

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 151 of 2003

Brij Bhan Singh, aged about 55 years, son of Shri Rampaal Singh, resident of Mahabeerpara, Ambikapur, Distt. Surguja (Chhattisgarh)

---- Appellant

Versus

1. Hanuman Singh, aged about 33 years, S/o Shri Vikram Singh, Occupation -Service, R/o Mahabeerpara Nagar Ambikapur, PS and Tah. Ambikapur, Distt. Surguja (CG)
2. Vikram Singh (dead) through LRs:
 - 2 (i) Smt. Gulab Devi, aged 70 years, Widow
 - 2 (ii) Hanuman Singh, 50 years, Son (already on record as respondent No.1)
 - 2 (iii) Smt. Rama Singh W/o Raghvendra Singh, aged 46 years, Daughter
 - 2 (iv) Smt. Shyama @ Manisha Singh W/o Mahendra Singh, 44 years, Daughter
 - 2 (v) Smt. Krishna Singh @ Kiran, W/o Kishan Singh, aged 42 years, Daughter
 - 2 (vi) Smt. Uma Singh, W/o Devendra Singh, 40 years, Daughter
 - 2 (vii) Smt. Sushma, W/o Bharat Singh, aged 38 years, Daughter
 - 2 (viii) Smt. Manju Singh, W/o Yuvraj Singh, aged 36 years, Daughter
 - 2 (ix) Smt. Nitu Singh, W/o Naresh Singh, aged 34 years, Daughter
 - 2 (x) Rajesh Singh, S/o Vikram Singh, aged 30 years, SonAll LRs No.2 (i) to 2 (x) resident of D.C. Road Ambikapur
3. Smt. Geeta Devi, aged about 40 years, wife of Shri Abhayraj Singh Sengar, Occupation- Domestic Wife, resident of Sector No.5, Street No.14, Quarter No.31/D, Bhilai, PO. Bhilai, District- Durg.

---- Respondents

For Appellant	:	Shri Nishikant Sinha
For Respondents	:	None appeared

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

Order On Board

01/08/2019

1. This appeal is directed against the impugned judgment and decree dated 13th February 2003 passed by learned Second Additional District Judge, Ambikapur, District- Sarguja in Civil Appeal No.117-A /2002 arising out of judgment and decree dated 17.5.1996 passed by learned Third Civil Judge Class-II, Ambikapur in Civil Suit No.249-A of 1990, by which respondents/defendants appeal has been allowed and the judgment and decree passed by the trial Court in favour of appellant/plaintiff has been set aside and suit dismissed.
2. This appeal was admitted on following two substantial questions of law :
 1. Whether the lower appellate Court was justified in reversing a well reasoned judgment and decree passed by the trial Court declaring and granting relief and 1/3rd share between appellant and respondent No. 2 & 3 ?
 2. Whether the lower appellate Court erred in not taking into consideration the application under Order 41 Rule 27 CPC for filing registered gift deed executed by Laxmi Bai ?"
3. The appellant – plaintiff filed a suit seeking decree of declaration and permanent injunction on the pleadings, inter alia, that the property described in Schedule -"A" appended to the plaint belongs to joint Hindu Family Property as it was acquired from the funds of joint Hindu Family consisting of the plaintiff, his father- Rampaal and elder brother Vikram Singh. According to the plaint's pleadings, there was no partition of the joint Hindu Family and even though the property in dispute was acquired from the funds of joint Hindu Family, for convenience, the sale deed was recorded in the name of defendant No.2-Laxmi Bai, the mother of the plaintiff. According to the plaintiff, in the joint family property, the plaintiff and defendants Rampaal and Vikram (father and the brother respectively) were the shareholders and each of them is entitled to 1/3rd share. Further

pleading was that the plaintiff came to know that the defendant No.1 has applied for mutation of his name in respect of 2 & ½ decimal of the joint family property in his name, on the basis of a gift deed claimed to have been made in his favour by defendant No.2- Laxmi Bai. An objection was raised by the plaintiff which was rejected. The so called gift made by defendant No.2 in favour of defendant No.1 gave the plaintiff cause of action to file a suit seeking a declaration that the property in dispute is joint Hindu Family Property and defendant No.2, mother of the plaintiff, had no right to gift any part of the property to anyone including defendant No.1. The relief sought in the plaint, therefore, was that the disputed property be declared as joint family property of the plaintiff, his father- Rampaal and brother- Vikram Singh and the gift made in favour of defendant No.1 be declared void, inoperative and the mutation orders be also declared as illegal and inoperative. Consequential relief of injunction was also sought.

4. Defendants No.1, 2 & 4 filed their joint written statement, in which, status of the property in dispute as joint family property was specifically denied and it was pleaded that the property was self acquired property of defendant No.2 and a valid gift of a part of this property was made by defendant No.2 in favour of defendant No.1, her grand-son. Defendant No.3, father of the plaintiff, however, did not file any written statement.
5. Learned trial Court framed as many as six issues. The first issue was whether the property in dispute described in Schedule-"A" is a joint family property purchased from the income of the joint family. The second issue was whether there has been any partition. The third issue was whether the gift deed of property as described in Schedule-"B" is illegal and inoperative. An issue as to whether plaintiff is estopped by principle of estoppel from disputing gift deed was also framed as issue No.5. Issue with regard to plaintiff's entitlement to get relief of permanent injunction and other relief were also framed as issues No.4 & 6.
6. Learned trial Court vide its judgment and decree dated 17.5.1996, partly decreed the suit of the plaintiff. Learned trial Court, though, held that the plaintiff failed to prove that it was joint family property and recorded a finding that property was not joint family property but self acquired property of defendant No.2 Laxmi Bai, it held that the gift deed was illegal

and in operative in law and that plaintiff was not estopped from challenging the same. During the pendency of the suit, defendant No.2 Laxmi died. This subsequent event was taken into consideration by learned trial Court on admitted facts regarding her death and taking into consideration that the property, even if treated as self-acquired property, upon death of Laxmi Bai devolved by way of succession on the plaintiff and other survivors namely defendant No.1 (son of Vikram Singh) who Vikram Singh and Smt. Geeta Devi daughter of Laxmi & Rajpaal (sister of plaintiff Brijbhan Singh and defendant- Vikram) who are entitled to equal share to the extent 1/3rd in the property and thus, partly decreed the suit in the manner that plaintiff, defendant No.2 and defendant No.3 are declared as joint owner in title of the property in dispute and the gift deed is declared null and void.

7. Aggrieved by the aforesaid judgment and decree, the defendants preferred an appeal. Learned lower appellate Court reversed the judgment and decree. While concurring with the trial Court's finding that the property in dispute described in Schedule -"A" was not joint family property but self acquired property of defendant No.2 Laxmi, it held that the plaintiff was estopped from challenging the gift deed executed by Laxmi in favour of defendant No.1- Hanuman Singh. Learned lower appellate Court, however, did not advert to other finding recorded by the trial Court by taking notice of the subsequent event of death of Laxmi and without traversing those finding, set aside the trial Court's judgment in its entirety and dismissed the suit.
8. At the outset, submission of learned counsel for the appellant is that he does not press the second substantial question of law as that question arises on the aspect of rejection of application under Order 41 Rule 27 CPC which was filed not by the appellant but by the defendant during appeal before the Court below. He further submits that he would not be pressing his application under Order 41 Rule 27 CPC filed before this Court. Therefore, the application (IA No.2) for bringing on record additional evidence filed by the appellant is dismissed as not pressed.
9. The main contention of learned counsel for the appellant is that even though, learned trial Court recorded a finding that property in dispute was not joint family property but self acquired property of defendant- Laxmi,

taking cognizance of subsequent event that Laxmi Bai died during pendency of the suit on 4.12.1995 and it being an admitted position on record by all the parties that she was survived by plaintiff, defendant No.2- Vikram Singh and her daughter Geeta Devi (defendant No.3), declared them as joint owner of the property. Even assuming that the gift deed in respect of small portion of joint family property was rightly held legal and valid by the learned lower appellate Court, the declaration of joint ownership of the property in dispute in favour of the appellant- Vikram Singh and Geeta (sons and daughter of Laxmi respectively) was not liable to be interfered with. It is argued that in fact, the finding recorded by learned trial Court in this regard as contained in para-35 & 36 have not been traversed. The appellate Court has completely omitted to record any reason and without adverting to the aforesaid admitted factual position and established legal position regarding right of the plaintiff, upon death of his mother Laxmi, the entire judgment and decree passed by learned trial Court and plaintiff suit has been dismissed. Relying upon the judgment of the High Court of Madhya Pradesh in the case of **Madhu Sudan Gupta Vs. State of Madhya Pradesh and Ors.** (1991 MPLJ 712) and judgment of Karnatka High Court in **Rangappa Vs. Jayamma** reported in ILR 1987 Kar. 2889, it is submitted that subsequent event, based on the same cause of action and admitted facts could be made a basis to mould the relief sought by the plaintiff in respect of his interest over the disputed property. He would submit that provision contained in Order VII Rule 7 CPC empowers the trial Court to mould relief in view of subsequent event. He would also submit that even if the property was declared to be a self acquired property of Laxmi, mother of the plaintiff and defendant- Vikram Singh and Geeta Devi, after death of Laxmi, being her legal heirs would be entitled to succeed to the property in accordance with provision contained in Hindu Succession Act and as Laxmi was survived by two sons and one daughter, including plaintiff and two defendants, learned trial Court moulded the relief in favour of plaintiff and declared that plaintiff and defendant- Vikram Singh and Geeta Devi were entitled to jointly succeed to the property of deceased Laxmi.

10. From the impugned judgment and decree of learned lower appellate Court, it is found that learned lower appellate Court confined its consideration on

two issues framed by learned trial Court. One - whether the disputed property was joint family property and secondly whether the plaintiff was estopped from challenging the gift deed and whether the gift deed was legal and valid. The learned lower appellate Court recorded a concurrent finding that entire property shown in Schedule-"A" was self acquired property of deceased Laxmi and not joint family property. It also recorded a finding that the plaintiff was estopped from challenging gift deed. However, despite all this finding having been recorded in favour of defendant and against plaintiff, learned lower appellate Court did not at all advert to the finding which were recorded by learned trial Court in para 35 & 36 of its judgment, based mainly on happening of subsequent event that during the pendency of the suit, Laxmi died. Relying upon several authorities, learned trial Court moulded the relief and having found that it was an admitted position on record that plaintiff and defendant and his brother- Vikram and Sister- Geeta were admittedly successors of Laxmi being sons and daughter, declared the disputed property to be in the joint ownership and title of plaintiff- Brijbhan Singh and defendants- Vikram and Geeta. Learned lower appellate Court simply did not advert to this finding and without traversing this finding recorded by learned trial Court, set aside the judgment and decree of learned trial Court in its entirety and dismissed the suit.

11. Impugned judgment and decree of learned lower appellate Court suffers not only from the aforesaid defect of not adverting to and not traversing the finding contained in para-35 and 36 of the judgment of trial Court, but also without considering the power of the trial Court to grant appropriate relief for which it is empowered under Order VII Rule 7 CPC, which read thus:

"ORDER VII : PLAINT

7. Relief to be specially stated:

Every Complaint shall state specifically the relief which the plaintiff claims either simply or in the alternative and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for. And the same rule shall apply

to any relief claimed by the defendant in his written statement.”

12. The words “*and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for*” are wide enough to empower the Court to grant such relief as the plaintiff is entitled to, on the facts established on the evidence on record, even if such relief has not been specifically prayed for.

13. The Supreme Court in the case of **Kedar Lal Seal and Anr. Vs. Hari Lal Seal** (AIR 1952 SC 47) observed thus :

“51. I would be slow to throw out a claim on a mere technicality of pleading when the substance of the thing is there and no prejudice is caused to the other side, however clumsily or inartistically the plaint may be worded. In any event, it is always open to a Court to give a plaintiff such general or other relief as it deems just to the same extent as if it had been asked for, provided that occasions no prejudice to the other side beyond what can be compensated for in costs.”

14. Further, in the case of **Rangappa** (supra) also, the scope of provision under Order VII Rule 7 CPC were considered in following manner:-

“8.1. The provisions of Order VII Rule 7 of the C.P.Code are so widely worded that they do enable the Court to pass a decree for partition in a suit for declaration of title to immovable property and possession thereof where it turns out that the plaintiff is not entitled to all the interest claimed by him in the suit property. In such a situation there is nothing unusual in giving relief to the parties by directing partition of the suit property according to the shares of the parties established in the suit. The normal rule that relief not founded on the pleadings should not be granted is not without an exception, Where substantial matters constituting the title of

all the parties are touched in the issues and have been fully put in evidence, the case does not fall within the aforesaid rule. The Court has to look into the substance of the claim in determining the nature of the relief to be granted. Of course, the Court while moulding the relief must take care to see that relief it grants is not inconsistent with the plaintiff's claim, and is based on the same cause of action on which the relief claimed in the suit, that it occasions no prejudice or causes embarrassment to the other side; that it is not larger than the one claimed in the suit, even if, the plaintiff is really entitled to it, unless he amends the plaint; that it had not been barred by time on the date of presentation of the plaint.

8.2. No doubt the plaintiff has sought for exclusive title and he has not been able to prove his exclusive title; but has been able to prove that he is entitled to a half share in the suit properties. When a party claims exclusive title to the suit property and is able to establish that he is entitled to half of the suit property, it will not be unusual for the Court to pass a decree for partition and possession of his half share. In fact such a relief flows from the relief prayed for in the plaint that he is the exclusive owner of the entire property. When a larger relief is claimed and what is established is not the entire relief claimed in the suit but a part of it, as whole includes a part, larger relief includes smaller relief, and it also arises out of the same cause of action. Therefore in the instant case, nothing prevented the Court to pass a decree for partition, in order to avoid another suit for partition and to give relief to the party in conformity with the right he had established."

A settled legal position in this regard observed by different High Courts was also considered in the aforesaid judgment as below:-

"8.4. In Gangaram Ramachandra v. Buthru Sao and Ors., AIR 1952 Nagpur 202 a Division Bench consisting of Bose and Hidayathulla, JJ. (as they were then) did not see any reason as to why "a suit for exclusive possession of 16 Annas cannot be turned into a suit for partition and possession of such share as may be determined to belong to the plaintiff, if the defendants, contend or it is found that the plaintiff is not entitled to the whole but only to a part".

"8.5 A Division Bench of the High Court of Patna in Katiar Jute Mills Ltd., v. Calcutta Match Works, has observed that the phrase "general or other relief" occurring in Order VII Rule 7 C.P.C is an omnibus phrase wide enough to cover all such reliefs as are consistent with the averments made in the plaint.

8.6 Coming nearer, in M. Lingappa v. Chennabasappa, (1917) 22 Mysore Chief Court Reports, 293, a Division Bench of the former Mysore Chief Court held as valid a decree for partition and separate possession passed by the Trial Court to the extent of the share of the plaintiff-coparcener in a suit filed by him to set aside the alienation made during his minority by his undivided brother and mother of a specific portion of the whole of the family property and to eject the alienee from the entire lands alienated, on a finding that the alienation was not binding on the plaintiff's share. It was further observed that :

"In these cases one object of the parties and the Courts must be to prevent unnecessary litigation so

far as may be ; the position of a purchaser from a member of a joint family is somewhat anomalous (Gurulingappa v. Nandappa (1896) ILR XXI Bom. 797) and in working out his rights as between himself and members of the family who are not responsible for the sale to him, we must bear in mind on the one hand the fact that his purchase is valid and on the other the fact that the members of the family are not to be prejudiced. It will therefore, be right to deal with each case on its own merits and not to try to lay down a hard and fast rule applicable to all cases. The question will be how can the rights of the contending parties be settled with the least inconvenience and without injustice to any of them."

Again in Ramaiah v. Siddalingappa, (1943) 48 Mysore High Court Reports, 317 following the aforesaid decision in Lingappa's case⁴ in a suit, brought by the purchasers of specific plots in a particular property belonging to a Hindu Joint Family owning extensive property, for possession of what they had purchased and in the alternative for partition of that particular property, on being found that the plots sold to the plaintiffs were less than the share of the vendor at the time of the sale, it was held that the suit was maintainable though it was not for a general partition ; that in the circumstances of the case, the plaintiffs were entitled to a decree for partition of a particular item of the joint family property they had purchased.

8.7 In Rame Gowda v. Kuntalinge Gowda and Ors., b(1950) 55 Mysore High Court Reports, 240, a Division Bench following the aforesaid two decisions in Lingappa⁴ and Ramaiah's cases? held

thus :

"Though this is a suit for declaration of title and possession only, there is nothing unusual in giving relief to the parties by directing a partition of the properties as has been done in other cases of this kind in order to avoid unnecessary litigation and waste of time of Courts ; vide Lingappa v. Chennabasappa (1917) 22 Mys. C.C.R. 293) and Ramaiah v. Siddalingappa (1942) 48 Mys. H.C.R. 317)."

Thus, apart from the fact that the view taken by us is quite in conformity with the provisions contained in Order VII Rule 7 of C.P.C. which are in very wide terms, it also receives support from the several authorities referred to above. For the reasons stated above, we hold that the Trial Court is not justified in refusing to pass a preliminary decree for partition and separate possession of the plaintiff's half share in the suit properties. Point No. 2 is accordingly answered in the negative and in favour of the plaintiff-appellant."

15.The plaintiff sought a declaration that the property be declared joint family property. However, after death of his mother Laxmi, on admitted position on record with regard to surviving descendants of Laxmi, the learned trial court moulded the relief declaring that the plaintiff and his brother and sister, the two defendants, are declared joint owner of the property in dispute. In the considered opinion of this Court, the view which was taken by learned trial Court could not be said to be illegal or otherwise contrary to law.

16.In the result, the first question of law is answered in the manner that the learned lower appellate Court was not justified in reversing the well reasoned judgment passed by learned trial Court and dismissing the entire suit of the plaintiff even though the property was not held to be joint family

property and gift deed was held legal and valid and plaintiff is entitled to declaratory decree that property in dispute as described in Schedule- "A" of the plaint is jointly owned in title by way of succession by the plaintiff Brijbhan Singh and his brother- Vikram Singh and sister-Geeta Devi.

17.The appeal is accordingly partly allowed. Parties shall bear their respective costs. Let an appellate decree be drawn accordingly.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Praveen