

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****First Appeal No. 33 of 2011****RESERVED ON 9-6-2020****DELIVERED ON 17-6-2020****Bhukharam son of Anand Ram (dead)****...Defendant No. 1**

- 1.1 Kerwa Bai, aged about 68 years, widow of late Bhukharam
- 1.2 Ghasiyaram, aged about 47 years, son of late Bhukharam
- 1.3 Kasiram, aged about 43 years, son of late Bhukharam
- 1.4 Bansi, aged about 40 years, son of late Bhukharam
- 1.5 Kanhayee, aged about 38 years, son of late Bhukharam
- 1.6 Gorelal, aged about 35 years, son of late Bhukharam

All are resident of village Mukta, Tahsil Malkharouda, Distt Janjgir
Champa (CG)

---- Appellants**Versus**

1. Suraj Kumar son of Shri Heeraram, aged about 28 year...Plaintiff No. 1
 2. Sudama son of Shri Heeraram, aged about 24 years ...Plaintiff No. 2
- Both are Satnami by caste, occupation agriculturist, R/o. Village
Mukta, Tahsil Malkharauda, Distt. Janjgir Champa (CG)
3. Heeraram, son of Shri Nanhu, aged about 55 years, caste Satnami,
occupation agriculturist ... Def. No. 2
 4. Rakesh son of Shri Heeraram aged about 13 years (Minor)-Def No. 3
 5. Roshan son of Shri Heeraram aged about 10 years (Minor)- Def.No. 4
- Respondents No. 4 and 5 (Minors) through their natural guardian- father
Heeraram, son of Nanhu, caste Satnami
- All are R/o. Village Mukta Tahsil Malkharauda, Distt. Janjgir Champa (CG)

...Def. No. 5

6. State of Chhattisgarh, through the Collector, Distt. Janjgir-champa
(CG)

---- Respondents

For Appellants : Mr. A. N. Bhakta, Adv.
For Respondents 1 to 5 : None, though served.
For Respondent No. 6 : Mr. D.C. Verma, Govt. Adv.

Hon'ble Shri Sharad Kumar Gupta, Judge**CAV JUDGMENT**

1. Appellant has preferred this Appeal against the impugned judgment and decree dated 13-1-2011 passed by Additional District Judge, Sakti Distt.

Janjgir Champa in Civil Suit No. 34-A/2007 whereby and whereunder he decreed the suit of respondents No. 1 and 2.

2. This is admitted by respondents No. 1 to 5 that some lands including disputed land bearing Khasra No. 202 /4 admeasuring 1.12 acre were in the name of respondent No. 3 Heeraram at village Mukta. Respondent No. 3 had executed a registered sale deed on 20-3-2003 regarding disputed land in favour of deceased appellant Bhukharam. This is also admitted by deceased appellant Bhukharam and present appellants that respondents No. 1 and 2 had given notice to late Bhukharam which was not replied by him. This is also admitted by respondent No. 3 to 5 that father of respondent No. 1, 2, 4 and 5 is respondent No. 3 Heeraram, disputed land is ancestral property of them and respondents No. 1 and 2, they are in possession of disputed land. Taking the advantage of weak ability to understand and think due to old age of respondent No. 3 and administering liquor, deceased appellant Bhukharam got executed said registered sale deed from respondent No. 3 Heeraram. No possession was handed over of disputed land to late appellant Bhukharam. There was no necessity for sell of disputed land.

3. In brief, the case of respondents No. 1 and 2 is that no consideration was given to respondent No. 3 Heeraram by late Bhukharam. The said registered sale deed is not binding upon them. If it is found that they are not in the possession of disputed land then possession may be handed over to them. Permanent injunction may be granted against appellants.

4. In brief, case of appellants is that respondent No. 3 Heeraram had sold the disputed land by aforesaid registered sale deed for Rs. 1,30,500/- to late Bhukharam. The consideration was paid to him. Respondent No. 3 sold disputed land on account of domestic expenses. After registry they are in continuous possession of disputed land. The disputed land is self acquired property of respondent No. 3 Heeraram. At the time of aforesaid sale, respondent No. 3 was manager of the family.

5. By the impugned judgment and decree the trial Court decreed the suit of respondents No.1 and 2. Being aggrieved, late Bhukaram preferred the instant appeal which is being pursued by present appellants.

6. In brief the appellants' case regarding this appeal is that trial Court did

not frame the issue regarding coparcenary property but gave the finding. Respondent No. 3 is still alive and neither he filed any suit against late Bhukharam nor lodged any report to any police station. Trial Court did not appreciate the evidence in proper perspective.

7. Points for determination:-

There are following points for determination in the case in hand:-

- (i) Whether disputed land Khasra No. 202/4 admeasuring 1.12 acre is the coparcenary property qua respondents No. 1 Suraj Kumar and respondent No. 2 Sudama ?
- (ii) Whether late Bhukharam had got executed said registered sale deed Ex. D-1 (Photocopy Ex. P-1) from respondent No. 3 Heeraram taking advantage of his weak ability to understand and think due to old age and administering liquor to him and without giving any consideration ?
- (iii) Whether respondent No. 3 had legal necessity to sale the disputed land ?
- (iv) Whether respondent No. 1 and 2 are stopped to challenge the execution of Ex. D-1 ?
- (v) Whether registered sale deed Ex. D-1 is not binding upon respondent No. 1 and 2 ?
- (vi) Whether respondent No. 1 & 2 are also title holder of the disputed land ?
- (vii) Whether respondents No. 1 and 2 are also entitled to get vacant possession of the disputed land from the appellants ?
- (viii) Whether respondents No. 1 and 2 are also entitled to get permanent injunction against the appellants ?
- (ix) Whether appellants are entitled to get compensatory cost Rs. 3,000/- from respondent No. 1 and 2 ?
- (x) Reliefs and costs.

Point for determination No.(i) Finding with reasons:-

8. Point for determination No. 1 covers the scope of issue No. 1. Issue No.1 covers the scope that whether disputed land is coparcenary property or not, hence this Court disallowed written argument submitted by counsel for appellants in this reference.

9. P.W.1 Suraj Kumar says in Para 10 during his cross-examination that Ram Prasad is his great grand-father. The father of Ram Prasad was Patait.

10. As per the certified copy of right of record 1954-55 Ex.P-5 disputed land was recorded in the name of Ram Prasad son of Patait.

11. As per the certified copy of Kisht Bandi Khatoni Ex. P-6 disputed land was recorded in the name of respondent No. 3 Heeraram son of Nanhuram.

12. As per the certified copy of Khasra Panchshala Ex. P-7 disputed land was recorded in the name of respondent No. 3.

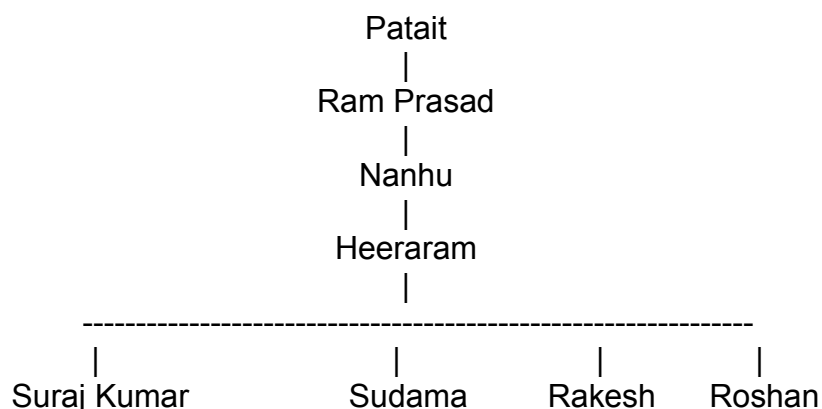
13. As per receipts Ex. P-8 and Ex. P-9 respectively dated 16.05.2007, and 17.05.2007 water tax was received from Ram Prasad son of Patait through respondent No.3.

14. As per irrigation certificate Ex. P-10 dated 13.06.2007 disputed land was recorded in the name of Ram Prasad.

15. There is no such material available on record on strength of which it can be said that aforesaid statement of Para 10 of P.W.-1 Suraj Kumar and Ex.P-5, Ex.P-6, Ex.P-7, Ex.P-8, Ex.P-9, Ex.P-10 are not simple, not natural and not normal. Thus this Court believes on aforesaid statement of Para 10 of P.W.1 Suraj Kumar, Ex.P-5, Ex.P-6, Ex.P-7, Ex.P-8, Ex.P-9 and Ex.P-10.

16. After the appreciation of the evidence discussed here before this Court finds that disputed land was recorded in the name of Patait who is the father of Ram Prasad, Ram Prasad is great grand-father of respondents No.1 and 2. Hence, Patait is the father of respondents No. 1 and 2's great grand-father Ram Prasad. Thereafter disputed land was recorded in the name of Ram Prasad. Thereafter the disputed land was recorded in the name of Nanhu who is the grand-father of respondents No.1 and 2. Thereafter it was recorded in the name of respondent No.3 Heera Ram.

17. Looking to the convenience the genealogy is shown herebelow:-



18. Para 7.1, 7.2 and earlier portion of 7.4 of the judgment of Hon'ble Supreme Court passed in the matter of **Arshnoor Singh Vs. Harpal Kaur and others** passed in **Civil Appeal No.5124/ 2019** on **01.07.2019** are relevant which read as under:-

“7.1. Mulla in his commentary on *Hindu Law* (22nd Edition) has stated the position with respect to succession under *Mitakshara* law as follows:

“page 129

A son, a grandson whose father is dead, and a great-grandson whose father and grandfather are both dead, succeed simultaneously as single heir to the separate or self-acquired property of the deceased with rights of survivorship.”

“page 327

All property inherited by a male Hindu from his father, father's father or father's father's father, is ancestral property. The essential feature of ancestral property according to Mitakshara law is that the sons, grandsons and great-grandsons of the person who inherits it, acquire an interest, and the rights attached to such property at the moment of their birth.

A person inheriting property from his three immediate paternal ancestors holds it, and must hold it, in coparcenary with his sons, son's sons, and son's son's sons, but as regards other relations, he holds it, and is entitled to hold it as his absolute property.”

(emphasis supplied)

7.2. In **Shyam Narayan Prasad v. Krishna Prasad & Ors.**, [2018 (7) SCC 646] this Court has recently held that:

“12. It is settled that the property inherited by a male Hindu from his father, father's father or father's father's father is an ancestral property. The essential feature of ancestral property, according to Mitakshara Law, is that the sons, grandsons, and great grandsons of the person who inherits it, acquire an interest and the rights attached to such property at the moment of their birth. The share which a coparcener obtains on partition of ancestral property is ancestral property as

regards his male issue. After partition, the property in the hands of the son will continue to be the ancestral property and the natural or adopted son of that son will take interest in it and is entitled to it by survivorship.”

(emphasis supplied)

7.4. In **Yudhishter v. Ashok Kumar** [1987(1) SCC 204] this Court held that:

“11. This question has been considered by this Court in Commissioner of Wealth Tax, Kanpur and Ors. v. Chander Sen and Ors. [1986] 161 ITR 370 (SC) where one of us (Sabyasachi Mukharji, J) observed that under the Hindu Law, the moment a son is born, he gets a share in father's property and become part of the coparcenary. His right accrues to him not on the death of the father or inheritance from the father but with the very fact of his birth. Normally, therefore whenever the father gets a property from whatever source, from the grandfather or from any other source, be it separated property or not, his son should have a share in that and it will become part of the joint Hindu family of his son and grandson and other members who form joint Hindu family with him.....”

(emphssis supplied)

19. Later part of para 7.4 of the judgment in the matter of **Arshnoor Singh** (supra) is relevant which reads as under:-

“7.4 In **Yudhishter -v- Ashok Kumar** [1987 (1) SCC 204] this Court held that :-

11.This Court observed that this position has been affected by Section 8 of the Act 1956 and, therefore, after the Act, when the son inherited the property in the situation contemplated by Section 8, he does not take it as Kar of his own undivided family but takes it in his individual capacity.”

20. In the matter of **Arshnoor Singh** (supra) in para No.7.5 the following judicial precedent has been laid down-

“7.5 After the Act 1956 came into force, this position has undergone a change. Post - 1956, if a person inherits a self-acquired property from his paternal ancestors, the said property becomes his self-acquired

property, and does not remain coparcenary property.”

21. In the case in hand material question is that as to when succession opened.

22. In the case in hand Ram Prasad who is the great grand-father of respondents No.1, 2, 4 and 5 died before the commencement of the Hindu Succession Act, 1956 (in short “Act 1956”). Thus, succession was opened under the old Hindu Law and the parties would be governed by Mitakshara branch of old Hindu law. Thus this Court finds that disputed land Khasra No. 202/4 admeasuring 1.12 acre was the coparcenary property qua respondent No.1 Suraj Kumar and respondent No.2 Sudama. Thus this Court decides point for determination No.(i) accordingly.

Point for determination No.(ii) finding with reasons:-

23. Respondent No. 3 himself failed to prove any report lodged by him in any police station alleging that, late Bhukharam had got executed said registered sale deed from him taking advantage of his weak ability to understand and think due to his old age and administering liquor to him and without giving any consideration. He also failed to prove any notice given by him to late Bhukharam alleging said facts. He had also not filed any civil suit regarding this matter. Moreover, it was not suggested to D.W.1 late Bhukharam witness of appellants that respondent No.3 allegedly had a weak ability to understand and think due to old age. Moreover, it was not suggested on behalf of respondents No. 1 to 5 to D.W.-2 Gajanand Kumar, D.W.3 Hetram witnesses of appellants that respondent No.3 was of weak ability to understand and think due to old age and at the time of registration Ex.D.1 liquor was administered to him. Moreover, D.W. No.1 Heeraram witness of respondents No.3 to 5, respondent No.3 himself does not clearly and strongly says in his statement given on oath that his mind was weakened due to old age.

24. In Ex. D-1 it has been mentioned that respondent No.3 Heeraram had received earlier Rs. 1,38,500/-. D.W.-1 Bhukharam witness of appellants says in para 3 of his statement given on oath during cross-examination that after the agreement he had given Rs.1,000/- as advance to respondent No.3 and paid remaining amount at the time of registry. D.W.-2 Gajanand witness of appellants says in Para 4 during his cross-examination that late

Bhukharam had given Rs.1,38,500/- to respondent No.3 at the Registrar Office. D.W.-3 Hetram witness of appellants says in Para 2 during his cross-examination that late Bhukharam had given Rs.1,38,500/- to respondent No.3 at the time of registry. This Court finds that these circumstances are not sufficient to disbelieve the registered sale deed Ex. D-1.

25. Moreover, if respondent No. 3 could not have acknowledged the contents of Ex. D-1 before the Registrar, then Registrar would have refused to register the sale deed Ex. D-1 or made such endorsement.

26. D.W.2 Gajanand Kumar and D.W. 3 Hetram witnesses of appellants supported the execution of Ex. D-1.

27. Looking to the above mentioned facts and circumstances, there is a strong presumption made out under Section 59 of the Registration Act, 1908 regarding execution of Ex. D-1. Thus, this Court allows the written argument of counsel for appellants in this reference.

28. After the appreciation of the evidence discussed here before this Court finds that, late Bhukharam had not got executed said registered sale deed Ex. D-1 from respondent No. 3 Heeraram taking advantage of weak ability to understand and think due to old age and administering liquor to him and without giving any consideration. Thus this Court decides point for determination No.(ii) accordingly.

Point for determination No.(iii) finding with reason:-

29. The Trial Court did not frame issue regarding this point for determination though it ought to have been by the Trial Court. The evidence available on record shows that the appellants and the respondents No. 1 to 5 have adduced evidence regarding this point for determination. The evidence available on record is sufficient to enable this Court to pronounce the judgment. Non-framing of additional issue regarding this point for determination does not cause any prejudice to either of the parties. Thus, looking to the provisions Order 41 Rule 24 of the Civil Procedure Code, 1908 this Court finds that it may pronounce the judgment in this appeal.

30. In Ex.D-1 it has been mentioned that respondent No.3 had sold disputed land due to domestic expenses. D.W.-1 Bhukharam, D.W.-2 Gajanand Kumar and D.W.-3 Haitram, witnesses of appellants say in Para 3 during examination in chief that loan was additional reason for sale, which is

not mentioned in Ex. D-1.

31. In the matter of **Arshnoor Singh** (supra) Hon'ble Supreme Court has observed in Para 8.1 which reads as under:-

8.1 “ It is settled law that the power of a Karta to sell coparcenary property is subject to certain restrictions viz. the sale should be for legal necessity or for the benefit of the estate the onus for establishing the existence of legal necessity is on the alienee.

In **Rani & Anr. v. Santa Bala Debnath & Ors.**, [(1970) 3 SCC 722] this Court held that :

“10. Legal necessity to support the sale must however be established by the alienees. Sarala owned the land in dispute as a limited owner. She was competent to dispose of the whole estate in the property for legal necessity or benefit to the estate. In adjusting whether the sale conveys the whole estate, the actual pressure on the estate, the danger to be averted, and the benefit to be conferred upon the estate in the particular instance must be considered. Legal necessity does not mean actual compulsion: it means pressure upon the estate which in law may be regarded as serious and sufficient. The onus of proving legal necessity may be discharged by the alienee by proof of actual necessity or by proof that he made proper and bona fide enquiries about the existence of the necessity and that he did all that was reasonable to satisfy himself as to the existence of the necessity.”

(Emphasis supplied)

32. In the case in hand appellants and late Bhukharam failed to prove that what were the domestic expenses and late Bhukharam had made the inquiry regarding that subject and ultimately he was satisfied that such domestic expenses had been occurred and for bearing the same, it was necessary for respondent No.3 to dispose of disputed land. Thus, aforesaid judicial precedent laid down by Hon'ble Supreme Court in the matter of **Arshnoor** (supra) is applicable against the appellants.

33. After the appreciation of the evidence discussed herebefore this Court finds that appellants failed to prove that respondent No. 3 had legal necessity to sale the disputed land. Thus, this Court decides point for determination No.(iii) accordingly.

Point for determination No.(iv) finding with reasons:-

34. The Trial Court did not frame issue regarding this point for determination though it ought to have been by the Trial Court. The evidence available on record shows that the appellants and the respondents No. 1 to 5 have adduced evidence regarding this point for determination. The evidence available on record is sufficient to enable this Court to pronounce the judgment. Non-framing of additional issue regarding this point for determination does not cause any prejudice to either of the parties. Thus, looking to the provisions Order 41 Rule 24 of the Civil Procedure Code, 1908 this Court finds that it may pronounce the judgment in this appeal.

35. D.W. 1 late Bhukharam witness of appellants who was himself the sole appellant earlier did not say in his statement given on oath that at the time of alleged execution of Ex. D-1, respondent No. 1 and 2 were also present.

36. Moreover, appellants are failed to prove any document which may indicate that respondent No. 1 and 2 had got opportunity to challenge the mutation of disputed land.

37. After appreciation of the evidence discussed hereinbefore this Court finds that appellants failed to prove that respondent No. 1 and 2 are stopped to challenge the execution of Ex. D-1. Thus, this Court decides point for determination No. (iv) accordingly.

Point for determination No. (v) finding with reasons:-

38. This has been earlier decided that disputed land is coparcenary property qua respondents No.1 and 2, appellants failed to prove that respondent No. 3 had legal necessity to sale the disputed land, respondents No. 1 and 2 are stopped to challenge the execution of Ex. D-1. Thus this Court finds that registered sale deed Ex. D-1 is not binding upon respondents No.1 and 2. Thus, this Court decides point for determination No.(v) accordingly.

Point for determination No.(vi) finding with reasons:-

39. The Trial Court did not frame issue regarding this point for determination though it ought to have been by the Trial Court. The evidence available on record shows that the appellants and the respondents No. 1 to 5 have adduced evidence regarding this point for determination. The evidence available on record is sufficient to enable this Court to pronounce the

judgment. Non-framing of additional issue regarding this point for determination does not cause any prejudice to either of the parties. Thus, looking to the provisions Order 41 Rule 24 of the Civil Procedure Code, 1908 this Court finds that it may pronounce the judgment in this appeal.

40. This has been earlier decided that disputed land is coparcenary property qua respondent No.1 and 2. appellants failed to prove that there was the legal necessity to sell the disputed land, respondents No. 1 and 2 are stopped to challenge the execution of Ex. D-1. Hence this Court finds that respondent No.1 Suraj Kumar and respondent No.2 Sudama are also titleholder of the disputed land. Thus this Court decides point for determination No.(vi) accordingly.

Point for determination No.(vii) finding with reasons:-

41. The Trial Court did not frame issue regarding this point for determination though it ought to have been by the Trial Court. The evidence available on record shows that the appellants and the respondents No. 1 to 5 have adduced evidence regarding this point for determination. The evidence available on record is sufficient to enable this Court to pronounce the judgment. Non-framing of additional issue regarding this point for determination does not cause any prejudice to either of the parties. Thus, looking to the provisions Order 41 Rule 24 of the Civil Procedure Code, 1908 this Court finds that it may pronounce the judgment in this appeal.

42. This has been earlier decided that disputed land is the coparcenary property qua respondents No.1 and 2, there was no legal necessity for sale of disputed land to respondent No.3, respondents No.1 and 2 are also titleholder of the disputed land. Thus, this Court finds that respondents No. 1 and 2 are also entitled to get vacant possession of the disputed land from the appellants. Thus this Court decides point for determination No.(vii) accordingly.

Point for determination No.(viii) finding with reasons:-

43. Trial Court has decided that respondents No.1 and 2 are also in possession of disputed land. This has been earlier decided that respondents No.1 and 2 are also the titleholder of disputed land and they also entitled to get the vacant possession of disputed land from appellant. Hence, this Court finds that after getting the vacant possession of disputed land, respondents

No.1 and 2 are also entitled to get permanent injunction against appellants. Thus this Court decides point for determination No.(viii) accordingly.

Point for determination No.(ix) finding with reason:-

44. This has been earlier decided that disputed land is coparcenary property qua respondents No. 1 and 2, Ex. D-1 is not binding upon them, they are also title holder of the disputed land, they are entitled to get vacant possession of the disputed land from appellants. Thus, this Court finds that appellants are not entitled to get any compensatory cost due to alleged false or vexatious suit filed by the respondents No. 1 and 2. Thus, this Court decides point for determination No. (ix) accordingly.

Point for determination No. (x) finding with reason:-

45. Appellants have not raised any question regarding court fees before the trial Court. Thus, they cannot challenge the same before this Court.

46. After complete and full appreciation of the evidence discussed herebefore this Court finds that appellants failed to establish their appeal.

47. Consequently, the appeal is dismissed. The impugned judgment and decree of the trial Court are hereby affirmed to the above extent. Permanent injunction granted by the trial Court is also affirmed.

48. A decree be drawn up accordingly.

Sd/-
(Sharad Kumar Gupta)
Judge