

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 71 of 2000****Reserved on : 26.04.2019****Delivered on : 25.06.2019**

1. Sharda Prasad Gupta, S/o Shri Mahesh Chandra Gupta, aged about 28 years, R/o Mungeli Naka Kudu Dand, Bilaspur, (M.P.) (Now C.G.)
2. Sanjay Alamchandani, S/o Naraindas Alamchandani, aged about 19 years, R/o Nehru Nagar, Bilaspur (C.G.)
3. Indira Bai Gupte (Dead) Through Lrs.
 - 3 (i) Smt. Subhangi, W/o Late Sharad S. Gupte, aged about 62 years.
 - 3 (ii) Sneha Gupte, D/o Sharad S. Gupte, aged about 30 years.

Both are R/o 11 Ravi Kiran Apartment, Bramhagiri, Near Bheem Nagar, Jail Road, Nasik (Maharashtra)

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1. Padmakar Gupte (Dead) Through Lrs.
 - 1 (i) Ashish Gupte, S/o Late Padmakar Gupte, aged about 36 years, R/o Kothrud, Sadafuli Aving, In front of Kushal Apartment, Flat No. 5, Flat Bhumiyo Colony, Panurod, Pune (Maharashtra)
 - 1 (ii) Madhulika Prakash Gupte, W/o Shri Prakash Gupte, aged about 51 years, R/o Plot No. 123, Rujuta Apartment, Pandeale Out, Khamla Raod, District- Nagpur (Maharashtra)
 - 1 (iii) Smt. Swati Avinash Chirnish, W/o Shri Avinash Chirnish, aged about 37 years, R/o Kirti Nagar, Near Ishwar Nagar Chowk, New Nandan Van, Nagpur (Maharashtra)
 - 1 (iv) Smt. Ashwini Ravindra Karkhanesh, R/o Plot No. 26, Kailash Nagar, Gorakshan Marg, Akola (Maharashtra)
 - 1 (v) Smt. Vaishali Sandeep Kulkurni, W/o Sandeep Kulkurni, aged about 40 years, R/o Ritika Apartment, Gupte Marg Jethapeth, Akola (Maharashtra)

---- Respondents

For Appellants	:	Mr. H.B. Agrawal, Sr. Advocate with Mr. Pankaj Agrawal, Advocate.
For respondents	:	Mr. Manoj Paranjpe & Mr. Bharat Sharma, 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 16.12.1999 passed by Seventh Additional District Judge, Bilaspur, District- Bilaspur (M.P.) (Now C.G.) in Civil Suit No. 10-A/1998, wherein the said court decreed the suit filed by the original respondent No. 1 namely Padmakar Gupte/ plaintiff for declaring his right of preemption and declaring void the sale-deed dated 26.07.1993 executed by original respondent No. 3- Indira Gupte in favour of appellant No. 1 & 2.
2. The suit property is 28.80 acres of land situated at Village- Bhojpuri, Patwari Halka No. 8, Revenue Circle/ Block- Bilha, District- Bilaspur (M.P.) (Now C.G.) which is a part of decree of the trial court. The suit property was owned by Martanda Rao who is father of original respondent No. 1 and husband of original appellant No. 3- Indira Bai Gupte. Martanda Rao died on 16.08.1966 leaving behind original respondent No. 1, four daughters and his wife Indira Gupte. All the successors have undivided interest of 1/6th share in the said property. The interest of Indira Bai Gupte was upto 1/6th share and it is pleaded by respondent No. 1 that he had preferential right to acquire the interest which was sold by Indira Bai Gupte without giving notice to him in violation of Section 22 of the Hindu Succession Act, 1956 (for short "the Act, 1956") that is why the suit was filed which was decreed by the trial court as mentioned above.
3. The ground raised in the appeal and argument advanced on behalf of

the appellants may be mentioned as under:-

- (i) On the basis of evidence on record, the trial court ought to have held that even after becoming aware of litigation between the parties and transaction between original appellant No. 3 and appellant No. 1 & 2, the original respondent No. 1 did not take any steps for purchase of property, therefore, no right of preemption exists in his favour.
 - (ii) Respondent No. 1/ plaintiff having sold 12 acres of land which is property of joint Hindu Family, has no right of preemption. Even if any right of preemption existed, the same has elapsed by conduct of respondent No. 1 in view of publication dated 02.02.1993 (Ex. P/1) regarding sale of suit property.
 - (iii) The trial court erred in holding that the plaintiff was not informed about the sale.
 - (iv) The sale-deed executed by Indira Bai Gupte was well within her jurisdiction, therefore, the decree passed by the trial court is liable to be set aside.
4. On the other hand, learned counsel for the respondents submits that the finding arrived at by the trial court is based on factual matrix and legal aspect of the matter and the same does not warrant any interference of this court while invoking jurisdiction of the appeal.
5. Respondent No. 1/ plaintiff side examined Padmakar Gupte (PW-1) while the appellant side examined Indira Bai Gupte (DW-1), Madhuri @ Shobhna (DW-2), Sharda Prasad (Witness No. 1 of respondent No. 2 & 3). The sale-deed is executed in favour of appellant No. 1 & 2 by

Indira Bai Gupte on 26.07.1993. Before execution of sale-deed, original respondent No. 1/ plaintiff issued a notice in newspaper (Ex.P/2) that no one should purchase the land in question. Again, one letter dated 28.05.1993 was given to O/o Registrar as per Ex. P/9 that the sale-deed should not be executed in this regard. Admittedly, the property devolves upon six heirs as specified in Class I of the Schedule of the Act, 1956, therefore, each one have preferential right to acquire interest of others.

6. First question for consideration before this Court is whether any notice was given to original respondent No. 1 by Indira Bai Gupte before disposing the property. Though Indira Bai Gupte deposed before the trial court that she asked original respondent No. 1, but he denied to purchase, but the same is not substantiated by any document, therefore, the bald statement is not sufficient to establish that the notice was given by her with intention to transfer the same. On the contrary, original respondent No. 1 published notice before execution of sale-deed in newspaper and given information to O/o Registrar which shows that he was willing to acquire right of the property before transferring to anyone.
7. Indira Bai Gupte was under obligation not to transfer the interest of original respondent No. 1 in violation of the preferential right, therefore, the trial court is right in holding that the undivided interest was transferred without giving notice to original respondent No. 1 who had preferential right to purchase the property. The trial court further opined that Section 164 of the M.P./C.G. Land Revenue Code, 1959

and Section 22 of the Act, 1956 is applicable to agricultural land. There is nothing to reverse the said finding that the provisions of Section 22 of the Act, 1956 is not applicable to agricultural land.

8. Having preferences, original respondent No. 1 has all the right to file suit to get back the property sold to stranger. Stranger cannot be share holder of the joint property. In the present case, property was not partitioned and sale-deed was executed for undivided interest which is not permissible because stranger cannot co-sharer of the joint family property. The value of sale-deed is Rs. 60,000/- and the trial court directed that the appellant No. 1 & 2 shall execute sale-deed in favour of original respondent No. 1/ legal representative on payment of Rs. 60,000/-. The finding arrived at by the trial court is based on factual matrix and legal aspect of the matter, therefore, the argument advanced on behalf of the appellants is not sustainable.
9. Accordingly, the appeal is liable to be dismissed. The decree is passed against the appellants and in favour of the respondents on the following terms and conditions:-
 - (i) The appeal is dismissed with cost.
 - (ii) Parties to bear their own cost.
 - (iii) Pleaders' fee, if certified be calculated as per certificate or as per schedule whichever is less.
 - (iv) A decree be drawn accordingly.

Sd/-
(Ram Prasanna Sharma)
Judge