

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No.11 of 2002

1. Ganga (Died) Through Legal Heirs

1(a) Vishnu Ram, S/o late Ganga Ram, aged about 45 yrs., R/o Village-Chathirma, P.S. and Tahsil- Ambikapur, District Surguja (CG)

2. Komal, S/o Ganga Rajwar, Aged About 25 Years, R/o Village Chathirma, P.S. And Tehsil Ambikapur, District- Surguja, Chhattisgarh

3. Jeetan, S/o Saghnu, Aged About 32 Years, R/o Village Chathirma, P.S. And Tehsil Ambikapur, District- Surguja, Chhattisgarh

4. Ramsay, S/o Saghnu, Aged About 25 Years R/o Village Chathirma, P.S. And Tehsil Ambikapur, District- Surguja, Chhattisgarh

5. Ramratan, S/o Mahadev, Aged About 42 Years, R/o Village Chathirma, P.S. And Tehsil Ambikapur, District- Surguja, Chhattisgarh

6. Thaula, S/o Shivprasad, Aged About 28 Years, R/o Village Chathirma, P.S. And Tehsil Ambikapur, District- Surguja, Chhattisgarh

--- Appellants/Defendants

Versus

1. Bachu Rajwar, S/o Saghnu Rajwar, Aged About 40 Years, Occupation Agriculture, R/o Village Chathirma, Teh. Ambikapur, District- Surguja, Chhattisgarh

2. Hariram, Aged About 34 Years, R/o Village Chathirma, Teh. Ambikapur, District- Surguja, Chhattisgarh -- **Respondents/Plaintiffs**

For Appellants/Defendants	:	Mr. A.K. Prasad, Advocate
For respondents/Plaintiffs	:	None appears

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

24/07/2019

Heard.

Despite service of notice, there is no representation made by the respondents.

1. This appeal is directed against impugned judgment and decree dated

02.11.2001 passed by the First Additional Sessions Judge, Ambikapur, District Surguja in Civil Appeal No.98-A/2001, by which, the first appeal of the present appellants/defendants has been dismissed and judgment and decree of the learned Trial Court affirmed, granting a decree of permanent injunction in favour of the plaintiffs/respondents herein.

2. This appeal was admitted on following substantial questions of law :

“Whether the Court below has committed an error of law in passing of the two orders by granting permanent injunction against the co-owner of the joint family property particularly in the light of the fact that the established position being that the property is joint family property as is evident from Annexure D/1 & D/2 ?”

3. The respondents/plaintiffs filed a suit seeking decree of permanent injunction and damages on the pleadings that the property in dispute, described in Schedule-A of the plaint, are self-acquired properties of the plaintiffs. It was pleaded that the plaintiffs and defendants belong to joint family but the parties had separated during survey settlement long back and since then, they are residing and doing their business separately and they are not joint in any manner. According to the plaintiffs, the defendants started interfering with the peaceful possession of the plaintiffs, therefore, the plaintiffs were required to seek permanent injunction in respect of land comprised in Khasra No.254, 255 & 256 where the defendants are interfering with his possession.

4. While defendant No.5 was proceeded ex-parte, all other defendants filed a joint statement, in which, they claimed that the property in dispute is the joint family property of the plaintiffs and defendants and it has never been partitioned but the plaintiff fraudulently got his name registered in the revenue records on 15.11.1987. The defendants specifically denied that the disputed property comprised in Khasra No.254, 255 & 256 is the self-acquired property of the plaintiffs. It was pleaded that the land comprised in Khasra No.256 was recorded as Dila Bargah land and land comprised in Khasra No.254 & 255 were settled, jointly in the name of Jaggu Rajwar, Saghan Rajwar, Bandhan Rajwar, Aghnu Rajwar, who were sons of Ramnath Rajwar.

5. Learned Trial Court framed as many as 7 issues.

6. Issue No.6 as framed was whether there is valid partition of the joint

family property of the parties. This issue was framed because while according to the plaintiff, partition had taken place long back during survey settlement and he claimed the property to be self-acquired property, the defendants denied any partition and stated that the property in dispute is and continuous to be joint family property. Learned trial Court recorded a finding on the aforesaid issue that a partition has taken place amongst the parties in view of the evidence of Defendant Ganga, who was examined as Defendant Witness No.1 as he deposed that a partition had taken place. This finding was also affirmed by learned Lower Appellate Court. On this conclusion that a partition had already taken place, learned Court below granted decree of permanent injunction in favour of plaintiffs based on a finding of his long possession over the property in dispute as concluded on Issue No.1 as to whether the plaintiffs had remained in possession of the property in dispute and cultivating since 25-30 years.

7. Learned counsel for the appellants would argue that the plaintiffs' suit was liable to be dismissed as the plaintiffs' claim was not based on receipt of disputed property as share upon so-called partition but on the plea that the property in dispute was self-acquired. According to him, the plaintiffs neither pleaded nor led any evidence whatsoever as to how and in what manner, they acquired the disputed property. Once the Trial Court recorded a finding that the property was joint family property, the plaintiffs' suit was bound to fail. Next submission of learned counsel for the appellants is that the property in dispute, as shown in Schedule-A, much less property comprised in Khasra No.254, 255 & 256, in respect of which, injunction was sought, could be established to be one received by the plaintiffs in partition. He would argue that the plaintiffs' suit could not be decreed, unless the plaintiffs either proved that it was a self-acquired property or that the property in dispute was received by him as his share upon partition. It is argued that once the property has been found to be recorded as joint family property, the burden was on the plaintiff to prove that it was subsequently partitioned and in that partition, he got his share as lands comprised in property shown in the plaint.

8. The plaintiffs' suit for decree of permanent injunction and damages is based on the pleading that the parties, who belong to joint family had separated in all respect at the time of survey settlement long ago and since then, they have been residing, cultivating and doing their business separately and not living jointly in any respect. The plaintiffs sought a decree

of permanent injunction on the basis that the property in dispute is the self-acquired one. However, in the plaint, there was no pleading as to how and in what manner, they acquired the properties in dispute. There was no pleading of the property having been acquired by way of sale or by other modes of transfer nor any pleading that any Government lease of the agriculture land was made in their favour. Except bald settlement in the plaint that the property in dispute was self-acquired property, no specific pleading was made.

9. On the other hand, the defendants not only came out with the pleading of the property in dispute being joint family property but also led in evidence two important documentary evidence Ex.D-1 and Ex.D-2 which are records of Sarguja State settlement of village Chatirma. The rayati land under Khata No.13 is shown to be recorded jointly in the name of Jaggu Rajwar, Saghan Rajwar, Bandhan Rajwar, Aghnu Rajwar, all son of Ramnath Rajwar in respect of 24 acres of land comprised in Khasra Nos.147, 243, 242, 236, 245, 235, 248, 237, 255, 256 and 254. Land comprised in Khasra No. 123,132, 133, 134, 146, 241, 252 and 256 were shown to be recorded in the name of Dilla Bargah, son of Mahto Bargah under Khata No.16 in the Sarguja State settlement. Learned Courts below having not disbelieved the aforesaid two clinching documentary evidence of the earliest time, it is clearly established that the disputed property in respect of which the plaintiffs sought a decree of permanent injunction were joint family properties. The plaintiffs claim that during survey settlement, itself, a partition had taken place, was required to be established as it was his burden to prove this fact as to when, how and in what manner, partition took place and which part of the joint family property was allotted to the plaintiffs share.

10. The learned Trial Court recorded a finding of partition based on what has been stated by Defendant No.1/Ganga Ram in his evidence. Even in the evidence of Ganga Ram, there are no specific details as to when and in what manner partition, had taken place amongst the family members and if so which part of the joint family property was allotted to the plaintiffs and what was the extent of the land which was allotted to his share.

11. The Plaintiffs' suit was liable to be dismissed, once, he failed to prove that the property was self-acquired property and that there had been a valid partition in which, the property in dispute allotted to his share. It is to be noticed that the plaintiffs sought decree of permanent injunction in respect of

entire extent of the property which were shown to be joint family property under revenue settlement Ex.D-1. That means that the plaintiffs' claim of partition at the time of survey settlement, was not established. Learned Courts below granted a decree of permanent injunction in favour of the plaintiffs on the basis of a bald statement of partition in the evidence of Defendant No.1/Ganga Ram without there being any details of partition and share received by various shareholders. Once the property is proved to be joint family property, as has been held by the learned Courts below, the presumption of jointness placed burden on the plaintiffs, who pleaded partition of joint family property. The plaintiffs having failed to discharge their burden, it has to be held that the property remained in jointness and therefore, no decree of permanent injunction could be granted in favour of the plaintiffs.

12. In the result, the substantial question of law is answered in affirmative that the Courts below committed patent error of law and perversity in granting permanent injunction in favour of the plaintiffs against the defendants the co-owner of the joint family property.

13. In the result, the appeal is allowed and the impugned judgment and decree is set aside and the plaintiffs' suit is accordingly dismissed. Parties to bear their respective costs.

14. Let appellate decree be accordingly drawn.

Sd/-

(Manindra Mohan Shrivastava)

Judge