

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.20 of 2008****Judgment reserved on:29.01.2020****Judgment delivered on:12.02.2020**

Bechu S/o late Rampati, Aged about 51 years, Resident of Village Ghongha, P.S.Ramkala, Tah. Pratappur, Distt. Surguja

----- Appellant/Plaintiff**Versus**

1. Ramgulam S/o late Rampati (Ahir) Aged about 43 years,
2. Ramsurat S/o late Rampati Aged about 41 years,
3. Ramjanam S/o late Rampati Aged about 39 years,
4. Shukwariya (died and deleted)

Respondent No.1 to 4 are R/o Village-Ghongha, P.S. Ramkala, Tah-Pratappur, Distt. Surguja (CG)

5. Belsiya D/o late Rampati W/o Mevram, Aged about 62 years,
6. Chhauja (Dead) through LR's

6(A) Ayodhya, S/o Jivbodhan, aged about 46 years,

(B) Awdhesh S/o Jivbodhan, aged about 44 years,

(C) Jivbodhan S/o Foudar, aged about 70 years,

Respondent No.6(A) to 6(C) are resident of village Chandoura, Tahsil Pratappur, District Surajpur (CG)

(D) Yashoda Bai W/o Chetanram, D/o Jivbodhan, aged about 48 years, resident of village Ghui, Tahsil Pratappur, District Surajpur (CG)

7. Bhusman D/o Late Rampati W/o Ramparikshan, Aged about 57 years, R/o Village Chemi, P.S. Chalgali, Tah. Ram-nujganj, Distt. Sarguja (CG)
8. Lakho D/o late Rampati W/o Girwa, Aged about 47 years, R/o Village Bedmi P.S. Ramkola, Tah. Pratappur, Distt. Sarguja (CG)
9. Shanti D/o late Rampati W/o Phenku, Aged about 45 years, R/o Village Beltikari, P.S. Bhaiyathan, Tah. Surajpur, Distt. Sarguja (CG)
10. State of Chhattisgarh, Through Collector Surguja, Ambikapur, Distt. Surguja (CG)

----- Respondents

For Appellant/Plaintiff: Mrs. Meena Shashtri, Advocate
 For Res.No.1 to 3/Defendants: Ms Sharmila Shinghai, Advocate
 For Respondent No.10: Mr.Akash Pandey, P.L.
 For other respondents: None present

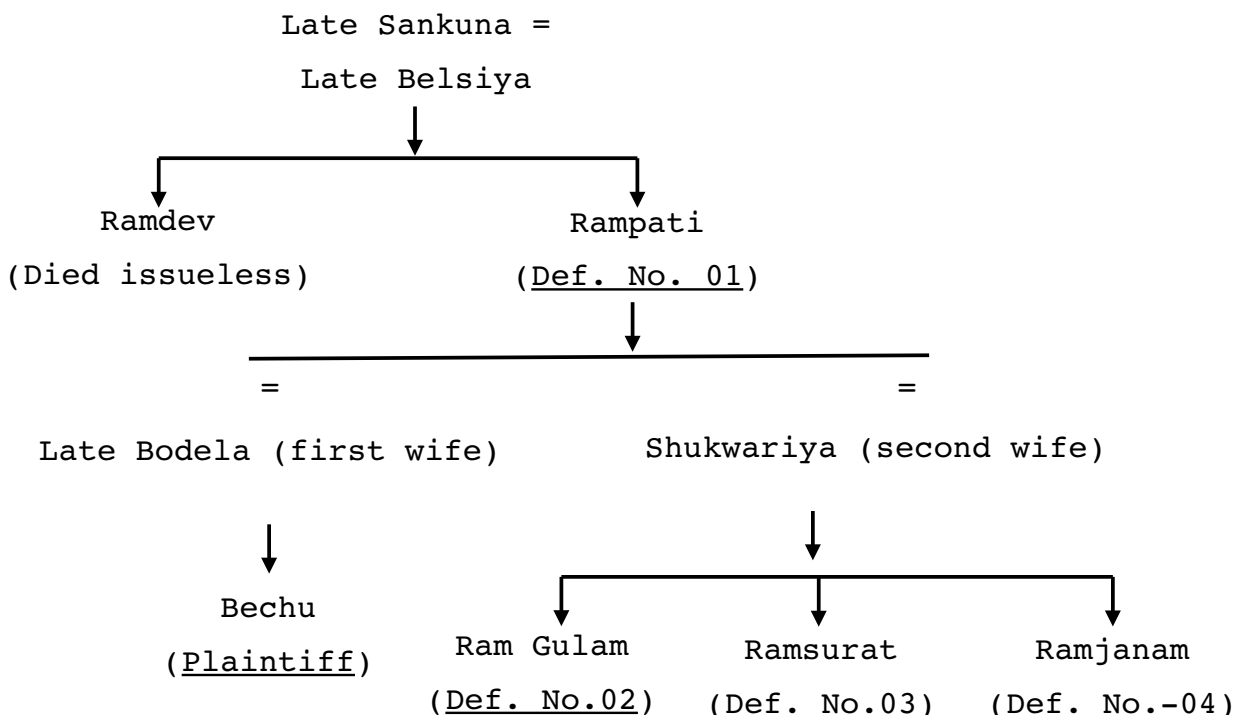
Hon'ble Shri Justice Sanjay K. AgrawalC.A.V. Judgment

1. The substantial question of law involved, formulated and to be answered in this second appeal preferred by the plaintiff is as under:-

"Whether the lower appellate Court was justified in reversing the finding recorded by the trial Court that the suit property is joint property of the plaintiff and the defendants No.1 to 4 ?"

[For the sake of convenience, the parties would be referred hereinafter as per their status shown and nomenclature in the suit before the trial Court].

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



3. The suit property mentioned in Schedule 'A' annexed with the plaint i.e. 9.06 acres of the land was settled in favour of Ramdev and Rampati (plaintiff's father) by Surguja settlement vide Ex.P-1 and Ex.D-2. Since Ramdev died issueless, therefore, it was finally recorded in the name of defendant NO.1-Rampati and dispute also relates to 4.63 acres of land purchased by defendant No.1-Rampati from one Lallan vide Ex.D-3 on 4.4.1955. Defendants No.2 to 4 are sons of Rampati out of his wedlock with second wife Sukwariya. The plaintiff instituted a suit for declaration of title, partition and possession stating inter-alia that the suit property was originally the property of Sankuna and he was cultivating the land during Surguja settlement and he was entitled for settlement, but before Surguja settlement could be finalized, he died and accordingly, the suit property i.e. 9.06 acres was settled in favour of Ramdev & Rampati and since Ramdev died issueless, therefore, it was recorded in the name of defendant No.1-Rampati, as such, the property was coparcenary property in which the plaintiff and defendant No.1 have equal share and he is entitled for 1/5th share in the suit property.

4. The defendants filed their written statement and denied the averments made in the plaint stating inter-alia that the suit properties i.e. 9.06 and 4.63 acres of land were self-acquired property of Rampati as it was

settled in Surguja settlement and defendant No.1-Rampati has purchased the said property by registered sale deed dated 4.4.55 (Ex.D-3) and being separate property he has executed sale deeds dated 30.7.97 and 6.2.97 in favour of defendants No.2 to 4 and as such, the plaintiff has no right and title over the suit land and prayed for dismissal of suit.

5. The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 23.3.2006 decreed the suit and held that the plaintiff has proved that the suit property is joint family property being coparcenary property held by Rampati and the plaintiff is entitled for 1/5th share in the suit property, which was reversed by the first appellate Court on the ground that it was self-acquired property of Rampati and the plaintiff has no right and title over the suit property. Questioning the judgment and decree of the first appellate Court, this second appeal under Section 100 of the CPC has been preferred by the appellant/plaintiff, in which substantial question of law has been formulated, which has been set-out in the opening paragraph of this judgment.

6. Mrs.Meena Shashtri, learned counsel for the appellant/plaintiff, would submit that the first appellate Court is absolutely unjustified in holding that the suit property was separate/self-acquired

property of Rampati ignoring the fact that Sankuna, grandfather of the plaintiff, was cultivating possession of suit land and entitled for settlement in his favour, but before settlement could be finalized, he died and therefore, it was settled in favour of his two sons Ramdev and Rampati (father of the plaintiff) and since Ramdev died issueless, it was recorded in the name of Rampati and since the property being coparcenary property in the hands of Rampati, the plaintiff has 1/5th share in the suit property and the trial Court is absolutely justified in granting decree of 1/5th share in the suit property, which could not have been reversed by the first appellate Court by recording a finding which is perverse and contrary to record.

7. On the other hand, Ms Sharmila Shinghai, learned counsel for respondents NO.1 to 3/defendants No.2 to 4, would submit that admittedly vide Ex.D-4 it was only settled in the name of Rampati, therefore, it is separate/self-acquired property of their father's (Rampati) and Rampati purchased 4.63 acres of land from one Lallan by registered sale deed dated 4.4.55 (Ex.D-3) and that is also separate/self-acquired property of their father, which has not been challenged by the plaintiff as joint family property, therefore, the first appellate Court is absolutely justified in holding that the suit property is separate/self-

acquired property of Rampati and dismissed the suit, which calls no interference.

8. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

9. The suit property consists two sets of property firstly, suit land (9.63 acres) which was granted in favour of Ramdev and Rampati jointly by Surguja settlement vide Ex.D-2 and secondly, the land (4.63 acres) acquired by Rampati by registered sale deed dated 4.4.1955 (Ex.D-3).

10. So far as the land acquired by defendant No.1- Rampati from one Lallan vide Ex.D-3 on 4.4.1955 is concerned, there is no pleading in the plaint that it was purchased by Rampati out of income of joint family and joint family had a nucleus to purchase that property. In this regard, the pertinent decisions of the Supreme Court may be noticed herein.

11. 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:-

¹ AIR 1954 SC 379

"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....."

12. In the matter of Mudi Gowda Gowdappa Sankh v. Ram

Chandra Ravagowda Sankh² 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....."

13. 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

² AIR 1969 SC 1076

Suryanarayanamurti & Others³ 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."

14. Likewise, in the matter of **D.S. Lakshmaiah and another v. L. Balasubramanyam and another**⁴ 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."

15. The Supreme Court in the matter of **Rangammal v. Kuppuswami & Anr.**⁵ has held that in a suit for partition only joint family property has to be included by holding as under:-

3 ILR 1948 Mad 440 (PC)

4 (2003) 10 SCC 310

5 (2011) 12 SCC 220

"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."

- 16.** Reverting to the facts of the present case in the light of legal position noticed hereinabove, it is quite vivid that the suit property was purchased by defendant No.1-Rampati by registered sale deed dated 4.4.1955 vide Ex.D-3, yet the plaintiff in the plaint did not plead that the suit property was joint family property and it was purchased by late Rampati from income of joint family for collective use of all his family members jointly. The plaintiff taking a plea that the suit property is joint family property purchased from income of joint family was required to plead and establish that joint family of them had a nucleus and out of that money the suit property (Ex.D-3) was purchased, which is completely missing in the plaint, therefore, it cannot be held that the suit property i.e. 4.63 acres of land purchased by Rampati

vide Ex.D-3 is not joint family property and the first appellate Court has not committed any illegality in holding that it is the separate property of Rampati, father of the plaintiff.

17. So far as the suit property which was granted vide Ex.D-2 in the names of Ramdev & Rampati by Surguja settlement was earlier held by late Sankuna, but before Surguja settlement could actually take place, he died and therefore, it was settled in favour of Ramdev and defendant No.1, as such, it was held by the trial Court that the property is joint family property in which the plaintiff would have share being ancestral property and that could not have been disposed of on 30.7.97 & 6.2.97 in favour of defendants No.2 to 4. The trial Court rightly relying upon the statements of Bechu (PW-1), Manbahoran (PW-2), Ramsunder (PW-3), Ramjanam (DW-1) & Panchamram (DW-2) came to the conclusion that the suit land which was settled in favour of Ramdev & Rampati was made cultivable by Sankuna and he was in cultivating possession of that land, but on account of his death, that was settled in favour of two brothers including father of the plaintiff. Merely because it was settled by Surguja Settlement in the names of Ramdev & Rampati jointly, it would not become separate property of Rampati, which was otherwise the property of the plaintiff's father Sankuna as he was long and cultivating possession of suit land,

therefore, the first appellate Court is absolutely unjustified in reversing the well merited finding of the trial Court in this regard holding the property to be self-acquired/separate property of Rampati.

18. It is well settled that all property inherited by a male Hindu from his father, father's father or father's father, 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, sons sons, and sons son and sons sons sons, but as regards other relations, he holds it, and is entitled to hold it as his absolute property.

19. With regard to nature of the property, **Mulla's Hindu Law, 22nd Edition**, page 327 states as under:-

"All property inherited by a male Hindu from his father, father's father, father's father's father is ancestral propriety. The essential feature of ancestral property according to Mitakshara law is that the son's, grandson's and great-grandson's 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 son and son's son's son, but as regards other

relations, he holds it, and is entitled to hold it as his absolute property."

20. 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 alinee.

21. In the matter of Smt.Rani and another v. Smt.Santa Bala Debnath and others⁶ the Supreme Court held as under:-

"10. Legal necessity to support the sale must however be established by the alienees. Sarala owned the land in dispute as a limited oner. She was competent to dispose of the whole estate in the property for legal necessity or benefit to the estate. In adjudging 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 insistence 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 alinee 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."

22. The principle of law laid down in Smt.Rani (supra) has been recently followed by the Supreme Court in the matter of Arshnoor Singh v. Harpal Kaur and others⁷.

23. Finally, reverting to the facts of the present

6 1970(3) SCC 722

7 AIR 2019 SC 3098

case, so far as the property (Ex.D-2) is concerned, it is quite vivid that it was joint family property and was settled in the names of Ramdev and defendant No.1-Rampati jointly after death of Sankuna, it is not separate/self-acquired property of defendant NO.1-Rampati, as such, the first appellate Court clearly erred in law in holding that it is separate/self-acquired property of Rampati and as such, Rampati was not competent to alienate the suit property (9.63 acres of land) in favour of defendants No.2 to 4 as they have failed to prove and establish the legal necessity or it was alienated for benefit of the estate on 30.7.97 and 6.2.97..

24. As a fallout and consequence of the above-stated discussion, the judgment and decree of the first appellate Court is partly set-aside holding that the suit property being 9.06 acres which Rampati and his brother Ramdev received by Surguja settlement is joint family property and the plaintiff will be entitled for 1/5th share in that property as held by the trial Court. However, the plaintiff's suit with regard to the suit property i.e. 4.63 acres of land purchased on 4.4.1955 vide Ex.D-3 dismissed by the first appellate Court is re-affirmed.

25. The substantial question of law is answered accordingly.

26. The second appeal is allowed in part to the extent

indicated hereinabove leaving the parties to bear their own cost(s).

27. Decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-