

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 412 of 2001****1. Malsai Baiga (Died) Through LR's**

1.1 - Dal Pratap S/o Late Mal Sai Aged About 35 Years R/o Village Deogarh, Tahsil Bharatpur, District Korea Chhattisgarh

1.2.1 Smt. Phul Jharia Bai Wd/o late Baijnath Baiga, aged about 25 years

1.2.2 Parwatia, D/o late Baijnath, aged about 9 years

1.2.3 Rajwati D/o Baijnath, aged about 6 years

Respondent No.1.2.2 & 1.2.3 minor, through mother Phul Jharia

All R/o village – Deogarh, Tah-Bharatpur, District – Korea (CG)

1.3 Shiv Pratap, S/o Late Mal Sai, aged about 29 years

1.4 Smt. Bulakia Bai, W/o Munna Baiga, aged about 27 years

1.5 Smt. Munnibai, W/o Sudarshan Baiga, aged about 25 years

1.6 Smt. Phul Jharia Bai W/o Ram Lakhan Baiga, aged about 22 years

All R/o Village Deogarh, Tah. Bharatpur, Distt. - Korea (CG)

2. Nandau @ Nanbabu S/o Late Shibhai Baiga**3. Bhulan S/o Late Shibhai Baiga**

R/o. of Village – Deogarh, P.S. Janakpur, Tah. - Bharatpur, Distt. - Korea (CG)

4. Samatia Wd/o Late Dhir Sai Baiga Aged About 38 Years Agriculturist, R/o Village Deogarh, Tahsil Bharatpur, District Korea**5. Mst. Gujeratia W/o Late Shibhai Baiga R/o Deogarh, P.S. Janakpur, Tah. Bharatpur, Distt. Korea C.G.****6. Mst. Shanti, W/o Ramdin Baiga, R/o Village Deogarh, P.S. Janakpur, Tah. Bharatpur, Distt. - Korea (CG)**

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Versus

(A). Dharmu Baiga S/o Lachhoo Baiga R/o Deogarh, P.S. Janakpur, Tah. Bharatpur, Distt. Korea C.G.

(B). Buttan W/o Shriram Baiga R/o Deogarh, P.S. Janakpur, Tah. Bharatpur, Distt. Korea C.G., District : Koriya (Baikunthpur), Chhattisgarh

(C). Chaiti D/o Lachhoo Baiga R/o Deogarh, P.S. Janakpur, Tah. Bharatpur, Distt. Korea C.G.

Chhotiya (Died) Through LRs
 2.1 - (A). Simanty W/o Chhotiya Aged About 68 Years
 2.2 - (B). Ramdulare S/o Late Chhotiya Aged About 48 Years

2.2-(C) Jayram, aged about 45 years

2.2.C (1) Dinesh S/o Jayram Aged About 25 Years S/o Jayram R/o Deogarh, Post Deogarh, P.S. Janakpur, Tahsil Bharatpur, District Korea Chhattisgarh

2.2.C (2) Umesh aged about 22 years S/o Jayram R/o Deogarh, Post Deogarh, P.S. Janakpur, Tahsil Bharatpur, District Korea Chhattisgarh

2.4 - (D). Shiv Pratap S/o Late Chhotiya Aged About 42 Years
 2.5 - (E). Ramnath S/o Late Chhotiya Aged About 39 Years
 2.6 - (F). Smt. Chandrawati D/o Late Chhotiya
 2.7 - (G). Bulku S/o Late Chhotiya Aged About 32 Years

Shripat (Died) Through Lrs.
 3.1 - Amar Bahadur S/o Late Ramratan Aged About 30 Years
 3.2 - Vijay Bahadur S/o Late Ramratan Aged About 25 Years

4. (Deleted) Jugnu (Died) As Per Hon'ble Court Order Dated 14.12.2018.

5. Kumha S/o Lachhoo Baiga R/o Deogarh, P.S. Janakpur, Tah. -Bharatpur, Distt. Korea C.G.

6. Girwar (Died) Through LRs

6.(i). Ramdhani S/o Late Ramai Aged About 23 Years Deogarh, Post - Deogarh, P.S. Janakpur, Tahsil - Bharatpur, District Korea Chhattisgarh

6.(ii). Brijlal S/o Baljeet Baiga Aged About 29 Years Caste - Baiga, Village And Post Devgarh, Tahsil Bharatpur, District Korea Chhattisgarh

6.(iii). Sundhari W/o Babao Aged About 50 Years R/o Village Markhori, Post - Devgarh, Tahsil Bharatpur, District Korea Chhattisgarh

7. Lurghutain @ Kalsiya W/o Ramkumar Baiga R/o Deogarh, P.S. Janakpur, Tah. Bharatpur, Distt. Korea C.G.

8(A). Mst. Tarsiya W/o Shankar Baiga R/o Deogarh, P.S. Janakpur, Tah. Bharatpur, Distt. Korea C.G.

8(B). Sabita D/o Shankar Baiga Minor, Thru- Mother Tarsiya, R/o Deogarh, P.S. Janakpur, Tah. Bharatpur, Distt. Korea C.G.

8(C). Sanjay S/o Shankar Baiga Aged About 10 Years Minor, Thru- Mother

Tarsiya, R/o Deogarh, P.S. Janakpur, Tah. Bharatpur, Distt. Korea C.G.

9. State Of Chhattisgarh Through- Collector, Korea C.G.

---- Respondents

For Appellants	:	Shri B.P.Gupta, Advocate
For Respondents 2 (C-1), 2 (C-2), 3.1, 3.2, 6(1-1) and 6 (1-2)	:	Shri Rajesh Sharma, Advocate
For State	:	Shri Aditya Bharadwaj, Panel Lawyer

S.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

24/07/2019

This appeal is directed against impugned judgment and decree dated 02/08/2001 passed by the learned lower Appellate Court, by which, the judgment of the Trial Court was affirmed and dismissed the suit of the appellants / plaintiffs.

2. On 03/12/2014, this appeal was admitted on following two substantial questions of law -

“1. Whether the findings arrived at by the Trial Court as well as the first Appellate Court in holding that the plaintiff has not been able to establish their source of income while acquiring the suit property is proper, legal and justified ?

2. Whether the findings of the Trial Court in dismissing the claim of the plaintiff is contrary to its own findings particularly of issue no.5 ?”

3. The appellants / plaintiffs filed a suit seeking a declaration of title and also injunction, damages on the pleadings *inter alia* that the property in dispute belongs to Shobhai (since deceased). According to the plaint allegations, Shobhai, the original plaintiff and Lachhoo, Chhotai, Shripat and Girvar (deceased – defendant)

were sons of Bhaagu and partition amongst them had taken place long back. The plaintiff's case before the Court below was that the property in dispute comprised of a land granted by way of lease in favour of Shobhai and land purchased by Shobhai long back on 21/05/1958. It was further pleaded that the defendants having no share in the aforesaid two properties, the subject matter of suit, started interfering which gave rise to cause of action to file suit.

4. The defendants before the Court below denied plaint allegations by stating that the property in dispute is not the self acquired property of the plaintiff but it is a joint family property which devolved upon sons of Bhaagu namely Lachhoo, Chhotai, Shripat and Girvar and each of them were having equal share.

5. Learned Trial Court framed as many as nine issues which included issue as to whether the property in dispute was self acquired property of Late Shobhai. It also framed issue whether the disputed property is the ancestral property and all the parties namely, plaintiffs and defendants, were having equal share. An issue was also framed as to whether, the partition had taken place amongst Shobhai and defendants No.1, 2, 3 and 8 and therefore, the defendants have no title.

6. While deciding issue No.3 as to whether the property in dispute was self acquired property, learned Trial Court recorded a finding that as the plaintiffs failed to lead documentary evidence or any other reliable evidence that he was granted lease by the Government and further that the plaintiffs also failed to lead reliable evidence of so called purchase of lands by Shobhai vide sale deed dated 21/05/1958, held that the plaintiffs having failed to establish his title, are not entitled to any decree. The suit was dismissed. On appeal being preferred, learned lower Appellate Court also concurred with the finding of the Trial Court and dismissed the appeal giving rise to this Second Appeal.

7. Learned counsel for the appellant would argue that the learned Courts below failed to properly appreciate clinching and reliable evidence in the form of secondary evidence led by the plaintiffs to prove that a part of the property in dispute was purchased by Late Shobhai vide sale deed dated 21/05/1958. According to him, as the original sale deed was lost, plaintiffs were permitted to lead secondary evidence and the plaintiffs led evidence to prove that in the year 1958, Hira Singh had sold a part of the property in dispute in favour of Shobhai. Apart from oral evidence led by the plaintiff, the records of the office of the Deputy Registrar were also produced and proved in support of plaintiff's claim of there being sale of property in favour of plaintiff – Shobhai by Hira Singh. However, learned Trial Court, wrongly disbelieving the said evidence on small discrepancies which were not very material, ignoring that the records of the office of the Deputy Registrar were duly proved before the Trial Court. He would further argue that once the execution of sale deed was proved, it was not necessary for the plaintiff to further prove that he had independent source of income. It is argued that the sale deed had taken place long back in the year 1958 and it was purchased by Shobhai for a consideration of Rs.100/-. The presumption that at that time, whether Shobhai had enough source of income to purchase the land from Hira Singh would lie in favour of the plaintiffs and if the defendants claim that it was the joint family property, it was for them to prove that the property if at all purchased, it was purchased out of the income derived from the joint family property or joint family occupation.

8. On the second question of law, it has been argued that once the learned Trial Court recorded a finding on issue no.5 that it could not be established and proved by the defendant that the property in question were joint family property / ancestral property, a presumption of title of the plaintiff is clearly established in view of all the revenue records recording the name of Shobhai as the holders of the land and therefore, the learned Trial Court as well as the Appellate Court committed patent

illegality and perversity in dismissing plaintiff's claim having clearly held that the defendants failed to establish that the property in dispute was the joint family property.

9. On the first question of law, this Court, after going through the judgment of the learned Trial Court finds that a specific issue no.3 was framed as to whether the property in dispute are self acquired property of the plaintiffs. As far as a part of the property claimed as having been granted on lease in favour of Shobhai is concerned, learned Trial Court has recorded finding that there is oral evidence but no documentary evidence or any record proving that the plaintiff was granted any Government lease in respect of a part of the disputed property. The oral evidence led in this regard has been disbelieved by the learned Trial Court. As far as acquisition of a part of the disputed property, purchased vide sale deed dated 21/05/1928 is concerned, the original sale deed was not produced and was said to have been lost. Learned Trial Court allowed the plaintiff to lead secondary evidence. The oral and documentary evidence with regard to proof of sale deed was considered in detail by the learned Trial Court in para 15 to 19 of its judgment in which, it appreciated the evidence of Mal Sai (PW3), Uttam Singh (PW8), Jameed Khan (PW9) and Jagjahir (PW10).

10. The finding of the learned Trial Court was that the sale deed could not be proved either by its witnesses or by the evidence of other witnesses. It is not a case that the learned Trial Court having held proved, execution of sale deed in favour of Shobhai by one Hira Singh in the year 1958, proceeded to record a finding that upon failure of plaintiff to prove that it was purchased out of his own income, it was held to be a joint family property. The question of law, therefore, does not arise for consideration because where the Courts below found that the plaintiff has failed to prove the very execution of sale deed in the year 1958, the question whether it was

purchased out of his own funds or it was purchased from the funds of the joint family income would not arise. That means, irrespective of decision of issue no.1, in the absence of there being any question of law arising for consideration by this Court as to whether the Courts below committed any patent illegality or perversity in recording a finding that the plaintiff failed to prove execution of sale deed, first question of law framed would not alter the decision. Therefore, it cannot be said to be a substantial question of law. As that has been answered in negative, such question of law does not arise for consideration.

11. Second question of law must also be answered in negative because irrespective of whether the defendant succeeded in proving the property as joint family property, the plaintiff would be entitled for declaration of its title only upon proof of his title. Though learned counsel for the appellant argued that in the revenue records, name of Shobhai was recorded, it is well settled legal position that the entries made in the revenue records are not document of title. The party who approached the Court seeking declaration of his title, is required to establish his title by leading independent evidence of valid acquisition of title. That having not been done, decision on issue no.5 would not help the plaintiff nor can be made a basis to allow his claim to give a declaration of title in his favour. The finding of the learned Courts below do not warrant any interference. The appeal is accordingly dismissed. Parties to bear their respective costs. Let appellate decree be accordingly drawn.

Sd/-
(**Manindra Mohan Shrivastava**)
Judge