

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 370 of 2017

Reserved on : 06.09.2019

Delivered on : 04.10.2019

Balbir Singh Flora, S/o Late Ujagar Singh Flora, R/o B.S. Electrical Engineering, T.P. Nagar, Korba, District- Korba (C.G.) ---- **Appellant**

Versus

Gurudev Singh Flora, S/o Late Ujagar Singh Flora, aged about 59 years, R/o G.S. Engineering, T.P. Nagar, Korba, District- Korba (C.G.) ---- **Respondent**

For Appellant : Mr. Awadh Tripathi, Advocate.

For Respondents : Mr. Manoj Paranjpe & Mr. Shubhank Tiwari, Advocates.

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 25.07.2017 passed by District Judge, Korba (C.G.) in Civil Suit No. 08A/2010, wherein the said court decreed the suit filed by the respondent/plaintiff for declaring title of plot No. 86, area 3000 sq.ft. situated at Transport Nagar, Korba and for delivery of possession of land/ house area 25 x 50 i.e. 1250 sq.ft. mentioned in Schedule-A of the plaint.
2. As per case of the respondent/ plaintiff, he purchased the land/plot No. 86 area 3000 sq.ft. from Special Area Development Authority Korba on 30.09.1981 and on 04.05.1984 after due sanction of map and permission, constructed shop and hall. The length of disputed hall

is 25 x 50 i.e. 1250 sq.ft. As per the plaint averment, appellant/defendant is younger brother of the respondent that is why the respondent provided the hall to the appellant for purpose of starting business with a condition that whenever the respondent requires the aforesaid hall, the appellant shall hand over the possession to him, but on demand, the appellant did not vacate the premise in question that is why a legal notice was issued to him on 16.04.2010. The same is not responded that is why suit was filed before the trial court and as per the appellant, the said court decreed the suit contrary to the factual matrix and legal aspects of the matter.

3. Learned counsel for the appellant submits as under:-

(i) The appellant and the respondent are members of undivided Hindu family and family partition did not take place between them. The property in question and other property were purchased in the name of the respondent by earning of undivided Hindu family.

(ii) The property in question is property of partnership firm namely M/s G.S. Engineering in which the respondent and his mother are partners, therefore, finding of the trial court is not correct that the property is owned by the respondent.

(iii) When the property is the firm property, it is handed over to the appellant in which the appellant is also having share, therefore, the finding arrived at by the trial court is liable to be set aside.

4. On the other hand, learned counsel for the respondent submits as

under:-

(i) There is no presumption of property being joint family property only on account of existence of joint Hindu family. The one who asserts has to prove that the property is a joint family property.

(ii) In the present case, the appellant has failed to discharge initial burden of establishing that there was any nucleus in the form of any income.

(iii) There is nothing on record that any member of the family possessed the joint property, therefore, the trial court is right in holding that it is a property of the respondent alone.

(iv) In the present case, the appellant has failed to bring counter claim for partition on the basis of documentary evidence. The property is solely acquired by the respondent, therefore, the finding arrived at by the trial court is not liable to be interfered with invoking jurisdiction of appeal.

5. Learned counsel for the respondent placed reliance in the matter of **D.S. Lakshmaiah & another Vs. L. Balasubramanyam & another**, reported in **(2003) 10 SCC 310**, **Municipal Corporation, Gwalior Vs. Puran Singh alias Puran Chand & others**, reported in **(2015) 5 SCC 725**, **Vinod Kumar Dhall Vs. Dharampal Dhall (Deceased) through His Legal Representatives & others**, reported in **(2018) 16 SCC 645** & **Chameli Bai & others Vs. Ujagar Singh**, reported in **2008 (4) MPJR 54**.

6. I have heard learned counsel for the parties, perused the record in which judgment and decree has been passed.
7. First question for consideration before this Court is whether there was joint family property and whether the property in question is acquired from income of the joint family property. The respondent/ plaintiff adduced evidence of himself as PW-1 & Parjeet Singh Flora (PW-2) and produced document Ex. P/1 to P/17 while the appellant/ defendant adduced evidence of himself as DW-1, Sukhwant Singh (DW-2), Jasvinder Kaur (DW-3), Horilal Chauhan (DW-4) and produced document Ex. D/1 to D/17.
8. The property in question is allotted to the respondent/ plaintiff through lease-deed (Ex. P/1) and the map is Ex. P/2. The construction in the lease land is also permitted to the respondent/ plaintiff as per Ex.P/3. The lease-deed was again renewed upto 29.09.2041 from 30.09.2011 as per Ex. P/8. The entire documents produced by the respondent/ plaintiff goes to show that he is the lease holder of the property in question and constructed as per permission granted to him for the premise in question. Gurudev Singh Flora (PW-1) deposed before the trial court that he required the premise for business of his son namely Parjeet Singh Flora (PW-2) which is supported by evidence of Parjeet Singh Flora (PW-2).
9. Contrary to evidence of respondent/ plaintiff side, the appellant/ defendant side adduced evidence of himself as DW-1, Sukhwant Singh (DW-2) and two other witnesses, who deposed before the trial

court that the property in question is purchased through income of joint family property, but no one is able to state as to what was the joint property, who was in possession of the joint property and what is earning of the joint family. No account regarding earning of the joint property is produced before the trial court. One partnership-deed was produced as per Ex. D/11, but the same is drafted on 09.07.1990 subsequent to the transaction between the parties. The document of partnership is not a document of joint property, therefore, the same is not helpful in concluding that what is joint property and what is income of the joint family.

10. No counter claim is filed by the appellant regarding his share in the property in question. In absence of any record regarding joint property and in absence of account of income of joint property, it is not established that the respondent/ plaintiff acquired the property in question out of income of joint property. It is settled law that the property cannot be presumed to be joint family property because of existence of joint family.
11. In the present case, the appellant has failed to prove that the property in question was acquired through joint family property and there was income from the said property, therefore, it is not established before the trial court that the property in question is purchased out of income of joint property. The trial court has recorded finding that the respondent is sole owner of the property and the appellant to vacate the property in question.

12. It is contended on behalf of the appellant that mother of the appellant is partner of M/s G.S. Engineering, therefore, the appellant is entitled to retain possession on behalf of her mother. In view of this Court, the argument has no force unless it is proved that earlier there was joint property in which mother of the appellant was also shareholder and out of income of the said property, the property in question is purchased. Mother has no title over the property in question, therefore, the appellant cannot retain possession of the property on behalf of his mother.
13. The trial court has elaborately discussed the entire evidence and after reassessing the same, this Court has no reason to reverse the finding recorded by the trial court. Argument advanced on behalf of the appellant is not sustainable.
14. Accordingly, the appeal is liable to be dismissed. The decree is passed against the appellant and in favour of the respondent on the following terms and conditions:-
- (i) The appeal is dismissed with cost.
 - (ii) The appellant to bear cost of the respondent 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