

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 145 of 2015

1. Avinash Sharma S/o Vishnu Prasad Aged About 30 Years Through Lrs Of Vishnu Prasad Dead Before Filing The Appeal R/o Village Naila, Tahsil Janjgir, Civil And Revenue District Janjgir-Champa, Chhattisgarh , Chhattisgarh
2. Anshuman Sharma S/o Vishnu Prasad, Aged About 28 Years Through Lrs Of Vishnu Prasad Dead Before Filing The Appeal R/o Village Naila, Tahsil Janjgir, Civil And Revenue District Janjgir-Champa, Chhattisgarh, District : Janjgir-Champa, Chhattisgarh
3. Siddarth Sharma S/o Vishnu Prasad Aged About 26 Years Through Lrs Of Vishnu Prasad Dead Before Filing The Appeal R/o Village Naila, Tahsil Janjgir, Civil And Revenue District Janjgir-Champa, Chhattisgarh, District : Janjgir-Champa, Chhattisgarh
4. Smt. Savita Sharma W/o Vishnu Prasad Aged About 50 Years Through Lrs Of Vishnu Prasad Dead Before Filing The Appeal R/o Village Naila, Tahsil Janjgir, Civil And Revenue District Janjgir-Champa, Chhattisgarh , District : Janjgir-Champa, ChhattisgarhDefendants

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Versus

1. Anusuiya Bai D/o Shiv Prasad Suryavanshi Aged About 48 Years R/o Village And Tahsil Janjgir District Janjgir Champa Chhattisgarh , Chhattisgarh
2. Ahiliya Bai D/o Shiv Prasad Suryavanshi Aged About 49 Years R/o Village And Tahsil Janjgir District Janjgir-Champa, Chhattisgarh District : Janjgir-Champa, ChhattisgarhPlaintiffs,
3. Varun Kumar Kahara S/o Pussau Ram Aged About 40 Years R/o Village Bhatpara Janjgir Chhattisgarh , District : Janjgir-Champa, Chhattisgarh
4. Kailash Kumar S/o Shiv Prasad Aged About 52 Years R/o Village And Tahsil Janjgir District Janjgir Champa Chhattisgarh , District : Janjgir-Champa, Chhattisgarh
5. Ram Kumar S/o Shiv Prasad Aged About 50 Years R/o Village And Tahsil Janjgir District Janjgir Champa Chhattisgarh , District : Janjgir-Champa, Chhattisgarh
6. Chand Ram S/o Shiv Prasad Aged About 55 Years R/o Village And Tahsil Janjgir District Janjgir Champa Chhattisgarh , District : Janjgir-Champa, Chhattisgarh
7. Sanjeevan Kumar S/o Shiv Prasad Aged About 53 Years R/o Village And Tahsil Janjgir District Janjgir Champa Chhattisgarh, District : Janjgir-Champa, Chhattisgarh

8. State Of Chhattisgarh Through Collector, Janjgir Champa Distt. Janjgir-Champa, Chhattisgarh District : Janjgir-Champa, Chhattisgarh

.....Defendants

---- Respondents

For Appellants	:	Shri H. P. Agrawal, Advocate
For Respondents No.1 & 2	:	Shri F.S. Khare, Advocate
For Respondent No.4	:	Shri A.P. Sharma, Advocate
For Respondent No.8/State	:	Shri Anmol Sharma, Panel Lawyer

**D.B. :Hon'ble Mr. Justice Manindra Mohan Shrivastava &
Hon'ble Mrs. Justice Vimla Singh Kapoor**

Judgment On Board

22/07/2019

Per Manindra Mohan Shrivastava, J.

1. This appeal is directed against the impugned judgment and decree dated 20.2.2015 passed by learned Second Additional District Judge, Janjgir-Champa in Civil Suit No.12-A of 2014 by which plaintiffs' suit for declaration and permanent injunction has been decreed.
2. The plaintiffs- two sisters namely Anusuiya Bai and Ahilya Bai filed a suit for declaration, permanent injunction on the pleading inter alia that the disputed property admeasuring 0.17 acres situated in kh.no.5051/1 belong to their father Shiv Prasad. In the plaint, it was pleaded that this property is held jointly by the plaintiffs and their brothers namely Kailash (defendant No.3), Ram Kumar (defendant No.4), Chand Ram (defendant No.5) and Sanjeevan Kumar (defendant No.6). It was further pleaded that Shiv Prasad had two wives namely Manglin Bai and Bhagmati Bai who were also holders of share but have died. According to the plaintiffs, as the property in dispute has not been partitioned, the defendant No.3- Kailash could not have sold the property to defendants No. 1 & 2. They having come to know about sale deed executed on 7.3.2007 by defendant No.3-Kailash in favour of defendant No. 1 & 2 for a consideration of Rs.2,21,000/-, cause of action arose for them to file a suit.

3. Defendant No.3- Kailash who had executed sale deed in favour of defendants No. 1 & 2 filed his written statement disputing that the plaintiffs had any share in the disputed property. According to him, a partition deed was executed on 18.2.1999 which was registered on 25.2.1999. His case was that he was misled and defrauded by his other brothers, mother and sisters, as in the share which was allotted to him, wrongly the name of wives of Shiv Prasad namely Manglin Bai and Bhagmati Bai along with the two plaintiffs (sisters) was shown jointly whereas other brothers Ram Kumar (defendant No.4), Chand Ram (defendant No.5) and Sanjeevan Kumar (defendant No.6) had separated by taking their own share. According to defendant No.3, he was cheated by all members of the family. It was also his case that later on, the plaintiffs had executed relinquishment deed (Ex.D-3) in his favour, on the basis of which, revenue proceedings were drawn and revenue records were corrected and later on, sold to defendant No.1 &2.
4. The defendants No.4, 5 & 6 did not file any written statement and remained ex- parte. Purchaser/defendants No. 1 & 2 came out with the case that the property was duly partitioned and that the part which was purchased by them by registered sale deed belong to share of defendant No.3 which was duly recorded in his name in various revenue records and, therefore, they are bonafide purchasers.
5. Learned trial Court found that on the basis of the registered partition deed, property in dispute was given to joint share of Kailash, two widows namely Manglin Bai and Bhagmati Bai and plaintiffs (the sisters). It was also held that according to this registered partition deed, plaintiffs were entitled to equal share along with defendant -Kailash. As far as relinquishment deed (Ex.D-3) is concerned, learned trial Court recorded finding that this document, apart from being suspicious, being unregistered, is incapable of transferring any title in favour of defendant No.3- Kailash. On this finding, learned trial Court concluded that in the property in dispute, the plaintiffs also had equal share along with defendant No.3-Kailash. This followed the impugned order and decree.
6. Learned counsel for the appellants/purchasers would argue that the appellants are the bonafide purchasers. It is argued that according to stand taken in the written statement of defendant No.3-Kailash, he was defrauded and cheated by other members of his family that though

partition was intended to give separate share to all the four sons of deceased-Shiv Prasad namely Kailash (defendant No.3), Ram Kumar (defendant No.4), Chand Ram (defendant No.5) and Sanjeevan Kumar (defendant No.6), while other three brothers were allotted separate share, in the share of defendant No.3- Kailash, the name of plaintiffs and their mother were also wrongly recorded, whereas, in effect, under the partition, the entire disputed property was given to Kailash. It was next argued that the plaintiffs never disputed the relinquishment deed (Ex.D-3) and even though they were fully knowing about the proceedings being drawn by Tehsildar on the basis of relinquishment deed (Ex.D-3), they did not raise any objection and finally, revenue records were mutated in the name of defendant No.3- Kailash and, thereafter, property was purchased by the appellants/ defendants. It is also argued that if the plaintiffs came out with a case that there was no partition, the suit was not maintainable because they ought to have sought a decree in respect of entire property and not only for that which according to Kailash (defendant No.3) fell to his share and out of which a parcel of land (disputed land) was sold to the appellants.

7. Learned counsel appearing for respondents/plaintiffs No. 1 & 2 supported the judgment and decree by submitting that defendant No.3- Kailash having himself pleaded and produced registered partition deed, was bound by the same and could not have claimed that the dispute property fell to his share to the exclusion of plaintiffs and two wives of Shiv Prasad. It is submitted that apart from grave suspicion on relinquishment document (Ex.D-3), the same being un-registered document, learned trial Court has not committed any error in holding that it is incapable of transferring any title.
8. Learned counsel for the defendant No.4- Kailash Kumar would submit that the partition amongst the family members was to the effect that Kailash would also receive exclusive share of the disputed property which was smaller part of 1.60 acres as mentioned in partition deed (Ex.D-2). He would further submit that later on, the plaintiffs had relinquished their share, if any, in the property on the basis of which land records were mutated. Therefore, after sale of the land, the plaintiffs are not entitled to raise any challenge to the title of defendant No.3- Kailash to sell the property.
9. We have heard learned counsel for the parties and perused the records of

the case.

10. Only two points arise for determination before us:

(A) Whether the property in dispute was jointly owned by plaintiffs- Anusuiya Bai and Ahilya Bai and defendant No.3-Kailash ?

(B) Whether unregistered relinquishment deed (Ex.D-3) would operate to relinquish interest of Anusuiya Bai and Ahilya Bai in favour of Kailash ?

11. The plaint allegation that the property in dispute belong to late Shiv Prasad is admitted by defendant No.3- Kailash. It is relevant to mention that defendants No. 1 & 2 are purchasers and defendants No. 3 to 6 are brothers of plaintiffs and they are common descendant of Shiv Prasad. In the 'family tree', there does not appear to be any dispute with regard to Manglin Bai and Bhagmati Bai being two wives of Shiv Prasad; Anusuiya Bai and Ahilya Bai (plaintiffs) being sisters of Kailash Kumar, Ram Kumar, Chand Ram and Sanjeevan (defendants).

12. The entire case of the plaintiffs rest on the pleading that the property in dispute was part of jointly owned property of plaintiffs, their brother Kailash and deceased- Manglin and Bhagmati. Defendant No.3-Kailash himself pleaded and also produced before the trial Court registered partition deed (Ex.D-2). Though according to him, the partition deed wrongly shown his name along with mothers- Manglin and Bhagmati Bai, two sisters- Anusuiya and Ahilya along with him in respect of land admeasuring 1.60 acres, we find that this particular parcel of land was given in partition to Kailash along with them and there is clear recital to this effect that the land described in the share of Kailash will remain joint along with Manglin Bai, Bhagmati, Anusuiya Bai and Ahilya Bai. This document has been signed by Kailash also. Kailash though does not dispute execution of this document but then he has come out with a case that fraud was practiced upon him. Kailash himself being signatory to the document, in the absence of any challenge laid to this document, was bound by it. There is nothing to show that Kailash sought any declaration against registered partition deed (Ex.D-2) either separately or by way of counter claim in the present suit. Therefore, it is clear that Kailash (defendant No.3) was bound by this registered partition deed under which 1.60 acres of land were

shown to be jointly given to Kailash along with sisters- Anusuiya Bai, Ahilya Bai and mothers-Manglin Bai and Bhagmati Bai. Under what arrangement, these five members were given joint share in some of the property, in the absence of any challenge to the partition deed, is not very relevant. This appears to be a family arrangement. We find that the share allotted to Chandram, Sanjeevan, Ramkumar as 0.79, 0.31, 0.77 acres respectively is far less than 1.60 acres. Therefore, the registered partition deed itself supports the plaintiffs' case that 1.60 acres of land comprised in various khasra numbers including land in khasra number- 5051 admeasuring 0.28 acres was jointly owned by plaintiffs, their mothers and Kailash. As Manglin Bai and Bhagmati Bai died, it being an admitted position on record, obviously, the property remained in joint possession of two plaintiffs and Kailash.

13. The so called relinquishment deed (Ex.D-3), apart from being suspicious, is incapable of having the effect of relinquishment of title of Anusuiya Bai and Ahilya Bai, because it is unregistered document and unregistered relinquishment deed is incapable of transferring any title.
14. Learned counsel for the appellants has placed heavy reliance on the orders of the revenue authority. Those proceedings will not confer title on Kailash on the basis of unregistered relinquishment deed. Therefore, at the time of sale of property by defendant No.3 in favour of defendants No. 1 & 2, both Anusuiya Bai and Ahilya Bai had equal share. This is what has been held by learned trial Court by giving appropriate declaration and injunction in their favour. The sale deed to the extent of their share in the property is void and has been so declared by learned trial Court.
15. Therefore, no case is made out. The appeal fails and is hereby dismissed. Let appellate decree be drawn accordingly.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge