

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 202 of 2005**

Shashikala Manikpuri, D/o Punidas, Aged about 33 years, R/o
Chandani Chowk, Kududand, Bilaspur (C.G.)

---- Appellant/Plaintiff

Versus

1. Komal Singh, Aged -38 years, S/o – Natthu Lal Caste-Gond, R/o Jagdalla, Tahsil – Champa, Distt – Janjgir-Champa (C.G.)
2. Dindal Das @ Pitar Das, Aged-40 years, S/o Prem Das, Cate-Panika, R/o Jagdalla, Tahsil – Champa, Distt- Janjgir-Champa (C.G.)
3. State of Chhatisgarh, Through – Collector, Janjgir- Champa (C.G.)

---- Respondents/defendants.

For Appellant	:	Mr. Sanjay Patel, Advocate
For Respondent No. 1	:	Mr. Ramakant Pandey, Advocate.
For Respondent No. 3	:	Ms. Anjali Singh Chouhan, PL

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

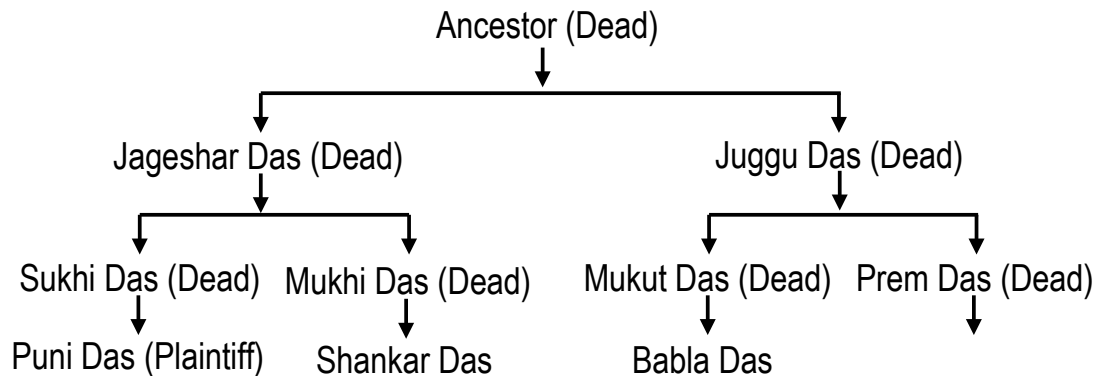
14/08/2019

(1) The substantial question of law involved, formulated and to be answered in this second appeal preferred by plaintiff states as under:

“Whether ignoring material evidence the 1st Appellate Court has reversed the judgment and decree passed by the trial Court ?

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

(2) The following genealogical tree would demonstrate the relationship among the parties :



(2.1) The plaintiff - Punidas filed a suit for possession and permanent injunction stating inter alia that Khasra No. 179, area 3.76 acres was abadi land possessed by his ancestors, out of which 464 squar meter was possessed by the father of plaintiff, who got the land in partition, and after his death, the plaintiff became the owner and title holder of the aforesaid land. In the year 1989, defendant No. 1 forcefully encroached upon 1020 sq.ft. of land (suit land) stating that he has purchased the said land from defendant No. 2 – Didaldas, as such, defendant No. 2 has no right to sell the suit land and defendant No. 1 be restrained from raising construction over the suit land by granting decree in his favour.

(2.2) Defendant No. 2 remained ex parte and did not file written statement whereas defendant No. 1 by filing written staement claimed to be bonafide purchaser of the suit land from defendant No. 2 on 13.07.1989 (Ex.D-1) and in possession of the said suit land.

(3) The trial Court, by its judgment & decree dated 15.01.2001 passed in Civil Suit No. 2-A/93, after appreciating oral and documentary evidence available on record, decreed the suit holding that the plaintiff is title holder of the suit land.

Defendant No. 1 preferred first appeal thereagainst. The first appellate Court after re-appreciating oral and documentary evidence available on record held that defendant No. 2 was having equal right along with Sukhidas, Mukhidas, Muktdas and Premdas and, therefore, he is entitled to alienate the land to defendant No. 1 and allowed the appeal and set aside the judgment & decree of the trial Court.

(4) Mr. Sanjay Patel, learned counsel for the appellant/plaintiff would submit that the first appellate Court is absolutely unjustified in dismissing the suit of the plaintiff by granting appeal filed by defendant No. 1 and, therefore, judgment and decree of the first appellate Court is set aside and that of trial Court be restored and the plaintiff's suit be decreed.

(5) Per contra, learned counsel for respondent No. 1 would support the impugned judgment & decree of the trial court.

(6) I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and went through the record with utmost circumspection.

(7) The first appellate Court, while dismissing the plaintiff's suit, held that the suit property was the joint family property, which was undivided property, as the suit property belongs to plaintiff's father and his uncle and defendant No. 2's father and his uncle and, therefore, the defendant No. 2 is entitled to alienate the land in favour of defendant No. 1.

(8) It is well settled that purchasers of undivided share in a joint family property are not entitled to possession of the land what they have purchased (see **M.V.S.**

Manikayala Rao v. M. Narasimhaswami¹).

(9) In the matter of **Ramdayal v. Manakla**², a Full Bench of the Madhya Pradesh High Court has clearly held that purchaser of an undivided interest of coparcenary property can only obtain under the sale an undivided interest of the alienating coparcener and a right to claim general partition by way of suit. The said decision has been followed with approval by the Madhya Pradesh High Court in the matter of **Maharu and others v. Dhansai and other respondents**³. Paras 10 and 11 of **Maharu's** case (supra) state as under:-

“10. From the statement of law by the Full Bench it can no longer be a subject of debate that the present purchasers could only obtain under the sale an undivided interest of the alienating coparcener and a right to claim general partition by way of suit. The purchaser only steps into the shoes of the transferor and is invested with all the rights and is subject to all the disabilities of the transferor. He at best, is entitled to only joint possession with the non-alienating co-owners and if resisted he may recover joint possession by a suit. He is, in fact, only bound by the arrangements, if any, as to exclusive possession by different co-owners entered into, before he acquired the interest in the joint property. In this case there is nothing on record to show that his vendor, under a mutual arrangement amongst the coparceners was in exclusive possession of the land transferred by him. Even under the principles of Section 44 of the Transfer of Property Act the transferee from a co-owner acquires the transferee's right to joint possession or other common or part enjoyment of the property and to enforce a partition of the same and subject to the conditions and liabilities affecting, at the date of transfer, the share or interest transferred to him. The aforesaid section also only assures to transferee's right to joint possession or common enjoyment of the property but does not confer on the transferee any right to exclusive possession even where the transferor was in such a possession. There are a few cases such as Sukh Dev v. Pari, AIR 1940 Lahore 473-474 and Chanderbhan v. Jailal, AIR 1964 Punjab 435 which take a view that if there existed any arrangement inter se between the coparceners or co-owners under which one of them is in exclusive possession of a portion

1 AIR 1966 SC 470

2 AIR 1973 Madhya Pradesh 222

3 AIR 1992 Madhya Pradesh 220

of joint property, a transferee from him, is entitled to enjoy the benefits of exclusive possession by virtue of the transfer in his favour.

11. In the instant case, however, there is no pleading of any such inter se arrangement between the coparceners. It is also not the case of the purchasers that the alienating member who placed them into possession, was in exclusive possession and enjoyment of the suit land sold in their favour. In a situation obtaining as in this case the purchasers, therefore, had only a right to remain in joint possession of the coparcenary property and to work out their rights by bringing a suit for general partition and claim in that suit allotment of the alienated property to the share of their vendor. The purchasers can claim no larger right than what their vendor, as member of the coparcenary, possessed.”

(10) In the matter of **Gajara Vishnu Gosavi v. Prakash Nanasaheb Kamble and others**⁴, the Supreme Court has held as under:-

“13. Thus, in view of the above, the law emerges to the effect that in a given case of an undivided share of a coparcener can be a subject-matter of sale/transfer, but possession cannot be handed over to the vendee unless the property is partitioned by metes and bounds, either by the decree of a court in a partition suit, or by settlement among the co-sharers.”

(11) The principle of law laid down in **Gajara Vishnu Gosavi** (supra) has been followed with approval by the Supreme Court in the matter of **Syscon Consultants Private Limited v. Primella Sanitary Products Private Limited and another**⁵.

(12) Thus, the crystallised legal view is that an undivided share of a coparcener can be a subject-matter of sale/transfer, but possession cannot be handed-over to the vendee unless the property is partitioned by metes and bounds or by decree of court in partition suit.

(13) Following the principle of law laid down by the Supreme Court and the High Court of Madhya Pradesh in the afore-cited cases (supra), it is quite vivid that the

4 (2009) 10 SCC 654

5 (2016) 10 SCC 353

suit property belongs to plaintiff's father and his uncle and defendant No. 2's father and his uncle and, therefore, though alienation can be made by defendant No. 2 but the said alienation made by defendant No. 2 in favour of defendant No. 1 is not binding on the plaintiff, but the plaintiff would not be entitled for decree of exclusive title in his favour and the remedy of purchaser/defendant No. 1 is to seek decree for partition.

(14) In view of foregoing, the second appeal is allowed in part. Judgment & decree of the first appellate Court is partly set aside. It is held that alienation made by defendant No. 2 in favour of defendant No. 1 is not binding on the plaintiff and defendant No. 1 is at liberty to seek decree for partition. Substantial question of law is answered in favour of plaintiff and against the defendants leaving the parties to bear their own costs.

(15) Decree be drawn up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

D/-

(Sanjay K. Agrawal)
Judge

