

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No.615 of 2003**

- Karan Sai S/o Harsai Uranw, aged about 46 years, Resident of Village Jamdi, P.S.H. Patna, Tahsil Baikunthpur, District Korea (CG)

---- Appellant/Plaintiff**Versus**

1. Dashrath S/o Harai, aged about 56 years
2. Dharam Sai S/o Harai, aged about 48 years,
3. Patiram S/o Dashrath Uranw, aged about 36 years
4. Motilal S/o Dashrath Uranw, aged about 34 years
5. Ram Narayan S/o Dashrath, aged about 31 years

All are resident of Bhandarpara (Machbandha) P.S.H. & Tahsil Baikunthpur, District Korea (CG)

---- Respondents/Defendants**Present:-**

Shri JK Shastri, Advocate for appellant.

Shri Rishikant Mahobiya, counsel for respondents No.1 & 3 to 5.

None for respondent No.2.

Single Bench : Hon'ble Shri Justice Manindra Mohan Shrivastava

JUDGMENT**26/09/2019**

Heard.

1. This second appeal arises out of the impugned judgment and decree dated 01-09-2003 passed by the Additional District Judge, Baikunthpur (Korea) in Civil Appeal No.23-A/2002, by which, the learned lower appellate Court, reversing the judgment and decree dated 31-01-2001 passed by the learned Trial Court in Civil Suit No.31-A/1995, has held that the plaintiff failed to prove

its case and dismissed the suit.

2. Appellant plaintiff filed a suit seeking declaration that property described in para 1-A of the plaint, situated in Village Jamdi be declared as having been partitioned and the plaintiff be declared Bhoomiswami. In the alternative, plaintiff prayed that plaintiff be declared entitled to 1/3rd share as Bhoomiswami of property shown in para 1-B of the plaint. The plaintiff prayed for partition and permanent injunction. It was pleaded that the property described in para 1-A of the plaint was the joint family property earned by the father of plaintiff and his brothers-defendants No.1 and 2. According to the plaintiff, as far as property described in para 1-B of the plaint is concerned, this land was also being cultivated by his father-Harai and as property situated at Village Jamdi was already recorded in his name, was also agricultural land of village Bhandarapara shown in para 1-B of the plaint was got recorded in the name of defendant No.1-Dashrath, though he continued to be remain in occupation and cultivation of the joint family property of Harai with his three sons namely Karan-the plaintiff and defendants No.1 & 2-Dashrath and Dharam Sai. Further pleading of the plaintiff was that this joint family property was already partitioned way back in the year 1966 and in this partition, property situated in Village-Jamadi fell to the share of the plaintiff, whereas the agricultural lands situated in Village-Bhandarpara were given to defendant Nos.1 and 2. After death of his father, the plaintiff came to know that defendant No.1-Dashrath, his brother got his name mutated in the revenue records, particularly lands of Village Jamdi and dispute arose. Later on, when defendant No.1 claimed partition and finally orders were passed by the Revenue Court, directing the parties to approach the Civil Court for declaration of their title, it led to filing of the suit. Plaintiff claimed that he be declared Bhoomiswami of the agricultural land described in para 1-A of the plaint and in the alternative, if it is held that no partition had taken place,

he be declared entitled to 1/3 share in the entire property comprised in para 1-A and 1-B of the plaint.

Defendant No.2-Dharam Sai remained ex parte and did not file any written statement.

3. Defendant No.1 and sons i.e. defendants No.3, 4 and 5 denied the claim of the plaintiff by stating that the property situated in village Bhandarpara did not form part of the joint family property and it was cultivated and earned by the defendant No.1-Dashrath, which was acquired by him by grant of lease. This land was cultivated by the defendant No.1 in his own name and therefore, there was no question of it being subjected to partition. It was next submitted that as far as property situated in Village Jamadi is concerned, it was joint family property and this was partitioned amongst all the brothers by their father-Harai and the defendant No.1 & 2 as also the plaintiff were entitled to 1/3rd share each and their names were also recorded in the revenue records of Village Jamdi. The plaintiff started raising dispute and only to harass them, filed frivolous suit. After framing issues, particularly as to whether the property situated in Village Bhandarpara constituted joint family property, the learned trial Court held that the said property also formed part of the joint family property, though lease was granted in favour of defendant No.1-Dashrath. Learned trial Court, on the said finding, declared that the plaintiff is entitled to 1/3rd share upon partition in respect of the agricultural land described in Para 1-B of the plaint and also restrained the defendant from seeking partition of land described in para 1-A of the plaint.

4. Aggrieved by the judgment and decree of the learned trial Court, the defendant filed an appeal before the learned lower Appellate Court. Learned Lower Appellate Court, upon re-appreciation of the evidence available on

record, held that the plaintiff failed to prove that land situated in Village Bhandarpara formed part of joint family property and dismissed the plaintiff's suit.

