

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 29-8-2019

Delivered on 18-9-2019

FA No. 76 of 2005

1. Janak Ram son of Dukalha Kurmi, aged ab out 42 years, resident of Mahamaya Ward No.4, Near Mahamaya Mandir, Pandariya, tahskil Pandariya Dist. Bilaspur (Presently Kabeerdham)
2. Sriram aged bout 32 years, s/o. Pisran Pyare (Chhote Pyare).
3. Shiv Kumar aged about 30 years, s/o. Shri Pisran Pyare, Kurmi.
4. Ramesh Kumar, aged about 9 years s/o. Jaleshwar.
5. Harendera Kumar, aged about 7 years, son of Jaleshwar.
6. Virendra Kumar aged about five years, son of Jaleshwar.

Sl. No. 4 to 6 are minors through their natural guardian father Jaleshwar son of Punni,Caste Kurmi.

Sl. No. 2 to 6 are resident of village Dhobgatti, PH N.13, Tahsil Pandariya, District Kabeerdham (CG).

---- Appellants/defendants

Versus

1. Ganesh Ram son of late Tokhan Kurmi, aged about 30 years, resident of village Dhobghatti, PH No.13, Tahsil Pandariya, District Bilaspur (presently Dist. Kabeerdham, CG).

--Respondent/plaintiff

2. Anju aged about 48 years, son of late Tokhan Kurmi, r/o. Dhobghatti, PHN 13, Tahsil Pandariya, Dist. Bilaspur (presently Dist. Kabeerdham, CG).

– Respondent No.2/defendant No.9.

3. The State of Madhya Pradesh through Collector, District Bilaspur (presently State of Chhattisgarh through District Collector, Kabeerdham,CG).

---- Respondent No.3/defendant No.10.

For appellants : Mr. Rajeev Shrivastava, Advocate.

For respondent No.1 : Mr. T.R. Chandrakar, Advocate.

For respondent No.3/ : Mrs. Smita Jha, Panel Lawyer
State.

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 21-3-2005 passed by the Additional District Judge (FTC), Kabeerdham (CG) in Civil Suit No. 6-A/2003 wherein the said court declared sale deed void executed by late Tokhan in favour of appellant Janak Ram as per Ex.D/3 and sale deed executed in favour of respondents Shri Ram, Shiv Kumar and late Badhri as per Ex.D/34 and subsequent sale deed executed by Janak Ram in favour of respondents No. 4 to 6 and in favour of Shri Ram, Shiv Kumar and late Badhri and declared title of respondent No.1 Ganesh Ram and respondent No.2 Anju and also granted decree of injunction.

2. Respondent No.1/plaintiff is son of Tokhan and respondent No.2 is also son of Tokhan. Respondent No.1/plaintiff filed a suit for declaration/permanent injunction and for declaring sale deed void regrading land bearing Khasra No. 53/01 rakba 0.26 acres, Khasra No.511/2 area 1.02 acres, Khasra No. 654/1 area 0.09

acres, , 0.40 acres of the eastern portion of Khasra No. 659, Khasra No. 858/1, rakba 0.34 acres, 0.35 acres of Khasra No. 659 and Khasra No. 659/1 rakba 0.40 acres situated at village Dhobghatti, Patwari Halka No. 13, Tahsil and Revenue Circle Pandariya, District Kabeerdham and executed by his father Tokhan as per Exs. D/3 and D/34 as mentioned above. The suit was filed on the ground that Tokhan who is father of respondent No.1 was taken to the house of Janak Ram on 16-5-1995 where Tokhan resided for about 15 days and between this time on 24-5-1995 a sale deed got executed. Said Tokhan did not receive any consideration for the suit property. The land in question is co-parcenary property which is not partitioned and respondent No.1 and his brother Anju- respondent No.2 are having interest over the property that is why suit was filed. As per the appellants, the property in question was acquired by Tokhan in partition and sale deed was executed for legal necessity. After hearing of both sides, the trial court decreed the suit as mentioned above.

3. Learned counsel for the appellants submits as under.

- i) Respondent No.1 Ganesh Ram who is not being the party to the sale deed cannot question the sale deed on the ground that no consideration was paid to Tokhan.
- ii) It is not mentioned as to what was the

total ancestral property and what was the share of respondent No.1 Ganesh Ram in the said property.

- iii) As the property is sold for legal necessity by Karta of the family namely Tokhan, therefore, same cannot be questioned by his sons respondents No.1 and 2.

4. On the other hand, learned counsel appearing for the respondent would submit that the finding of the trial court is based on proper marshaling of the evidence and same is not liable to be interfered with while invoking jurisdiction of the appeal.

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

6. The first question for consideration of this court is whether sale deed executed by Tokhan is legally sound. The claim of respondent No.1 is based on the averment that property in question is ancestral property. It is not mentioned in the plaint the total land and other property which was ancestral property i.e., property of the father of Tokhan namely Ram Prasad which was succeeded by co-parceners namely Ganesh Ram, respondent No.1 and Anju, respondent No.2 and their father Tokhan. Though suit was filed on the ground that no partition took place between co-parceners, but total property is not mentioned in the plaint and it is also not mentioned the limit of share of respondent No.1 which

ought to have been pleaded and proved. For deciding the issue as to whether father of respondent No.1 has alienated the property within his right, Hindu Law by Mulla while dealing with the right of a father to alienate any ancestral property said in Article 254 which reads 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 240.

(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...”

8. Admittedly, there is no pleading by the respondent No.1 as to who was maintaining coparceners and of the members of their families. It is also not pleaded regarding income from property which is alleged to be coparcenary property. Respondent No.1 was under obligation to establish that property was not sold for maintenance of coparceners and of the members of their families. It is also not clear from evidence as to who has maintained the family of coparceners. The suit is filed only on the ground of fraud and lack of consideration, but father of respondent No.1 has never questioned the said deed and did not file any suit for cancellation of sale deed which shows that sale deed was executed after getting consideration and no fraud is played on seller i.e., late Tokhan. When source of income for maintaining family of coparcener is not established by respondent No.1 before the trial court, it can be inferred that property is sold for maintenance of coparceners and of the members of their families which comes within the purview of legal necessity. If property would have been alienated by other

coparcener, the situation would have been different, but in the present case, the father of respondent No.1 has special power of alienating coparcenary property for legal necessity, but this aspect of the matter is lost sight by the trial court, therefore, sale deed executed by Tokhan is valid one and finding of the trial court on this count is not sustainable.

9. As the property is sold by father for legal necessity and sale deed executed by him is valid, therefore, no relief can be granted to respondent No.1 or coparcener for property which is already alienated. Judgment/decreed passed by the trial Court is liable to be set aside and is hereby set aside.

10. Accordingly, the appeal is allowed and decree is passed in favour of the appellants and against the respondents No. 1 and 2 as under:

- i) The suit filed by the respondent No. 1/plaintiff 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