

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 419 of 2009**

Yogeshwar S/o Dweep singh, Aged about 39 years,
Caste Agharia, Occupation Agriculturist, R/o
Village Dhanigaon, Tahsil Saranggarh, District
Raigarh, Chhattisgarh.

--Appellant/Plaintiff No. 2

Versus

1. Manbodh Singh, S/o Shri Dweep Singh, Aged about 50 years, Caste Agharia, Occupation Agriculturist, R/o Village Dhanigaon, Tahsil Saranggarh, District Raigarh, Chhattisgarh.
2. Dropadi Bai W/o Narayan Prasad, Aged about 67 years, Occupation Agriculturist, R/o Village Lendhra, Tahsil Saranggarh, District Raigarh, Chhattisgarh.
3. Mogara Bai W/o Gourishankar Agharia, Aged about 54 years, R/o Village Madhopali, Tahsil Saranggarh, District Raigarh, Chhattisgarh.
4. Kekali W/o Trilochan, Aged about 50 years, Caste Agharia, R/o Village Kodpalla, District Bargarh, Orissa.
5. Dol Kunwar W/o Chintamani, Aged about 47 years, R/o village Gopalpur, Tahsil Saranggarh, District Raigarh, Chhattisgarh.
6. State of Chhattisgarh, Through Collector Raigarh, Chhattisgarh.

--- Defendants

7. Rohit Kumar S/o Dweep Singh, Aged about 41 years, Caste Agharia, R/o Village Dhanigaon, Tahsil Saranggarh, District Raigarh, Chhattisgarh.

-- Plaintiff No. 1

---Respondents

For Appellant : Mr. Sourabh Sahu, Advocate
For State : Ms. Shivali Dubey, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

02/03/2020

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellant/plaintiff No. 2 under Section 100 of the CPC against the impugned judgment and decree passed by the first appellate Court affirming the judgment and decree by which trial Court dismissed the suit of the plaintiffs finding no merit.
2. Mr. Sourabh Sahu, learned counsel for the appellant/plaintiff No. 2 would submit that both the Courts below have committed grave legal error in holding that the suit property was not purchased by plaintiffs as well as defendant No. 1 jointly out of the joint family income, therefore, plaintiffs are entitled for partition and possession to the extent of 1/3rd share each in the suit property, as such, the appeal deserves to be admitted for hearing by formulating substantial question of law in this regard.
3. The two plaintiffs filed a suit for partition and possession that the suit property which is the subject matter of purchase by sale deed dated

25/01/1992 from one Pyarilal was purchased by the plaintiffs as well as defendant No. 1 out of the joint family income, therefore, they are entitled for 1/3rd share each in the suit property.

4. Learned trial Court, upon appreciation of oral and documentary evidence on record, dismissed the suit which was affirmed by the first appellate Court in the appeal preferred by the plaintiffs.

5. The Supreme Court in the matter of **Srinivas Krishnarao Kango v. Narayan Devji Kango and others**¹

has held that proof of the existence of a joint family does not lead to the presumption that property held by any member of the family is joint.

It was observed as under:-

"8....Proof of the existence of a joint family does not lead to the presumption that property held by any member of the family is joint, and the burden rests upon anyone asserting that any item of property was joint to establish the fact. But where it is established that the family possessed some joint property which from its nature and relative value may have formed the nucleus from which the property in question may have been acquired, the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family property....."

6. In the matter of **Mudi Gowda Gowdappa Sankh** (supra) the Supreme Court has held that there is no presumption that merely because the family is joint

so the property is also joint. So the person alleging the property to be coparcenary property must prove it. But if it is shown that there was a nucleus of the joint family property, then any acquisition by its aid by a member is joint property. It was observed as under:-

"6..... This is however subject to the limitation that the joint family property must be such as with its aid the property in question could have been acquired. It is only after the possession of an adequate nucleus is shown, that the onus shifts on to the person who claims the property as self-acquisition to affirmatively make out that the property was acquired without any aid from the family estate....."

7. In the matter of Mudi Gowda Gowdappa Sankh (supra), the Supreme Court relied upon the ratio of Privy Council judgment in Randhi Appalaswami v. Randhi Suryanarayanamurti & Others² and held as under:

"...Proof of the existence of a joint family does not lead to the presumption that property held by any member of the family is joint, and the burden rests upon anyone asserting that any item of property was joint to establish the fact. But where it is established that the family possessed some joint property which from its nature and relative value may have formed the nucleus from which the property in question may have been acquired, the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family property."

8. Likewise, in the matter of D.S. Lakshmaiah and another v. L. Balasubramanyam and another³ the

² ILR 1948 Mad 440 (PC)

³ (2003) 10 SCC 310

Supreme Court relied upon its earlier decisions in this regard and held as under:-

"18. The legal principle, therefore, is that there is no presumption of a property being joint family property only on account of existence of a joint Hindu family. The one who asserts has to prove that the property is a joint family property. If, however, the person so asserting proves that there was nucleus with which the joint family property could be acquired, there would be presumption of the property being joint and the onus would shift on the person who claims it to be self-acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available."

9. The Supreme Court in the matter of Rangammal (supra) has held that in a suit for partition only joint family property has to be included by holding as under:-

"45. It hardly needs to be highlighted that in a suit for partition, it is expected of the plaintiff to include only those properties for partition to which the family has clear title and unambiguously belong to the members of the joint family which is sought to be partitioned and if someone else's property meaning thereby disputed property is included in the schedule of the suit for partition, and the same is contested by a third party who is allowed to be impleaded by order of the trial court, obviously it is the plaintiff who will have to first of all discharge the burden of proof for establishing that the disputed property belongs to the joint family which should be partitioned excluding someone who claims that some portion of the joint family property did not belong to the plaintiff's joint family in regard to which decree for partition is sought."

10. Reverting to the facts of the present case in view of the aforesaid legal position, it is quite vivid that plaintiffs have failed to plead and prove that the suit property was purchased by plaintiffs as well as defendant No. 1 jointly out of the joint family income. They have also failed to prove that joint family had the nucleus to purchase the suit property. Both the Courts below have come to the conclusion that defendant No. 1 purchased the suit property out of his own income, therefore, it is his separate property and it was not purchased out of the joint family income as the plaintiffs have failed to prove that the joint family had nucleus to purchase the suit property. The aforesaid finding recorded by both the Courts below is a finding of fact based on evidence available on record which is neither perverse nor contrary to the record and does not involve any substantial question of law for determination.

11. The second appeal deserves to be and is accordingly dismissed *in limine* without notice to the other side. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge