

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 3-5-2019

Judgment delivered on 25-06-2019

FA No. 86 of 2003

- Chanda Bai W/o Makhan Satnami, Aged About 65 Years R/o Village Gujara, Tahsil And Distt. Raipur, Chhattisgarh.

---- Appellant/plaintiff

Versus

- Phul Bai Dead Through LRs R/o Village Navagaon, Tahsil And Distt. Raipur, Chhattisgarh

1 (a) - Uttarabai @ Phuggabai D/o Phulabai, Aged About 50 Years W/o B.R. Ratre, R/o Civil Line, Gariyaband, District Raipur, Chhattisgarh

1.(b) Rajeshwari D/o Phulabai, Aged About 48 Years W/o Dhansuram Banjare, R/o Village- Lakhauli, Tahsil Aarang, Dist. Raipur, Chhattisgarh

1.(c) Durpati Bai D/o Phulabai, Aged About 45 Years W/o Chandra Kumar, R/o Satnamipara Baloda Bazar, District Raipur, Chhattisgarh

1.(d) Annapurna Bai W/o Ramesu Koshle, Aged About 36 Years D/o Phulabai, R/o Village Jora, Near Agriculture University Raipur, Tahsil And District Raipur, Chhattisgarh

2. Dharam Das S/o Raindas Satnami, Aged About 45 Years R/o Village Navagaon, Tahsil And Distt. Raipur, Chhattisgarh.

3. Home Kumar S/o Dharamdas, Aged About 20 Years R/o Village Navagaon, Tahsil And Distt. Raipur, Chhattisgarh.

4. Nain Kumari W/o Chalkkan Satnami, Aged About 25 Years R/o Village Navagaon, Tahsil And Distt. Raipur, Chhattisgarh.

5. Mahantji Dead Through Lrs
5.1 - Anantram S/o Late Shri Mahant Ram r/o. Nawagaon, near village Tarra, Tahsil Nawapara, District Raipur (CG).

6. State Of Chhattisgarh, Through Collector Raipur, District : Raipur, Chhattisgarh

7. Bharat Lal Sahu S/o Baratu Ram Sahu, Aged About 28 Years R/o Village Navagaon, Near Kathiya No.2 Tahsil Abhanpur, Distt. Raipur, ChhattisgarhDefendants.

---- Respondents

For appellant	:	Mr. Bharat Sharma, Advocate appears on behalf of Mr. Manoj Paranjpe, Advocate.
For respondent 1.	:	None
For respondents No. 2 to 4	:	Mr. Keshav Dewangan, Advocate appears on behalf of Mr. Prafull N. Bharat, Advocate.

SB: Hon'ble Shri Justice Ram Prasanna Sharma
CAV JUDGMENT

1) This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decreed dated 16-7-2002 passed by the District Judge, Raipur (CG) in Civil Suit No. 138-A/1999 wherein the said court decreed 1/3rd share of the appellant/plaintiff in property situated at village Nawagaon bearing Khasra No. 287/7 area 0.809, 491/24, 0.287, 492/2, 0.032, 493/2, 0.158, 494/2, 0.202, 53/4, 0.971, 197, 0.134, 242/2, 0.142 and directed the revenue authorities to go for actual partition as per Section 54 of the CPC, 1908.

2) Appellant filed suit for partition and declaring the sale deed executed in favour of respondents No. 2 to 5 and 7 by Keja Bai, who is mother of the appellant. Appellant claimed half share over

the property in question but the trial court declared her 1/3rd share. The appellant also claimed right over the house and barn situated at village Nawagaon by his father namely Kamdar and mesne profits but the trial court decreed 1/3rd share of the land and did not decree for the rest of the claim that is why appeal is filed.

3) Learned counsel for the appellant would submit as under:

- i) The owner of the property namely Kamdar died on 21-12-1979 and after passing of Kamdar, mother of the appellant namely Keja Bai, appellant and her one sister namely Phul Bai were successors of the property. Keja Bai died on 26-4-1985 therefore, trial court ought to have allotted half share to the appellant and half share to his sister Phul Bai but the trial Court allotted 1/3rd share to appellant which is not proper.
- ii) The trial court erred in holding that Keja Bai executed sale deed in favour of Nain Kumari, Mahant, Dharam Das and Home Kumar after getting full consideration for sale deed.
- iii) The trial court erred in holding that the appellant is not entitled for any share in the house and barn situated at Navagaon. The trial Court further committed error in holding that the appellant failed to prove the claim towards mesne profits, therefore, finding of the trial court is liable to be set aside.

4) I have heard learned counsel for the parties and perused the record in which judgment and decree has been passed.

5) Admittedly, Keja Bai is mother of the appellant and after passing of Kamdar, Keja Bai and her two daughters namely appellant Chanda Bai and Phul Bai were successors of the property of Kamdar. All the three were shareholders in the property, therefore, Keja Bai had 1/3rd share in the property of Kamdar. Four sale deeds were executed by Keja Bai as per Exs.P/8, P/9, P/10 and P/11. First sale deed was executed on 26-3-1983, second and third sale deeds were executed on 12-4-1983 and fourth sale deed was executed on 21-4-1983. After death of Kamdar property was recorded in the name of Keja Bai and her two daughters namely appellant Chanda Bai and Phul Bai, therefore, each got 1/3rd share in the property left by Kamdar. The trial Court after due consideration recorded finding that sale deed executed by Keja Bai is legal upto her share and, therefore, she was right in alienating property upto extent of her 1/3rd share. It is further held by the trial Court that house and barn were already partitioned during life time of Kamdar and that cannot be reopened after 12 years of the partition when parties were in possession as per partition made during life time of Kamdar. The trial Court further opined that sale deed executed by Keja Ba is valid upto her 1/3rd share in the said sale deed. The trial Court recorded finding

that the sale deed executed by Keja Bai is valid upto 1/3rd share, but appellant is also entitled 1/3rd of her share in the said property and decreed the suit accordingly.

6) Right of the appellant opened on passing of Kamdar on 21-12-1979. All the transactions performed during life time of Kamdar is not questionable by the appellant because right was not opened to present appellant before passing of Kamdar, therefore, the trial Court opined that property which is already partitioned during life time of Kamdar which is land/house and barn are not questionable by the present appellant. The trial Court further opined that the appellant failed to prove the ground of compensation and therefore, she is not entitled for compensation. Finding of the trial court is based on proper marshalling of the evidence and after re-assessing the evidence, this court has no reason to substitute contrary finding. Argument advanced on behalf of the appellant is not sustainable.

7) As a fallout and consequence of the aforesaid discussion, the appeal is held to be devoid of merit and same is liable to be dismissed. Accordingly, decree is passed in favour of respondents and against the appellant as under:

- (i) The appeal is dismissed with cost.
- (ii) Parties to bear their own costs.

- (iii) Pleader's fee., if certified, be calculated as per Schedule or as per certificate whichever is less.
- (iv) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju