

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 14--02-2019

Judgment delivered on 08-03-2019

FIRST APPEAL NO. 192 of 2003

Maya Das S/o Santu Das Manikpuri, aged about 55 years, Occupation Government Servant, Samiti Prabandak (District Co-operative Central Bank, Durg) Branch Nawagarh, R/o Village Nawagarh, District Durg (C.G.) (died and deleted – through LRs)

1. Smt. Amrika Manikpuri, Wd/o Late Mayadas, aged about 50 years, R/o Nawagarh, Tehsil Nawagarh, District Durg, (C.G.) (died and deleted)
2. Smt. Durga Manikpuri, W/o Santosh Manikpuri, aged about 42 years, R/o Village Sahupara, Bemetara, District Durg, (C.G.).
3. Ashok Manikpuri, S/o Late Mayadas, aged about 39 years, R/o Village Nawagarh, Tehsil Nawagarh, District Durg, (C.G.).
4. Smt. Nandini Manikpuri, Wd/o Late Haridas Manikpuri, aged about 30 years, R/o Sahupara, Bemetara, District Durg, (C.G.).
5. Rameshwar Manikpuri, S/o Late Maya Das, aged about 28 years, R/o Nawagarh, Tehsil Nawagarh, District Durg, (C.G.).
6. Smt. Taruna Manikpuri, W/o Rajnish Manikpuri, aged about 27 years, R/o Baigara, Tehsil Nawagarh, District Durg, (C.G.).
7. Ku. Mohini Manikpuri, D/o Late Mayadas, aged about 26 years, R/o Village Nawagarh, Tehsil Nawagarh, District Durg, (C.G.).

---- Appellants.

Versus

1. Parwati Bai, Wd/o Maadas, aged about 56 years, R/o Village Shankar Nagar, Near Kutchery, Nawagardh, Thana & Tehsil Nawagardh, District Durg, (C.G).
2. State of C.G. Through Collector, Durg, District Durg.

---- Respondents.

For appellants : Mr. Viprasen Agrawal, Advocate.

For respondent No.1 : Mr. Manoj Paranjpe, Advocate.

For respondent No.2 : Mr. Afroz Khan, Panel Lawyer State.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1) This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decreed dated 19-9-2003 passed by 2nd Additional District Judge,(FTC) Bemetara, Civil Dist. Durg, (CG) in Civil Suit No. 1-A/2002 wherein the said court dismissed the suit filed by the appellants for declaration of title/permanent injunction of a house constructed on survey No. 838 area 0.06 hectares situated at village Nawagarh, Tahsil, Nawagarh, District Durg, (CG).

2) As per version of the original appellant Mayadas though sale deed for the land in question is executed in his favour and Meladas, who is husband of respondent No.1/defendant, but the entire consideration is paid by him and he took loan from the

District Co-operative Central Bank, Durg to the tune of Rs.68,000/- for constructing the house, but the court of Naib Tahsildar, Nawagarh, declared half share of the original appellant Mayadas and half share of Meladas in the property in question that is why he filed the suit for declaration of his sole title. Respondent No.1 opposed the pleading and as per version of the said respondent, land in question is joint property of original plaintiff/appellant Mayadas and Meladas and Meladas also spent money for construction the house and some portion of his house was given on rent to one Ramesh .

3) Learned counsel for the appellants would submit as under:

- i) The trial Court has picked up only one line from the statement of PW/1 Meladas (para 12) and finding recorded by the trial Court is perverse.
- ii) Though sale deed is registered in the name of the appellant and Meladas, but Meladas had not contributed a sum of Rs., for purchase of the said property.
- iii) Apart from earning from salary, the appellant had another source of agriculture which was overlooked by the trial Court.
- iv) The appellant spent whole amount for construction of the house, therefore, he is the sole owner of the house in question.
- v) As per Ex.P/5, appellant paid house tax of Gram Panchayat, Nawagarh. As per Ex.P/6, appellant obtained loan of Rs.68,000/- from District Co-

operative Central Bank, Durg. As per Ex.P/7, Survey No. 837/2 is in the sole ownership of Meladas in which one house is shown to be constructed. Ex.P/11 is consent deed by Meladas in favour of the appellant.

- vi) As agreement is written as per Ex.P/11, Sections 91 & 92 of the Evidence Act bars oral evidence to rebut the document and documentary evidence will prevail.
- vii) Appellant had regular source of income, therefore, it should be presumed that the house is solely built by him.
- vii) Version of Meladas is not acceptable that he sold the house and obtained money for constructing the said house.

4) On the other hand, learned counsel for the respondents would submit as under:

- i) Property is jointly purchased by Mayadas and Meladas vide registered sale deed dated 25-3-1985 bearing Survey No. 837 (old Survey No. 1354/1) and survey No.48 measuring 0.06 hectares.
- ii) As there is no contrary version regarding purchase of the said land by both parties, the appellant cannot take contrary stand that name of Meladas was mentioned in the sale deed out of affection .
- iii) In relief clause of the plaint, the appellant sought relief regarding half portion of the

property in question which was constructed in southern area of the land in question.

- iv) Sale deed executed in favour of the appellant has not been filed before the trial Court, therefore, appellant cannot be declared owner of the property in question.
- v) Document (Ex.P/11) which is a document of relinquishment cannot be acted upon because same is unregistered in violation of Section 17 of the Registration Act, 1908. Exhibition of document will not create any right in favour of the appellant, therefore, Ex.P/11 is not creating any interest in favour of the appellant.
- vi) Finding of the trial Court that since document is exhibited, therefore, it cannot be objected, is not sustainable. This court can examine the fact of the document as per Order 41 Rule 33 of the CPC to do complete justice.
- vii) As per order of the Tahsildar, Nawagarh, Ex.P/1, the property in question is divided between Mayadas and Meladas and both have been declared owner of the half of the share of the land in question. That order attained finality.
- viii) Not a single perversity in the order of the trial Court is shown which is not based on evidence on record. From the evidence of PW/3 and PW/4, it is established that Maladas and Mayadas both have spent money in constructing the house.

5) I have heard learned counsel for the appellant and perused the record in which judgment and decree has been passed.

6) The first question for consideration of this court is whether the property in question is joint property of Mayadas and Meladas or it is solely owned by late appellant Mayadas. Admittedly, the sale deed was executed in favour of Mayadas and Meladas. Mayadas (PW/1) deposed before the trial Court that he and Meladas had purchased one other land survey No.48 area 1.10 acre from one Gautam Tamboli and both have paid for purchasing the land. In sale deed for the property in question, both are shown as purchasers, therefore, in absence of any document in rebuttal, oral evidence is not acceptable as per Sections 91 & 92 of the Evidence Act, 1872. Even if Mayadas took the loan from any Bank, the same is not conclusive proof that he alone constructed the house on the property in question.

7. From the evidence of DW/1 Parwati Bai, DW/2 Bhuvanlal and DW/3 Rajesh Kumar Gupta, it is established that Meladas was residing in one portion of the house which is owned by them. Three rooms were built in the east side and three rooms were built in the west side which is divided by the courtyard and varandah. PW/3 Harbans Singh deposed before the trial Court that one house for keeping the animals is constructed by Meladas and he has spent money for the same.

8. Looking to the entire evidence, the trial court opined that the property in question is not solely owned by the appellant late Mayadas, but it is owned by Mayadas and Meladas and both are having half of the share in the property. After re-assessing the entire evidence, this court has no reason to substitute contrary finding. The appeal is liable to be dismissed.

9) As a fallout and consequence of the aforesaid discussion, the appeal is held to be devoid of merit and same is liable to be dismissed. Accordingly, decree is passed in favour of respondent No.1 and against the appellants as under:

- (i) The appeal is dismissed with cost.
- (ii) Appellants to bear the cost of respondent No.1 through out.
- (iii) Pleader's fee., if certified, be calculated as per Schedule or as per certificate whichever is less.
- (iv) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju