

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 385 of 2016

Dr. Smt. Ratnavali Singh W/o Shri Mahendra Kumar Singh, Aged About 70 Years D/o Thakur Chhedi Lal, R/o Thakur Chhedi Lal Barrister Bungalow Ward No.28 House No.61 Gandhi Square Dayalband Bilaspur, ChhattisgarhPlaintiff, Chhattisgarh

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Versus

1. Takur Vijay Pratap Singh S/o Late Thakur Chedi Lal Singh, Aged About 66 Years R/o Gandhi Square Dayalband Bilaspur, Chhattisgarh, Present Residence Flat No.262 Block No.M Sector 25 Noeda U.P., Uttar Pradesh
2. (अ) - Sanjay Singh S/o Prithvi Pal Singh,
(ब) - Aditya Singh S/o Prithvi Pal Singh,
(स) - Prabal Singh S/o Prithvi Pal Singh,
(द) - Deependra Singh Alias Daby S/o Prithvi Pal Singh,

All R/o Akaltara Tehsil Akaltara District Janjgir-Champa, Chhattisgarh, District : Janjgir-Champa, Chhattisgarh
3. Shri Yogendra Singh (Dead) Through Lrs :
3.1 - Prema Devi Singh W/o Late Yogendra Singh, Aged About 50 Years
3.2 - Renu Rani Singh D/o Late Yogendra Singh, Aged About 34 Years
3.3 - Sourabh Singh S/o Late Yogendra Singh Aged About 26 Years

All Respondent No.3.1 to 3.3 R/o Gupta Lane Tikrapara Bilaspur, Tehsil & District- Bilaspur (CG)

3.4 - Dr. Lokesh Singh S/o Late Yogendra Singh, Student, Mental Hospital Kanke Ranchi (Jharkhand)
4. Ashok Kumar Singh S/o Indra Bhushan Singh, Aged About 48 Years
5. Akhilesh Kumar Singh (Dead) Through Lrs :
5(क) -Smt. Malini Singh Aged About 51 Years
5(ख) - Smt. Shalini Singh Aged About 49 Years
5(ग) - Smt. Nalini Singh Aged About 47 Years
5(घ) - Shri Rana Pavan Aged About 45 Years

All Res. No.4, 5 & 5(क) to 5(घ) R/o Purani Basti Akaltara, District Janjgir-Champa, Chhattisgarh, District : Janjgir-Champa, Chhattisgarh
6. Shri Rajbahadur Singh S/o Indra Bhushan Singh, Aged About 56 Years R/o Village Akaltara, District Janjgir-Champa, Chhattisgarh, District : Janjgir-Champa, Chhattisgarh
7. Shri Rana R.N.Singh S/o Chitranjan Singh, Aged About 42 Years R/o Village Akaltara, District Janjgir-Champa, Chhattisgarh, District : Janjgir-Champa,

