

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 146 of 2006****Reserved on : 12.04.2019****Delivered on : 09.05.2019**

Mohit Ram Sahu, S/o Shri Bisouha Ram Sahu, aged about 46 years,
Occupation- Agriculture, R/o Village- Pendri, Tahsil- Bhatapara, District-
Raipur (C.G.)

---- Appellant**Versus**

1. Bisouha Ram Sahu (Deleted), S/o Late Shri Nanku Sahu, aged about 68 years.
2. Mohan Lal Sahu, S/o Shri Bisouha Ram Sahu, aged about 48 years.
3. Khorbahara Ram Sahu, S/o Shri Bisouha Ram Sahu, aged about 45 years.
4. Smt. Kewra Bai, W/o Shri Bisouha Ram Sahu, aged about 63 years.
All R/o Village- Pendri, Tahsil- Bhatapara, District- Raipur (C.G.)
5. State of Chhattisgarh, Through: The Collector, Raipur (C.G.)

---- Respondents

For Appellant	:	Mr. Raghvendra Pradhan, Advocate.
For Respondent 1 to 4	:	Mr. Prakash Mishra & Mr. Ashok Soni, Advocates.
For State/ respondent 5	:	Mr. Ravish Verma, Government Advocate.
For Applicant/Intervener	:	Mr. Manoj Paranjpe & Mr. Shubhank Tiwari, Advocates.

Hon'ble Shri Justice Ram Prasanna Sharma**CAV JUDGMENT**

1. This first appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against judgment/ decree dated 28.06.2006 passed by Additional District Judge, Bhatapara, District- Raipur (C.G.) in Civil

Suit No. 7-A/2005, wherein the said court decreed the suit filed by the appellant/ plaintiff and the appeal is regarding modification of the decree regarding share of appellant and respondents No. 1 to 4 (Respondent No. 1 died on 25.05.2014).

2. Heard on I.A. No. 02/2012, application filed by one Santosh Kumar Agrawal under Order 1 Rule 10 of C.P.C. read with Section 151 of C.P.C. for impleading him as respondent No. 6 for the reason that respondent No. 1-Bisouha Ram Sahu executed a registered sale deed in favour of this applicant on 08.04.2005 for land bearing Survey No. 471 area admeasuring 0.837 Hectare (2.07 acre) situated at Village- Pendri, Patwari Halka No. 6, Revenue Circle- Bhatapara, District- Raipur (C.G.).
3. The appellant/ plaintiff adduced evidence of Mohit Ram (PW-1), Rama Sahu (PW-2) & Bahadur (PW-3) and produced document Ex.P/1 to P/11 while respondent side adduced evidence of Bisouha Ram Sahu (DW-1) & Nandu (DW-2). From evidence of both side, it is clear that property is ancestral property and partition did not take place between Bisouha Ram Sahu and his son namely Mohit Ram & Mohan Lal and Khorbahara. Survey No. 471 area admeasuring 0.837 acre is joint property as per Ex. P/3 & P/7.
4. Looking to the entire evidence, it is established that the property in question is joint family property which is not partitioned. The applicant is claiming his right on the basis of sale deed executed in his favour by Bisouha Ram Sahu, but Bisouha Ram Sahu had no right to alienate specific portion of land without consent of other coparceners

namely Mohit Ram, Mohan Lal and Khorbahara.

5. In the matter of **Hardeo Rai Vs. Sakuntala Devi & others**, reported in **(2008) 7 SCC 46**, it is held that the coparcenary interest can be transferred subject to the condition that the purchaser without the consent of other coparceners cannot get possession of what he has purchased. Such a purchaser however, acquires a right to sue for partition (Para 26).
6. In view of the above, the applicant can file a suit for partition between Bisouha Ram Sahu and other three coparceners and he can get possession of the land which comes in share of Bisouha Ram Sahu. In the present case, suit was filed on 10.12.2004 and sale deed in question was executed on 08.04.2005 i.e. after institution of the suit, therefore, Section 52 of the Transfer of Property Act, 1882 will be applicable in the present case as per doctrine of lis pendens and right of the purchaser/ applicant is subject to outcome of the litigation. After all, the applicant will get property which comes in share of Bisouha Ram Sahu, therefore, he is not entitled to be impleaded as party in a suit for partition between coparceners. As the applicant is stranger to joint hindu family, he cannot be impleaded in a suit which is between members of joint hindu family. Accordingly, application is liable to be and is hereby dismissed.
7. The suit was filed by the appellant/ plaintiff before the trial court on the ground that the property mentioned in Ex.P/1 to P/8 area admeasuring 6.181 Hectare is recorded in the name of Nanku and Bisouha Ram Sahu and it was joint hindu family property. The appellant and

respondents No. 2 & 3 being three sons of Bisouha Ram Sahu are coparceners with Bisouha Ram Sahu. Bisouha Ram Sahu sold the property bearing Survey No. 554/1 area admeasuring 1.343 Hectare to his wife namely Kewra Bai without partition as per Ex. P/9. On the date of execution of sale deed, Bisouha Ram Sahu was not authorized to sell any specific land, but he was authorized to sell the undivided interest, therefore, sale deed did not confer any right on Kewra Bai for specific portion of land. First, notional partition between Bisouha Ram Sahu and his sons will take place and thereafter, wife of Bisouha Ram Sahu namely Kewra Bai will get share of partitioned property of Bisouha Ram Sahu, therefore, share declared by the trial court is not proper and the same is liable to be modified.

8. Learned counsel for the appellant submits as under:-

(i) The property was not partitioned as per metes and bounds, therefore, respondent No. 1- Bisouha Ram Sahu was not entitled to alienate the specific portion of land.

(ii) Wife of Bisouha Ram Sahu namely Kewra Bai will get share from Bisouha Ram Sahu after partition as the property is undivided property between coparceners and as such she will get only 1/16 of the total land. Finding arrived at by the trial court is liable to be modified.

9. On the other hand, learned counsel for the respondents submits as under:-

(i) Bisouha Ram Sahu sold the land to one Santosh Kumar Agrawal bearing Survey No. 471 area admeasuring 0.837 Hectare and

said Santosh Kumar Agrawal is recorded owner of the said property.

(ii) Bisouha Ram Sahu had all the right to alienate the property, therefore, transfer of the property by Bisouha Ram Sahu is valid and it should not be questioned.

(iii) The finding arrived at by the trial court is based on relevant material placed on record and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.

10. Learned counsel for the respondents placed reliance in the matter of **Babulal S/o Jalam Singh & others Vs. Ramkali Bai Wd/o Khushilal & others**, reported in **2012 (2) MPLJ 713**, **Chandrakanta Vs. Ashok Kumar**, reported in **2002 (3) MPLJ 576**, **Ramdayal Vs. Manaklal**, reported in **1973 MPLJ 650**, **Thomson Press (India) Ltd. Vs. Nanak Builders & Investors P. Ltd. & others**, reported in **2013 AIR (SCW) 1617** & **A Nawab John & others Vs. V.N. Subramaniam**, reported in **2012 AIR (SCW) 4248**.
11. I have heard learned counsel for the parties and perused the record in which judgment and decree has been passed.
12. The first question for consideration before this Court is whether the joint property is partitioned or not. From the evidence of Bisouha Ram Sahu (DW-1) (Para 16), it is clear that no partition took place between his sons and himself. Nandu (DW/2) also admitted (Para 16) that the property is joint property. When the property is joint property and it is ancestral property, all the three sons of Bisouha Ram Sahu were coparceners of the property since their birth, therefore, coparcenary interest can be transferred subject to condition that the purchaser

without consent of other coparceners cannot get possession of what he has purchased. Such purchaser, however, acquires right to sue for partition as per the law laid down by the Apex Court in the matter of **Hardeo Rai** (supra).

13. The purchaser is stranger to the joint hindu family, therefore, he cannot have joint possession in the joint property as member of joint hindu family. He is simple purchaser of any portion of the property and has a right to sue for partition, therefore, the trial court is right in holding that no specific land can be transferred to anyone without partition, therefore, Santosh Kumar Agrawal has only right to sue for partition. The property is coparcenary, therefore, firstly, it will be partitioned between Bisouha Ram Sahu and his three sons each will get $\frac{1}{4}$ share. Bisouha Ram Sahu sold the property, therefore, the purchaser will get the property within limit of $\frac{1}{4}$ share of Bisouha Ram Sahu and if any property is left after giving land to the purchaser within limit of $\frac{1}{4}$ share of Bisouha Ram Sahu, then only it will be open for partition to his successors.
14. As the coparceners who are the appellant and respondents No. 2 & 3 are having right over $\frac{1}{4}$ share of the property, the decree is liable to be modified. Argument advanced on behalf of the respondents is not acceptable and the case laws cited by learned counsel for the applicant/ intervener are clearly distinguishable from the facts and circumstances of the present case and the same are not in the factual background of the case, therefore, the same is not permissible.
15. Accordingly, the appeal is allowed. The decree is passed in favour of

the appellant and respondents No. 2 & 3 on the following terms and conditions:-

- (i) The appeal is allowed. The appellant and respondents No. 2 & 3 will get $\frac{1}{4}$ share in the joint property of Bisouha Ram Sahu and they will get possession of the land of their respective share after actual partition in metes and bounds as per Section 54 of C.P.C.
- (ii) Parties to bear their own costs.
- (iii) Pleaders' fee, if certified be calculated as per certificate or as per schedule whichever is less.
- (iv) A decree be drawn accordingly.

Sd/-
(Ram Prasanna Sharma)
Judge