

HIGH COURT OF CHHATTISGARH, BILASPUR**First Appeal No. 200 of 2005****Judgment reserved on 26-7-2018****Judgment delivered on 27-8-2018**

Hari Ram Sharma s/o Shri Raghuwar Dayal Sharma, aged about 50 years, Occupation-Businessman, R/o GandhiGanj (Old Mandi-Oldganj) Tahsil and District Raigarh (CG)

---- Appellant**Versus**

Chhagan Lal Sharma s/o Shri Raghuwar Dayal Sharma, aged about 45 years, Occupation- Service, Resident of Beerpara, Tehsil and District Raigarh (CG)

---- Respondent

For Appellant	: Shri R.S. Patel, Advocate
For Respondent	: Shri S.N. Nande, 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 6th September, 2005, passed by the First Additional District Judge, Raigarh (CG) in Civil Suit No. 46A/2005, wherein the said Court had declared $\frac{1}{2}$ share of the appellant and $\frac{1}{2}$ share of the respondent in the land recorded in Najul Sheet No.33, plot No.74, area 1335 sq. ft. situated at Gandhi Ganj, Raigarh (CG) and directed actual partition to be executed by the Commissioner appointed by the Court.

2. As per the suit filed by the respondent, the respondent and the appellant have purchased the aforementioned disputed property from one Mahavir Prasad for a cash consideration of Rs.9,000/- through registered sale deed and obtained possession of the said land. Names of both the owners were recorded in the revenue record. As per further case of the

respondent, he left the disputed house in the year 1985 and was residing at Beerpara house. As the appellant claimed to be sole owner of the property, the suit was filed and after hearing both the parties, the trial Court decreed the suit as mentioned above.

3. Learned counsel for the appellant submits as under :

(i) The respondent has already taken his share from the joint family property and was residing separately, therefore, he is not entitled to get further share in the disputed property.

(ii) The trial Court has not evaluated the evidence oral/documentary in its true perspective.

(iii) Since the respondent has not denied the averment made by the appellant before trial Court that goes to show the written statement of the appellant is admitted.

4. Now, the first question for consideration is whether the property in question is owned by the appellant and the respondent or whether it is a property of joint family ?.

5. In the present case, only two persons namely the appellant and respondent are the party to the suit and no other member of the family is arrayed as party. The suit is filed by the respondent for the property in question only and there is no specific pleading regarding any joint family property and share-holders of the same. It has come on record that the appellant are 7 brothers in number and no record of right is produced before the trial Court regarding joint family property of other members of the family and no particulars are given in the trial Court regarding joint family property. It is also not a case that the property in question is purchased out of selling

of any ancestral property or it is purchased out of the income of joint family or from joint fund of the family. In absence of any such pleading and evidence, it is not established that the property in question is related to joint family property in any way. Ex. P1 is the registered sale deed of the property in question in which, the seller is one Mahavir Prasad and purchasers are 2 in number namely- the appellant and the respondent.

6. The property is recorded in the names of appellant and the respondent. Document Ex. P1 is proved by the respondent though the appellant who appeared before the trial Court as DW1 deposed that the property in question is his sole property but he is not able to rebut the sale deed Ex.P1. The trial Court has elaborately considered the oral and documentary evidence adduced before it and came to the conclusion that both are owners of the property in question. The finding of the trial Court is based on proper marshalling of the evidence and confers $\frac{1}{2}$ share of the respondent in property in question. It is not the case that the property is related to any joint family property and it is also not the case that the trial Court has not evaluated all the oral and documentary evidence. It is nowhere case of the respondent that he admitted the sole ownership of the appellant in property in question, therefore, the arguments advanced on behalf of the appellant on this count is not acceptable and the finding recorded by the trial Court is not liable to be interfered with invoking jurisdiction of appeal.

7. Accordingly, the decree is passed against the appellant and in favour of the respondent as under :

- (1) The appeal is dismissed with cost.
- (2) The appellant to bear cost of the respondent 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