

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 303 of 2006****Judgment reserved on 28/11/2019****Judgment delivered on 02/12/2019**

1. Sukhbati (died and deleted).
2. Pavan Kumar, Son of Mer Singh, Aged about 43 years.
3. Shail Kumar, Son of Mer Singh, Aged about 34 years.

All are "Halba" by caste, farmer and resident of Shahakatta, Tahsil Bhanu Pratappur, Distt. Kanker, Chhattisgarh.

--- Appellants/Plaintiffs

Versus

1. Bajni Bai D/o Sagru, since wrongly shown Sakru, Aged about 39 years, Wife of Shri Balram R/o Village Shahakatta.
2. Kumar Bai D/o Sagru, wrongly shown as sakru, Wife of Amar Singh, Aged about 31 years, R/o Village Kunwapaani, Tahsil Bhanupratappur.
3. Mohani Bai, D/o Sagru, wrongly shown as Sakru, Wife of Motilal, Aged about 21 years, R/o Village Hindubinapar, Tahsil Antagarh. All belonging to Caste "Halba", farmer and resident of District Kanker, Chhattisgarh.

4.State of Chhattisgarh, through the Collector,
Distt. Kanker, Chhattisgarh.

--- Respondents/Defendants

For Appellants	:	Mr. R.N. Jha, Advocate
For Respondents	:	Mr. Parag Kotecha, Advocate
For State	:	Mr. Ravi Bhagat, Deputy Government Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

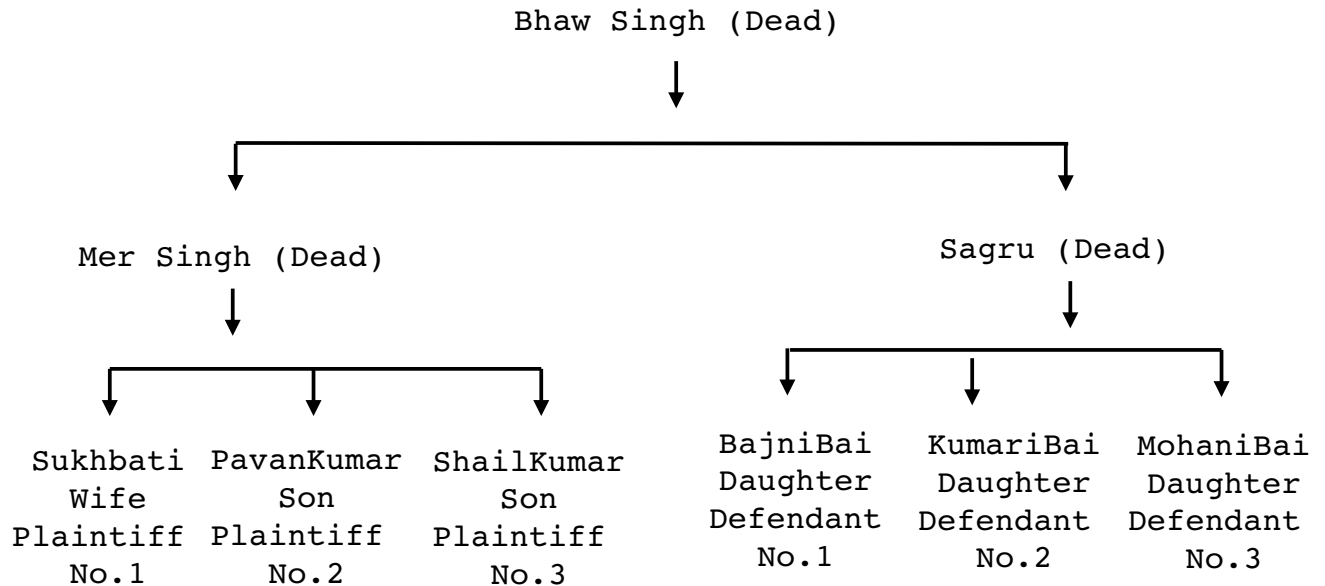
C.A.V. Judgment

1.This second appeal preferred by the plaintiffs was admitted for hearing on the following substantial question of law :-

“Whether the lower appellate Court committed an error of law in holding that the suit lands were the joint family property among the 2 brothers namely Mer Singh and Sagruram and thereby reversing the judgment and decree passed by the trial Court ?”

