

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 203 of 2011

Bhuneshwar, S/o- Sukhi Ram Satnami, Age about- 45 years,
R/o- Sarkipar, Patwari Halka No. 12, Tah. Palari District-
Raipur (C.G.)

---- **Petitioner**

Versus

1. Naina, S/o – Ledga Satnami, Aged about- 40 years, R/o- Sarkipar, Patwari Halka No. 12, Tahsil – Palari, District – Raipur (C.G.)
2. State of Chhattisgarh, Through- Collector District- Raipur (C.G.)

---- **Respondents**

For appellant. : Mr. N. K. Malvia, Sr. Advocate with Mr. R.
Manish, Advocate

For State/Respondent : Mr. Afroj Khan, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

08/07/2019

1. This first appeal is filed under Section 96 of the Code of Civil Procedure, 1908 against judgment/decreed dated 28th June, 2011 passed by First Additional District Judge, Balodabazar, District- Raipur (C.G.) in Civil Suit No. 32- A/2011, wherein the said Court decreed that land bearing survey No. 374/3 area 0.214 hectare, survey No. 415 area 0.413, survey No. 43/3 area 0.158 hectare, are joint property of the appellant and respondent No. 1- namely Naina Bai.
2. As per the appellant, the appellant/ plaintiff herein filed a suit before the trial Court for declaring his sole title over the land bearing Survey No. 347 area 0.551 hectare, 374/3 area 0.214

hectare, land bearing survey No. 415 area 0.413 hectare, survey No. 43/3 area 0.158 hectare and survey No. 43/7 area 0.328 hectare. In certain sale-deed name of respondent No. 1- Naina Bai is mentioned as purchaser. Name of Naina Bai is mentioned in the sale-deed by the appellant because of his affection with said Naina Bai, but Naina Bai did not pay any consideration amount for the sale-deed in question, therefore, he should be declared as sole owner of the entire property.

3. On the other hand, it is pleaded on behalf of respondent No.1- Naina Bai that she purchased the property and paid consideration amount as she was having a bank account from which she withdrawn money for payment of consideration amount.
4. Learned counsel for the appellant submits that from the evidence adduced from his side, it is established that respondent No. 1-Naina Bai is having no title over the land, but the Court has wrongly interpreted the evidence and recorded finding against the factual matrix of the case, therefore, the same is liable to be reversed.
5. Both sides adduced evidence orally and documentary. The appellant namely Bhuneshwar (PW-1), Santuram (PW-2), Demukh (PW-4), Shiv Kumar (PW-5) and Heeralal (PW-6) deposed before the trial court that the appellant is sole owner of the property, while Naina Bai (DW-1) and Lomesh Kumar Sen (DW-2), Assistant Manager of Primary Co-operative Agriculture Seva Samiti deposed that the consideration

amount of sale is paid by Naina Bai after withdrawal of amount from her account which is opened in that Co-operative Central Bank. As per version of Lomesh Kumar (DW-2), Naina Bai withdrawn the amount on various dates in the year 2006. On 10th march, 2006, she withdrawn Rs.4,30,000/-, on 26th April, 2006 she withdrawn Rs. 40,000/-, on 7th August, 2006 she withdrawn Rs. 10,000/-, on 6th September, 2006 she withdrawn Rs. 25,000/-, on 9th October, 2006 she withdrawn Rs. 30,000/-, on 16th October, 2006 she withdrawn Rs. 20,000/- , on 18th October, 2006 she withdrawn Rs. 30,000/- & on 30 October, 2006 she withdrawn Rs. 9,000/-.

6. The core issue for consideration before this Court is whether the appellant is the sole owner of the property in question. The sale-deed Ex. P-2(C) is executed on 13th March, 2006. The land bearing survey No. 347, area 0.551 hectare is purchased and it is mentioned that respondent No. 1-Naina Bai and appellant- Bhuvneshwar both purchased the land for cash consideration of Rs. 65,000/-. As per Ex. P-3(C), the land bearing survey No. 374/3 area 0.214 hectare is purchased on 13th March, 2006 for cash consideration of Rs. 35,000/-. The appellant and respondent No. 1 have been mentioned as purchaser in the said sale-deed. As per Ex.P-4(C), the land bearing survey No. 415 & 43/3 area 0.413 hectare & 0.158 hectare respectively are purchased for cash consideration of Rs. 66,000/-. In the said sale-deed name of the appellant and respondent No. 1 are mentioned as purchaser. One sale-deed

EX. P-5(C) is produced before the trial Court which is for land bearing survey No. 43/7 area is 0.328 hectare wherein name of respondent No.1-Naina Bai is mentioned as sole purchaser of the land for a cash consideration of Rs. 47,560/-.

7. Looking to the evidence of both sides, the trial Court opined that the land bearing survey No. 347 area 0.551 hectare, survey No. 374/3 area 0.214 hectare, survey No. 415 area 0.413 hectare and survey No. 43/3 area 0.518 hectare is jointly purchased by appellant and respondent No. 1. They are the co-owners and appellant is not a sole owner of these survey numbers as per the sale-deeds. The trial Court further opined that the land bearing survey No. 43/7 area 0.328 hectare is purchased by respondent No. 1- Naina Bai and she is sole owner of this land.
8. Learned counsel for the appellant submits that name of Naina Bai was mentioned in the sale-deed out of affection and Naina Bai is not purchaser of the property, therefore, finding of the trial court is not liable to be sustained.
9. Now the point for consideration before this Court is whether these arguments is legally permissible. All the transactions took place in the year 2006. The Benami Transactions (Prohibition) Act, 1988 which is enforced since 5th September, 1988, prohibits such arguments as per section 4 of the Act that no suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or

on behalf of a person claiming to be the real owner of such property.

10. In the present case, name of respondent No. 1-Naina Bai is mentioned as purchaser, she shall be treated as purchaser of all the property and no other person can enforce right against her, therefore, the Trial Court is right in holding that Naina Bai is also a joint owner of the property, which is mentioned above. Respondent No. 1- Naina Bai filed a cross-objection in which she claimed that she is sole owner of the entire property in question.
11. From all the sale-deeds, it is clearly established that land bearing survey No. 347 area 0.551 hectare, survey No. 374/3 area 0.214 hectare, survey No. 415 area 0.413 hectare & survey No. 43/3 area 0.518 are purchased by both the appellant and respondent No. 1, therefore, they both are joint owners of these properties. Survey No. 43/7 area 0.328 hectare is solely purchased by respondent No. 1-Naina Bai, therefore, she is sole owner of this survey No.
12. Although, survey No. 347 area 0.551 hectare is not mentioned in the decree, therefore, looking to the relief sought in appeal/cross-objection, the decree is liable to be modified.
13. Accordingly, the judgment/ decree passed by the trial court is modified allowing the appeal/cross objection partly. The decree passed on the following terms and conditions:-

- (i) The appellant- Bhuneshwar and respondent No. 1- Naina Bai are joint owners of land bearing survey No. 347 area 0.551 hectare, survey No. 347/3 area 0.214 hectare, survey No. 415 area 0.413 hectare & survey No. 43/3 area 0.158 hectare situated at village Sarkipar, District - Raipur (C.G.).
- (ii) Respondent No. 1- Naina is sole owner of the land bearing survey No. 43/7 area 0.328 hectare situated in the same village as mentioned above.
- (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 up accordingly.

Sd/-
(Ram Prasanna Sharma)
Judge