

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 28-8-2019

Delivered on 04.10-2019

FA No. 42 of 2006

Ramdayal, S/o- Punaauram Dhimar, Aged about-25 years, R/o- Hirmi, P.O.- Suhela, Tahsil- Simga, District- Raipur (C.G.)

---- Appellant/plaintiff

Versus

1. Smt. Derhin Bai, Wd/o- Kejau Dheemar, Aged about- 62 years, R/o- Hirmi, Tehsil- Simga, District- Raipur.
2. Rajmati, D/o- Kejau Dheemar, Aged- 42, R/o- Risada, Tehsil- Balodabazar, District- Raipur (C.G.)
3. Khedu, Aged about- 52.
4. Pusau, Aged about- 47.
5. Kejia
6. Fulmat Bai
- 3 to 6 are Children of Hichcharam Dheemar
7. Ramadhar, Aged about- 30.
8. Ramlal, Aged about- 21
9. Shyamlal, Aged about- 27.
- 7 to 9 are Children of Kejau
10. Parbhuram, S/o- Pusram, Aged about- 32 years.
- 3 to 10 R/o- Hirmi, PO – Suhela, Tehsil – Simga, District- Raipur (C.G.)
11. State of Chhattisgarh, Through- Collector Raipur (C.G.)

---- Respondents/Defendants

For the appellant : Mr. Raja Sharma, Advocate.

For respondents : None

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. The appellant has preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decreed dated 14-11-2005 passed by 2nd Additional District Judge, Baloda Bazar (CG) in Civil Suit No. 24-A/2003 wherein the said court dismissed the suit filed by the appellant/plaintiff for declaring his title on 1/4th of the suit land and for possession of land bearing Khasra No. 148/2 area 0.709 hectares, 161/2 area 0.709 hectares, 162/5 area 0.470, 148/5 area 0.360 hectares, 148/6 area 0.113 hectares, 184/1 area 0.158 hectares, 349/64 area 1.428 hectares, 945/2 area 0.097 hectares, 1053/2 area 0.704 hectares, 1053/1 area 0.704 hectares, 1053/3 area 0.700 hectares, 362/2 area 0.176 hectares, 377/1 area 0.40 hectares, 381/2 area 0.004 hectares, 787 area 0.219 hectares, 807/2 area 0.279 hectares, 362/1 area 0.066 hectares and 371 area 0.032 hectares (total 6.968 hectares) situated at village Hirni, Patwari Halka No. 33, Tahsil Simga (CG).

2. As per appellant/plaintiff, the property in question is ancestral property owned by Hichharam who was paternal grand-father of the appellant. The said Hichharam had four sons namely Kejau, Khedu, Pusram and Punau. The appellant is successor of Punau. As per contention of the appellant, his father was blind and ancestral property was sold by co-sharers and sale proceed was not used equitably. At the time of execution of sale deed appellant was minor and his interest as well as the interest of his blind father was looked after by

co-sharer Kejau. After death of his father he obtained copies of sale deed and thereafter he came to know about story of defrauding that is why he filed suit before the trial court but the trial court dismissed the suit against the factual matrix and legal aspect of the matter.

3. Learned counsel for the appellant submits as under.

- i) As per sale deed Ex.P/3 to P/14 area 5.789 hectares was sold out of total ancestral property of 6.968 hectare, but out of sale proceeds property was not purchased in the name of the appellant as per his share.
- ii) Appellant being successor of Punau is entitled for 1/4th of the share in the property in question, but the trial court recorded finding that description of the property is not proper.
- iii) The trial court has not recorded finding in its true perspective, therefore, same is liable to be set aside and decree should be passed in favour of the appellant.

4. I have heard learned counsel for the appellant and perused the record of court below including the judgment and decree.

5. The first question for consideration of this court is whether the father of appellant has alienated ancestral property as per Ex.P/3 to

P/14 or not and if so, whether that can be challenged by the appellant.

6. From sale deed Ex.P/3 to P/14 which is filed by the appellant/plaintiff before the trial court, it is clear that ancestral property measuring 5.789 hectares was sold by all the four sons of Hichharam namely Kejaw, Khedu, Pusram and Punau to a company namely Larson and Turbo Limited. When father of the appellant who is also party in the sale deed has alienated the property, the consequence is dealt with by Mulla in Hindu Law. While dealing with the right of a father to alienate any ancestral property Article 254 of the said Law may be read as under:

"254. Alienation by father – A Hindu father as such has special powers of alienating coparcenary property, which no other coparcener has. In the exercise of these powers he may alienate the property for legal necessity".

7. What was legal necessity was also succinctly said by Mulla in Article 241 which reads as under:

"241. What is legal necessity – The following have been held to be family necessities within the meaning of Article 241.

(a) payment of government revenue and of debts which are payable out of the family property;

(b) Maintenance of coparceners and of the members of their families.

Xxxxxx

xxxxx

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xxxxxx

xxxxxx..."

8. The aforesaid law gives right to a father to alienate property for maintenance of coparceners and of the members of their families. The suit is filed by the son of Punau who is appellant. When any alienation by father is challenged by son, he must plead and prove that property was not alienated for maintenance of coparceners and of the members of their families. There is no pleading or proof regarding maintenance of family of coparcener. It is also not clear from evidence as to who maintained the coparcener. The suit is filed only on the ground that sale proceeds were not distributed equally. It is not a case that consideration amount was not paid to father of the appellant. If property would have been alienated by other coparcener, the situation would have been different, but in the present case, father of the

appellant No.1 has special power for alienating coparcenary property, therefore, sale deed executed by father is valid and after alienation by father, the appellant is not entitled for 1/4th share of the property which is already sold. The appellant is only entitled for rest of the property.

9. As per Ex.P/16 & 17 area 0.658 hectares and area 0.198 hectares, total area 0.856 is open for partition as it is recorded in the name of successors of appellant's father and his other brothers. The appellant is also entitled to 1/4th share of the property which is recorded in the name of appellant's father and his other brothers or their successors. The trial court has overlooked the fact that remaining property is open for partition, therefore, finding of the trial court is liable to be reversed in part and decree should be passed in favour of the appellant for partition of land which remaining and open for partition.

10. In view of the above, the appeal is allowed and decree is passed in favour of the appellant and against the respondents as under:

- i) The appellant/plaintiff is entitled for 1/4th share of land bearing survey No. 362/2 area 0.116 hectares, Khasra No. 377 area 0.040 hectares, Khasra No. 381/2 area 0.004 hectares, Khasra No. 787 area 0.219 hectares, Khasra No,807/2 area 0.279, Khasra No.362/1 area 0.166 hectares, Khasra No. 371/1 area 0.032 hectares in other land which is

jointly recorded in the name of the appellant with other co-sharers situated at village Hirni, Patwari Halka No.33, Tahsil Simga Distt. Raipur (CG)

- ii) Appellant will get actual possession after real partition and separation of record as per Section 178 of the Chhattisgarh Land Revenue Code, 1959.
- iii) Parties to bear their own costs.
- iv) Pleader's fee, if certified, be calculated as per schedule or as per certificate, whichever is less.
- v) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju