

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 339 of 2003**

1. Jugri Bai And Another W/o Bhagirathi Satnami Aged About 40 Years R/o Village Chandli Tehsil Lormi, Distt. Bilaspur Chhattisgarh
2. Tulsi Bai W/o Prasad Aged About 42 Years R/o Village Pendri Talab, Tehsil Lormi, Distt. Bilaspur Chhattisgarh

---- Appellants**Versus**

1. Kamla Bai W/o Faguram Aged About 40 Years R/o Village Chandli, Tehsil Lormi Distt. Bilaspur Chhattisgarh
2. 2.A Pancho Bai W/o Late Pyare Lal Aged About 56 Years R/o Village Chandli, Tahsil Lormi, District Mungli Chhattisgarh
- 2.B Koushilya D/o Pyare Lal Aged About 25 Years R/o Village Chandli, Tahsil Lormi, District Mungli Chhattisgarh
- 2.C Baalam S/o Late Maakan Aged About 45 Years R/o Village Chandli, Tahsil Lormi, District Mungli Chhattisgarh
- 2.D Mini D/o Late Maakan Aged About 40 Years R/o Village Chandli, Tahsil Lormi, District Mungli Chhattisgarh
- 2.E Tijan Bai D/o Late Jogi Ram Aged About 25 Years R/o Village Chandli, Tahsil Lormi, District Mungli Chhattisgarh
3. The State Of M.P. (Now C.G.) Through Collector Bilaspur Chhattisgarh

---- Respondents

For Appellant	:	Shri A.K.Prasad, Advocate
For Respondent No.1.	:	Shri Prakash Tiwari, Advocate
For State	:	Shri Anmol Sharma, Panel Lawyer

S.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****31/07/2019**

This appeal is directed against judgment and decree dated 25.02.2003 passed by the Additional District Judge, Mungeli in Civil Appeal No.22-A/2000

whereby the learned Lower Appellate Court modified the judgment and decree dated 11.08.2000 passed by Civil Judge, Class-I, Mungeli in Civil Suit No. 38-A/96.

2. This appeal was admitted on following substantial question of law -

“Whether the first appellate Court committed an error of law by passing a decree and directing that the land purchased by the plaintiff be allotted to the share of Bhajiharin Bai after completing the partition from the revenue Court?”

3. Plaintiff-Kamla Bai filed a suit seeking declaration of title, partition and permanent injunction on the pleadings *inter alia* that vide registered sale deed dated 29.04.1995, she had purchased property in dispute described in Schedule-B from Dev Kunwar/defendant No.3 comprising of land admeasuring 0.85 acres situated in Khasra No. 490 of Village – Chandli, Tahsil – Lormi, District - Bilaspur. Plaintiff's case was that after having purchased share of Deo Kunwar, plaintiff became entitled to the share in the family property to the extent of share of Deo Kunwar. Later on, when the defendants started raising dispute, an occasion arose for the plaintiff to file suit. The plaintiff prayed for a declaration that the plaintiff is entitled to 1/4th share of the property as also declaration of his title in respect of 0.85 acres of land comprised in Khasra No.490 by virtue of sale deed dated 27.04.1995 and also for consequential relief of permanent injunction. The defendants filed their separate written statement. Defendants No.1 and 2, namely Jugri Bai and Tulsi Bai, came out with the pleading that name of Deo Kunwar was recorded as benami purchaser. Nema had a joint family and the property described in Schedule A belong only to Nema and his wife Deo Kunwar whereas the property described in Schedule B was joint Hindu family property. It was further pleaded that on the disputed land, all the joint holders of the family had

their share and partition of land described in Schedule A and B has not taken place. Therefore, Deo Kunwar did not have the right to sell any particular part of the joint family property as there was no partition.

Defendants No.3 and 4, namely Deo Kunwar, the vendor and Bhajiharin Bai pleaded that the property is self acquired property of defendant No.3. It was this self acquired property which was sold by Deo Kunwar in favour of the plaintiff and the plaintiff was also given possession and other defendants have never cultivated the land. Defendants No.3 and 4 fully supported the case of the plaintiff.

4. The learned Trial Court framed as many as four issues. Vide judgment and decree dated 11.08.2000, the Trial Court decreed the suit of the plaintiff in the manner that the plaintiff, by virtue of sale of undivided share of Deo Kunwar in her favour vide registered sale deed dated 29/04/1995, is entitled to share in the undivided properties described in Schedule A and B to which, Deo Kunwar would be entitled.

Plaintiff challenged judgment and decree before the lower Appellate Court by filing an appeal. Though learned Lower Appellate Court also affirmed finding to the extent that plaintiff - Kamla Bai purchased undivided share because by the time, sale deed was executed on 29.04.1995, no partition had taken place, it modified the judgment and decree of the Trial Court in the manner that upon partition, the land in dispute shall be allotted to the share of Bhajiharin Bai.

5. Learned counsel for the appellants would argue that once both the Courts below have recorded concurrent findings that what was purchased by Kamla Bai was the undivided share of Deo Kunwar because by the time, sale deed was executed, partition had not taken place, the plaintiff is only entitled to partition by

virtue of she having acquired undivided interest of Deo Kunwar in the joint family property. Learned lower Appellate Court committed illegality in modifying the judgment and decree of the Trial Court by holding that upon partition, the land in dispute alone should be allotted to the share of Bhajiharin Bai. Relying upon decision of the Supreme Court in the case of **Gajara Vishnu Gosavi v. Prakash Nanasahed Kamble & Ors., 2009 (10) SCC 654**, it is submitted that where purchaser purchase undivided share in the joint family property, he is not entitled to partition and he cannot claim exclusive share in respect of the property described in the plaint which he claims to have purchased through sale deed.

6. On the other hand, learned counsel for the respondent would argue that the defendant / vendor namely, Deo Kunwar and her daughter – Bhajiharin Bai did not dispute the title of the plaintiff and in their written statement, they have clearly pleaded that the property in dispute was purchased by defendant No.3 – Deo Kunwar from her own income and she also explained the circumstances in which, while effecting such purchase, she got the name of her husband – Nema also recorded. Therefore, the learned lower Appellate Court was fully justified in holding that the partition should be effected in such a manner that the disputed property which was subject matter of sale should be allotted to Bhajiharin Bai. After hearing learned counsel for the parties, this Court is of the opinion that the learned lower Appellate Court committed perversity and patent illegality in recording a finding that the disputed property as described in the plaint should be allotted to one share holder i.e. Bhajiharin Bai.

7. It is well settled legal position that where a share holder of joint family property executes a sale deed in respect of a particular part of the joint family property, the purchaser would only get interest as joint holder and he is not entitled to claim a specific property and that he can only claim partition in the

undivided joint family property. In the case of **Gajara Vishnu Gosavi** (supra), relied upon by learned counsel for the appellants, the Supreme Court held as below -

“7. The parties led evidence and after considering the same, the trial Court came to the conclusion that *no partition had ever taken place*. Therefore, Housabai could not claim any specific share in the property. She could be a co-sharer in common and joint possession. As the partition had never been effected, the question of handing over of the possession either to the present appellant/plaintiff or her vendee could not arise. Therefore, her possession was merely a forcible possession and was not valid and the suit was dismissed vide judgment and decree dated 19.12.1991. The trial Court observed that at the most on the basis of the sale deed Anjirabai and thereafter appellant/plaintiff could become the owner in common along with respondent - defendants in respect of the suit property but as there was no partition, the appellant/plaintiff could not be in lawful possession. The said findings of fact had been affirmed by the First Appellate Court in Regular Civil Appeal No.104 of 1992 decided on 13.8.1999, as well as by the High Court vide impugned judgment. Hence, this appeal.”

8. Learned Courts below having held that the property which was subject matter of sale, formed part of joint family property of which, Deo Kunwar, Bhajiharin Bai, Jugri Bai and Tulsi Bai were share holders and entitled to equal share, partition having not taken place till the date of execution of sale deed dated 29/04/1995, by virtue of sale deed the plaintiff could only claim partition of joint family property and could not lay any claim on any specific part of the joint family property much less described in sale deed.

9. Learned lower Appellate Court in varying the judgment and decree of the Trial Court that partition should be done in a particular manner so as to allot the property described in the plaint erred in law and such finding is clearly illegal and

unsustainable in law.

10. In view of above, the impugned judgment and decree passed by the learned lower Appellate Court is set aside and that of the Trial Court is restored. The plaintiff – Kamla is entitled to partition of joint family property which belong to Deo Kunwar, Bhajiharin Bai, Jugri Bai and Tulsi Bai and each of them would be entitled to 1/4th share of the property in partition.

11. The question of law is accordingly answered in the manner that the learned lower Appellate Court committed gross error of law by passing a decree and directing that the land purchased by the plaintiff be allotted to the share of Bhajiharin Bai after completing the partition from the Revenue Court.

Parties to bear their respective costs. Let appellate decree be drawn.

Sd/-
(**Manindra Mohan Shrivastava**)
Judge