

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 125 of 2006**

1. Jagdish Prasad Rathore (died) through Lrs.

(I) Dulasiya Bai Rathore, Wd/o Late Jagdish Prasad Rathore, Aged about 66 years.

(ii) Rajesh Kumar Rathore, S/o Late Jagdish Prasad Rathore, Aged about 41 years.

(iii) Gayatri Rathore W/o Devi Prasad Rathore D/o Jagdish Prasad Rathore, Aged about 37 years, R/o Siyur, Tahsil Nawagarh, District Janjgir-Champa, Chhattisgarh.

(iv) Laxmi Rathore W/o Dwarika Prasad Rathore, D/o Jagdish Prasad Rathore, Aged about 35 years.

(v) Parwati W/o Anurag, D/o Late Jagdish Prasad Rathore, Aged about 32 years.

(vi) Girja Bai Wd/o Jagdish Prasad Rathore, Aged about 48 years.

(vii) Ku. Gauri Rathore D/o Late Jagdish Prasad Rathore, Aged about 28 years.

(viii) Ku. Durga Rathore D/o Late Jagdish Prasad Rathore, Aged about 20 years.

(ix) Rakesh Rathore S/o Jagdish Prasad Rathore, Aged about 24 years.

No. 1, 2 and 4 to 8 R/o Ganesh Nagar, Bilaspur, Tahsil and District Bilaspur, Chhattisgarh.

--- Appellants/Plaintiffs

Versus

1. A. Gangotri Bai W/o Late Badri Prasad, Aged about 57 years, R/o Village Ghaghra, Tahsil Kharasiya, District Raigarh.

B. Vimla Bai W/o Shatruhan, Aged about 32 years, R/o Chingarajpara, Bilaspur, Near Govt. High Secondary School.

C. Beena Bai W/o Vishnu, Aged about 28 years, R/o Village Sapiya, Tahsil Malkharoda, District Raigarh.
2. Smt. Bhagwati Bai W/o Late Badri Prasad Rathore, Aged about 61 years, R/o Ghagra, Tahsil Kharasia, District Raigarh, Chhattisgarh.
3. Samund Bai W/o Late Heeraram, Aged about 71 years.
4. Bhuneshwar Prasad S/o Late Heeraram, Aged about 43 years.

No. 3 and 4 R/o Korba, Junadeehi Colony, Gevra Road, Tahsil Korba, District Korba, chhattisgarh, Now residing at Village Mohka, Tahsil Kharsiya, District Raigarh.
5. Sant Ram S/o Late Bhojram Rathore, Aged about 60 years.
6. Sadhuran S/o Late Bhojram Rathore, Aged about 56 years.
7. Parasram S/o Late Bhojram, Aged about 49 years.
8. Ram Narayan S/o Late Bhojram, Aged about 39 years.

All R/o Dumarbhata, Tahsil Kharsiya, District Raigarh, Chhattisgarh.

9. Suresh Kumar S/o Shail Kumar Rathore, Aged about 35 years.

10. Sanjay Kumar S/o Shail Kumar Rathore, Aged about 42 years.

11. Vedan Prakash S/o Shail Kumar Rathore, Aged about 40 years.

12. Vijay Prakash S/o Shail Kumar Rathore, Aged about 29 years.

All R/o Village Chhataunabhatha, Tahsil Sakti, Distt. Janjgir-Champa, Chhattisgarh.

13. State of Chhattisgarh, Through Collector, Raigarh, District Raigarh, Chhattisgarh.

--- Respondents/Defendants

For Appellants : Mr. R.N. Jha, Advocate

For Respondents : None

For State : Mr. Akash Pandey, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

29/11/2019

1. This second appeal preferred by the plaintiff (now, his Lrs.) was admitted for hearing on the following substantial question of law :-

"Whether the Courts below committed an error of law by holding that the lands described in Schedule B and C of the plaint were not the joint family property and further holding that the same were the self acquired lands of defendant- Badri Prasad, who according to the plaintiff was a member of co-parcenary ?"

(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. Original plaintiff Jagdish Prasad and original defendant No. 1 Badri Prasad, both are the sons of Late Shri Heeraram, born out of his wedlock with his first wife Keshar Bai. Defendant No. 3 Samund Bai is the second wife of Late Shri Heeraram and defendant No. 4 Bhuneshwar Prasad is his son born out of his wedlock with his second wife Samund Bai.

3. Original plaintiff – Jagdish Prasad Rathore filed a suit for declaration of title, partition and *mesne* profit upon the suit property shown in

Schedule A, B and C annexed with the plaint contending that the parties constituted co-parcenery forming joint Hindu family with common ancestor Heeraram and the suit property mentioned in Schedule B and C of the plaint were purchased from the income of the joint family property, though in the name of defendant No. 1 and his wife, therefore, plaintiff is entitled for $\frac{1}{2}$ share in the suit property.

4. Defendants denied the plaint allegations stating *inter alia* that defendant No. 1 - Badri Prasad and his family have separated from the joint family property since the year 1958 and he has acquired the suit property particularly mentioned in Schedule B and C with his own earning therefore, plaintiff has no right title over the said suit property mentioned in Schedule B and C of the plaint.

5. Learned trial Court, upon appreciating the oral and documentary evidence on record, held that plaintiff is entitled for partition with regard to the suit property shown in Schedule A of the plaint as it is the ancestral property of the parties however, vide its judgment and decree

dated 31/07/2002, dismissed the suit of the plaintiff holding that the suit property mentioned in Schedule B and C of the plaint is the self-acquired property of defendant No. 1 Badri Prasad.

6. On appeal being preferred by the plaintiff, learned first appellate Court, vide its judgment and decree dated 28/12/2005, agreed with the reasonings and findings of the trial Court and dismissed the appeal affirming the judgment and decree passed by the trial Court.

7. Questioning the judgment and decree of the first appellate Court, this second appeal under Section 100 of the CPC has been preferred by the plaintiff (now, his Lrs.) in which substantial question of law has been framed and set out in the opening paragraph of this judgment.

8. Mr. R.N. Jha, learned counsel for the appellants/plaintiffs would submit that both the Courts below have concurrently and gravely erred in holding that the suit property particularly shown in Schedule B and C of the plaint are the self-acquired property of defendant No. 1 and therefore, plaintiff has no right title over it.

There is overwhelming record on evidence to hold that the suit property was held by plaintiff and defendant No. 1 as a part of co-parcenery, though it was purchased in the name of defendant No. 1 and his wife, but it was purchased out of the income of joint family property, as such, plaintiff is entitled for partition in suit property mentioned in Schedule B and C as well and the second appeal deserves to be allowed to that extent.

9. None appears for respondents/defendants, though served.

10. I have heard learned counsel for the appellants/plaintiffs, considered his submissions and went through the records with utmost circumspection.

11. Learned trial Court, after framing as much as eight issues and going through the matter in great detail, has clearly held that the suit property mentioned in Schedule A of the plaint is held jointly by plaintiff, defendant No. 1 and defendant No. 4, but with regard to the suit property mentioned in Schedule B and C of the plaint, it has clearly been held that it is the

property purchased by defendant No. 1 from his own income vide Ex. D/5 to D/15 and therefore, plaintiff is not entitled to claim partition which has been affirmed by the first appellate Court as well.

12. Mr. R.N. Jha, learned counsel for the plaintiff has taken me through the statements of plaintiff, defendant No. 1 and other witnesses to demonstrate that the suit property shown in Schedule B and C of the plaint was purchased by the joint family nucleus though in the name of defendant No. 1 and his wife and he has relied upon the decision of the Supreme Court in the matter of **K. V. Narayanaswami Iyer v. K.V. Ramakrishna Iyer and Ors.**¹ in which it has been held that where in fact at the date of acquisition of a particular property the joint family had sufficient nucleus for acquiring it, the property in the name of any member of the joint family should be presumed to be acquired from out of family funds and so to from part of the joint family property, unless the contrary is shown. Likewise, he has also relied upon **Ramakrishna and Ors. v. Vithal Rao and Ors.**²

1 AIR 1965 SC 289

2 1978 JLJ 450

wherein it has been held that if the property is acquired in the name of some members and the joint family had sufficient nucleus for acquiring the property, presumption is that it is joint hindu family property.

13. Reverting to the facts of the present case, it is quite vivid that both the Courts below have concurrently held that the suit property particularly mentioned in Schedule B and C of the plaint was purchased by defendant No. 1 out of his own income and thus, it is his self-acquired property. Defendants have examined two witnesses; D.W. 3 namely Murari Lal and D.W. 4 namely Ramhit Rathore wherein they have clearly stated that they sold their property in favour of defendant No. 1 and the sale consideration amount was paid by defendant No. 1 Badri Prasad himself, and even otherwise, there is no evidence on record except the pleading that the suit property mentioned in Schedule B and C was purchased from the nucleus of the joint family property and moreover, it does not appear that at the time of acquisition of the property, the joint family had sufficient nucleus from which the suit property have been acquired.

14. The two Courts below, after examining the evidence in great detail, have clearly and concurrently reached to the conclusion that the suit property shown in Schedule B and C of the plaint was the self-acquired property of defendant No. 1 and his family which he purchased out of his own income. The said finding though has been stated to be perverse, but it could not be successfully shown to be perverse or contrary to record. Thus, the aforesaid finding concurrently recorded by both the Courts below that the suit property mentioned in Schedule B and C of the plaint is the self-acquired property of defendant No. 1 and therefore, plaintiff is not entitled for partition in the said property is a finding of fact based on evidence available on record which is neither perverse nor contrary to the record. Consequently, the substantial question of law is answered in negative and I do not find any perversity or illegality in the findings recorded by both the Courts below.

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

16. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet