo on fragmentation of holdings below the prescribed extent.

13. Thus, in view of the above, the law emerges to the effect that in a given case an undivided share of a co-parcener can be a subject matter of sale/transfer, but possession cannot be handed

over to the vendee 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-sharers."

27) Learned trial Court in the facts and circumstances of the case rightly held that the sale deed dated 29.05.2000 to the extent of share of plaintiff is not binding on her because one of the co-sharer was not having any right to sell the entire suit property or even the property of his own share without consent of the other co-sharer and that too, without there being any partition between them by metes and bounds. The purchaser of the undivided property could not get any right by virtue of the sale deed executed in his favour, unless and until the suit for partition is brought by him or by other co-sharer. He will only be entitled to the extent of the share allotted in favour of the seller, only after partition.

28) In the case in hand, one of the co-sharer sold the entire suit property to defendant- 2 without prior permission or consent of the other co-sharer (plaintiff). Therefore, in light of aforementioned judgment rendered by Hon'ble Supreme Court, learned trial Court rightly held the sale deed dated 29.05.2000 is not binding on the plaintiff to the extent of her share and she is entitled for possession of the suit property to the extent of half portion of that suit property.

29) Learned trial Court while considering the application with regard to limitation raised in the plea, correctly applied the provisions of Limitation Act considering the date of knowledge of execution of sale deed by her brother and rightly held that the suit is within limitation period from the date of knowledge.

30) Looking to the facts and circumstances of case, learned trial Court has taken lenient view while granting six months' time to defendant- 2 (purchaser of suit property) for filing a suit for partition.

31) The respondent / defendant No.2 failed to prove that the rights and interest of sisters of Ramcharan have been transferred in favour of defendant- 1 by any mode known to law.

32) In view of above discussions and law laid down by Hon'ble Supreme Court, the appeal preferred by the plaintiff, being devoid of merit, liable to be and is hereby dismissed.

Sd/-
(Parth Prateem Sahu)
JUDGE