NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No.571 of 2003

Shiv Dayal Soni S/o Phaguram Soni Aged About 62 Years R/o Village- Khaparikala, Tahsil And R.I.C. Lormi, District- Bilaspur, Chhattisgarh **---- Appellant/Defendant No.1**

Versus

1. Kejau, S/o Meghwa, Aged About 58 Years R/o Village Khaparikala, R.I.C. And Tahsil Lormi, District- Bilaspur, Chhattisgarh

2. Tribhuwan Das (Died) Through Legal Heirs
   2(i) Bajrang Manikpuri S/o Tribhuwan Das Manikpuri Aged About 32 Years, R/o Village Khaparikala, R.I.C. And Tahsil Lormi, District- Bilaspur, Chhattisgarh
   2(ii) Dashrath Manikpuri S/o Tribhuwan Das Manikpuri Aged About 25 Years, R/o Village Khaparikala, R.I.C. And Tahsil Lormi, District- Bilaspur, Chhattisgarh …...Plaintiffs

3. Sahodara Bai Wd/o Gyandas Aged About 49 Years R/o Village Khaparikala, P.S. Pandariya, District- Bilaspur, Chhattisgarh

4. Sukhram @ Sukhau S/o Meghwa Aged About 37 Years R/o Village Khaparikala, P.S. Pandariya, District- Bilaspur, Chhattisgarh.,

5. Shivdas S/o Bihari Aged About 27 Years R/o Village Khaparikala, P.S. Pandariya, District- Bilaspur, Chhattisgarh

6. Guddi Bai D/o Tihari Aged About 36 Years, R/o Village Khaparikala, P.S. Pandariya, District- Bilaspur, Chhattisgarh

7. Anand Bai Wd/o Tihari Aged About 52 Years R/o Village Khaparikala, P.S. Pandariya, District- Bilaspur, Chhattisgarh

8. Thagiya Bai D/o Bihari Aged About 25 Years R/o Village Beltari (Bhanwara Kachhar) Tahsil Takhatpur, District- Bilaspur, Chhattisgarh.

9. State Of M.P. (Now State Of Chhattisgarh) Through- Collector, Bilaspur, Chhattisgarh....(Defendant No. 2 To 8)

--- Respondents/Defendants

For Appellants/ Plaintiffs : Mr. H.B. Agrawal, Senior Advocate with Ms. Richa Dwivedi, Advocate
For Respondents No.1 & 2 : Mr. Vivek Shrivastava, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

25/09/2019

Heard.

1. This appeal is directed against impugned judgment and decree dated 23.07.2003 passed by the Additional District Judge, Surguja in Civil Appeal No.9A/96 whereby the judgment and decree dated 23.07.1996 passed by the Trial Court, dismissing plaintiff suit, has been reversed and a decree granted in favour of the respondents/plaintiffs.

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

> "1. Whether first appellate Court was justified in reversing the judgment & decree of the trial Court by directing plaintiff No.1 to bring suit for partition in view of the fact that original suit is only for permanent injunction and in alternative recovery of possession by recording findings, which are perverse and contrary to the record ?
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> 2. Whether first appellate Court was justified in converting the suit for permanent injunction into the suit for title questioning the sale deed dated 17.06.1982 ?"

3. Respondent/plaintiff filed a suit seeking decree of permanent injunction in respect of land admeasuring 2.144 hectares situated in Khasra No.164 and 179/2 situated in Village Khaprikala, on the pleadings *inter alia* that the property in dispute was joint family property of three brothers namely Tularam, Meghva and Pakladas. Plaintiff-Kejau is son of Meghva and plaintiff-Tribhuwan is son of Pakladas. As Tularam was the elder brother and Karta of family, in respect of the property and lands, his name was recorded in all the records. After death of Tularam, Ramwati widow of Tularam, taking undue advantage of the fact that in the revenue records, name of Tularam was recorded, executed a sale deed on 17.06.1982 in favour of defendant-Shiv Dayal. The plaintiffs having come to know about the said transaction, filed objection application before Nayab Tahsildar, Lormi, which is pending. On the pleadings that defendant No.2 Ramwati had no right to sell the property in dispute in favour of defendant No.1, plaintiffs sought decree of permanent injunction and in the alternative, recovery of possession if it is found that the plaintiffs are not in possession.

4. Defendant No.1/the purchaser, filed his written statement stating that he purchased the property from defendant-Ramwati. While defendants No.1 & 2 admitted that Tularam died on 10.06.1980, the plaintiffs' case was denied that the property in dispute was joint family property. According to defendants No.1& 2, the property belonged to Tularam and it was not part of joint family property, therefore, after death of Tularam, his widow Ramwati, defendant No.2 succeeded to the entire property and thus, she had title over the same. Defendants No.4 to 9 and 10 & 11, however, admitted the plaintiffs' claim.

5. Learned Trial Court framed as many as four issues including as to whether the property in dispute was joint family property and for that reason, she had no right to sell the same in favour of defendant No.1. Learned Trial Court after allowing the parties to lead oral and documentary evidence held that the plaintiff failed to prove from any oral and documentary evidence that the property in dispute did not belong to Tularam exclusively but it was joint family property though recorded in the name of Tularam. Having held so, the plaintiffs' suit was dismissed.

6. Learned Lower Appellate Court, however, reversing the finding by holding that the property in dispute belonged to the joint family of which Tularam was the *karta* and therefore, irrespective of whether or not the revenue records recorded the name of Tularam alone or along with others, the plaintiffs were also shareholders and therefore, Ramwati had no right to sell the property in dispute by sale deed dated 17.06.1982. Learned Lower Appellate Court granted decree of possession of property in dispute and to be handed over by defendant No.1/Shiv Dayal to plaintiffs and other members of the joint family including defendant No.2 also. Learned Lower Appellate Court also directed the purchaser to bring suit for partition of the joint family property on the basis of sale deed in his favour and after partition, he may seek possession of 04.87 acres of land.

7. Learned Senior counsel, assailing impugned judgment and decree submits that the plaintiffs' suit was not at all maintainable. He would submit that having specifically pleaded that the property was joint family property and not exclusive property of Tularam and thereafter, his widow Ramwati having also stated in the plaint that Ramwati had sold the property in dispute by registered sale deed dated 17.06.1982 in favour of defendant No.1/Shiv Dayal, sought a decree of permanent injunction or

recovery of possession. He would submit that no declaration was sought by the plaintiffs that the property be declared as joint family property and even partition was not sought. He would further argue that no relief against the sale deed that it was void and inoperative to the extent it was in excess of Ramwati's share was sought. Learned Lower Appellate Court converting the suit into that suit of declaration and without there being any relief of partition, directed the appellant/defendant to file a suit for partition.

8. Learned counsel for respondents No.1 & 2 supporting the judgment of the Court below and submits that it was not necessary for the plaintiffs to seek relief other than those which were sought. It is argued that the property being joint family property and not exclusive property of Tularam, his widow had no right to sell the joint property or any part thereof. In such a case, relief of declaration is not necessary because once it is proved that the property was joint in nature, that the sale deed would be illegal and inoperative to the extent of share of others and will operate only to the extent of share which came to Ramwati after death of Tularam.

9. In the plaint, on the basis of which, relief was sought by the plaintiffs it contained specific pleadings that the property was joint Hindu family belonging to Tularam and deceased husband of Ramwati and father of two plaintiffs, namely, Meghva and Pakaladas. In the plaint, it was also specifically pleaded that Ramwati taking undue advantage that the property was recorded in the name of Tularam, executed a sale deed dated 17.06.1982 in favour of defendant-Shiv Dayal. These pleadings on the face of it, were pleadings to the effect that the act of Ramwati created serious cloud on the plaintiffs' title in respect of the property in dispute. However, no declaratory decree was sought by plaintiffs. It is not a case where without there being any sale deed executed by Ramwati in favour of defendant-Shiv Dayal and despite property jointly recorded in the name of all the parties, defendant No.1 had started interfering with possession of the plaintiffs or had dispossessed plaintiffs. It was clearly a case where even according to plaintiffs, the property in dispute was recorded in the name of Tularam and after his death, it was recorded in the name of Ramwati/defendant No.2. Ramwati sold the property by registered sale deed in favour of defendant No.1-Shiv Dayal. Thus, without seeking appropriate declaratory relief and relief to avoid sale deed, the plaintiffs' suit was not maintainable. Learned Lower Appellate Court converted the

suit for permanent injunction into the suit for title as if the plaintiffs had sought a declaration of their title in respect of the property in dispute and further that it was a suit questioning sale deed dated 17.06.1982.

10. In view of above consideration, both the questions of law are decided in favour of the appellant/defendant and against the respondents/plaintiffs in the manner that the First Appellate Court was not justified in reversing judgment and decree of the Trial Court by directing the defendant to bring suit for partition and also for recovery of possession in a suit filed by the plaintiffs seeking limited relief of permanent injunction and alternative relief of recovery of possession. Further, it is held that the Court below was not justified in converting suit for permanent injunction into the suit for title questioning sale deed dated 17.06.1982. The appeal is allowed. Impugned judgment and decree passed by the Lower Appellate Court is set aside and the judgment and decree of the Trial Court dismissing plaintiff's suit is affirmed.

11. Parties shall bear their respective costs.

12. Let appellate decree be accordingly drawn.

Sd/-

(Manindra Mohan Shrivastava)

Judge

Rekh