

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 430 of 2003**

1. (Deleted) Smt. Champa Bai As Per Hon'ble Court Order Dated- 18-02-2019
2. Kartikeshwar S/o Ayatu Aged About 38 Years R/o Kumharpara, Jagdalpur, District Bastar, Chhattisgarh
3. Vighneshwar (Died) Through LRs. Nil.
 3.1 - A. Liti S/o Vighneshwar Aged About 35 Years R/o Kumharpara, Jagdalpur, District-Bastar, Chhattisgarh
 3.2 - B. Sonmati D/o Vighneshwar Aged About 30 Years R/o Kumharpara, Jagdalpur, District Bastar, Chhattisgarh
4. Lakheshwar S/o Ayatu Aged About 35 Years R/o Kumharpara, Jagdalpur, District Bastar, Chhattisgarh

---- Appellants**Versus**

1. Manu (Dead) Through LRs Murlidhar Nil
 1.1-A. (Deleted) Murlidhar Nil.
 1.2 - B. Deena S/o Murlidhar R/o Village Edka Tahsil Narayanpur, District Narayanpur, Chhattisgarh.
 1.3 - C. Smt. Sonmati D/o Manu W/o Cham Singh R/o Village Sownra, Tahsil Jagdalpur District Bastar, Chhattisgarh.
2. Tulsiram S/o Sukru Aged About 50 Years R/o Kumharpara, Jagdalpur, District Bastar, Chhattisgarh
3. Ram Dayal S/o Ramlal Aged About 30 Years R/o Kumharpara, Jagdalpur, District Bastar, Chhattisgarh
4. Ramprasad S/o Ramlal Aged About 25 Years R/o Kumharpara, Jagdalpur, District Bastar, Chhattisgarh
5. Ram Chandra S/o Ram Lal Aged About 19 Years R/o Kumharpara, Jagdalpur, District Bastar, Chhattisgarh
6. Smt. Dashmi Bai Wd/o Ramlal Aged About 55 Years R/o Kumharpara, Jagdalpur, District Bastar, Chhattisgarh
7. Munna S/o Hari Aged About 22 Years R/o Kumharpara, Jagdalpur, District Bastar, Chhattisgarh
8. Rameshwar (Died) Through LRs. Nil.
 8.1 - A. Sunita D/o Rameshwar
 8.2 - C. Khemo D/o Rameshwar
 8.3 - D. Laxmi D/o Rameshwar

8.4 - E. Sarita D/o Rameshwar

9. (Deleted) Smt. Sukhdei As Per Hon'ble Court Order Dated- 18-02-2019

10. State Of Chhattisgarh Through Collector Bastar Jagdalpur, Chhattisgarh

---- Respondents

For Appellants	:	Shri Prafull Bharat, Advocate
For Respondent No.1	:	Shri Aman Kesharwani, Advocate
For Respondents 2 to 9	:	Shri Ramkumar Tiwari, Advocate
For State	:	Shri Vaibhav Singh, Panel Lawyer

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

Order On Board

05/09/2019

This appeal is directed against impugned judgment and decree dated 23/04/2003 passed by the First Additional District Judge, Bastar-Jagdalpur in civil appeal No.46-A/2001, by which, the learned lower Appellate Court reversed the judgment and decree dated 17/07/2001 passed by the Trial Court in Civil Suit No.7-A/2001 holding that the plaintiffs succeeded to prove that the disputed property was joint family property, they are entitled to seek permanent injunction and declaration as sought for and decreed the suit.

2. The respondents / plaintiffs filed a suit seeking declaration and partition of the disputed property on the pleadings *inter alia* that the property situated in village – Hatkachora and village – Sonwra, described in the plaint, admeasuring 19.48 acres and 32.16 acres respectively are the joint family properties of the parties shown in the family tree. According to the plaintiffs, Donda had three sons i.e. Lekhan, Budhram and Govind. According to the plaintiffs, as the property was ancestral property and the successors of Lekhan, Budhram and Govind, who are sons of Donda, had taken the property jointly, all the properties were liable for

partition.