Chhattisgarh

8. Shri Rana Dinesh Singh S/o Chitranjan Singh, Aged About 40 Years R/o Village Akaltara, District Janjgir-Champa, Chhattisgarh, District : Janjgir-Champa, Chhattisgarh
9. Shri Rana Divakar Singh S/o Chitranjan Singh, Aged About 34 Years R/o Village Akaltara, District Janjgir-Champa, Chhattisgarh, District : Janjgir-Champa, Chhattisgarh
10. Shri Bodhi Singh S/o Shri Laljit Singh, R/o Juna Bilaspur, Chhattisgarh, District : Bilaspur, Chhattisgarh
11. Shri Virendra Singh Aged About 90 Years, S/o Late Harprasad (Dead) Through Lrs, Chhattisgarh
 - 11(अ) - Smt. Kalyani Singh W/o Late Virendra Singh, Aged About 85 Years
 - 11(ब) - Smt. Nalini Singh W/o Late Virendra Singh, Aged About 60 Years
 - 11(स) - Jayant Kumar S/o Late Virendra Singh, Aged About 55 Years
 - 11(द) - Smt. Namita Singh D/o Late Virendra Singh, Aged About 53 Years
 - 11(ई) - Sanjeev Kumar Singh S/o Late Virendra Singh, Aged About 50 YearsAll Res. No.11(अ) to 11(ई) R/o Purani Basti Akaltara, Tehsil-Akaltara, District-Janjgir-Champa (CG)
12. Shri Keshav Kumar Singh Aged About 75 Years, S/o Late Shri Hariprasad Singh R/o Village Akaltara, Tahsil And District Janjgir-Champa, Chhattisgarh Died Through Lrs, Chhattisgarh
 - 12(क) - Smt. Gulab Devi Singh Wd/o Late Keshav Kumar Singh, Aged About 65 Years
 - 12(ख)- Shri Anil Kumar Singh S/o Late Shri Keshav Kumar Singh, Aged About 60 Years
 - 12(ग) Shri Anjini Singh S/o Late Shri Keshav Kumar Singh, Aged About 58 Years
 - 12(घ) Shri Aalok Singh S/o Late Shri Keshav Kumar Singh, Aged About 36 YearsRes. No. 12(क) to 12(घ) R/o Purani Basti Akaltara, District, Janjgir-Champa (CG)
 - 12(ण) Smt. Ranjana Singh D/o Late Shri Keshav Kumar Singh Aged About 54 Years, W/o Shri Dheer Singh R/o Village Mudhpar Tehsil Masturi, District -Bilaspur (CG)
 - 12(त) Smt. Prabha Singh D/o Late Shri Keshav Kumar Singh Aged About 47 Years, W/o Dr. Yogendra Singh, R/o Govt. Hospital Dhamtari (CG)
 - 12(थ) Smt. Bhavna Singh D/o Late Shri Keshav Kumar Singh Aged About 45 Years , W/o Shri Rajendra Singh alias Bablu, RTO Colony Bilaspur
 - 12(द) Smt. Sangita Singh D/o Late Shri Keshav Kumar Singh, Wd. Late Shri Anup Singh, Aged About 47 Years
 - 12(ध) Shri Ankur Singh Aged About 22 Years , S/o Late Shri Anup Singh (Anup Singh, S/o Late Keshav Kumar Singh)Res. No.12(द) & 12(ध) R/o Akaltara District- Janjgir Champa (CG)

13. State Of Chhattisgarh, Through Collector Bilaspur, Chhattisgarh
.....Defendants, District : Bilaspur, Chhattisgarh

---- Respondents

For Appellant	:	Shri S.N. Nande, Advocate
For Respondent No.1	:	None appears
For Respondents 2 to 9, 11 & 12	:	Shri Avinash Mishra, Advocate
For State	:	Shri Vaibhav Singh, Panel Lawyer

**D.B. :Hon'ble Mr. Justice Manindra Mohan Shrivastava &
Hon'ble Mrs. Justice Rajani Dubey**

Order on Board

09/09/2019

1. This appeal is directed against the judgment and decree dated 25th October 2016 passed by learned Fifth Additional District Judge, Bilaspur in Civil Suit No.81-A of 2013 by which the learned trial Court has dismissed plaintiff's suit.
2. Appellant-plaintiff filed a suit seeking decree of declaration of title and permanent injunction on the pleadings, inter alia, that the property in dispute was self-acquired property of plaintiff's father. According to the plaintiff, her father had remained in possession of the property in dispute along with his family during his lifetime and after his death on 18.9.1956, the plaintiff and defendant No.1, the daughter and son respectively, succeeded to the property and remained in possession of the property in dispute. Further case of the plaintiff was that later on, the plaintiff and defendant No.1 partitioned the property which was received by them by their father. Property described in Part-"A" fell to the share of the plaintiff and that shown in Part-"B" was allotted to defendant No.1. Plaintiff remained in possession of the property since long and later on, plaintiff also got renovation done. Cause of action arose for the plaintiff to file suit when her brother/defendant No.1 started disputing plaintiff's title and objected to certain repairing/renovation work started by the plaintiff.
3. The plaintiff had impleaded not only her brother- Thakur Vijay Pratap Singh/defendant No.1, but also descendants of Bajrang & Chhotelal,

brother of Pachkod Singh. Pachkod had five sons including Chhedi Singh.

4. Defendant No.1 in his written statement, though admitted that property in dispute belong to his father Thakur Chhedilal and that he remained in possession during lifetime, denied that after his death, plaintiff succeeded to the property . His plea was that after death of his father, defendant No.1 succeeded to entire property in dispute and out of compassion, looking to the plaintiff's need, he had allowed the plaintiff to reside in a part of the house comprised in disputed property.
5. The other defendants being successor from other branches, however, disputed the plaintiff's claim of title over the property and maintained that the property was not self-acquired property of Thakur Chhedilal, but it was joint family property of Thakur Chhedilal along with his brothers, Vishal Bajrang, Chhote Lal and Pachkod Singh. Further case of the defendant No. 2 to 9 and 12, 13 was that, in fact, the property in dispute was purchased by Vishal and later on, after his death, this property was enjoyed by his widow but later on, vide registered relinquishment deed (Ex.D-2), she relinquished the property in the manner described in relinquishment deed. The plaintiff's case was thus opposed by the these defendant.
6. Learned trial Court framed as may as five issues. The first issue was whether the name of defendants No. 2 to 11 was recorded in revenue records having no right over the property claimed by the plaintiff. The second was whether the property in dispute was self-acquired property of Thakur Chhedilal. The third issue was whether the plaintiff was entitled to share in the disputed property and its possession thereof. Other issues related to valuation and ancillary relief.
7. After allowing the parties to lead oral and documentary evidence, learned trial Court found that the plaintiff, though, pleaded that the property in dispute was self-acquired property of Thakur Chhedilal/her father, the plaintiff could not prove as to how and in what manner Thakur Chhedilal acquired the property. As decision on this issue had material bearing on all other issues, the finding on issues No. 1, 2 & 3 were recorded against the plaintiff and the suit was dismissed.
8. Assailing correctness and validity of the impugned judgment and decree, learned counsel for the appellant-plaintiff would argue that the entire

judgment of the Court below proceeds on misleading of the plaintiff's case as pleaded in his plaint. He would argue that what the plaintiff pleaded was that Thakur Chhedilal acquired the propriety upon partition of family property which belonged jointly to plaintiff's father and his brothers and later on, amongst plaintiff and his own brothers. Learned counsel for the appellant stressed upon the pleading and evidence led by the defendant to submit that, even though, defendants No. 2 to 9 and 12 & 13 have admitted that property was joint, they have stated regarding family partition and, therefore, it is clear that whatever was occupied, held and possessed by Thakur Chhedilal during his lifetime was that which was received by him as his own share after family partition. Learned counsel for the appellant further submitted that the defendant No.1 himself did not enter the witness box nor he controverted the evidence led by the plaintiff with regard to property in dispute having been received by way of partition by plaintiff's father Thakur Chhedilal and thereafter, plaintiff having remained in continuous possession of the same. Further submission of learned counsel for the appellant is that in the present case, the revenue records /nazul records all recorded possession not only of Thakur Chhedilal during his lifetime but thereafter, of the plaintiff and her brother defendant No.1 which clearly established that the property was in exclusive enjoyment and possession of plaintiff's father Thakur Chhedilal since several decades. This possessory title acquired by the plaintiff due to long possession without any intervention ought to be given full effect to by giving appropriate declaration of possessory title if not ownership title. Learned counsel for the appellant would also argue that as the land being *aabadi* land, long possession is prima facie evidence of title. In support of his submissions learned counsel for the appellant-plaintiff relied upon the decision in **Sukh Lal** (since deceased) through LRs and Ors. **Vs. Ashok Kumar Raghuwansi** (2013) 97 ALR 163, **Vidhyadhar Vs. Mankikrao and Anr.** AIR 1999 SC 1441 and **G. Sekar Vs. Geetha & Ors.** (Civil Appeal No.2535 of 2009 decided on 15th April 2009).

9. Per contra, learned counsel for respondents No. 2, 3 (3.1 to 3.4) 4, 5 (क) to (घ), 6 7, 8, 9,11 (अ), (ब), (स), (द), (ई), 12 (क), (ख), (ग), (घ), (ण), (त), (थ), (द), (ध) submits that the entire case of the plaintiff is based on the pleading that the property in dispute was self-acquired property of late Thakur Chhedilal

but there is no amount of pleading that the property in dispute had been received by Thakur Chhedi in any family partition. As the plaintiff failed to lead any oral and documentary evidence of valid acquisition of title over the property in dispute to the exclusion of all other members of the family, learned trial Court rightly dismissed the plaintiff's suit. He would argue that the plaintiff sought to lead evidence of partition without there being any pleading and therefore, what was pleaded has not been proved and the evidence on which the plaintiff relies upon is not based on any pleading.

10. We have heard learned counsel for the parties and perused the records of the Court below.

11. In our opinion, only one point arises for determination in this appeal and that is whether the plaintiff succeeded in proving that the property in dispute was self-acquired property of late Thakur Chhedilal, father of the plaintiff and defendant No.1. On this issue, learned trial Court has recorded a finding against the appellant-plaintiff.

12. In order to establish the claim, all that the plaintiff has brought on record is entries made in revenue and nazul records. Having pleaded that the property was self acquired one, the burden was squarely on the plaintiff to come with the evidence as to how Thakur Chhedilal acquired the property. In the plaint also, there is no specific pleading as to how Thakur Chhedilal acquired title over the property in dispute. In para-2 of the plaint, it has been, pleaded that the property belong to Thakur Chhedilal and it was self acquired one. Except this, there is no pleading. The evidence of the power of attorney holder of the plaintiff namely Dr. Madhulika Singh Thakur (PW1) also does not disclose as to in what manner Thakur Chhedilal acquired the property. Though, plaintiff's witness has stated in her evidence (affidavit under Order 18 Rule 4 CPC) that property was partitioned between the plaintiff and her brother /defendant No. 1, there is no evidence led as to how Thakur Chhedilal acquired the property. The evidence is that Thakur Chhedilal used to reside in the house since long and plaintiff and his brother were also residing in that very house since long and later on, the plaintiff's brother/ defendant No.1 having joined Indian Navy, left the place. The pleading of partition between plaintiff and defendant No.1 was without any detail except a bald assertion. There is no evidence to show

how the plaintiff father acquired title. The entire case of the plaintiff was based on various entries made in the tax assessment register, nazul records, etc.

13. The defendants No. 2 to 9 and 12, 13 came out with the case that the property was purchased by Vishal, brother of Pachkod and uncle of Thakur Chhedilal and was, later on, relinquished by his wife in the manner described in registered relinquishment deed Ex.D-2. However, it is not necessary for this Court to examine on those matters because if the plaintiff has sought declaration of title on the basis that the property was self acquired one, the burden was squarely on the plaintiff to lead specific evidence regarding valid acquisition of title by Thakur Chhedilal by purchase, 'will', gift etc. or such other mode of transfer known to the laws of land.
14. Though, learned counsel for the appellant-plaintiff strenuously argued before us that there existed a joint family and later on partition had also taken place therefore, the property in dispute should be treated as having been received by way of partition by Thakur Chhedilal, we are afraid, in the absence of there being any amount of pleading, such contention cannot be accepted. Neither there is any pleading nor any evidence led by the plaintiff that the property in dispute was received upon partition by Thakur Chhedilal as his own share. Therefore, the plaintiff could not rely upon any evidence coming on record suggesting partition of family property in the past. Neither any detail has been given nor any documentary evidence of any such partition, memo of partition etc. has been placed on record. In any case, the plaintiff has to succeed on his own legs and he cannot take benefit of defects in the pleading and evidence led by the defendant, if at all it were to be assumed to be there.
15. It is not a case where the title of Thakur Chhedilal is sourced through partition in the family. In the absence of there being any pleading whatsoever, the plaintiff's case rested purely on a plea that the property in dispute was self acquired one of Thakur Chhedilal.
16. The submission of learned counsel for the appellant that as the property was situated in *aabadi* land and plaintiff's father had resided in same house

since long and thereafter the plaintiff, the plaintiff was entitled to a proper declaration based on possession, cannot be accepted. Reliance placed on decision in the case of **Sukh Lal** (supra) is completely misconceived. Present is a case where as against plaintiff's claim of acquisition of title over the property by her father, the defendant No. 2 to 9 and 12, 13 have come out with the case that property constituted joint family property. Not only that there is a sale deed of purchase of property by Vishal who was the uncle of Thakur Chhedilal. In what manner that self-acquired property percolated to Thakur Chhedilal is sans pleading and evidence both. The other two decisions cited by learned counsel for the appellant do not come to his aid. Once it is held that plaintiff has led no evidence of acquisition of title over the property by Thakur Chhedilal, it is not necessary for this Court to go into other aspect of the matter relating to the effect of non examination of defendant No.1 and all other aspect relating to application of law of succession.

17. An argument has also been raised by learned counsel for the appellant-plaintiff that as the property was situated in *aabadi*, the plaintiff must be held to have a prima facie title holder over the property. Even if it were to be accepted that the plaintiff was in long possession of the property, that by itself does not mean that the property was held by the plaintiff in his exclusive right to the exclusion of all. This could happen only upon proof either of some partition or acquisition of title over the property by Thakur Chhedilal. Moreover, the plaintiff has failed to place before the Court any kind of grant in favour of the plaintiff or any such other order under the law of the land conferring even possessory title of the plaintiff. Therefore, in our opinion, learned trial Court committed no illegality in dismissing the plaintiff's suit. All that can be observed while parting with the suit is that a person in possession of the property could be evicted only in accordance with law.

18. In the result, the appeal fails. Plaintiff's suit is dismissed. Let appellate decree be drawn accordingly.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Rajani Dubey)
Judge