5. This appeal was admitted for hearing on the following substantial question of law:-

“Whether the first appellate Court was justified in reversing the finding of the trial Court and declaring the agricultural property of Village Jamadi of appellant and respondents No.1 & 2 as joint property?”

6. Learned counsel for the appellant would argue that the question of law has to be considered in the sense whether the learned Lower Appellate Court was justified in holding that the property situated in Village-Jamadi continued to be joint family property, despite specific plea taken by the plaintiff that it was partitioned and upon partition, it was given to the share of the plaintiff. Learned counsel for the appellant would argue that the plaintiff specifically pleaded that the property situated in Village-Jamadi and Bhandarpara both were earned by Harai and notwithstanding grant of patta in favour of the defendant No.1-Dashrath, it continued to be joint family property in joint cultivation and enjoyment of Harai along with his three sons. He would argue that the plaintiff himself and other two witnesses Dharam Sai, PW-2 and Jangal Sai, PW-3 have not only clearly deposed that the property of Village Jamadi and Bhandarpara both were earned by Harai, but they have also stated that later on, partition on the property situated in Village Jamadi had taken place and was given to share of the plaintiff. As against this specific and clinching evidence led by the plaintiff, the defendant, though sought to assert by oral evidence that the property situated in Village Bhandarpara was his self earned property and not joint family property, as it was given to him by government lease, no specific evidence in

rebuttal could be led to dislodge the plaintiff's evidence that the property situated in Village Jamadi was partitioned and it was given to the share of the plaintiff and therefore, no further partition could be done as claimed by the defendant. He would argue that on the question of law as framed by this Court, as the plaintiff is entitled to at least declaration that the property situated in Village-Jamadi was not liable for further partition, as it was received by plaintiff, upon partition held in the year 1966.

7. On the other hand, learned counsel for the respondents would argue that the learned lower appellate Court, upon re-appreciation of evidence on record, which included oral as well as documentary evidence, has come to the conclusion that the property of Village Bhandarpara was granted by way of lease only in favour of defendant No.1-Dashrath and that he was not minor, the plaintiff's case has been disbelieved as improbable, because once the plaintiff failed to prove that the property situated in Village Bhandarpara was joint family property, it is admission of the plaintiff that the property of Village-Jamadi is the joint family property, it is improbable that the entire joint family property would be given to the plaintiff by his father, without giving any share to other two brothers.

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

9. The evidence and pleading of the plaintiff and defendant leads to one one admitted position that the property of Village Jamadi was joint family property. However, the plaintiff's assertion that the property situated at Village Bhandarpara was also joint family property, though for name sake, recorded in the name of defendant No.1-Dashrath, has not been believed by the learned lower Appellate Court. True it is that there is oral evidence led by the plaintiff, in the absence of any other documentary evidence, the learned lower Appellate

Court disbelieved the case that though, the property was recorded by way of lease in favour of Dashrath, yet it was in effect, earned by Harai, thus constituted joint family property. The plaintiff's case that the property at village Bhandarpara was earned by Harai, except his own oral evidence, no other material evidence has been brought before the Court. It is an admitted position that the property at Village Bhandarpara was recorded in the name of Defendant No.1-Dashrath. The evidence on record also shows that at that time, Dashrath was 30 years of age. If that be so, grant of lease in the name of defendant No.1-Dashrath alone, gives presumption that the property belonged to Dashrath only. The burden was on the plaintiff, heavy one, to prove otherwise. The learned lower Appellate Court has scrutinized the oral evidence as well as documentary evidence on record to reach its own finding of fact, which can neither be termed as patently illegal nor perverse.

10. Once the plaintiff failed to establish and prove that the property situated at Village Bhandarpara was joint family property, the plaintiff's claim that the property situated at Village Jamdi, which admittedly is joint family property, would be given in partition to him alone, without any share to other member of the family, appears to be highly improbable. According to the plaintiff, partition had taken place in the year 1966 whereas, at that time, the plaintiff was minor.

11. Moreover, it is also to be noticed that by that time, no patta was granted in favour of defendant No.1-Dashrath in respect of land situated in Village-Bhandarpara.

12. Therefore, viewed from any angle, it cannot be said that the finding recorded by learned lower Appellate Court suffers from patent illegality and perversity. The view, which has been taken by the learned lower appellate Court

is possible view based on legally admissible evidence and merely because, two views are possible, no interference is permissible, unless it is established that the finding recorded in favour of the defendant, suffers from gross perversity, patent illegality or in ignorance of any evidence or contrary to evidence on record.

13. In the result, the appeal has no merit and the same is accordingly dismissed. Let appellate decree be accordingly drawn.

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