3. The defendants, who were successors of Kaali Singh, though admitted that the property situated in village – Sonwra was joint property, they pleaded that as far as the land admeasuring 19.48 acres situated in village – Hatkachora is concerned, it was not part of joint family property but it was self acquired property of Kaali Singh.

4. Learned Trial Court framed issues as below -

- “1. क्या खंड “अ” में दर्शित वाद भूमि रकबा 19.48 एकड़ लगान 25.68 वादीगण की पैत्रिक संपत्ति है ?
2. क्या वादी क्रं.8, वादी क्रं.3, 4,5 का भाई है ?
3. क्या वादीगण वाद भूमि रकबा 19.48 एकड़ लगान 25.08 में से हिस्सा पाने का अधिकारी है, यदि हाँ तो कितना?
4. क्या वाद भूमि रकबा 19.48 एकड़ लगान 25.68 प्रतिवादी क्र.1 के ससुर तथा प्रति.क्रं. 2, 3, 4 के पिता काली सिंह की स्वअर्जित संपत्ति है?
5. सहायता एवं व्यय?”

5. Learned Trial Court, after allowing the parties to lead oral and documentary evidence, recorded a finding that the plaintiffs failed to prove that the entire property shown in Schedule A, admeasuring 25.68 acres was joint family property and that the property situated at village - Hatkachora was self acquired property of Kaali Singh and dismissed the suit without granting any relief of partition.

6. Aggrieved by the judgment and decree, the plaintiff filed an appeal. The Appellate Court, however, held that the property situated in village – Hatkachora and village – Sonwra were joint family property, as jointness of the property situated in village – Sonwra was an admitted position and as far as the property situated in village – Hatkachora is concerned, the defendants failed to discharge their burden

to prove that it was the self acquired property of Kaali Singh. On this finding, plaintiff's suit was decreed.

7. This appeal was admitted on following substantial question of law -

“Whether the lower appellate court was justified in holding that the property of Hatkachora was a joint family property which could be subject to partition?”

8. Learned counsel for the appellant would argue that the judgment and decree of the learned lower Appellate Court suffers from perversity and patent illegality in so far as the property situated in village – Hatkachora is concerned. He would argue that even though the defendants had not disputed that the property situated in village – Sonwra was joint family property, they came out with a specific pleading that the land situated in village – Hatkachora, admeasuring 19.48 acres, were self acquired property of Kaali Singh and did not form part of joint family property. Therefore, it could not be subject to partition. It is next contended that even if it is accepted that the burden was on the defendant to prove that the property situated in village – Hatkachora was self acquired by Kaali Singh, the defendants have discharged their burden by leading oral and documentary evidence that the property at village – Hatkachora was self acquired property which is supported by documentary evidence being an old record of statement of the year 1932-1933, in which, the property was recorded in the name of Kaali Singh and it was not recorded in the name of Kaali Singh jointly with others. Learned counsel for the appellant would argue that the presumption regarding jointness could be drawn only when it has been proved from the evidence on record that each and every property described in the plaint was being jointly cultivated by all the parties. According to him, there is not only evidence to show that the property at village – Hatkachora were being only cultivated by Kaali Singh and thereafter, by his sons

and grand sons, plaintiff's witness – Lokuram (PW2), Roop Singh (PW4) and Tulsi Ram (PW5), all of them have admitted that the family members, later on, had separated and they had started cultivating their own land after partition and plaintiff No.2, examined as plaintiff witness No.5, has clearly admitted in his evidence that the property in village – Hatkachora was purchased by Kaali Singh. Learned lower Appellate Court has drawn conclusion on the basis of perverse finding as contained in paragraph 14 that there is no evidence of purchase of property situated at village – Hatkachora by Kaali Singh. The finding that there is no pleading is also perverse and based on patent misreading of the defendant's pleading as contained in their written statement.

9. On the other hand, learned counsel for the respondents / plaintiffs would argue that the learned lower Appellate Court has examined the pleadings, oral and documentary evidence of the parties on the legal premise that where the parties are having joint nuclear property, any of the parties who asserts property acquired, out of the joint nuclear property, is required to discharge burden of proof of property being out of the joint family property and it being the self acquired property of one of them. He would further argue that the learned lower Appellate Court has examined defendants' evidence, particularly that of Kartikeshwar. He would further submit that mere oral evidence of purchase of property by Kaali Singh does not prove valid acquisition of title by Kaali Singh. Neither any sale deed nor any other evidence has been shown to prove as to how and in what manner, Kaali Singh acquired property situated in village – Hatkachora. He would also argue that the settlement records of old times are not conclusive presumption of exclusive title because in those days, even in respect of joint family property, the name of elder member of the family used to be recorded to represent the complete estate on behalf of all the joint holders.

10. Plaintiffs, in their pleadings, have stated that the joint family property of plaintiffs and defendants who are descendants of Lekhan, Budhram and Govind (three sons of Donda), possessed of joint family property, which has been described in Clause A and B of paragraph 4. According to the plaintiffs, it was their parental property which was liable for partition amongst all the family members, being successors of deceased brothers – Lekhan, Budhram and Govind. The plaintiff's case is based on the pleadings. No documentary evidence has been led by the plaintiffs to prove that prior to name of Kaali Singh, names of Lekhan, Budhram and Govind were jointly recorded. There is no evidence to prove that originally, the property situated in two villages were recorded in the name of Donda so as to draw an inference that since generations, the entire property was recorded in the name of common ancestors.

11. Learned Trial Court dismissed the suit holding that the plaintiffs failed to prove that the property in dispute were ancestral property to which the parties were entitled to succeed. Learned lower Appellate Court, however, recorded a finding that in a case where a joint family property holder succeeds and parties are shown to be in jointness, any party who asserts acquisition of self acquired property, the burden would be on that party to prove that the property was not joint family property but it was outside the nucleus of joint family property. Having discussed in para 14 of the judgment, learned lower Appellate Court recorded finding that the defendants have failed to discharge the burden of proof as to how, when and in what manner, the property in village – Hatkachora was acquired by Kaali Singh.

12. The aforesaid finding suffers from perversity on following counts -

(a) Learned lower Appellate Court proceeded on misleading of the pleadings contained in the written statement by observing that it is not a case of the

defendants that the property situated in village – Hatkachora was self acquired property of Kaali Singh. In paragraph 4 itself, while the defendant admitted that the property situated in part B admeasuring 32.16 acres is ancestral property, it was specifically denied that the property described in part - A admeasuring 19.48 acres was ancestral property. It was specifically pleaded that this property i.e. the property situated in village – Hatkachora was self acquired property of father-in-law of defendant No.1 and father of defendants No.2, 3 and 4. Such pleading was again repeated in para 8 of the written statement. A perusal of the written statement would show that the defendants have through out taken a stand that as far as the property situated in village – Sonwra is concerned, it is an ancestral property but as far as the property situated at village – Hatkachora is concerned, it was a self acquired property of Kaali Singh.

Therefore, the learned lower Appellate Court has recorded a perverse finding that no such pleading has been made by the defendants in their written statement.

(b). Learned lower Appellate Court has recorded a finding that the defendants' witness has failed to prove as to wherefrom and when Kaali Singh had acquired the property situated in village – Hatkachora. While the defendant witnesses have not stated in detail as to when and in what manner and mode, Kaali Singh acquired the property in village – Hatkachora, oral evidence is that the said property was self acquired property of Kaali Singh. In support of this evidence, the defendants have filed an old settlement record of the year 1932 – 1933 (Ex.D/1) which records the name of Kaali Singh as the holder of land situated in village – Hatkachora and it does not contain name of any other members of the family so as to draw an inference that since beginning, the property stood jointly in the name of all the family members.

Learned lower Appellate Court has not paid any heed to this documentary

evidence which supports the case of the defendant. It has to be noticed that the defendants were successors of Late Kaali Singh. Kaali Singh was survived by his son – Ayatu and Kartikeshwar, Vighneshwar and Lakheshwar are sons of Ayatu i.e. grand son of Kaali Singh. Defendant – Champa Bai was widow of Ayatu.

(c) The finding of the learned lower Appellate Court is perverse because it is in ignorance of the clear admission with regard to not only separate cultivation and residence but also evidence of admission that the property situated in village – Hatkachora was purchased by Kaali Singh.

13. As many as three witnesses of the plaintiffs including plaintiff No.2 have admitted this factual position in their evidence. Lokuram (PW2) has stated in para 9 that the plaintiffs and defendants have separated in residence and are cultivating their respective agricultural lands.

14. Roop Singh (PW4) has stated in para 11 of his evidence that as far as property situated in village – Hatkachora is concerned, the same is being cultivated separately since life time of Kaali Singh. In para 14, this witness has admitted that Kaali Singh, Hari, Arjun and Sukru though resided with each other but they were separate in residence and were also separately earning ever since life time of Kaali Singh. Most importantly, Tulsi Ram (PW5) - plaintiff No.2 has stated that his father namely Sukru used to cultivate the property situated in village – Sonwra but not that situated in village – Hatkachora.

In para 20 of his evidence, he has admitted that the land situated in village – Hatkachora was purchased by Kaali Singh. He has also admitted that the property situated in village – Sonwra was also purchased by Kaali Singh. He, then, admits that the property situated in village – Hatkachora is owned and cultivated by Kaali Singh and that situated in village – Sonwra is cultivated by him.

15. The aforesaid clinching evidence in the form of admission of the plaintiff witnesses was completely ignored from consideration by the learned lower Appellate Court that as far as the property situated in village – Hatkachora is concerned, it was the property which did not form part of the joint family property but it was the self acquired property of Kaali Singh. However, even if this Court comes to the conclusion that the finding of the learned lower Appellate Court that the property situated in village – Hatkachora constitutes part of joint family property was perverse and therefore, not sustainable in law, it is found that as far as status of property situated in village – Sonwra is concerned, the defendants have clearly admitted that the said property constitutes ancestral property of the plaintiffs and defendants. Specific admission in this regard has been made by the defendants in their written statement in paragraphs 4 and 8 both, wherein, they have admitted that the property described in Part B i.e. village – Sonwra is an ancestral property and that the property at village – Hatkachora is self acquired property of Kaali Singh.

16. In that view of the matter, the plaintiffs' suit was liable to be decreed at least in part in respect of the property situated in village – Sonwra and as described in Part – B of para 4 of the plaint. That property stated to be 32.16 acres situated in various khasra numbers at village – Sonwra, P.H. No.39, Tah.- Jagdalpur.

17. In the result, the impugned judgment and decree of the learned lower Appellate Court is modified and it is held that the plaintiffs' suit in respect of land admeasuring 19.48 acres situated in village – Hatkachora and described in clause A of para 4 is liable to be dismissed. It is declared that the land admeasuring 32.16 acres situated in village – Sonwra and described in clause B of para 4 are joint family property of plaintiffs and defendants and the plaintiffs are entitled to

partition of the same. Moreover, taking into consideration that this property has been admitted to be ancestral property, out of 32.16 acres of the land, brothers Lekhan, Budhram and Govind shall take equal share. Thus, property admeasuring 32.16 acres, situated in village – Sonwara shall be partitioned equally in the three branches of Lekhan, Budhram and Govind.

18. Accordingly, the appeal is partly allowed. The parties shall bear their respective costs. Let appellate decree be accordingly drawn.

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