

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.292 of 2008

Ramnarayan @ Rajesh, S/o Late Bisauha Sahu, aged about 23 years,  
Occupation Agriculturist, R/o Village Kusmi, Tahsil and Police Station  
Bemetara, District Durg (C.G.).

(Plaintiff)  
---- Appellant

Versus

1. Chameli Bai, Widow of Late Lala @ Laxminarayan, aged about 24 years;
2. Onkareshwar Prasad, S/o Late Lala @ Laxminarayan, aged about 6 years, Minor;
3. Ku. Jageshwari, D/o Late Lala @ Laxminarayan, aged about 4 years, Minor;

The respondent No.1 and 2 are Minors through their natural guardian Mother Chameli Bai and all resident of Village Kusmi, Police Station and Tahsil Bemetara, District Durg (C.G.). Presently residing at Village Salghi, Tahsil Berla, District Durg (C.G.).

4. Kishore @ Kishorilal, S/o Late Bisauha Sahu, aged about 32 years, Occupation Driver;
5. Sukhwati Bai, Widow of Late Bisauha Ram Sahu, aged about 45 years, Occupation Agriculturist;
6. Tekuram @ Rajkumar, S/o Bisauha Ram Sahu, aged about 19 years, Occupation Agriculturist;
7. Dhan Singh, S/o Derha Sahu, aged about 47 years, Occupation Agriculturist;

The respondent No.4 to 7 are resident of Village Kusmi, Tahsil Bemetara, District Durg (C.G.).

8. Pokhbatu Sahu, W/o Dinaram Sahu, aged about 25 years, Occupation Agriculturist, R/o Village Siltara, Tahsil Saja, District Durg (C.G.).
9. Basanti Sahu, W/o Goukaran Sahu, aged about 22 years, Occupation Agriculturist, R/o Village Andhiyarkhor, Tahsil Nawagarh, District Durg (C.G.).

10. State of Chhattisgarh, through the Collector, Durg (C.G.).  
(Defendants)  
---- Respondents

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For Appellant/Plaintiff: -

Mr. Amit Kumar Sahu, Advocate.

For Respondents No.1 to 3/Defendants: -

Mr. A.D. Kuldeep, Advocate.

For Respondent No.10 / State: -

Ms. Shivali Dubey, Panel Lawyer.

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Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

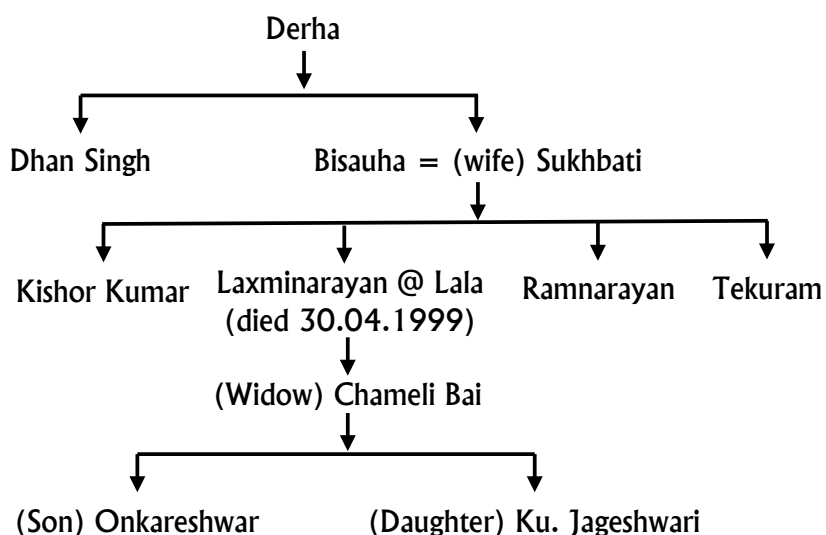
30/01/2020

1. This second appeal under Section 100 of the CPC filed by the plaintiff was admitted for hearing by formulating the following substantial question of law: -

“Whether, the finding of the learned First Appellate Court with regard to the property mentioned in Schedule-B is not the family property is perverse and is against the material available on record specifically the sale deed Ex.P/2 as well as evidence of A.W.-3?”

(For the sake of convenience, parties hereinafter will be referred as per their status shown and ranking given in the plaint before the trial Court.)

2. The following genealogical tree would demonstrate the relationship among the parties:



3. The suit property shown in Schedules A, B & C appended with the plaint was originally held by Bisauha. He had four sons Kishore Kumar, Laxminarayan @ Lala, Ramnarayan (plaintiff) and Tekuram. The plaintiff is one of the sons of Bisauha and the defendants are widow and daughters of Laxminarayan, as Laxminarayan died on 30-4-1999. The plaintiff filed suit for partition and possession stating inter alia that he being the son of Bisauha, is entitled for 1/6 share in the suit property mentioned in Schedules A, B & C of the plaint, as the property shown in Schedule B was purchased out of the income of the joint family on 9-2-1982 and 21-7-1978 vide Exs.P-1 & P-2 in the name of minor son Laxminarayan which the defendants opposed and denied by filing written statement controverting the allegations made in the plaint.
4. The trial Court dismissed the suit, whereas the first appellate Court partly decreed the suit with regard to the property shown in Schedules A & C of the plaint holding that the plaintiff will be entitled for 1/6 share in the suit property mentioned in Schedules A & C of the plant, but held that the plaintiff has failed to prove that the property shown in Schedule B is the joint family property, as such, that property is not liable to be partitioned against which this second appeal has been preferred by the plaintiff in which substantial question of law has been formulated which has been set-out in the opening paragraph of this judgment.
5. Mr. Amit Kumar, learned counsel appearing for the appellant herein / plaintiff, would submit that the first appellate Court has legally erred

in holding that the property shown in Schedule B of the plaint is not the joint family property liable for partition, it is the self-acquired property of Laxminarayan, and thereby fell into legal error which is liable to be set-aside.

6. Mr. A.D. Kuldeep, learned counsel appearing for respondents No.1 to 3 herein / defendants, would support the impugned judgment & decree.
7. The dispute in this appeal confines only to the property shown in Schedule B of the plaint, as the parties have accepted the judgment of the first appellate Court with respect to the property shown in Schedules A & C of the plaint. The plaintiff pleaded that the property shown in Schedule B of the plaint was purchased by Bisauha in the name of his minor son Laxminarayan vide Exs.P-1 & P-2, therefore, it is the joint family property in which all the coparceners will have a share which the trial Court and the first appellate Court, both, have not accepted.
8. The question for consideration would be, whether the plaintiff has pleaded and established that the suit property is the joint family property and whether the joint family had nucleus to purchase the property vide Exs.P-1 & P-2 in the name of Laxminarayan shown in Schedule B appended with the plaint?
9. In order to consider the plea, it would be appropriate to notice the relevant decisions on the point.
10. The Supreme Court in the matter of Srinivas Krishnarao Kango v.

**Narayan Devji Kango and others**<sup>1</sup> 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. ...”

11. In the matter of **Mudigowda Gowdappa Sankh and others v. Ramchandra Revgowda Sankh (dead) by his legal representatives and another**<sup>2</sup>, 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. ...”

12. In **Mudigowda Gowdappa Sankh** (supra), the Supreme Court relied upon the ratio of Privy Council judgment in the matter of **Randhi**

1 AIR 1954 SC 379

2 AIR 1969 SC 1076

Appalaswami v. Randhi Suryanarayanamurti & Others<sup>3</sup> 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. ..."

13. Likewise, in the matter of D.S. Lakshmaiah and another v. L. Balasubramanyam and another<sup>4</sup> the 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."

14. The Supreme Court in the matter of Rangammal v. Kuppuswami and another<sup>5</sup> 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

<sup>3</sup> ILR 1948 Mad 440 (PC)

<sup>4</sup> (2003) 10 SCC 310

<sup>5</sup> (2011) 12 SCC 220

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."

15. Reverting to the facts of the present case in light of the legal position

noticed herein-above, it is quite vivid that the property has been purchased by Bisauha in the name of his minor son Laxminarayan vide Exs.P-1 & P-2 on 21-7-1978 and 9-2-1982 which was branded by the plaintiff as joint family property held by the joint family in which he has a right of partition to which both the Courts below have not accepted. The plaintiff pleading and taking defence that the suit property shown in Schedule B of the plaint is the joint family property purchased from the income of joint family, was required to plead and establish that the joint family of them had a nucleus and out of that money, the property shown in Schedule B was purchased by the joint family or by Bisauha – karta of the family and therefore it is the joint family property. It was the burden upon the plaintiff to prove the said fact, but a careful perusal of the plaint would show that the plaintiff except pleading that the suit property was purchased by Bisauha in the name of his minor son Laxminarayan from the joint family property, nothing further has either been pleaded or established stating that the joint family of Bisauha had nucleus to purchase the suit property and out of that income, the suit property shown in Schedule B of the plaint was purchased, whereas the defendants have clearly pleaded that their maternal grand-father gave

money and out of that money, the suit property shown in Schedule B was purchased. The finding recorded by the first appellate Court that the plaintiff has failed to establish that the suit property of Schedule 'B' was the joint family property, is a finding of fact based on the evidence available on record, it is neither perverse nor contrary to the record. The substantial question of law is answered accordingly.

16. In the result, I do not find any merit in the second appeal. The second appeal deserves to be and is accordingly dismissed leaving the parties to bear their own cost(s).

17. Decree be drawn up accordingly.

Sd/-  
(Sanjay K. Agrawal)  
Judge