

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.446 of 2003

Singhai Subhash Jain, S/o Singhai Brijlal Jain, 45 yrs., R/o Patel Ward, Dongargarh, Distt. Rajnandgaon (C.G.)

(Plaintiff)
---- Appellant

Versus

1. Sheel Chand (Dead) Through LRs

1a. Smt. Ashoklata Jain @ Surekha Jain, W/o late Sheel Chand Jain

1b. Manoj Kumar Jain, S/o late Sheel Chand Jain.

1c. Manish Kumar Jain, S/o Late Sheel Chand Jain

1d. Shailesh Kumar Jain, S/o Late Sheel Chand Jain.

1a to 1d are R/o Golbazar, Near Old Police Station Dongargarh, Distt. Rajnandgaon (C.G.)

1e. Smt. Mamta Jain, W/o Abhay Kumar Jain, D/o Late Sheel Chand Jain, Accountant, Bharat Bhawan, Bhopal (M.P.)

2. Manoj Kumar, S/o Sheel Chand Jain, 28 years, Business man, R/o Patel Ward, Dongargarh, Distt. Rajnandgaon (C.G.)

---- Respondents

For Appellant: Mr. Ravindra Agrawal, Advocate.

For Respondents: Mr. B.D. Guru, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

20/02/2019

1. The substantial question of law involved, formulated and to be answered in the plaintiff's second appeal is as under: -

“Whether the finding in relation to acquisition of property by the plaintiff namely Brijlal Jain is perverse and is based upon no positive evidence on record?”

(Parties hereinafter will be referred as per their status shown and ranking given in the plaint before the trial Court.)

2. Shri Brijlal Jain, who died during the pendency of the suit on 8-10-

1991, had filed suit for possession of the suit house stating inter alia that he has purchased the suit house by registered sale deed dated 17-10-1966 from Shri Shivendra Bahadur Singh vide Ex.P-10A and obtained possession thereof from which his son has dispossessed him in May, 1991, therefore, he is entitled for possession of the suit house. Since, original plaintiff Brijlal Jain died during the pendency of the suit, his other son Subhash Jain – plaintiff herein, was brought on record and in the newly substituted claim, the suit property was claimed by Subhash Jain by way of Will dated 7-12-1988 executed by Brijlal Jain.

3. The defendants – father and son pleaded that the suit house was purchased by late Shri Brijlal from the joint family fund and therefore it is the joint family property and the plaintiff is not entitled for possession of the suit house.
4. The trial Court decreed the suit holding that the suit house was purchased by Brijlal Jain from his own income and it was his self-acquired property and he has executed Will in favour of Subhash Jain and the defendants had no right, title and interest in the suit house which was reversed by the first appellate Court holding it to be the joint family property and the suit was dismissed leading to filing of second appeal in which substantial question of law has been formulated which has been set-out in the opening paragraph of this judgment.
5. Mr. Ravindra Agrawal, learned counsel appearing for the appellant / plaintiff, would submit that the first appellate Court was absolutely unjustified in reversing the well-merited judgment and decree of the trial Court, as the burden to prove that the suit property was the joint family property, was upon the defendants who claim it to be the joint family property and the possession of a nucleus of the joint family

property is neither admitted nor proved and as such, the judgment & decree of the first appellate Court are liable to be set aside.

6. Mr. B.D. Guru, learned counsel appearing for the respondents / defendants, would support the judgment & decree of the first appellate Court.
7. I have heard learned counsel for the parties and considered the rival submissions and went through the record with utmost circumspection.
8. The suit property was purchased by original plaintiff Brijlal Jain by registered sale deed dated 17-10-1966 (Ex.P-10A) from Shri Shivendra Bahadur Singh for a cash consideration of ₹ 15,000/- and obtained possession which the original plaintiff has claimed to be dispossessed by his son on 15-5-1991, as he is a man of criminal antecedents leading to filing of suit for possession and since the original plaintiff died, his son Subhash Jain was substituted on the strength of Will. The trial Court after appreciating the evidence on record has clearly come to the conclusion by appreciating Exs.P-1 to P-13 that the suit property was the self-acquired property of Brijlal Jain which the present plaintiff has got by Will Ex.P-16 and which the first appellate Court did not accept and reversed holding the suit property to be the joint family property.
9. The Supreme Court in the matter of **Mudi Gowda Gowdappa Sankh v. Ram Chandra Ravagowda Sankh**¹ has held that the burden of proving that any particular property is joint family property is upon the person who claims it to be coparcenary property and observed as under: -

“6. We pass on to consider the next question arising in this appeal, viz., whether the High Court was right in holding that the 12 pieces of lands were joint family

1 1969 (1) SCC 386

properties and were not the self-acquisition of Goudappa. The case of the appellants was that these lands were self-acquisition of Goudappa, but the respondents contended that they were joint family properties. The law on this aspect of the case is well settled. Of course there is no presumption that a Hindu family merely because it is joint, possesses any joint property. The burden of proving that any particular property is joint family property, is, therefore, in the first instance, upon the person who claims it as coparcenary property. But if the possession of a nucleus of the joint family property is either admitted or proved, any acquisition made by a member of the joint family is presumed to be joint family property. This is however subject to the limitation that the joint family property must be such as with its aid the property in question could have been acquired. It is only after the possession of an adequate nucleus is shown, that the onus shifts on to the person who claims the property as self-acquisition to affirmatively make out that the property was acquired without any aid from the family estate. ...”

10. Similarly, in the matter of Adivappa and others v. Bhimappa and another², Their Lordships of the Supreme Court held as under: -

“17. In order to prove that the suit properties described in Schedules B and C were their self-acquired properties, the plaintiffs could have adduced the best evidence in the form of a sale deed showing their names as purchasers of the said properties and also could have adduced evidence of payment of sale consideration made by them to the vendee. It was, however, not done.”

11. In the instant case, defendant No.1 in the written statement claimed the suit property to be the joint family property by stating that Late Shri Brijlal Jain obtained ₹ 10,000/- from his uncle – father's brother Late Babulal Jain and ₹ 8,000/- from his mother Smt. Kshama Jain who sold her ornaments and given the amount to Shri Brijlal Jain to purchase the suit accommodation. But, on behalf of the defendants, except the self-serving statement of Sheelchand (DW-1) and Mahesh Chandra Jain (DW-2), no other witness was examined to prove the nucleus that Brijlal Jain obtained ₹ 10,000/- as loan from Babulal Jain and ₹ 8,000/- was taken from mother Smt. Kshama Jain. Though Smt. Kshama Jain was alive, but for the reasons best known to

² (2017) 9 SCC 586

defendant No.1, she was not examined before the trial Court to hold that she has contributed for purchase of suit house to Brijlal Jain. Apart from this, the plaintiff filed reply to interrogatories under Order 11 Rule 6 of the CPC in the civil suit which was produced by the defendants and which was got marked and exhibited by the defendants in the cross-examination of the plaintiff as Ex.D-3 in which in paragraph 4 it has been stated as under: -

{4} मैं शपथपूर्वक कथन करता हूँ कि प्रश्न का उत्तर देने के लिए पुराने खाता-बही के अवलोकन से सन् 1966 की रोकड़ (कैश बुक) स्व. ब्रजलाल जैन द्वारा स्वयं लिखित प्राप्त हुई है, जिसके दुकान खरीदी हेतु राशि की आय-व्यय से संबंधित प्रष्ठ क्रमांक 330 340, 343, 351, 359, 360 तथा या दी (याद दास्त) फाइनल स्टेटमेंट में प्रस्तुत कर रहा हूँ, जिसके अनुसार 15000/- रु. का अर्जन करने हेतु स्वयं प्रेमलाल सुनार से क्रय किया गया एक मकान स्थित पटेल वार्ड को बिक्री कर 5000/- रु. प्राप्त किया. 5 हजार रुपये में सोलहापारा का एक मकान जिसे स्व. ब्रजलाल जैन ने सरदार हाकम सिंह से क्रय किया था को अमृतलाल मणिलाल गुजराती सोनी बिक्री कर प्राप्त किया. तथा 5 हजार रु. नकद कर्ज श्री विमलचन्द से प्राप्त कर कुल 15 हजार में दुकान श्री शिवेंद्र बहादुर सिंह से क्रय किया गया है.

12. A careful reading of the aforesaid paragraph 4 of the affidavit of the plaintiff clearly reveals that the plaintiff's father obtained ₹ 10,000/- from selling two houses and ₹ 5,000/- he had taken from one Vimalchand on loan and purchased the suit accommodation. Since Ex.D-3 has been relied upon by the defendants themselves and that statement is also contained in the said affidavit which the defendants have relied upon, it clearly belies the stand taken by the defendants that in order to purchase the suit house, ₹ 10,000/- was taken on loan from Babulal Jain and ₹ 5,000/- has been contributed by his mother Smt. Kshama Jain, as such, there is no evidence brought on record by the defendants to hold that the suit property was purchased from the nucleus of the joint family property and therefore the first appellate

Court reached to a wrong conclusion that the suit property was purchased out of the joint family nucleus and it was given to Shri Brijlal Jain and out of that income, Shri Brijlal Jain has purchased the suit property making the suit property to be the joint family property. There is sufficient evidence on record as discussed by the trial Court to hold that the suit property was self-acquired property of Shri Brijlal Jain as admitted by the defendants vide Ex.D-3 and therefore the first appellate Court is absolutely unjustified in setting aside the well-merited judgment & decree of the trial Court.

13. Consequently, the judgment & decree of the first appellate Court is set-aside and that of the trial Court is restored. The substantial question of law is answered accordingly.
14. The second appeal is allowed to the extent indicated herein-above leaving the parties to bear their own cost(s).
15. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge