

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No.322 of 2003**

1. Shankar Lal And Others S/o Late Shri Bakru Aged About 53 Years R/o Village Gandai, Penderiya, Tah. Khairagarh, District- Rajnandgaon, Chhattisgarh., District : Rajnandgaon, Chhattisgarh
2. Babulal (Deid) Through Legal Heirs As Per Honble Court Order Date- 29-01-2019.
 - 2.1 - (A) Smt. Keshar Bai W/o Late Babulal Aged About 70 Years R/o Durg, Tahsil And District- Durg, Chhattisgarh., District : Durg, Chhattisgarh
 - 2.2 - (B) Smt. Chetna Bai Namdeo D/o Late Babulal Aged About 42 Years W/o Anand, R/o Durg, Tahsil And District- Durg, Chhattisgarh., District : Durg, Chhattisgarh
 - 2.3 - (C) Santosh Kumar S/o Late Babaulal Aged About 35 Years R/o Durg, Tahsil And District- Durg, Chhattisgarh., District : Durg, Chhattisgarh
 - 2.4 - (D) Smt. Shalini Namdeo D/o Late Babulal Aged About 32 Years W/o Mukesh, R/o Durg, Tahsil And District- Durg, Chhattisgarh., District : Durg, Chhattisgarh
 - 2.5 - (F) Pawan Kumar S/o Late Babulal Aged About 21 Years R/o Durg, Tahsil And District- Durg, Chhattisgarh., District : Durg, Chhattisgarh
3. Jhukkulal (Deid) Through Legal Heirs As Per Honble Court Order Date- 29-01-2019.
 - 3.1 - (A) Gunwant S/o Late Jhukkulal Aged About 42 Years R/o Durg, Tahsil And District- Durg, Chhattisgarh., District : Durg, Chhattisgarh
 - 3.2 - (B) Dharmendra S/o Late Jhukkulal Aged About 35 Years R/o Durg, Tahsil And District- Durg, Chhattisgarh., District : Durg, Chhattisgarh
4. Dasrath Lal S/o Late Shri Bakru Aged About 43 Years R/o Durg, District- Durg, Chhattisgarh., District : Durg, Chhattisgarh
5. Laxman Lal S/o Late Shri Baru Aged About 40 Years R/o Village Gandai Pandariya Tahsil Khairagarh, Distict- Rajnandgaon, Chhattisgarh., District : Rajnandgaon, Chhattisgarh

---- Appellants/Plaintiffs**Versus**

1. Daddu (Dead) Through Legal Heirs Nil
 - 1.1 - (A) Smt. Saroj Namdeo Wd/o Late Shri Daddu Aged About 40 Years R/o Sitla Ward No. 10, Kawardha, District- Kabirdham, Chhattisgarh., District : Kawardha (Kabirdham), Chhattisgarh
 - 1.2 - (B) Navin Kumar S/o Late Daddu Namdeo Aged About 13 Years Minor Through Res. No. 1a, Mother Smt. Saroj Namdeo, W/o Late Shri Daddu Namdeo, R/o Sitla Ward No. 10, Kawardha, District- Kabirdham, Chhattisgarh., District : Kawardha (Kabirdham), Chhattisgarh
2. Santosh S/o Kharbahra Aged About 34 Years R/o Sitla Ward No. 10 Kawardha, Tahsil Kawardha, District- Kabirdham, Chhattisgarh., District : Kawardha (Kabirdham), Chhattisgarh
3. Ashok S/o Shri Khorbahra Aged About 30 Years R/o Sitla Ward No. 10

Kawardha, Tahsil Kawardha, District- Kabirdham, Chhattisgarh., District :
Kawardha (Kabirdham), Chhattisgarh

4. Rajesh S/o Khorbahra Aged About 25 Years R/o Sitla Ward No. 10 Kawardha, Tahsil Kawardha, District- Kabirdham, Chhattisgarh., District : Kawardha (Kabirdham), Chhattisgarh
5. Chhabi Bai W/o Horilal Aged About 38 Years Namdeo By Caste, R/o Village Dharmshala Pendatarai, Tah. Pandariya, Chhattisgarh., District : Kawardha (Kabirdham), Chhattisgarh
6. Ravidevi W/o Bodu Aged About 36 Years Caste- Namdeo, R/o Dongargarh, Baghuwa Chowk, Dongargarh, Chhattisgarh., District : Rajnandgaon, Chhattisgarh
7. Shashi Kumari W/o Dhannalal Aged About 32 Years Caste- Namdeo, R/o Baghunwa Chowk, Dongargarh, Chhattisgarh., District : Rajnandgaon, Chhattisgarh
8. Sarita Bai W/o Baldau Aged About 28 Years Caste Namdev, R/o Brahmanpara, Raipur, Tah. And District- Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
9. Savita Bai W/o Ashok Kumar Aged About 26 Years Caste Namdeo R/o Bhagat Chowk, Dongargarh, Chhattisgarh., District : Rajnandgaon, Chhattisgarh
10. Salan Bai D/o Khorbahra Aged About 24 Years R/o Kanker, Tah. And District- Kanker, Chhattisgarh., District : Kanker, Chhattisgarh
11. State Of Chhattisgarh Through Collector, Kawardha, Kabirdham, Chhattisgarh., District : Kawardha (Kabirdham), Chhattisgarh

---- **Respondents/Defendants**

Present:-

Shri HB Agrawal, Senior Advocate with Ms. Richa Dwivedi, Advocate for appellants.

Shri Arvind Shrivastava, Advocate for respondents.

Ms. S. Harshita, Panel Lawyer for respondent/State.

Single Bench : Hon'ble Shri Justice Manindra Mohan Shrivastava

JUDGMENT ON BOARD

13/11/2019

Heard.

1. This second appeal is directed against the impugned judgment and decree dated 22-04-2003 passed by the Additional District Judge(FTC), Kawardha in Civil Appeal No.14-A/2002, reversing the judgment and decree dated 27-09-1996 passed by the learned trial Court in Civil Suit No.23-A/1996,

by which, the learned lower appellate Court has dismissed the plaintiff's suit, reversing judgment and decree passed by the trial Court in favour of the plaintiff.

2. The appellant-plaintiff filed a suit seeking decree of partition of agricultural land on the pleadings, inter alia, that the ancestral of the plaintiff and defendant namely Late Ram Dayal and Late Deen Dayal had purchased the disputed land ad measuring 2.10 Acres (0.845 Hectare) situated in Khasra No.296, Patwari Halka No.34/1, Revenue Circle Kawardha, District Kawardha. In Village Kawardha, according to the plaintiff, the said property was held jointly by both the parties, however, later on, the defendant-Khorbahara started claiming his exclusive title and denied giving property in partition and later on, got his name mutated in the revenue records, which gave the plaintiff cause of action to file suit. The plaintiff prayed for declaration that in the disputed property ad-measuring 2.10 acres (0.845 Hectare), the plaintiff is entitled to half share. The plaintiff also prayed for partition and possession as also mesne profit.

3. The defendant resisted the claim of the plaintiff by pleading that the property was not purchased jointly by Ram Dayal and Din Dayal, but by Bakhru and Pilababu. According to the defendant, partition had already taken place, but later on, Bakhru and Ganga Ram sold the property in dispute in favour of Khorbahara, though by unregistered sale deed dated 22-02-1946, Ex.D-2 and thereafter, Khorbahara and after his death, his successors are in continuous and hostile possession of the property.

4. Learned trial Court framed as many as six issues, which included an issue whether the property was purchased jointly by Ram Dayal and Din Dayal, whether the plaintiff was entitled to half of share in the property and also an issue whether the defendant No.1 had perfected his title by enjoying possession

for more than 12 years. Learned trial Court held that the property continued to be joint family property and the possession of defendant cannot be said to be adverse in nature. On such finding that the property was held jointly, the plaintiff was held entitled to half of the share in the property.

5. Aggrieved by the judgment and decree passed by the learned trial Court, the defendant preferred an appeal. The learned lower appellate Court, however, reversed the judgment and decree passed by the learned trial Court and recorded a finding that, though, unregistered sale deed dated 22-02-1946 did not transfer title in favour of Khorbahara, the possession of defendant-Khorbahara and thereafter, his successors was in denial of title of plaintiff since long and therefore, the defendants perfected their title by adverse possession and plaintiff's suit was liable to be dismissed. On such finding, the learned lower appellate Court reversed the judgment and decree passed by the learned trial Court.

6. This appeal was admitted for hearing on 01-03-2019 on the following two substantial questions of law:-

“1. Whether First Appellate Court was justified in reversing judgment and decree of the trial Court holding that by un-registered sale deed dated 22.2.1946 (Ex.D-2) plaintiffs have extinguished their title over the suit land and defendant No.1-Khorbahra/his legal heirs have perfected their title over the suit land by way of adverse possession?

2. Whether First Appellate Court was justified in reversing judgment and decree of the trial Court without expressly reversing the finding of the trial Court that suit property was held jointly by predecessor-in-interest of plaintiff-Ramdayal and defendant No.1's ancestor-Deendayal?”

7. Learned Senior counsel for the appellant argued that the finding recorded by the learned lower appellate Court that the defendant continued in possession of the property since long and that such possession was adverse to the interest and title of the plaintiff, is completely perverse and contrary to the evidence on

record. He would argue that even though, the learned lower appellate Court may have recorded a finding that the defendants were in actual possession of the property, it could not be said to be possession adverse to the title and interest of the plaintiff, because the property was jointly purchased by their respective father. Drawing attention of this Court to the pleadings of the defendant, he would submit that though, the defendant denied that the property was jointly purchased by Ram Dayal and Deen Dayal, there is an admission on their part that it was otherwise joint property, because it was acquired jointly by Bakhru and Peela Babu. He would argue that the learned trial Court has recorded a finding that the property was jointly acquired, therefore, the descendants of Ram Dayal and Deen Dayal or for that purpose, descendants of Bakhru and Peela Babu would be entitled to equal share in the property. His next submission is that the plaintiff has led specific documentary evidence in the form of revenue records as Ex.P-1, P-2 & P-3, jointly recorded the name of all the parties. This important documentary evidence of joint possession was ignored from consideration, therefore, the learned lower appellate Court has recorded a perverse finding that the possession of the defendant was hostile to the title and interest of the plaintiff. His further argument is that in the revenue records arising out of the mutation also, the order of mutation is set aside by the appellate authority holding that the sale deed was unregistered one. He would further submit that even Ganga Ram moved an application before the Revenue Authorities, claiming partition, which shows that Gangaram had not accepted defendant's title. He himself was asserting his interest in the property. This evidence taken together only prove that even if the defendants were in possession of the property, it was not exclusive or hostile possession. The possession, if any, was only as joint property and even if it is held that the plaintiffs were in possession of the property, at the same time, it cannot be said

that the possession of the defendant was hostile in nature so as to divest the plaintiff of their title for having not approached the Court within a period of 12 years. Next submission is that in order to establish that the defendant had perfected their title by adverse possession, the defendant was required to plead and prove that right from the year 1966, till the date of filing of suit in the year 1991, they continued to remain in uninterrupted possession of the property, which they failed to prove.

8. On the other hand, learned counsel for the respondents argued that two substantial questions of law did not arise for consideration in this appeal, because, first substantial question of law is essentially question of fact based on appreciation of oral and documentary evidence on record. He would next submit that as far as second substantial question of law is concerned, the same also is not substantial one, because even if it is held that the suit property was joint in nature, in view of the sale of the property, though by unregistered sale deed, the possession of the defendants over the property became hostile to the title and interest of Bakhru and Gangaram. Bakhru, during his life time, did not raise any dispute nor claimed any share. Only after death of Bakhru, sons of Bakhru started claiming interest over the property and filed suit. He would further argue that even though, unregistered sale deed is not admissible in evidence for proof of sale, for collateral purpose of proving possession of the defendants, the same has been taken into consideration by the learned lower appellate Court.

9. I have heard learned counsel for the parties and perused the records.

10. While pleading of the plaintiff has been that the property in dispute was purchased jointly by Late Ram Dayal and Deen Dayal, who are Grandfather of the plaintiffs and defendants respectively, the defendant in their written statement have denied this fact, but in any case, they admitted in their written

statement that the property in dispute was jointly acquired by Bakhru and Peela Babu. This property was acquired by Ram Dayal or Deen Dayal or Bakhru and Peela Babu jointly is not clear, because earlier property was joint one as it was jointly acquired. But, the defendants case in their written statement is that later on, by unregistered sale deed dated 22-02-1946, Ex.D-2, Khorbahra purchased the share of Bakhru and Ganga Ram. On this basis, the defendant set up a case that since long time, it was purchased by Khorbahra, he was in cultivating possession of the property excluding Bakhru and Gangaram and this was completely hostile to the title and interest of Bakhru and all their sons-the plaintiffs.

11. While the learned trial Court recorded a finding that the defendant has failed to prove that their possession was uninterrupted and hostile in nature, the learned lower appellate Court has recorded a detailed finding with regard to factum of possession over the property in dispute, as contained in para 11, 12 & 13 of its judgment. In order to hold that the defendants remained in possession of the property, learned lower appellate Court has considered the fact of unregistered sale deed dated 22-02-1946, Ex.D-2 only for the collateral purpose of deciding the issue of possession. The document contained recital to the effect that the possession was given to Khorbahra. Further, the learned lower appellate Court, on preponderance of probabilities, has taken into consideration the evidence of the parties, revenue Khasra entries contained in Ex.D-4 and has recorded a finding with regard to possession of the defendant-Khorbahra. The learned lower appellate Court has also taken into consideration that the plaintiffs case of they being in possession is also not acceptable, in view of the evidence on record, which shows that the plaintiffs were not even residents of the village. It has also taken into consideration the evidence of other witnesses, who have stated that the possession of the property in dispute remained with the

defendant-Khorbahra since long. These finding were essentially a finding of fact based on appreciation of evidence. Another set of evidence available on record also leads to possibility of another finding of fact, but in the absence of any perversity in the finding recorded by the learned lower appellate Court, this Court would not go into re-appreciation of oral and documentary evidence on record.

12. Argument of learned counsel for the appellant that the revenue entries as contained in Ex.P-1, P-2 & P-3 bear case of hostile possession cannot be accepted. The evidence led by the defendant that the possession of the defendant over the property in dispute was since long, is based on another set of oral and documentary evidence on record. Essentially, it would then be a matter of weighing evidence on record with regard to possession. The overwhelming evidence with regard to possession as led by the defendant has been accepted and believed by the learned lower appellate Court to come to the conclusion regarding his possession.

13. The argument that revenue entries, Ex.P-1, P-2 & P-3 would show that the possession was joint, has been negated by the learned lower appellate Court. The other argument that such entries would lead to inference that even if the defendants were in possession, it was possession as joint holder and not as exclusive title holder, however, cannot be accepted. Whether the possession was adverse or not, would depend upon the evidence on record and it cannot be decided on the basis of certain revenue entries only. The Court below have taken into consideration the evidence that the plaintiff's father-Bakhru along with Ganga Ram had left the property by receiving certain money from defendant-Khorbahra and the possession of Khorbahra was only in denial and hostility of title of the plaintiff. All these findings are finding of fact and therefore, first

substantial question of law does not arise for consideration in this second appeal. As far as second substantial question of law is concerned, it need not be answered, even if it is accepted that the property was held jointly and defendant's case has been that later on, after partition, Bakhru sold his property/share to the defendant-Khorbahra and that is how, Khorbahra came in possession and enjoyed possession for long time. It is also to be noticed that the plaintiff has failed to prove by any oral or documentary evidence of he being in possession of the property after 1970-71. From 1971, till the filing of suit i.e.1991, there is no material to show that the plaintiff remained in possession of the property. The defendants longstanding possession over the property that too in denial of the title of plaintiff has been rightly made a basis by the learned lower appellate Court to hold that the plaintiff is not entitled to any relief.

14. In the result, this appeal being devoid of any merit, is therefore dismissed. Let appellate decree be drawn accordingly. Parties to bear their respective costs.

SD/-
(**Manindra Mohan Shrivastava**)
JUDGE