

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURJudgment reserved on 29-3-2019Judgment delivered on 20-6-2019FA No. 100 of 2015

Ramsingh (Dead)

1. Raisingh S/o Ramsingh Aged About 37 Years
2. Vijay Singh S/o Ramsingh Aged About 29 Years

R/o Alirajpur, District- Jhabua M.P.

3. Smt. Kalpana W/o Bawalia R/o Indore M.P.,

Through Power Of Attorney Holder- Mohammad Hasan, S/o
Shri Sheikh Sultan, R/o Baijnathpara, Distt. Raipur
Chhattisgarh

---- Appellants

Versus

1. Premji Rao S/o Late Balchandra Rao Dhote Aged About 60
Years R/o Ganesh Chouk, Nandi Chouk, Tikrapara, P.S.
Tikrapara, Raipur, Tah. And Distt. Raipur Chhattisgarh
2. Nagar Palika Nigam Raipur C.G., Through- Commissioner,
Nagar Palika Nigam, Raipur Chhattisgarh

---- Respondent

For Appellants	None
For Respondent No.1	Shri Vinod Tekam, Advocate
For Respondent No.2	Shri H.B. Agrawal, Sr. Advocate with Ms Preeti Yadav, Advocate

Hon'ble Shri Prashant Kumar Mishra, JHon'ble Smt. Vimla Singh Kapoor, JC A V Judgment

The following judgment of the Court was passed by
Prashant Kumar Mishra, J.

1. Trial Court has dismissed the plaintiffs' suit for declaration of title, permanent injunction and recovery of Rs.5,07,000/- in respect of house bearing Municipal House No.623, 623/1 Mohalla Tikrapara, Shahid Brigadier Usman Ward, Raipur.
2. Plaintiffs' case, as projected before the trial Court, was that the plaintiffs' grand maternal uncle (nana) Late Shanker Rao, S/o Firtu Rao had received part of the suit house in partition, which was recorded in the Municipal records in the name of Shanker Rao. The relationship between the parties has been depicted through a family tree, which is reproduced hereunder :

फिरतू राव (मृत)



3. The above family tree would indicate that Shanker Rao had one son namely; Dinkar Rao and two daughters namely; Bhagwati Bai & Smt. Chandrakanta Bai. Dinkar Rao was a lunatic and Bhagwati Bai is missing since last 30 years, therefore, Chandrakanta Bai was the sole legal heir of Shanker Rao. After death of Shanker Rao on 19-5-1974 the property was jointly succeeded by Dinkar Rao, Bhagwati Bai & Chandrakanta Bai, but due to the aforementioned facts/reasons Chandrakanta Bai alone succeeded the property and the plaintiffs being the husband, sons and daughter of Chandrakanta Bai would succeed the property. It is also stated that Chandrakanta Bai was earlier married with Pandurang, but after divorce with said Pandurang, she married with the plaintiff No.1 Ram Singh. She executed a power of attorney in favour of the defendant No.1 Premji Rao, who was taking care of the property at Raipur because Chandrakanta Bai was residing at Jabalpur. Chandrakanta died at Alirajpur, District Jhabua on 3-9-2005 and thereafter, the plaintiffs contacted the defendant No.1, but he avoided to meet and inform them about the property.
4. In the meanwhile, both the parties started raising dispute of title over the suit property. In one of the matter bearing Civil Revision No.193 of 2004 (***Mahesh Soni v Premji Rao & Another***) the High Court passed an order on 23-4-2008 allowing mutation of name of respondent Premji Rao.
5. Plaintiffs further stated that the defendant No.1 Premji Rao is the son of Balchandra Rao and grandson of Kishanlal, who, in turn, was brother of Shanker Rao, therefore, the defendant No.1 would not succeed the property and his claim regarding mutation was only to the limited extent of his right against the tenant and not against the present plaintiffs.

Plaintiffs further asserted that the defendant's conduct of receiving rent from the tenants residing in part of the suit accommodation is adverse to their interest, therefore, the present suit for declaration of title, permanent injunction and recovery of Rs.5,07,000/-, which the defendant No.1 has received as rent from the different tenants.

6. Defendant denied that there was any partition between Shanker Rao and his brothers, all sons of Firtu Rao or that in any such partition the suit property fell in the share of Shanker Rao. Defendant stated that Late Shanker Rao and Dinkar Rao used to reside with him. Shanker Rao's son Dinkar Rao was not a lunatic, but he was suffering from gangrene disease and died issueless. It was further pleaded that Bhagwati Bai is not missing nor met civil death. Her daughters are still alive, which is known to the plaintiffs yet they have not been arrayed in the suit, therefore, the suit suffers from non joinder of necessary parties and deserves to be dismissed.
7. The defendant also pleaded that the plaintiffs are not the legal heirs of real Chandrakanta Bai, but they are related to some other lady, therefore, they are not the proper legal heirs. Even the suit has been filed by plaintiffs' attorney holder Mohd. Hasan who carries the power of attorney in respect of House No.623/1 area 1962 sq.ft. and not for whole of the property. The defendant No.1 next pleaded that Chandrakanta Bai was married with Pandurang with whom she never divorced and yet married with Ram Singh, therefore, her marriage with Ram Singh is null and void and similarly the plaintiffs No.2 to 4 being born from Ram Singh are the illegitimate children and thus neither Ram Singh nor other plaintiffs are entitled to file the suit. Mutation of name

of the defendant No.1 was carried by the Municipal Corporation, Raipur, in accordance with law and the plaintiffs being not the legal heirs of Chandrakanta Bai were not required to be heard before mutation of name of the defendant No.1 nor they were necessary parties in the proceedings before the High Court in ***Mahesh Soni*** (supra). The defendant No.1 also pleaded that Shanker Rao having died in 1974 the suit filed on 5-10-2009 is hopelessly barred by limitation and further that plaintiffs not being in possession of the suit house at any point of time or at least on the date of filing of the suit, the present suit without seeking recovery of possession is not maintainable and even otherwise the defendant No.1 has perfected his title on application of principle of adverse possession.

8. Defendant No.1 further pleaded that one of the tenant Bhimrao Chokoba has himself stated that he was inducted as tenant by Ghughri Bai widow of defendant's grandfather Late Kishanlal. The defendant No.1 is paying all the taxes to the Municipal Corporation, Raipur and this fact is known to the plaintiffs' attorney holder Mohd. Hasan, who himself is a property dealer and has filed the suit to grab the property. Lastly the defendant No.1 raised the objection that the suit has neither been valued properly nor requisite Court fees has been paid, therefore, the civil suit deserves to be dismissed.
9. Both the parties have led evidence, both oral and documentary, to substantiate their case. The trial Court dismissed the suit on finding that the plaintiffs have not been able to prove their right, title and interest in the suit property either through succession or partition.

10. Admittedly, plaintiffs have not filed any document evidencing recording of their names in the suit property at any point of time. There is no proof either of the fact that in any previous partition amongst the legal heirs of Firtu Rao the suit property fell in the share of Shanker Rao and thereafter to his son Dinkar Rao and then to Chandrakanata Bai. Their effort to mutate their names in the suit property remained unsuccessful vide order passed by the High Court in ***Mahesh Soni*** (supra) and thereafter, in the Court of First Additional District Judge, Raipur, vide order dated 9-4-2009 passed in Misc. Civil Appeal No.8/2008. The present suit has been filed on 5-10-2009 by the plaintiffs' attorney holder through Mohd. Hasan, however, the power of attorney (Ex.P/1) was executed on 18-4-2011. Thus, on the date of filing of suit Mohd. Hasan was not the attorney holder for the plaintiffs. In view of this, the suit filed by attorney holder prior to execution of power of attorney does not appear to be duly constituted. There being no verification of the plaint averments by the plaintiffs or any one of them and the attorney holder being not authorised on the date of filing of suit, the plaint is not duly verified.
11. It is not disputed by the plaintiffs that the defendant No.1 Premji Rao is grandson of Kisanlal, therefore, his interest in the property is not in doubt because as per the plaintiffs' own case the property belonged to the common ancestor Firtu Rao. Plaintiffs have not filed the present suit for partition, but it is for declaration of title, permanent injunction and recovery of Rs.5,07,000/-.
12. It is also to be seen that if the plaintiffs are not the owner of the property under any previous partition and are also not in possession of the suit premises of their own or through

agents, servants or tenants, it is doubtful, if an issue would have been framed by the trial Court in this regard, whether the plaintiffs could have succeeded on this count.

13. There being absolutely no evidence in favour of the plaintiffs to prove their title, the trial Court has rightly dismissed the suit
14. As a sequel, the instant first appeal, sans merit, is liable to be and is hereby dismissed.

Sd/-

(Prashant Kumar Mishra)
Judge

Sd/-

(Vimla Singh Kapoor)
Judge

Gowri