

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 325 of 2018**

Judgment Reserved On : 05/10/2018

Judgment Delivered On : 05/03/2019

1. Holaram @ Holamal S/o Late Shri Giddumal Peswani Aged About 77 Years R/o Sindhi Colony, Jarhabhatha, Tahsil And District Bilaspur, Chhattisgarh
2. Suresh Peswani S/o Holaram @ Holamal Aged About 40 Years R/o Sindhi Colony, Jarhabhatha, Tahsil And District Bilaspur, Chhattisgarh

---- Appellant**Versus**

1. Smt. Babita Jain W/o Pankaj Kumar Jain Aged About 39 Years Occupation Business, R/o Nehru Nagar, Bilaspur, Tahsil And District Bilaspur, Chhattisgarh
2. Totaram Peswani S/o Late Shri Gelaram @ Gokhumal Peswani Aged About 65 Years R/o Sindhi Colony, Jarhabhatha, Tahsil And District Bilaspur, Chhattisgarh
3. State Of Chhattisgarh Through Collector Bilaspur, Chhattisgarh

---- Respondent**FA No. 377 of 2018**

1. Holaram @ Holamal, S/o Late Shri Giddumal Peswani Aged About 77 Years R/o Sindhi Colony, Jarhabhatha, Tahsil And District Bilaspur Chhattisgarh.
2. Suresh Peswani S/o Holaram @ Holamal Aged About 40 Years R/o Sindhi Colony, Jarhabhatha, Tahsil And District Bilaspur Chhattisgarh.

---- Appellant**Versus**

1. Panchanan Rana S/o Akshay Kumar Rana Aged About 55 Years R/o 27, Kholi Vikas Nagar, Bilaspur Tahsil And District Bilaspur Chhattisgarh.
2. Totaram Peswani S/o Late Shri Gelaram @ Gokhumal Peswani Aged

About 65 Years R/o Sindhi Colony, Jarhabhatha, Tahsil And District Bilaspur Chhattisgarh.

3. State Of Chhattisgarh Through Collector Bilaspur Chhattisgarh.

---- Respondent

FA No. 378 of 2018

1. Holaram @ Holamal S/o Late Shri Giddumal Peswani Aged About 77 Years R/o Sindhi Colony, Jarhabhatha, Tahsil And District- Bilaspur, Chhattisgrh
2. Suresh Peswani S/o Holaram @ Holamal Aged About 40 Years R/o Sindhi Colony, Jarhabhatha, Tahsil And District- Bilaspur, Chhattisgrh

---- Appellant

Versus

1. Umrautin Chandra W/o Shri Radheshyam Chandra Aged About 43 Years R/o Ratanpur Road Sarkanda, Tahsil And District- Bilaspur, Chhattisgrh.
2. Totaram Peswani S/o Late Shri Gelaram @ Gokhumal Peswani Aged About 65 Years R/o Sindhi Colony, Jarhabhata, Tahsil And District- Bilaspur, Chhattisgarh.
3. State Of Chhattisgarh Through- Collector, Bilaspur, Chhattisgarh.

---- Respondent

FA No. 384 of 2018

1. Holaram @ Holamal S/o Late Shri Giddumal Peswani Aged About 77 Years R/o Sindhi Colony, Jarhabhatha, Tahsil And District Bilaspur Chhattisgarh.
2. Suresh Peswani S/o Holaram @ Holamal Peswani Aged About 40 Years R/o Sindhi Colony, Jarhabhatha, Tahsil And District Bilaspur Chhattisgarh.

---- Appellant

Versus

1. Gendram Chandra S/o Shri Gajanand Chandra Aged About 39 Years R/o Ayodhyanagar (Ameri) Tahsil Takhatpur District Bilaspur Chhattisgarh.

2. Smt. Kamini Chandra W/o Shri Gendram Chandra Aged About 38 Years R/o Ayodhyanagar (Ameri) Tahsil Takhatpur, District Bilaspur Chhattisgarh.
3. Totaram Peswani, S/o Late Shri Gelaram @ Gokhumal Peswani, Aged About 65 Years R/o Sindhi Colony, Jarhabhatha, Tahsil And District Bilaspur Chhattisgarh.
4. State Of Chhattisgarh Through Collector, Bilaspur Chhattisgarh.

---- Respondent

FA No. 386 of 2018

1. Holaram @ Holamal S/o Late Shri Giddumal Peswani Aged About 77 Years R/o Sindhi Colony, Jarhabhatha, Tahsil And District Bilaspur Chhattisgarh.
2. Suresh Peswani S/o Holaram @ Holamal Aged About 40 Years R/o Sindhi Colony, Jarhabhatha, Tahsil And District Bilaspur Chhattisgarh.

---- Appellant

Versus

1. Shiv Ghosh S/o Late Shri S N Ghosh Aged About 45 Years Occupation - Service R/o 12 Kholi, Ware House Road, Bilaspur Tahsil And District Bilaspur Chhattisgarh.
2. Totaram Peswai S/o Late Shri Gelaram @ Gokhumal Peswani Aged About 65 Years R/o Sindhi Colony, Jarhabhatha, Tahsil And District Bilaspur Chhattisgarh.
3. State Of Chhattisgarh Through Collector, Bilaspur Chhattisgarh.

---- Respondent

FA No. 397 of 2018

1. Holaram @ Holamal S/o Late Shri Giddumal Peswani Aged About 77 Years Caste Sindhi, R/o Sindhi Colony, Jarhabhatha, Tahsil And District- Bilaspur, Chhattisgarh
2. Suresh Peswani S/o Holaram @ Holamal Aged About 40 Years Caste Sindhi, R/o Sindhi Colony, Jarhabhatha, Tahsil And District- Bilaspur, Chhattisgarh

---- Appellant

Versus

1. Lakshmi Narayan Awasthi S/o V.M. Awasthi Aged About 54 Years R/o Irrigation Department Colony, Korba, (Rampur Korba) Tahsil And District- Korba, Chhattisgarh
2. Totaram Peswani S/o Late Shri Gelaram @ Gokhumal Peswani Aged About 65 Years R/o Sindhi Colony, Jarhabhatha, Tahsil And District- Bilaspur, Chhattisgarh
3. State Of Chhattisgarh Through- Collector, Bilaspur, Chhattisgarh

---- Respondent

For Appellants : Shri Arvind Shrivastava, Advocate.
 For Respondent/State : Shri Shashank Thakur, Govt. Advocate.
 For Respective Respondents : Shri RN Jha, Shri CD Sharma and Shri MD Sharma, Advocates.

**Hon'ble Shri Prashant Kumar Mishra &
 Hon'ble Smt. Vimla Singh Kapoor, JJ**

C A V JUDGMENT

The following judgment of the Court was delivered by **Prashant Kumar Mishra, J.**

1. These First Appeals have been preferred by the defendants challenging the judgment and decree passed by the trial Court allowing the respective suits for declaration of title and permanent injunction.
2. The following table would show the suits land in each of the Appeal.

Sr. No.	First Appeal No.	Civil Suit Number and name of the	Suit land
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		plaintiff	
1.	325/2018	360-A/2014 plaintiff – Smt. Babita Jain	Land situated at village Ameri, PH No.26, RI Circle Sakri, Tahsil Takhatpur, District Bilaspur, 1600 sq. ft. and 720 sq. ft from Khasra No.448/2, total land 2320 sq. ft.
2.	386/2018	144-A/2014 plaintiff – Shiv Ghosh	Land situated at village Ameri, PH No.26, RI Circle Sakri, Tahsil Takhatpur, District Bilaspur, Khasra No.454/29, area 5.5 decimal
3.	384/2018	361-A/2014 plaintiffs – Gendram and Smt. Kamini Chandra	Land situated at village Ameri, PH No.26, RI Circle Sakri, Tahsil Takhatpur, District Bilaspur, Khasra No.454/60, area 0.06 acre
4.	377/2018	359-A/2014 plaintiff – Panchanan Rana	Land situated at village Ameri, PH No.26, RI Circle Sakri, Tahsil Takhatpur, District Bilaspur, Khasra No.454/37, area 4.5 decimal
5.	378/2018	365-A/2014 plaintiff – Umarotin Chandra	Land situated at village Ameri, PH No.26, RI Circle Sakri, Tahsil Takhatpur, District Bilaspur, Khasra No.454/50, area 0.04 acre
6.	397/2018	363-A/2014 plaintiffs Laxmi Narayan Awasthi	Land situated at village Ameri, PH No.26, RI Circle Sakri, Tahsil

			Takhatpur, District Bilaspur, 4.5 decimal diverted land from Khasra No.454/1, the present Khasra Number of which is 454/33
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3. The plaintiffs have purchased the land from defendant Totaram or from the persons to whom Totaram had sold the suit lands. For the sake of brevity, status of the parties in the suit shall be referred from the record of Civil Suit No.360-A/2014 wherefrom FA No.325/2018 would arise.
4. The plaintiff has purchased the land from defendant No.3 Totaram Peshwani. According to the plaintiff, defendant No.1/appellant Holaram @ Holamal and defendant No.3 Totaram Peshwani were members of joint Hindu family having equal share. In a family partition/arrangement/settlement, the suit land fell in the share of defendant No.3 Totaram Peshwani. Defendant No.1 Holaram and other members of the joint family accepted the previous partition and executed an instrument on 21.1.1988 and remained in separate occupation of their respective share. After execution of the said memorandum of previous partition dated 21.1.1988, the name of defendant No.3 was recorded in the Revenue Records over the suit land by mutation order dated 31.3.1988. Defendants No.1 and 3 had also sought permission from the Town and Country Planning

Department for development and use of agricultural land for other purposes. Before purchasing the property, the plaintiff met defendant No.1 as well as defendant No.3 and in the said meeting, both the defendants informed the plaintiff about the previous partition. After examining the papers carrying the name of defendant No.3 over the suit property, the plaintiff purchased the land by two separate registered sale deeds and raised construction of boundary wall after obtaining diversion of land, sanctioning of map from the Municipal Corporation and the Department of Town and Country Planning. However, on 18.12.2006, defendant No.1 along with his son defendant No.2 Suresh Peshwani and other anti social elements reached the plot and threatened to dispossess the plaintiff, therefore, the plaintiff is required to prefer the present suit.

5. Defendants No.1 and 2 filed the joint written statement and denied the suit allegations. They denied that they are members of joint family along with defendant No.3 or have equal share in the suit property. They also denied of any previous partition amongst them. They stated that the name of father of defendant No.3 was Gelamal, son of Bakhtumal whereas, the name of father of defendant No.1 was Giddumal, with further pleading that Giddumal and Bakhtumal did not had any joint property nor they

have jointly purchased any such property. It was also pleaded that from the very inception when the family of defendants migrated from Pakistan to Hindustan, they resided separately having their separate business. The suit land was purchased by father of defendant No.1 in 1958, therefore, after his death, defendant No.1 became sole owner of the property and he had never sold the property to any individual nor granted any share in the property to any other person and had never executed or signed memorandum of partition dated 21.1.1988. Defendants No.1 and 2 further pleaded that Gelamal and Gokhumal were different individuals, however, after the death of Gelamal, defendant No.3 projected that Gelamal and Gokhumal were the same person and became successful in recording his name in the property of Gokhumal, which was subsequently cancelled by the Revenue Court. The plaintiff's husband being an employee of the Bilaspur Development Authority is an influential person, therefore, he has purchased the property in his own name and in the name of his brother Rishabh Jain at throwaway prices. However, the sale deeds being executed by a person who has no title to the suit property, the plaintiff's suit deserves to be dismissed being baseless and frivolous. Defendants No.1 & 2 further pleaded that on account of cordial relations with defendant No.3, defendant No.1 agreed to purchase the house

belonging to defendant No.3 and during that transaction, defendant No.3 got executed memorandum of partition and became successful in recording his name in the revenue records, which was subsequently cancelled.

6. Defendant No.3 admitted the plaintiff's claim and would further state that after creation of the State of Chhattisgarh, the prices of the land having escalated, defendant No.1 has become greedy, therefore, he preferred Appeals before the Collector and the Board of Revenue to grab the property.
7. The trial Court framed two material issues for trial. However, the entire suit revolves around the issue No.1 as to whether Totaram, defendant No.3, was competent to execute the sale deed.
8. On the basis of evidence on record, both oral and documentary, the trial Court has held that defendants No.1 & 3's father or forefathers have migrated to India from Pakistan at the time of partition; they belong to same *Gotra* and resided in one house at Sindhi colony, Jarhabhata, therefore, they belong to a joint family and had executed the memorandum of partition dated 21.1.1988. The trial Court has also referred to the handwriting expert's opinion (Ex.- P/18) proved by handwriting expert Dr. Sunanda Dhenge (PW-3). The trial Court has also drawn adverse inference against the

appellant Holaram, who has not entered the witness box to support the stand taken by him in his written statement.

9. Learned counsel for the appellant would argue that the findings recorded by the trial Court are perverse because there is no proof that the parties had common ancestors or they were members of joint family. Learned counsel would also submit that when the documents itself are suspicious, the trial Court should not have drawn adverse inference for Holaram's failure to enter the witness box. It is also put forth that the partition allots unequal shares and other members of the family are not included, therefore, it is illegal. It is also submitted that witnesses of memorandum of partition have not been examined nor the deed is registered, therefore, it is not admissible.
10. Per contra, learned counsel for the plaintiff/respondent No.1 would support the impugned decree. He would submit that there are number of documents evidencing acceptance of memorandum of partition by the parties subsequent to its execution. He would also submit that both the parties have taken steps to enter their names in the revenue records on the basis of memorandum of previous partition (Ex.-P/11). Therefore, once the document has been acted upon by both the parties, its execution is also automatically proved.

Learned counsel would also argue that Holaram did not raise any objection when the document (Ex.-P/11) was exhibited in evidence. In respect of allegation of allotment of unequal share, the law laid down by the Supreme Court in the matter of **Apoorva Shantilal Shah Vs. Commissioner of Income Tax, Gujarat I, Ahmedabad** {AIR 1983 SC 409} is referred by the learned counsel.

11. The most pertinent issue to be considered is whether document (Ex.-P/11) was in fact executed by the parties and it was subsequently acted upon.
12. At the time of filing of written statement in the year 2007, the appellant/defendant No.1 Holaram was aged about 75 years. The document (Ex.-P/11) was executed on 21.1.1988. Thus at the time of execution, the appellant was aged about 55 years, however, he has not called in question the validity or genuineness of the said document by preferring any suit despite the document having come to his notice several years back. Most importantly, appellant Holaram has not entered the witness box to depose that the document (Ex.-P/11) either does not bear his signatures or his signatures were obtained by fraud or misrepresentation.
13. The document (Ex.-P/11) is signed by 5 members of the family

namely, Sudama, Aasan Das, Totaram, Ramchandra and Holaram @ Holamal. The document was typed by Document Writer Awadhesh Kumar Trivedi. It records approval of the previous partition dated 23.12.1987. In this partition, the suit land has been allotted to defendant Totaram from whom the plaintiff has purchased part of the land and likewise, the plaintiffs of other suits have also purchased different parts of the land. Holaram was allotted share at Budhwari Bazar (Railway Area) Bilaspur. Similarly, the house entered in the name of Totaram at Sindhi Colony, Jarhabhata was allotted to Sudama (ground floor) and Holaram (upper floor). Pursuant to this, Totaram executed a sale deed of the shop situated at Budhwari (Railway Area). The revenue records of the suit land was corrected soon after the execution of the document (Ex.-P/11) to enter the name of Totaram. Ex.-P/9 is another document executed between the parties on 28.2.1997, which is captioned as “*Ikrarnama*” signed by appellant Holaram @ Holamal. This document refers to the document (Ex.-P/11) dated 21.1.1988. A reading of this document would indicate that in Ex.-P/11, one house at Jarhabhata was to be sold and the consideration was to be divided equally amongst the allottees, however, the sale of the house having not materialized, an area of 682 square feet, out of total area of 2006 square feet,

was handed over to their widow sister Meera Bai forever. The appellant/defendant has neither denied this document nor Meera Bai has been examined by the defendant/appellant to disown this document. Pursuant to Ex.-P/9, the name of Meera Bai was recorded in the municipal records, as would be clear from payment of property tax receipt (Ex.-P/10) in the name of Meera Bai. After execution of Ex.-P/11, Totaram and Holamal had applied for and were granted sanction of development plan by the Town and Country Planning Department vide Ex.-P/12 & P/13. In the house allotted to appellant Holamal, his name was recorded vide Ex.-P/16. Handwriting expert PW-3 also submitted her report to the effect that signature of Holamal in Ex.-P/11 is genuine, as it tallies with his admitted signature.

14. The argument concerning unequal partition has no substance in view of the observation made by the Supreme Court in **Apoorva Shantilal Shah** (Supra) wherein the Supreme Court has held that a partial partition of any joint family property by the father between himself and his sons does not become invalid on the ground that there has been no equal distribution amongst co-sharers.
15. The other argument raised by the appellant is that the document (Ex.-P/11) is not registered, therefore, it is not admissible in

evidence. However, a reading of the document (Ex.-P/11) would categorically establish that it was not a deed for affecting any partition *in praesenti*, but it is a document recording previous partition, therefore, it need not be registered as held by the Supreme Court in the matter of **Kale and others Vs. Deputy Director of Consolidation and Others** {AIR 1976 SC 807}. In the said case, the Supreme Court would observe that the family arrangement may be even oral in which case no registration is necessary. The registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the Court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and is, therefore, not compulsorily registrable.

16. Out of 6 suits filed by the different purchasers, the sale deed in favour of Laxmi Narayan was executed by Totaram on 5.10.1989; in favour of Ram Niwas it was executed on 12.6.1989; in favour of Shiv Ghosh it was executed on 28.7.1994; in favour of Panchanand

it was executed on 16.2.1990 and other sale deeds were executed in the year 2002 and 2005. However, Holaram never questioned these sale deeds despite the fact that the purchasers were settled in possession more than 12 years back prior to the present dispute.

17. Based on the above discussion, we are in full agreement with the judgment rendered by the trial Court allowing the plaintiff's suit for declaration of title on the basis of sale deed executed by Totaram in her favour and likewise, in favour of other purchasers in the connected suits/First Appeals.

18. In the matter of Gendram and Umrautin Bai, counter claim was filed which has been dismissed on merits. On the basis of findings arrived by us in the preceding paragraphs, once we reach to the conclusion that the plaintiff has successfully proved her case, dismissal of counter claim by the trial Court is also affirmed. The Cross Appeals filed before us challenging dismissal of counter claim also deserve to be and are hereby dismissed.

19. In the result, all the Appeals being devoid of any substance deserve to be and are hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

Sd/-
Judge
(Vimla Singh Kapoor)