(For the sake of convenience, parties would be referred hereinafter as per their status and ranking shown in the suit before the trial Court.)

2. The following genealogical tree will demonstrate the relation between the parties :-



The three plaintiffs are wife and sons of Late Mer Singh respectively whereas the three defendants are all daughters of Late Sagru.

3. Plaintiffs brought an action against the defendants for declaration of title and possession stating *inter alia* that the suit property shown in Schedule 'A' appended with the plaint was exclusively held by their husband/father Mer Singh and after his death, they have been in possession of the suit property and without their knowledge or consent, defendants got their names recorded in the revenue records whereas they have no title over the suit property and moved an application before the Tahsildar for partition of the said suit

property which necessitated the institution of the civil suit by the plaintiffs for the aforesaid reliefs of declaration of title and in alternative possession.

4. Defendants filed their written statement opposing the plaint allegations thereby stating *inter alia* that the suit property was recorded jointly in the names of Mer singh and Sagru in the revenue records and at the time of death of their father Sagru, defendants were minor therefore, plaintiffs' husband/father Mer Singh was their guardian. It was also stated that by order dated 06/05/1994 passed by the Tahsildar, Bhanupratappur, the suit property was partitioned between the parties against which plaintiffs preferred an appeal but the Sub-divisional Officer affirmed the order of the Tahsildar by its order dated 20/07/1994. It was further stated that the suit filed by the plaintiffs is barred by limitation and therefore, they are not entitled for decree for declaration of title and in alternative possession.

5. Learned trial Court, after appreciating the oral and documentary evidence on record, held that plaintiffs' father Mer Singh purchased the suit

property from one Anadi Halba by an unregistered sale deed dated 30/12/1940 (Ex. P/3) for a consideration amount of ₹ 300/- and thereafter, came into possession of the suit property and though the sale deed is unregistered but presumption under Section 90 of the Evidence Act would be applicable and by its judgment and decree dated 27/08/1999 decreed the suit in plaintiffs' favour declaring them to be the title-holders of the suit property.

6. On appeal being preferred by the defendants, learned first appellate court, by its judgment and decree dated 29/04/2006, reversed the judgment and decree of the trial Court by holding that the suit property is the joint family property of plaintiffs as well as defendants and both are entitled for $\frac{1}{2}$ share in the suit property.

7. Being aggrieved by the judgment and decree passed by the first appellate Court, this second appeal under Section 100 of the CPC has been preferred by the plaintiffs wherein substantial question of law was formulated on 28/08/2006 which has been set out in the opening paragraph of this judgment.

8. Mr. R.N. Jha, learned counsel for the appellants/plaintiffs would submit that the first appellate Court was absolutely unjustified in holding that suit property is the joint family property of the plaintiffs as well as the defendants ignoring the fact that plaintiffs' husband/father Mer Singh purchased the suit property by sale deed dated 30/12/1940 (Ex. P/3) and even though the sale deed is an unregistered document, but since plaintiffs are in possession of the suit property, they have perfected their title by way of adverse possession, as such, they are entitled for decree as claimed by them which the trial Court has rightly granted but the first appellate Court has reversed without any cogent and strong ground, therefore, the second appeal deserves to be allowed and the judgment and decree of the first appellate Court is liable to be set aside and that of the trial Court be restored.

9. Mr. Parag Kotecha, learned counsel for the respondents/defendants would submit that Ex. P/3 is an unregistered sale deed and so it will not pass any title upon the successors in title of Mer Singh i.e. the plaintiffs and even the

presumption under Section 90 of the Evidence Act would not extend to the document (Ex. P/3) which was required to be registered and yet it has not been registered, therefore, the first appellate Court is absolutely justified in holding that plaintiffs are not the exclusive title-holders of the suit property and the second appeal deserves to be dismissed accordingly.

10. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the records with utmost circumspection.

11. It is a case of the plaintiffs that they are the owners and title-holders of the suit property shown in Schedule 'A' annexed with the plaint, but during the course of the evidence, they filed the document (Ex. P/3) i.e. copy of the unregistered sale deed dated 30/12/1940 through which plaintiffs' father Mer Singh purchased the suit property for a consideration amount of ₹ 300/- after which he came into possession of the suit property. The said sale deed (Ex. P/3) was accepted by the trial Court in view of the provision contained under Section 90 of the Evidence Act, but the first appellate Court

reversed it holding that if the immovable property is of a value of more than ₹ 100, then title cannot be transferred without a registered document by virtue of Section 54 of the Transfer of Property Act, 1882 (in short "the TP Act").

12. In order to appreciate the aforesaid plea, it would be appropriate to notice Section 54 of the Transfer of Property Act, 1882, which states as under :-

"54. "Sale" defined. - "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made - Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property."

13. Under Section 54 of the TP Act, there are only two modes of transfer by sale, and these are (i) registered instrument; and (ii) delivery of possession. The first overlaps the second, for a transfer may in all cases be made by a registered instrument. It is only in the case of tangible immovable property of value less than ₹ 100, that the Section allows the simpler alternative of delivery of possession. In all other cases, a registered instrument is compulsory. The option of a simpler alternative is allowed in the case of tangible immovable property of value less than ₹ 100, because the formality of a registered instrument is not considered necessary in view of the small value, and the patent evidence of the transfer afforded by the delivery of physical possession. (See: *Mohinuddin v. President, Municipal Committee, Khargone*¹)

14. Reverting to the facts of the present case, it is quite vivid that admittedly, the suit property is said to have been transferred in favour of plaintiffs' father Mer Singh by unregistered sale deed (Ex. P/3) dated 30/12/1940 for a sale consideration of ₹ 300/-, therefore, Section 54

of the TP Act would be attracted here and the sale of the suit property could have been made only by a registered instrument, but since, it has been made by an unregistered instrument, no title has been passed in favour of plaintiffs' father and thereafter, in favour of plaintiffs.

15. Where the sale deed requires registration, title does not pass until the sale deed is registered, even though the transfer of possession as well as payment of consideration amount takes place before the registration of the document. (**See: *Cherichi v. Ittianam***²). As such, the first appellate Court is absolutely justified in holding that title over the suit property has not been passed in favour of the plaintiffs due to the sale deed dated 30/12/1940 (Ex. P/3) not being a registered document.

16. Mr. R.N. Jha, learned counsel for the appellants/plaintiffs contended that by doctrine of adverse possession, plaintiffs have perfected their title over the suit property. It is quite pertinent to notice that plea of adverse possession was never set up by the plaintiffs either in the plaint, before the trial Court or

before the first appellate Court. The plea of adverse possession was not set up by the plaintiffs as a source of title before both the Courts below and it ought to have been raised therein in order to notice the other side and in order to provide an opportunity to the defendants to defend the said ground. Since, the plea of adverse possession has not been raised by the plaintiffs before both the Courts below throughout, it certainly cannot be permitted to be raised for the first time before this Court, as such, the first appellate Court has rightly held that the suit property was not the self-acquired property of plaintiffs' father Mer Singh and thus, plaintiffs have not succeeded it alone, but it is the joint family property of Mer Singh as well as Sagru and both plaintiffs and defendants are entitled for $\frac{1}{2}$ share in the suit property. Consequently, the substantial question of law is answered in negative. I do not find any perversity or illegality in the findings recorded by learned first appellate Court.

17. The second appeal deserves to be and is accordingly dismissed leaving the parties to bear their own cost(s).

18. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet