

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on : 15.01.2019

Judgment Delivered on : 28/01/2019

S.A. No. 5 of 1997

1. Ram Sewak (Died) Through legal representatives
 - 1.a Bechanram, S/o. Late Shri Ramsewak, Aged About 50 Years, Agriculturist by occupation, R/o. Darripara, Post Office and Tah. Surajpur, District Surguja M.P. Now Chhattisgarh.
 - 1.b Ishwar Prasad, S/o. Late Shri Ramsewak, Aged About 45 Years, Agriculturist by occupation, R/o. Darripara, Post Office and Tah. Surajpur, District Surguja M.P. Now Chhattisgarh.
 - 1.d Phool Kuwanar (deceased) W/o. Laxmiram, R/o. Village Ghousa Near Darripara, Tahsil Surajpur District Surguja M.P. Now Chhattisgarh

---- Appellants

Versus

1. Mohan Ram, S/o. Shri Sitaram, Aged About 44 Years, Occupation- Agriculturist, R/o. Darri Para, P.O. and Tahsil Surajpur, Distt. Surguja M.P. Now Chhattisgarh.
2. Shiv Narayan (now dead) through : Legal representative
 - 2.A Smt. Kunti, W/o. Late Shivnarayan, Aged About 60 Years,
 - 2.B Rameshchandra Gupta, S/o. Late Shivnarayan, Aged About 52 Years
 - 2.C Sureshchandra Gupta, S/o. Shivnarayan, Aged About 48 Years,
 - 2.D Smt. Uma, W/o. Ramadhar,
R/o. Village Chopna, Surajpur, District Surajpur Chhattisgarh.
3. Rup Narayan, S/o. Late Shri Sitaram, Aged About 52 Years, Occupation – Agriculturist, R/o. Surajpur Teh. Surajpur, Distt. Surguja M.P. Now Chhattisgarh

-----Respondents

For Appellants	: Mr. H.B. Agrawal, Sr. Advocate with Mrs. Itu Rani Mukharjee, Advocate
For Respondent/State	: Mr. Kishore Bhaduri, Advocate with Mr. Sunny Agrawal, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V JUDGMENT

28/01/2019

1. This is an appeal against the judgment and decree dated 18.10.1996, passed by the First Additional District Judge, Ambikapur, District – Sarguja, in Civil Appeal No.25-A/1985, whereby the judgment and decree passed by the learned Court below on 04.09.1985, in Civil Suit No.11-A of 1973 was set-aside.
2. The appellant/plaintiff pleaded in civil suit filed by him that both the parties were members of the joint Hindu family. By agreement dated 08.02.1947, the joint family property was divided between the members of the family, in which the appellant/plaintiff was given in his share the suit house as described in schedule -A, which was occupied by one tenant Shiv Prasad Halwai, from whom the vacant possession was obtained by the appellant, after he filed civil suit against the tenant. The possession was received in the year 1950. The appellant raised construction for residence as well as for business purpose on the land of that suit house and because of some personal reasons, he has shifted from the place in the year 1962. The house, shop and construction raised were left in locked condition. On 10.04.1973, the defendants have unauthorizedly occupied the suit house, on that basis civil suit was filed praying relief for possession, mesne profit, damages and other expenditure.
3. Defendant/respondents denied the partition dated 08.02.1947 and stated that partition took place on 03.01.1958 between the members

of the joint Hindu family by registered partition deed. It is claimed that the suit house belonged to the respondents, which was purchased by the deceased defendant No.1 from Badkau Halwai and one of the portion of that house was let out to Shiv Prasad Halwai by deceased defendant No.1 for the time being. It is denied that the vacant possession of the said suit house was received by the appellant/plaintiff and claimed that the deceased defendant No.1 had been ever since residing in the suit house. It is specifically denied that the appellant was dispossessed on 10.04.1973 from the suit house. It was prayed that the suit be dismissed.

4. Trial Court framed issues and after completion of trial, passed the judgment dated 04.09.1985 holding that the partition dated 08.02.1947 was found proved, on that basis the appellant was held as title holder of the suit property, who was unauthorizedly dispossessed by the defendants on 10.04.1973. On this basis reliefs were granted in favour of the appellant/plaintiff and suit was decreed.
5. Respondent/defendant challenged the judgment and decree in Civil Appeal No.25-A/1985, which has been decided by the impugned judgment, in which the finding of the trial Court was set-aside and held that the partition in which the suit house fell into the share of the appellant was not proved, on that basis, it was held that the appellant/plaintiff failed to prove his case. This appeal was allowed and the impugned judgment and decree of the trial Court was set-aside. The judgment and decree of the First Appellate Court is

under challenge before this Court.

6. The second appeal was admitted for hearing and the following substantial questions of law were framed by this Court :-

“(1) Whether in view of pleadings of the appellant to the effect in paragraph IV of the plaint that the documents were written to the evidence the fact of allotment of share of each brother, by Sitaram on 08.02.1947, the lower appellate Court was right in holding that the documents Ex.P-1 to P-6 executed on 08.02.1947 were deed of partition requiring registration and not merely a memorandum of partition?

(2) Whether the documents executed on 08.02.1947 are covered by Clause छ and ज of the Kanoon Intkal Raiyati Jameen of Sarguja State?

(3) Whether the Court below was right in holding that the suit property jointly purchased by he appellant and Sitaram, was not the property of the co-parcenary?

(4) Whether the Court below should not have granted a decree for partition in case it came to the conclusion on the evidence that the suit house jointly belonged to the appellant and Sitaram”

7. It is submitted by the learned counsel for the appellants that the Court below has erred in rejecting the evidence of Ex.P-1 to Ex.P-6, which is in-fact a memorandum of partition that had taken place between the appellant and his brothers in the year 1947. It was proved by the evidence of hand writing expert that the respondent/defendants Sitaram was one of the signatory to that documents, therefore, having knowledge of existence of such documents from very beginning, the respondent/defendants side

have never challenged the same because of which, the respondents are stopped to challenge the same. It is also submitted that registered partition deed of 1958, which is claimed to be a partition between the parties did not include the suit property and according to the admission made by both the parties that they are separately enjoying the property in their possession also gives impression that the partition between them had taken place. Therefore, the finding given by the trial Court has been erroneously set-aside by the first appellate Court. It is prayed that the appeal be allowed and the judgment and decree of the trial Court below be restored.

8. Counsel for the respondents submits that the partition of 1947 had never happened and was never accepted by the defendants/respondents. It is specifically stated that the documents on which the appellants relies i.e. Ex.P-1 to Ex.P-6 claimed as memorandum of partition are in fact a partition deed, as the date of partition and the date of preparation of the document is same. In case of memorandum of partition, the pleadings and the evidence should have been such, that partition had taken place earlier to the date the memorandum was reduced to writing. Therefore, the contents of Ex.P-1 to Ex.P-6 itself speak that it is a deed of partition reduced to writing on the same day, the partition had taken place, therefore, it requires to be registered compulsorily under the provisions of Section 17 of the Registration Act. Reliance has been placed on the judgment of Supreme Court in case of **Roshan Singh Vs. Zile Singh**, reported in **AIR 1988 SC 881**. Therefore, it is submitted that the documents Ex.P-1 to Ex.P-6 are not legally admissible in

evidence. Hence, prayed that the appeal be dismissed.

9. I have heard the learned counsel for both the parties at length and perused the documents and evidence on record.

Question No.1 and 2

10. The issues revolves around the partition deed dated 08.02.1947, which is unregistered and regarding which the evidence was rejected by the First Appellate Court. The claim of the appellant/plaintiff on the house property is situated at Kh. No.2133, 2134 and 2135 in Surajpur, District – Sarguja, which is based on unregistered documents i.e. Ex.P-1 to Ex.P-6. The admissibility of these documents in defence has been disputed by the respondent.
11. Ramsewak (P.W.-1) has stated that he received the suit house and plot in his share and in proof of that Ex.P-1 to Ex.P-6 were exhibited subject to the objection of the defence counsel. It was specifically stated by Ramsewak (P.W.-1) on 08.02.1947 the partition between the brothers took place and the same is dated on which Ex.P-1 to Ex.P-6 were prepared and signed by the concerned.
12. It is argued by the counsel for the appellants/plaintiff that the documents were never challenged since 1947, therefore, can not be questioned. The counsel for the respondents argued that according to the statement made by the plaintiff (P.W.-1) himself on 08.02.1947 is the date on which the members of the joint family agreed to the partition and the same was recorded on the same day vide Ex.P-1 to Ex.P-6, therefore, in accordance with Section 17 of

the Registration Act, there was specific requirement that the documents should have been registered, which is an enactment of 1908.

13. According to the Section 17 of the Registration Act, 1908 the documents, which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and above are required to be registered. The deed of partition also falls in the same category of the documents, if the partition is followed by a document prepared. According to the statement made by Ramsweak (P.W.-1) itself it appears to be clear that the date on which the plaintiff and his brother agreed for partition, it was on the same day, their agreement was reduced to writing.
14. It is a well settled principle and also observed by the Supreme Court in case of **Subraya M.N. Vs. Vittala M.N. And Ors**, reported in **(2016) 8 SCC 705**, that when the terms of family settlement/ arrangements between the parties have been reduced to writing it has to be registered. Non registration of such documents are clearly affected by Section 49 of Registration Act, 1908, which puts a bar in receiving such documents in evidence. The proviso to Section 49 shall not also be available in such a case, when the document is deed of partition.
15. The submission made by the counsel for the appellant that the documents Ex.P-1 to Ex.P-6 are in fact memorandum of partition, is

not acceptable according to the evidence of plaintiff himself, as it has been discussed earlier that the agreement was reduced in writing on the same day, therefore, according to the claim and pleading made by the plaintiff, partition was followed by document reduced to writing. Rest of the evidence brought by the appellants/plaintiff is regarding the dispute over the possession of the property, which is not needed to be considered.

16. Sitaram (D.W.-4), the deceased defendant has clearly denied the partition of 1947 and was confronted with document Ex.P-1 to Ex.P-6. He has clearly made statement that he had not affixed his signature in the documents. Apart from this denial by the defendant/respondent side, the legal position exists as it has been discussed herein above that the documents Ex.P-1 to Ex.P-6, which are claimed to be a deed of partition are not admissible in evidence for the reason of non-registration of the documents being affected with bar under Section 49 of the Registration Act, 1908. Therefore, the finding on this point given by the First Appellate Court does not suffer from any infirmity and that needs no interference.
17. Another substantial question framed in this appeal regarding applicability of Kanoon Intkal Raiyatee Jameen of Sarguja State, the provision that are referred to in Kanoon Intekal relates to will and inheritance of the property, which is not a question or dispute in this appeal. Hence, there is no need to answer the substantial question of law No.2.

Question No.3 and 4

18. Entitlement over the suit property has been claimed by the appellants/plaintiff only on the basis of the document Ex.P-1 to Ex.P-6, which have been held inadmissible in evidence. Sitaram (D.W.-4) had made statement before the Court that suit house was under the joint ownership in which he himself and the plaintiff Ramsewak were joint holders and no partition had taken place regarding that property.
19. Ramsevak (P.W.-1) has in his examination-in-chief stated that the suit property was of joint Hindu family. In cross-examination, he has stated that house and plot was also subject to the partition of 1947 and he has received that suit house with plot in his share. Thus no question has been put to the plaintiff specifically that suit house was acquired by him and the deceased defendant No.1 jointly and that it was a property separate from the joint Hindu family property. Therefore, defendants side had clearly failed to discharge the burden to full extent and formality has been done by making statement by Sitaram (D.W.-4), which is not supported with any documentary evidence and not admitted by the plaintiff. Therefore, the substantial question of law on this point is answered that the finding on this point in first appeal is erroneous. The answer to question No.4 has been dependent on the answer to question No.3 as that answer has been found in negative therefore, the answer to this question is also given in negative.

20. After due consideration on all the evidence and the facts and circumstances of the case and the legal submission made by both the counsel for both the parties, I come to this conclusion that the the appeal is without any substance, which is dismissed accordingly.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram