

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 4 of 2000**

1. (A) Mayaram (dead)

1.(B) Anjor Singh, S/o Late Mayaram, aged about 30 yrs., Occupation-Agriculturist, R/o Village Bagrumnala, Tahsil Nagari, District Raipur (CG)

1.(C) Dharam Singh (dead)

1.(C) (i) Ramin Bai, Wd/o Dharam Singh, Aged About 60 Years, R/o Village Bagrumnala, Post Office Keregaon, Tahsil Nagri, Police Station Arjuni, District Dhamtari, Chhattisgarh

1(C) (ii) Gangaram, S/o Dharam Singh, Aged About 36 Years, R/o Village Bagrumnala, Post Keregaon, Tahsil Nagri, Police Station Arjuni, District Dhamtari, Chhattisgarh

1(C) (iii) Ghanaram S/o Late Dharam Singh, Aged About 36 Years, R/o Village Bagrumnala, Post Office Keregaon, Tahsil Nagri, Police Station Arjuni, District Dhamtari, Chhattisgarh

2. Rambati (Dead)

2(A) Shyamlal, S/o Shri Mayaram, aged about 40 yrs., R/o Village Karaiha, Post Maraiha, Tahsil Nagri, District Dhamtari (CG)

2(B) Premlal, S/o Shri Mayaram, aged about 36 yrs., R/o Village Karaiha, Post Maraiha, Tahsil Nagri, District Dhamtari (CG)

3. Parwati Bai, W/o Dayaram, aged 55 years, Caste Gond, R/o Village Dhourabhatha, Tahsil Kanker, District Bastar (CG)

4. Baisakhin Bai, Widow of Mangal, aged 50 yrs, Caste Gond, R/o Village Kekarakholi, Tahsil Nagari, District Raipur (CG)

5. Sewantin Bai (dead)

5(A) Herobai, D/o Late Shri Jogiram, aged about 35 yrs., R/o Village Gathora, Post Dugli, Tahsil Kanker (CG)

5(B) Ram Kumar, S/o Late Shri Jogiram, aged about 40 yrs., R/o Village and Post Badal, Tahsil Narharpur, District Kanker (CG)

6. Fatkan Bai (Dead)

6(A) Ram Prasad (dead)

6(B) Shiv Prasad, S/o Late Shri Shobharam, Aged about 48 Yrs., R/o Village Bagrumnala, Post Keregaon, Tahsil Nagri, District Dhamtari (CG)

6(C) Siyaram, S/o Late Shri Shobharam, Aged about 44 years, R/o Village Bagrumnala, Post Keregaon, Tahsil Nagri, District Dhamtari

(CG)

6(D) Shivilal, S/o Late Shri Shobharam, aged about 39, R/o Village Bagrumnala, Post Keregaon, Tahsil Nagri, District Dhamtari (CG)

7. Budhiya Bai (Dead) Through Lrs

7(A) Mansingh Markam S/o Patiram, Aged About 45 Years R/o Bagrumnala, Tehsil Nagri, District Dhamtari, Chhattisgarh

7(B) Ramcharan Markam, S/o Patiram, Aged About 43 Years, R/o Bagrumnala, Tehsil Nagri, District Dhamtari, Chhattisgarh

7(C) Kimotin Bai D/o Patiram, Aged About 39 Years R/o Bagrumnala, Tehsil Nagri, District Dhamtari, Chhattisgarh

7(D) Budhantinbai, W/o Tularam, aged 40 years, R/o Kariyapahar, Tahsil Kanker, District Bastar (CG). **...Appellants/Plaintiffs**

Versus

1. Pardeshi Ram (Died) Through Lrs.

1(A) Baratnin Bai Wd/o Late Pardeshi Ram, Aged About 66 Years R/o Village Hitlipara Keregaon, Post Office Chanagaon, Police Station Arjuni, Tahsil Nagri, District Dhamtari, Chhattisgarh

1(B) Smt. Chamro Bai W/o Buddhu Ram, Aged About 50 Years R/o Village Koliyari Pandridabri, Post Office Dugli, Police Station Dugli, Tahsil Nagri, District Dhamtari, Chhattisgarh

1(C) Sonbati Bai, W/o Pilau, Aged About 47 Years, R/o Village Kuralthemli, Post Office Bhanusuli, Police Station Narharpur, Tahsil Narharpur, District Kanker, Chhattisgarh

1(D) Foolbati Bai W/o Birbal, Aged About 45 Years R/o Village Bhiraud, Post Office Abhanpur, Police Station Narharpur, Tahsil Narharpur, District Kanker, Chhattisgarh

1(E) Tuka Ram S/o Late Pardeshi Ram, Aged About 42 Years R/o Village Hitlipara Keregaon, Post Office Chanagaon, Police Station Arjuni, Tahsil Nagri, District Dhamtari, Chhattisgarh

2. Dev Singh (Dead)

2(A) Mantora Bai, Wd/o Late Dev Singh Gond, Aged about 60 years, R/o Village Hitlipara, Tahsil Nagri, District Dhamtari (CG)

2(B) Manbha Bai, W/o Dhiraj Gond, aged about 38 yrs., R/o Village Munaikera, Post Dugli, Tahsil Nagri, District Dhamtari (CG)

2(C) Heerabati, W/o Kanhaiya Gond, R/o Kukarikonha, Post Karaiha, Tahsil Nagri, District Dhamtari (CG)

2(D) Neerabai, W/o Omprakash Gond, R/o Village Umergaon, Tahsil Nagri, District Dhamtari (CG)

2(E) Heeralal, S/o Late Dev Singh Gond, R/o Village Hitalipara, Tahsil Nagri, District Dhamtari (CG)

3. Vide Singh, S/o Late Khooniram Gond, aged 52 yrs., Occupation- Agriculturist, R/o Village Hitlipara (Keregaon), Tahsil Nagari, District Raipur (CG)
4. Smt. Parani Bai (Dead)
- 4(A) Bhanwar Singh, S/o Nathuram, R/o Village Ninginala, Post Gattasilli, Tahsil Nagriya, District- Dhamtari, Chhattisgarh
- 4(B) Smt Jamuna Bai (Died) Through Lrs.
- 4(B)(A) Bhawar Singh, S/o Nathuram, R/o Village Ninginala, Post Gattasilli, Tahsil Nagriya, District- Dhamtari, Chhattisgarh
- 4(B)(B) Ankalin Bai, W/o Hemlal, R/o Village Dholsarai, Post And Police Station Gona Shobha, Tahsil Mainpur, District- Gariyaband, CG
- 4(C) Sukhiya Bai (Died)
5. State of Madhya Pradesh, (Now Chhattisgarh), Through the Collector, Raipur, District Raipur (CG)**Respondents/Defendants**

For Appellants	:	Mr. Rajkumar Pali, Advocate
For Respondents No.1D, 1E,2A,2E, 3	:	Mr. Roop Naik, Advocate
For other respondents	:	None appears

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

03.07.2019

Heard.

1. The second appeal is admitted for hearing on the following substantial question of law :

“Whether the First Appellate Court is justified in holding that the suit land is self-acquired property of Khuni Ram Predecessor-in-title of the defendants and therefore, the plaintiffs have no right and title over the suit land by recording a finding which is perverse to record ?”

2. The appellants/plaintiffs, herein, filed a suit seeking decree of declaration of title and permanent injunction on the pleadings *inter alia* that the property in dispute, admeasuring 17.18 acres in Khasra No.44 in Mauja Bagrumanala was acquired by late Bhukhau, common ancestor of the property. Later on, various property including properties of Bagrumanala acquired by late Bhukhau were given in partition to one of his son Motiram.

Further, pleading was that the land situated in Mauja Hitli was given to Khooniram (father of defendants) upon partition. Further, pleading was that the land situated in Mauja Bagrumanala (land in dispute) was given to Khoru and Punau, sons of Bhukhau. It was averred that by hook or by crook, Khooniram got his name recorded in the revenue records of lands of Bagrumanala. It was further pleading that Punau and Khoru were issue-less, name of their respective widows namely : Tizai Bai and Hatiyarin was recorded in the revenue records after death of Punau and Khoru. After death of Punau and Khoru on 20.11.1960, land records were mutated jointly in the name of Tizai Bai and Hatiyarin as also widow and sons of Khooniram. According to the plaintiffs, partition, as aforesaid, had taken place 25-30 years before amongst all the brothers namely Khooniram, Punau, Khoru & Motiram yet, as the lands continued to be recorded jointly in the name of heirs of deceased Khooniram and widows of Punau & Khoru, an occasion arose for moving an application before the Revenue Authority for effecting partition of holdings and correction of revenue records. As the defendants opposed the prayer for mutation and partition of holdings, cause of action arose for filing suit seeking declaration.

3. Defendants, legal heirs of deceased Khooniram, however, came out with the case that the land in dispute belonged to Khooniram to the exclusion of all and it was not joint family property, therefore, the plaintiffs are not entitled to any declaration. The factum of partition of this land in dispute was disputed.

4. Learned Trial Court after framing issues and allowing the parties to lead documentary and oral evidence granted a decree in favour of plaintiffs holding that the land in dispute was joint family property and therefore, liable for partition. Learned Trial Court recorded a finding that even though a Patta (Government lease) was granted in favour of Khooniram as evident from Ex.D/1, in the year 1950, as later on, after his death, along with the widow and sons of Khooniram, names of Tizai Bai and Hatiyarin, respective widows of Punau & Khoru were also mutated on the basis that they were joint possession of the property, they were entitled to share in the property.

5. Though, the defendants had also raised a counter claim, their counter claim was partly allowed to the extent that defendants were also held entitled to share upon partition.

6. Aggrieved by the aforesaid judgment of the trial Court, the defendants filed an appeal before the Learned Lower Appellate Court. Though on issues

No.1(अ), 1(ब) & 1(स), learned Trial Court had recorded finding in favour of defendants against the plaintiffs, the plaintiffs did not choose to file any cross-objection on those findings. Those findings were not even assailed in the second appeal.

7. Learned Lower Appellate Court noticing that the land in dispute was granted on lease to Khooniram alone and not to others, held that the plaintiffs were not entitled to partition only on the basis that the name of Punau and Hatiyarin was jointly recorded in the revenue records alongwith the names of legal heirs of deceased Khooniram and that mere possession would not entitle such party to seek partition unless it is proved that the plaintiffs were entitled to share on the ground that the disputed property was joint property of the plaintiffs and defendants.

8. When this appeal was filed by the appellants/plaintiffs, an application under Order 41 Rule 27 CPC was also filed seeking to bring additional evidence on record. In para 3 of the application, it has been stated that the appellants/plaintiffs are poor villagers and illiterate persons and, though, they contested the case with due diligence and care, despite making all efforts, they were not able to procure the revenue documents regarding the entry of the name of their ancestors, as owner prior to the year 1950. It is further stated that after formation of new District, somehow they managed to obtain the document i.e. copy of *Chakbandi missal* of the year 1939-40, in which, the name of ancestors of plaintiffs i.e. Khoru was recorded as the owner. As the defendants' case rests on the Government lease said to be granted in favour of Khooniram on 06.01.1950 which is subsequent to Chakbandi Missal of the year 1939-40, the documentary evidence is extremely relevant for adjudication of controversy involved between the parties.

9. The plaintiffs while filing suit had access to old records. Alongwith the plaint, they had filed revenue records of the year 1956. It cannot, therefore, be said that they had no means of access to old revenue records. Moreover, it is found that the document which is now sought to be led in evidence at the second appellate stage, after almost 2 decades of filing of the suit, appears to be a Chakbandi document of the year 1939-40. This document is said to be recorded in the name of Khoru alone and not in the name of either his father Bhukhau nor jointly recorded in the name of Khoru, Khooniram, Motiram & Punau. The plaintiffs pleadings in the suit has been that the property was self-acquired by Bhukhau. There is no pleading that later on, this property was

acquired by Khoru. According to the plaintiffs own case, the properties were held jointly. This is not a document evidencing joint family property nor a document evidencing that it was recorded in the name of Bhukhau. Thus, the document which is sought to be led in the evidence at the second appellate stage is contrary to the plaintiffs' own pleading. Apparently, now the plaintiffs' seeks to set up a new case on the basis of document which is at variance at his own pleadings. Though reliance has been placed on three decisions in the cases of **Jayaramdas and sons vs. Mirza Rafatullah Baig and others, 2004(10) SCC 507, Mehar Singh and others vs. Balbir Singh and another, 2009(17) SCC 465 & Union of India Vs. K.V. Lakshman and others, 2016(13) SCC 124**, in view of aforesaid consideration, the aforesaid decisions are distinguishable and would not come to the aid of the plaintiffs to bring additional evidence on record. The application is accordingly rejected.

10. The questions which arises for consideration before this Court is whether the finding recorded by Learned Lower Appellate Court that the property in dispute was self-acquired property of Khooniram suffers from any perversity.

11. The case of the plaintiffs has been that the property in dispute admeasuring 17.18 acres situated in Khasra No.44, Mauza Bagrumanala was part of the joint family property acquired by late Bhukhau and later on, partitioned amongst his sons, in which, this property was given by way of partition to Khoru and Punau. According to defendants, the disputed property was self-acquire property of deceased Khooniram.

12. The plaintiffs, in order to establish its case, led oral evidence and the documentary evidence in the form of Ex.P/1 which shows that after death of Khooniram, the names of his legal representatives i.e. his widow and his three sons and names of widows of Khoru and Punau i.e. Tizai and Hatiyarin were mutated. The plaintiffs' case mainly rested on this document that the mutation of name of widows of Khoru and Punau along with the legal representative of deceased Khooniram proves that the property was not only jointly own but in joint cultivation of all.

13. On the other hand, the defendants' case rested on a lease Ex.D/1 granted in favour of Khooniram in the year 1950. This was sought to be supported by oral evidence.

14. Learned Trial Court while examining the respective claims of the parties recorded specific finding on issues No.1(अ), 1(ब) & 1(स) against the plaintiffs. Issue No.1(अ) was whether Bhukhau after having self-acquired the land situated in Godlanala, Hitli & Bagrumanala had partitioned amongst his sons during his lifetime. This issue was decided against the plaintiffs, as the Trial Court held that the plaintiffs failed to prove that the land situated in the aforesaid village including the land in dispute were the self-acquired property of late Bhukhau.

15. Issue No.1(ब) was whether under partition, disputed land admeasuring 17.18 acres situated in Bagrumanala was allotted to the share of Khoru & Punau. This issue was also decided against the plaintiffs as the learned Court below held that in view of finding recorded on issue No.1(अ), that property in dispute were self-acquired property of late Bhukhau.

16. Issue No.1(स) was whether Khooniram had fraudulently got his name entered in the revenue records in respect of the disputed land i.e. 17.18 acres situated in Bagrumanala or in the alternative, whether the disputed land was given by way of lease by the Government to Khooniram. On this important issue, the learned Trial Court recorded a finding that the lease was granted in the name of Khooniram, placing reliance upon the lease document Ex.D/1 and that the plaintiffs failed to prove that Khooniram fraudulently got his name alone recorded in the lease document. However, based on oral evidence and Ex.P/1 records of right, learned Trial Court recorded a finding that the land in dispute was subjected to partition about 25-30 years before and it went to the share of Tijai and Hatiyarin. On this basis, a decree of partition was granted in favour of the plaintiffs. The counter claim of the defendants was also accordingly partly decreed.

17. The defendants, aggrieved by the judgment and decree, filed an appeal. In the appeal, the appellants/plaintiffs did not file any cross-objection assailing correctness of finding recorded on issues No.1(अ), 1(ब) & 1(स). Learned Lower Appellate Court held that as the plaintiffs had not assailed findings on the aforesaid issues, particularly, on the Trial Court's finding that the land in dispute were granted by way of lease by the Government in favour of Khooniram in the year 1950 and that there was no evidence and that mere joint possession would not entitle the plaintiffs to seek decree of partition in the absence of evidence of property being joint family property, dismissed the

appeal.

18. The finding of learned Lower Appellate Court and that of the learned Trial Court that the property in dispute was self-acquired property of Khooniram not only rests on the oral evidence led by the defendants but the said finding is based on a very clinching documentary evidence i.e. the document of Government lease Ex.D/1 led in evidence by the defendants before the trial Court. The Learned Trial Court as well as Lower Appellate Court both have relied upon these documents. Learned Trial Court while recording its finding on Issue No.1(स) has elaborately considered the documentary evidence of Government lease Ex.D/1 and taking into consideration that it is an old document, relying upon the provision contained in Section 19 of the Evidence Act and judicial pronouncement, it has recorded a finding regarding of self-acquisition of the property in dispute having been acquired by way of Government lease by Khooniram. In that document, there is nothing to show that this lease was granted jointly in the name of Khooniram along with his brother Khoru & Punau. Therefore, the finding recorded by Learned Lower Appellate Court that the property in dispute was self-acquired property of Khooniram, cannot be said to be perverse. Finding is based on appreciation of oral and documentary evidence led by the parties.

19. Therefore, the questions of law is answered, in the manner that the finding of the First Appellate Court that the suit land is self-acquired property of Khooniram predecessor-in-title of the defendants, cannot be said to be perverse.

20. In the result, the appeal is dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge