

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.368 of 2001****Judgment reserved on : 08.1.2019****Judgment delivered on: 11.01.2019**

- 1.A Shivnarayan Rajwade S/o Late Dashrath Prasad, aged about 47 years,
- 1.B Satyanarayan Rajwade S/o Late Dashrath Prasad, aged about 47 years,
- Both R/o Village Bodar, Tahsil Baikunthpur, District Korea (CG)
2. Sardar Prasad S/o Thakur Prasad, Caste-Rajwar, aged about 65 years, r/o village Bodar, Tehsil Baikunthpur , Distt. Korla, C.G.

---- Appellants**Versus**

1. Dubraj Prasad S/o Thakur Prasad, Caste-Rajwar, aged about 54 years,
2. Gajraj Prasad S/o Thakur Prasad, Caste-Rajwar, aged about 5 years,
- Both r/o village Bodar, Tehsil Baikunthpur, Distt.Korla, C.G.
3. The State of M.P. (now the State of C.G.) through Collector, Korla, C.G.

---- Respondents

For Appellants	:	Mr.Sakti Raj Sinha, Advocate
For Respondents No.1&2	:	Mr.Mahendra Dubey, Advocate
For Respondent No.3	:	Mr.A.N.Bhakta, Dy.A.G.

Hon'ble Shri Justice Sanjay K. Agrawal**C.A.V. Judgment**

1. The substantial question of law involved, formulated and to be answered in the second appeal preferred by defendants No.1 and 2 is as under:-

“Whether the First Appellate Court was justified in reversing well reasoned judgment of the trial Court by

holding that the suit lands were the joint family property by recording perverse finding ?”

[For the sake of convenience, the parties would be referred hereinafter as per their status shown and ranking given in the suit before the trial Court].

2. The plaintiffs filed civil suit bearing Civil Suit No.21-A/1994 for declaration of title, partition and separate possession stating inter-alia that the plaintiffs and defendants No.1 and 2 are brothers. The plaintiffs are having $\frac{1}{2}$ share in the suit property described in para of the plaint. It was specifically pleaded that plot No.93/1 area 3 acres was purchased in the year 1965 in the name of defendant No.1, plot No.748 area 3.20 hectares was received by the plaintiffs and the defendants jointly in lieu of extending certain help to its owners and plot No.2961 area 1.25 acres was also jointly purchased, but sale was executed in the name of defendant No.1 and revenue records were also mutated solely in his name for the sake of convenience.
3. Defendant No.1 and 2 filed their written statement denying the pleadings of the plaintiffs stating inter-alia that the suit land was of exclusive ownership of defendant No.1 as it is his self-acquired property borne out of his earning as teacher. They further pleaded that the plaintiffs and the defendants have joint family property of area 9.53 hectares, but the suit property is excluded to it, as such, the plaintiffs had no right and title over the suit property.
4. The trial Court after appreciating oral and documentary evidence available on record, by the judgment and decree dated 14.3.97,

dismissed the suit by recording the finding that defendant No.1 himself has purchased the suit property and the suit is barred by limitation, which has been reversed by the First Appellate Court holding that the suit property was purchased by the plaintiffs and the defendants jointly and decreed the suit of the plaintiffs.

5. Questioning legality and validity of the judgment and decree passed by the First Appellate Court, this second appeal under Section 100 of the CPC has been filed by the appellants/defendants, in which substantial question of law has been framed by this Court, which has been set-out in opening paragraph of this judgment.
6. Mr.Sakti Raj Sinha, learned counsel for the appellants/defendants, would submit that the First Appellate Court has committed grave legal error in recording the finding that defendant No.1 jointly purchased the suit property with the plaintiffs, as there is evidence on record to prove that the suit property was purchased by defendant No.1 from his own earning and he has discharged his burden to prove that the suit property has been acquired out of earning in his personal capacity, as such, the judgment and decree of the First Appellate Court deserves to be set aside and the second appeal deserves to be allowed.
7. Mr.Mahendra Dubey, learned counsel for respondents No.1 and 2/plaintiffs would support the judgment and decree impugned.
8. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

9. Original plaintiffs-Dubraj Prasad (died during pendency of the first appeal), Gajraj Prasad and defendants No.1 & 2 are brothers. The plaintiffs filed a suit for declaration of title, partition and possession stating inter-alia that all four brothers were members of joint Hindu family, but now they have started residing separately and they owned joint property at village Bodar, Tahsil Baikunthpur, they have also acquired joint property admeasuring 2.93 hectares at same village, but since defendant No.1 was eldest one and Karta of the family, the properties were acquired in his name. Khasra No.93/1 area 3 acres was purchased in the name of defendant No.1 and land bearing khasra No.748 area 3.20 acres was relinquished by Smt. Lawango and Sawango in their favour, which was also mutated in the name of defendant No.1. Likewise, khasra No.296 area 1.25 hectare was also purchased in the name of defendant No.1. All the properties were purchased for the benefit of all four brothers though they started residing separately, but the properties remained joint and when request was made by the plaintiffs to defendants No.1 and 2, they did not come forward for partition and when they filed an application before the Revenue Court, defendants No.1 and 2 objected, in which the Revenue Court directed to get the title adjudicated by the Civil Court. The defendants have claimed exclusive title over the suit land and to be acquired personally by defendant No.1.
10. The trial Court dismissed the suit holding that the suit properties were acquired by defendant No.1 out of his own income,

which was reversed by the First Appellate Court.

11. Lawango who is PW-2 has gifted 3.20 acres of land and which is in the name of defendant No.1 has clearly stated that he has gifted the property to all four brothers for their common benefit. Likewise, Aalam Sai (PW-3), who has sold 3 acres of land to defendant No.1, has also clearly stated that property was purchased by all four brothers. Amolsai (PW-5) who has sold 1.25 hectares of land to defendant No.1 has also stated that the suit land has been sold in favour of four brothers. Sardar Prasad (DW-2) in his cross-examination has clearly stated that the suit land is being cultivated by all four brothers.

12. The First Appellate Court on appreciation of evidence on record in great details has come to the specific conclusion that the suit properties are joint family property of all four brothers from their joint earning and merely because it is registered in the name of defendant No.1, it cannot be held to be separate property of defendant No.1. It has further been held that the plaintiffs and the defendants are members of joint Hindu family and they were remained joint till 1980 and thereafter they started residing separately and the suit property is the joint family property of all four brothers. The aforesaid finding recorded by the First Appellate Court is the finding of fact based on evidence available on record, which is neither perverse nor contrary to record. The First Appellate Court is justified in reversing the finding of the trial Court. Resultantly, the substantial question of law is answered in favour of the plaintiffs and

against the defendants. I do not find any merit in this second appeal.

13. Accordingly, the second appeal deserves to be and is hereby dismissed leaving the parties to bear their own cost(s).

14. A decree be drawn up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-