

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 175 of 2017

Reserved on : 28.08.2019

Delivered on : 04.10.2019

Fulsingh Kurmi, S/o Mangla Kurmi, aged about 40 years, Occupation Agriculturist, R/o Village- Ruse, Police Station & Tahsil- Nawagarh, District- Bemetara (C.G.) (Earlier District- Durg)

---- Appellant

Versus

1. Roopsingh Kurmi, S/o Mangla Kurmi, aged about 48 years, Occupation Agriculturist, R/o Village- Ruse, Police Station & Tahsil- Nawagarh, District- Bemetara (C.G.) (Earlier District- Durg)
2. Santu Kurmi, S/o Mangla Kurmi, aged about 44 years, R/o Village- Ruse, Police Station & Tahsil- Nawagarh, District- Bemetara (C.G.) (Earlier District- Durg)
3. Santosh Kurmi, S/o Mangla Kurmi, aged about 38 years, Occupation Agriculturist, R/o Village- Ruse, Police Station & Tahsil- Nawagarh, District- Bemetara (C.G.) (Earlier District- Durg)
4. Mangla Kurmi, S/o Bhokai Kurmi, aged about 70 years, R/o Village- Ruse, Police Station & Tahsil- Nawagarh, District- Bemetara (C.G.) (Earlier District- Durg)
5. Smt. Shanti Bai, W/o Manharan, aged about 42 years, D/o Mangla, Caste Kurmi, Occupation Agriculturist, R/o Village- Amora, Up-Tahsil- Nandghat, Tahsil- Nawagarh, District- Bemetara (C.G.) (Earlier District- Durg)
6. Smt. Kanti Bai, W/o Dilharan, aged about 40 years, D/o Mangla, Caste Kurmi, Occupation Agriculturist, R/o Village- Amora, Up-Tahsil- Nandghat, Tahsil- Nawagarh, District- Bemetara (C.G.) (Earlier District- Durg)
7. Minor Chumman Kurmi, S/o Santosh, aged about 12 years, through: natural guardian father Santosh, S/o Mangla, Caste Kurmi, R/o Village- Ruse, Police Station & Tahsil- Nawagarh, District- Bemetara (C.G.) (Earlier District- Durg)
8. Suresh Kurmi, S/o Santu Kurmi, aged about 25 years, Occupation Agriculture, R/o Village- Ruse, Police Station & Tahsil- Nawagarh, District- Bemetara (C.G.) (Earlier District- Durg)
9. Deepak Kumar, S/o Mukund Rao, aged about 59 years, Caste

- Bramhan, Occupation Agriculturist, R/o Village- Ruse, Police Station & Tahsil- Nawagarh, District- Bemetara (C.G.) (Earlier District- Durg)
10. Prakash Rao, S/o Shri Mukund Rao, aged about 67 years, Caste Bramhan, Occupation Agriculturist, R/o Village- Ruse, Police Station & Tahsil- Nawagarh, District- Bemetara (C.G.) (Earlier District- Durg)
 11. Ghodu Rao, S/o Mukund Rao, aged about 61 years, Caste Bramhan, Occupation Agriculturist, R/o Village- Ruse, Police Station & Tahsil- Nawagarh, District- Bemetara (C.G.) (Earlier District- Durg)
 12. Sanjay Kumar, S/o Mukund Rao, aged about 52 years, Caste Bramhan, Occupation Agriculturist, R/o Village- Ruse, Police Station & Tahsil- Nawagarh, District- Bemetara (C.G.) (Earlier District- Durg)
 13. The State of Chhattisgarh, Through: the Collector, Bemetara, District- Bemetara (C.G.) (Earlier Durg)

---- Respondents

For Appellant	:	Mr. Roop Naik & Mr. Sanjeev Kumar Sahu, Advocates.
For Respondent No. 1 to 4, 6 & 8	:	Mr. Rajkumar Pali & Mr. Amit Kumar Sahu, Advocates.
For State/ Respondent No. 13 :	:	Mrs. Shubha Shrivastava, PL.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This first appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against judgment/ decree dated 17.02.2017 passed by District Judge, Bemetara, District- Bemetara (C.G.) in Civil Suit No. 11-A/2013, wherein the said court dismissed the suit filed by the appellant/plaintiff for declaring his 1/7 share in the property mentioned in Schedule- A, B & C of the plaint which is house, kitchen garden and barn and mentioned in Schedule- K, Kh & G which is open plot and for declaring 1/4 share in the land bearing Survey No. 356/1, area admeasuring 1.42 Hectare and for declaring not binding the sale-deed dated 02.06.2010 executed by respondent No. 9 to 12 in favour of

respondents namely Roopsingh, Suresh & Chumman.

2. As per the appellant/ plaintiff, he and respondent No. 1 to 3 are real brothers and they partitioned the ancestral land admeasuring 28-29 acres in the year 2009. As per the plaint averment, the appellant and respondent No. 1 to 3 purchased the land bearing Survey No. 356/1 area 1.42 Hectare from respondent No. 9 to 12 and it is purchased from income of joint family in which the appellant paid 50% of the consideration amount. As per the appellant, the property mentioned in schedules of the plaint has not been partitioned between brothers, therefore, he filed a suit for declaration of 1/7 share in the said property and further, claimed 1/4 share which is purchased by him along with his brothers as mentioned above, but the trial court dismissed the suit contrary to the facts and legal aspect of the matter.
3. Learned counsel for the appellant submits as under:-
 - (i) The sale-deed regarding Survey No. 356/1 could not be executed by the seller till 2009, hence, the said property was not partitioned amongst the brothers.
 - (ii) The property which is mentioned in the schedules of the plaint has not been partitioned, but the trial court recorded negative finding in this regard misreading the evidence available on record.
 - (iii) The trial court has not evaluated the evidence in its true perspective, therefore, the finding arrived at by the trial court is liable to be set aside

4. On the other hand, learned counsel for the respondents submit that the finding arrived at by the trial court is based on proper marshaling of evidence and the same is not liable to be interfered with invoking jurisdiction of the appeal.
5. I have heard learned counsel for the parties, perused the record in which judgment and decree has been passed.
6. First question for consideration before this Court is whether the house, kitchen garden & barn mentioned in Schedule- A, B & C of the plaint was not partitioned between the appellant and his brothers. The appellant adduced evidence of himself as PW-1, Santosh Verma (PW-2) & Kunwaru Verma (PW-3), while the respondents adduced evidence of Santu Verma (DW-1), Roopsingh Verma (DW-2), Komal Singh Verma (DW-3) & Panchram Verma (DW-4).
7. From the evidence, it is clear that the land about 28-29 acres was partitioned between the appellant and respondent No. 1 to 3 earlier and the appellant got 7 acres of land in that partition. The only question for consideration before this Court is whether three houses and three open plots which is mentioned in Schedule- A, B & C and K, Kh & G is partitioned between the appellant and his brothers or not.
8. From evidence of Santu Verma (DW-1), it is clear that one house having nine rooms was allotted to the appellant and one kitchen garden admeasuring 12 dismal which is known as Lemon Garden and one barn of 8-10 dismal, were allotted to the appellant in partition

which is supported by Roopsingh Verma (DW-2). Though, the appellant deposed before the trial court that the house was not allotted to him, but he admitted (Para 13) that one house having nine rooms is in his possession in Village- Ruse which is place of the suit property. Though, this witness deposed before the trial court (Para 13) that house is owned by his daughter namely Savitri, but no document was produced before the trial court that the house was acquired by his daughter. In absence of any document of acquiring that house, the trial court recorded finding that this house was allotted to him in partition, therefore, he is not entitled for partition in the property in question.

9. Again, he admitted (Para 12) that one kitchen garden which is known as Lemon Garden is allotted to him in partition, but he further deposed that he has possessed the said kitchen garden. This witness/ appellant is unable to establish as to how he acquired the kitchen garden, therefore, the trial court recorded its finding that looking to the evidence and other witnesses, namely Kunwaru Verma (PW-3), it is clear that the appellant is in possession of the property which is allotted to him in partition. This witness further deposed that the appellant is residing at Raurkela and when he comes to Village- Ruse, he stays in the house at Village- Ruse, therefore, the trial court recorded finding that the kitchen garden and house is allotted to the appellant in partition and he is not entitled for any property which is mentioned in the plaint as claimed by him.

10. Again, this witness deposed (Para 12) that the appellant is having a barn area 12 dismal, but he further deposed that this barn is purchased by his son namely Raju Verma, but from his evidence, it is not clear that when his son purchased this barn though he admits that he is in possession of the barn. In absence of any evidence regarding acquiring of the barn by his son, the trial court opined that this barn is also allotted to the appellant in partition, therefore, the appellant is not entitled for second partition regarding house, kitchen garden and barn which is mentioned in the schedules of the plaint.
11. Second question for consideration before this Court is whether the appellant paid any sum regarding purchase of land bearing Survey No. 356/1, area 1.42 Hectare situated at Village- Ruse. Admittedly, the sale-deed is registered in the name of respondent No. 1, 7 & 8 namely Roopsingh, Chumman & Suresh respectively. It is executed by respondent No. 9 to 12 namely Deepak Kumar, Prakash Rao, Ghodu Rao & Sanjay Kumar respectively. As per Ex. P/10 to P/12, the appellant is not mentioned as purchaser in the said sale-deed executed on 02.06.2010. From evidence of the appellant (Para 11), it is clear that he is residing at Raurkela since 30-35 years. He admitted that he was not present at the time of execution of sale-deed (Ex. P/10 to P/12). He is not able to depose (Para 19) as to when any sum was paid towards consideration amount of the sale-deed. There is no documentary evidence on record to show that any sum was paid by him as consideration amount for execution of the above sale-deed.

When there is no evidence regarding payment of the consideration amount by him and no document is showing that any payment is made by him, the trial court recorded finding that the appellant has not paid any sum as consideration amount for the said sale-deed.

12. The trial court has elaborately discussed the entire evidence and after reassessing the same, this Court has no reason to take a contrary view. Argument advanced on behalf of the appellant is not sustainable.
13. Accordingly, the appeal is liable to be dismissed. The decree is passed against the appellant and in favour of the respondents on the following terms and conditions:-
 - (i) The appeal is dismissed with cost.
 - (ii) The appellant to bear cost of the respondents throughout.
 - (iii) Pleaders' fee, if certified be calculated as per certificate or as per schedule whichever is less.
 - (iv) A decree be drawn up accordingly.

Sd/-
(Ram Prasanna Sharma)
Judge