

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 338 of 2003

1. Madangopal Byas (Dead) through LR's.:

1(a) Smt. Laxmi Vyas Wd/o Late Madan Gopal Vyas Aged About 68 Years R/o Budha Para, Near Hanuman Mandir, P.S. Purani Basti, Post-Purani Basti, Tahsil - Raipur, District Raipur Chhattisgarh , Chhattisgarh

1(b) U. N. Vyas S/o Late Madan Gopal Vyas, Aged About 48 Years R/o Budha Para, Near Hanuman Mandir, P. S. Purani Basti, Post Purani Basti, Tahsil Raipur, District Raipur Chhattisgarh

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Versus

1. Siriya S/o Jhaduram Aged About 57 Years Caste Satnami, Occupation Agriculture, R/o Village Karhi, Tehsil Bemetara, Distt. Durg Chhattisgarh , Chhattisgarh

2. Kartik S/o Jhaduram Aged About 45 Years Caste Satnami, Occupation Agriculture, R/o Village Karhi, Tehsil Bemetara, Distt. Durg Chhattisgarh , District : Durg, Chhattisgarh

3. Kunwarsingh S/o Jhadram, Aged About 35 Years Caste Satnami, Occupation Agriculture, R/o Village Karhi, Tehsil Bemetara, Distt. Durg Chhattisgarh, District : Durg, Chhattisgarh

4. Bhoram (died) through LR's:

4 (a). Ubaran S/o Late Bhoram, Aged About 25 Years R/o Village Karhi, Tahsil Bemetara, District Bemetara Chhattisgarh

4 (b) Umenda S/o Late Bhoram Bai Aged About 51 Years R/o Village - Karhi, Tahsil - Bemetara, District Bemetara Chhattisgarh., District : Bemetara, Chhattisgarh

4 (c). Naindas S/o Late Bhoram Bai Aged About 49 Years R/o Village - Karhi, Tahsil - Bemetara, District Bemetara Chhattisgarh., District : Bemetara, Chhattisgarh

4 (d). Chaindas S/o Late Bhoram Bai Aged About 47 Years R/o Urla (Birgaon), Near Ubaran House District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

4 (e). Taran Bai D/o Late Bhoram Aged About 55 Years R/o Village - Karhi, Tahsil - Bemetara, District Bemetara Chhattisgarh., District : Bemetara, Chhattisgarh

4 (f). Tar Bai D/o Bhoram Bai Aged About 45 Years R/o Near Belra, Tahsil And District Bemetara Chhattisgarh., District : Bemetara, Chhattisgarh

5. Smt. Budhiyarin (Deleted) As Per Honble Court Order Dated 05.01.2016.
6. Mansharam S/o Jhaduram, Aged About 25 Years Caste Satnami, Occupation Agriculture, R/o Village Karhi, Tehsil Bemetara, Distt. Durg Chhattisgarh, District : Durg, Chhattisgarh
7. The State Of M.P. Now Chhattisgarh Through Collector, Durg, Chhattisgarh.....Defendants, District : Durg, Chhattisgarh

---- Respondents

For Appellants	:	Mr. A.K. Prasad, Advocate
For Respondents 1 to 3, 4 (a) to 4 (f) and 6 :		Mr. J.K. Shastri and Ms. Ranjana Singh Tomar, Advocates
For State	:	Mr. Aditya Bhardwaj, Panel Lawyer

