

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Judgment reserved on 09-02-2017**

**Judgment delivered on 20-02-2018**

**FA No. 90 of 2015**

- Lakhanlal Patel S/o Late Ghasiram Patel R/o Village Tulsidih, Post Naurangpur, Tahsil Sarangarh, P.S. Sarangarh, Civil And Revenue Distt. Raigarh Chhattisgarh , Chhattisgarh

**---- Appellant**

**Versus**

1. Smt. Janki Bai W/o Late Mahettar Das Aged About 40 Years R/o Village Naurangpur, Tahsil Sarangarh, Police Station- Sarangarh, Distt. Raigarh Chhattisgarh Present Address Village Nawapali, P.S. And Tahsil Baramkela, Distt. Raigarh Chhattisgarh , Chhattisgarh
2. Sahodra D/o Late Mahettar Das Aged About 28 Years R/o Village Naurangpur, Tahsil Sarangarh, Police Station- Sarangarh, Distt. Raigarh Chhattisgarh Present Address Village Nawapali, P.S. And Tahsil Baramkela, Distt. Raigarh Chhattisgarh , District : Raigarh, Chhattisgarh
3. Budhiyarini Bai D/o Fuldass Aged About 26 Years R/o Village Taparda, P.O. Bade Bhandar, Tahsil And P.S. Pussaur, Distt. Raigarh Chhattisgarh , District : Raigarh, Chhattisgarh
4. Smt. Sumrit Bai D/o Late Fulsai Mahant Aged About 52 Years W/o Thola Mahant, R/o Village Naurangpur, Tahsil Sarangarh, Distt. Raigarh Chhattisgarh Present Address- Village Kapartunga, P.O. Malda B, Tahsil Sarangarh, Distt. Raigarh Chhattisgarh , District : Raigarh, Chhattisgarh
5. State Of Chhattisgarh D/o Through The Collector, Raigarh Distt. Raigarh Chhattisgarh , District : Raigarh, Chhattisgarh

**---- Respondents**

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| For appellant              | : | Mr. Vivek Tripathi, Advocate. |
| For respondents No. 1 to 3 | : | Mr. Roop Naik, Advocate.      |
| For respondent No.4        | : | None                          |
| For respondent No.5/State  | : | Mr. Satish Gupta, G.A.        |

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**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 24-2-2015 passed by the Additional District Judge, Sarangarh, Civil District Raigarh (CG) in Civil Suit No. 8A/2013 wherein the said Court decreed the suit of the respondents/plaintiffs namely Smt. Janki Bai w/o. Late Mahettar Das, Sahodra d/o. Late Mahettar Ds and Budhiyarin Bai d/o. Fuldass and directed the appellant to deliver the possession of land bearing survey No. 34/1 area 0.486 hectare situated at village Naurangpur, Patwari Halka No.26, Revenue Circle Hardi, Tahsil Sarangarh, District Raigarh (CG) and further decreed that sale deed executed by respondent N.4/defendant No.1 Smt. Sumrit Bai in favour of the appellant for the above mentioned land on 4-9-2009 is not binding on the respondents No. 1, 2 and 3/plaintiffs.
2. As per pleadings of the parties, land bearing survey No. 34/1 area 0.486 hectare is ancestral property and original owner is Fulsai. Santosh Das and Ghasi Das are two sons of Fulsai and Amritdas and Sumrit Bai (respondent No.4/defendant No.1) are two daughters of Fulsai. Respondent No.1 Janki Bai is wife of late Mahettar Das who is son of Santosh Das. Respondent No.2 Sahodra is a daughter of late Mahettar Das. In this way, Janki Bai and Sahodra inherited property from Santosh Das. Agnikunwar is wife of Ghasidas who executed the will dated 25-9-1998 in favour of Sahodra/respondent No.2 and Sahodra inherited property of Agnikunwar by way of registered will/testament succession Respondent No.3/plaintiff

Budhiyarin Bai is daughter of Amritdas who inherited property from Fulsai

3. As per version of the appellant, Sumrit Bai is entitled for the above land on the basis of family settlement and she executed a sale deed in favour of the appellant because land was mutated in the name of Sumrit Bai and he is a *bona fide* purchaser. The trial Court has ignored the evidence adduced by Sumrit Bai/respondent No.4 and, therefore, decree is liable to be set aside.
4. The core issue for consideration of this court is whether Sumrit Bai is owner of the disputed land by way of family settlement. As per statement of Janki Bai (PW/1), Sahodra (PW/2), Sumrit Bai (DW/1) and record of rights (Ex.P/10, P/11, P/12 of the years 1977-78, 1980-81, 1983-84, the property bearing survey No. 34/1 area 0.486 hectare was mutated jointly in the name of Janki Bai wife of Mehattar Das, Chandrakumari wife of Fulsai, Ghasidas s/o. Fulsai. From the statements of the witnesses and documents produced before the trial Court, it is established that the land in question was ancestral property belonging to Fulsai and after Fulsai, his sons and daughters inherited the property. Though it is claimed by Sumrit Bai that family has settled 20 – 25 year ago that person who will maintain Ghasidas and Agnikunwar and other elder person of the family will get the land but from her own statement it is not established that she maintained any of the elder person of her family and therefore, there is no evidence on record of the trial Court that any family settlement was

arrived at by all the family members and on the basis of family settlement Sumrit Bai is entitled for the property in question. Even if Sumrit Bai is entitled to any share at the time of passing of her father, it was open for her to claim that limited share/undivided interest and she cannot transfer whole property or any specific land which is ancestral/joint property.

5. Present appellant is claiming the title on the basis of one sale deed alleged to have been executed by Sumrit Bai in his favour on 4-9-2009 on which day Sumrit Bai was not the owner of that property and any transferee cannot transfer a better title what he has while executed any sale deed. It is for Sumrit Bai to get her title decided and then only she can transfer the property of her share. As the property in question was not in ownership of Sumrit Bai and mutation in any revenue record does not confer any title. Declaration of title is in exclusive jurisdiction of civil court. When the property was not in the ownership of Sumrit Bai, the appellant did not acquire any right over the property in question through any sale deed. Property in question is joint Hindu family property and any stranger cannot be joint owner of the said property. Such stranger is not entitled to possession of the said property through a sale deed executed by a person having no right/limited right. Such transferee can file suit for partition of limited interest and can enter into the land only through legal recourse.

6. As observed by the trial Court, the appellant can recover the amount from Sumrit Bai paid to her for the said sale deed. When the appellant did not acquire any right through sale deed, he is not entitled to retain the possession in the said property. The trial Court has decreed the suit on the basis of proper marshalling of oral and documentary evidence adduced before it and same is not liable to be interfered while invoking jurisdiction of the appeal. The appeal is liable to be dismissed.
7. Accordingly, the decree is passed against the appellant and in favour of respondents No. 1, 2 and 3/plaintiffs as under:
- i) The appeal is dismissed with costs.
  - ii) Parties shall bear their own costs.
  - iii) Counsel fee, if certified, be given as per certificate or as per schedule whichever is less.
  - iv) A decree be drawn up accordingly.

Sd/-  
**(Ram Prasanna Sharma)**  
JUDGE