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

Order On Board

31/07/2019

1. This appeal is directed against the impugned judgment and decree dated 19th February 2003 passed by learned Second Additional District Judge (FTC), Bemetara, Durg in Civil Appeal No.2-A/2002, whereby the learned lower appellate Court set aside the judgment and decree dated 2nd February 1992 passed by Civil Judge Class-I Bemetara in Civil Suit No.109-A/1987, thereby dismissing the plaintiff's suit.
2. This appeal was admitted on following two substantial questions of law :
 1. Whether the lower appellate Court was not justified in reversing a well reasoned judgment and decree passed by the trial Court ?
 2. Whether the Jhaduram being the sole and exclusive owner executed the sale deed in favour of Madan Gopal in the year 1974 ?”
3. Madan Gopal filed a suit against widow and sons (defendant) of Late Jhaduram seeking decree of declaration, possession and permanent

injunction on the pleadings inter alia that vide registered sale deed dated 24th June 1974, the plaintiff had purchased land in dispute described in the plaint, from Jhaduram for valuable consideration of Rs.2000/- and also obtained possession. A part of that property claimed to be purchased by the plaintiff, situated in khasra No.153/2 and 155/3 of village Karhi submerged in dam. According to the plaintiff, by virtue of registered sale deed, the plaintiff acquired valid title in respect of the property in dispute. The defendants who are widow and sons of Jhaduram (the vendor), after death of Jhaduram, started disputing the title of the plaintiff and also started interfering with his possession, giving him a cause of action to file suit and seek relief. The plaintiff prayed that he acquired title and bhumi-swami rights in respect of property in dispute by virtue of sale deed dated 24th June 1974 and that the possession of the entire property in dispute be delivered to him and defendant be restrained from interfering with the possession. Damages were also claimed. The order passed by the Settlement Officer on 10.12.1984 was also challenged and declaration was sought that the said order be declared illegal and inoperative in law.

4. Both the defendants disputed plaintiff's claim and said that the so called sale deed dated 24th June 1974 was a sham transaction and Jhaduram never sold the property in favour of the plaintiff and suit has been filed by the plaintiff through a power of attorney holder. According to defendant, the property in dispute was ancestral property of Hindu un-divided family and Jhaduram neither sold the property nor he had right to sell any part of joint family property.
5. Learned trial Court framed as many as nine issues. One of the issues framed by learned trial Court was whether Jhaduram, being the sole owner of the property, had the right to sell the property in dispute. The learned trial Court decreed suit in favour of the plaintiff on the finding that by virtue of registered sale deed dated 24th June 1974 (Ex.P-1), the plaintiff acquired valid title in respect of disputed property.
6. The defendant aggrieved by the judgment and decree passed by the learned trial Court filed an appeal. The learned lower appellate Court, however, recorded a finding that the property in dispute was the joint family property of Late Jhaduram which was received by him from his

ancestors, therefore, it constituted joint family property of the parties. It also recorded a finding that the plaintiff failed to prove that he acquired valid title under the registered sale deed because the witnesses have not come with any clinching evidence to prove that sale transaction had taken place between Jhaduram and the plaintiff. On this finding, learned lower appellate Court allowed the appeal and set aside the judgment and decree of the trial Court and dismissed the suit.

7. Assailing legality and validity of the judgment and decree passed by the learned lower appellate Court, learned counsel for the appellant-plaintiff would argue that the learned lower appellate Court committed illegality in reversing a well reasoned judgment passed by learned trial Court which examined the evidence on record and recorded a finding that the plaintiff had acquired title in respect of the property in dispute by virtue of registered sale deed. He would argue that the plaintiff having rested his claim based on registered sale deed, in the absence of any challenge laid to the same by the defendants, either separately or by way of counter claim in the same suit, learned lower appellate Court could not have recorded a finding against the sale deed. He would next submit that the plaintiff otherwise proved valid execution of sale deed by Jhaduram, father of plaintiff, by examining not only the Document Writer but also one of the witnesses of the sale deed and, therefore, examination of sale deed could not be doubted. He would submit that Jhaduram never disputed the sale deed during his lifetime and it is only after he died that his widow and sons started disputing the sale deed.
8. Learned counsel for the respondents-defendants would argue that plaintiff's suit was not maintainable as it was filed by plaintiff's power of attorney holder on the basis of 'power of attorney' which itself was incapable of giving any authority to file suit on behalf of the plaintiff. He would next submit that, though, the learned lower appellate Court has clearly recorded a finding that the property was joint family property, in the absence of there being any consent given by any of the joint holder namely sons of late Jhaduram, Jhaduram had no authority to sell the property. He would further argue that the learned lower appellate Court has given very cogent reason by marshalling the evidence on record that the sale deed

itself does not appear to be a bonafide transaction and it appears to be a sham document.

9. I have heard learned counsel for the parties and perused the records of the Courts below.
10. Out of the two questions of law, the first question of law, as stands by itself, cannot be said to be a substantial question of law. During the course of arguments, learned counsel for the appellant would argue that first question of law is only in the context of the second substantial question of law.
11. The plaintiff's claim rests on a registered sale deed dated 24th June 1974 (Ex.P-1). The plaintiff examined not only one of the attesting witnesses to the sale deed but also the Document Writer who ascribed the sale deed. The learned lower appellate Court in para -10 of its judgment has also considered that Manakchand, plaintiff witness No.2, who was one of the attesting witnesses, has proved plaintiff's case regarding execution of sale deed by Jhaduram in favour of plaintiff. However, the approach of the learned lower appellate Court that as the other attesting witness was not examined, therefore, the sale deed should become doubtful, is clearly and patently illegal. There is no legal requirement as such that in order to prove execution of sale deed, all the attesting witnesses of the sale deed are required to be examined. It would essentially be a matter of assessment of evidentiary value. Merely because one of the attesting witnesses has not been examined, that by itself, could not be a basis to disbelieve the testimony of the other attesting witness to the execution of sale deed. There is nothing in the impugned judgment as to why the evidence of Manakchand (PW2) was liable to be disbelieved who has clearly stated that a sale deed was executed by Jhaduram in favour of plaintiff and he signed the sale deed. He has clearly stated regarding passing of consideration of Rs.2,000/-. The other witness who has supported the plaintiff's case is Dhan Singh (PW1) who is Document Writer. Even though, evidence of Sukhidas (PW3) is treated to be hearsay evidence, the legal requirement of proof of sale deed by one of the attesting witness clearly proves the case of the plaintiff. It is to be noted that the plaintiff case was based on registered sale deed and the defendant never challenged the said sale deed either by

filing a separate suit or by a counter claim in present suit itself.

12. However, it is clear from the judgment of learned lower appellate Court that the property in dispute was ancestral property received by Jhaduram and his sons from their ancestors. A clear and categorical finding has been recorded by the learned lower appellate Court in para-19 of its judgment that the property in dispute was the joint family property of Jhaduram and defendant. That finding having remained un-challenged and no question of law having been framed to assail said finding, this Court has to proceed on the premise that the property in dispute was un-divided family property of Jhaduram and his sons.
13. Therefore, the legal effect would be that Jhaduram, at the most, could sell his un-divided share in the property. By virtue of sale deed dated 24th June 1974 (Ex.P-1), the plaintiff would be entitled to claim only un-divided share in the property and nothing more. That is the only relief which could be granted to the plaintiff because the suit is not for partition or separate possession, but for recovery of entire property of the suit and for permanent injunction. If the plaintiff acquires un-divided share of Jhaduram by virtue of sale deed dated 24th June 1976 (EX.P-1), he, at the most, can seek partition and separate possession and no injunction against co-sharer.
14. An argument was raised by learned counsel for the respondent that the plaintiff's suit itself was not maintainable because the power of attorney holder was not competent to file suit.
15. This Court finds that there is no question of law framed on this aspect. The same also does not arise for consideration as it is only a question of fact and not of law. There is concurrent finding of both the Courts below on this aspect.
16. In the result, the questions of law framed by this Court earlier are answered in the manner that the plaintiff acquired interest to the extent of un-divided share of Jhaduram in the ancestral property (*property in dispute in the suit*). He is neither entitled to recovery and possession of the property described in the plaint nor any injunction against the defendant and the plaintiff can only claim partition and nothing more.

17.The appeal is accordingly allowed to the extent indicated above. Let an appellate decree be drawn.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Praveen