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HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 463 of 2017**

- Rishabh Kumar Jain S/o Shri Dulichand Jain Aged About 44 Years R/o Ayodhya Nagar, Bilaspur, Tahsil And District Bilaspur, Chhattisgarh

---- Appellant**Versus**

1. Holaram @ Holamal S/o Late Shri Giddumal Peswani Aged About 77 Years R/o Sindhi Colony, Jarhabhata, Bilaspur, Tahsil And District Bilaspur, Chhattisgarh
2. Suresh Peswani S/o Shri Holaram (Holamal Mentioned In The Impugned Judgment) @ Holamal Peswani Aged About 40 Years R/o Sindhi Colony, Jarhabhata, Bilaspur, Tahsil And District Bilaspur, Chhattisgarh
3. Totaram Peswani S/o Late Shri Gelaram @ Gokhumal Peswani Aged About 65 Years R/o Sindhi Colony, Jarhabhata, Bilaspur, Tahsil And District Bilaspur, Chhattisgarh
4. State Of Chhattisgarh, Through- Collector, Bilaspur, Chhattisgarh

---- Respondents**FA No. 466 of 2017**

- Abhay Kumar Jain S/o Late Dulichand Jain Aged About 45 Years R/o Ayodhya Nagar, Tahsil And District Bilaspur, Chhattisgarh

---- Appellant**Versus**

1. Holaram Alias Holamal S/o Late Shri Giddumal Paiswani Aged About 77 Years R/o Sindhi Colony, Jarhabhata, Tahsil And District Bilaspur, Chhattisgarh
2. Suresh Peswani S/o Shri Holamal Alias Holamal Peswani Aged About 40 Years R/o Sindhi Colony, Jarhabhata, Tahsil And District Bilaspur, Chhattisgarh
3. Totaram Peswani S/o Late Shri Gelaram @ Gokhumal Peswani Aged About 65 Years R/o Sindhi Colony, Jarhabhata, Tahsil And District Bilaspur, Chhattisgarh
4. State Of Chhattisgarh, Through The District Collector, Bilaspur, Chhattisgarh

---- Respondents

For respective Appellants :	Shri Prafull Bharat and Shri B.P.Sharma, Advocates
For Respondents 1 and 2 :	Shri Arvind Shrivastava, Advocate
For State :	Shri Ravish Verma, Govt. Adv.

D.B.:- Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment on Board

Per Manindra Mohan Shrivastava, J.

20/07/2020

By this common judgment, the aforesaid two appeals are being decided as both the appeals arise out of judgment and decree of the Trial Court in the suit filed by respective appellants / plaintiff involving common issue with regard to title and authority of defendant – Totaram to execute sale deed in favour of respective plaintiffs, disputed properties being part and parcel of lands claimed to have been received by Totaram under a family partition.

2. As far as F.A.No.463/2017 is concerned, the plaintiff – Rishabh Kumar Jain filed a suit seeking declaration and permanent injunction against the defendants – Holaram, his son – Suresh Peswani, one Totaram Peswani as also State, on the pleadings that the plaintiff purchased land admeasuring 1626 sq.ft. situated in khasra no.448/47 and land admeasuring 723 sq.ft. situated in khasra no.448/48 situated in P.H.No.26, Revenue circle – Sakri, Village – Ameri, Tahsil – Takhatpur, District – Bilaspur vide sale deeds dated 23/10/2000 and 28/10/2000 executed in his favour by defendant No.3 – Totaram. As pleaded by the plaintiff, the plaintiff paid the consideration, obtained possession and thereafter, he remained in possession of the property and enjoying the same since last 16 years. It was further pleaded that Totaram and Holaram were equal share holders of joint family

property in the joint Hindu family wherein partition had taken place and the property in dispute allotted to the share of Totaram. Later on, however, Holaram started disputing the title of the plaintiff stating that he had no blood relation with Totaram, there was no joint family property and Totaram illegally executed the sale deed in favour of plaintiffs. Various orders were passed by the revenue authorities and the defendants – Holaram and his son – Suresh Peswani started disputing plaintiff's title and therefore, the plaintiff was required to file suit for declaration and permanent injunction.

3. Defendants - Holaram and Suresh filed their written statement stating that Totaram was not related to Holaram. The property in dispute did not belong to Totaram. They denied that there was any blood relation between Totaram and Holaram. The contesting defendants further pleaded that there was no occasion for partition because the property in dispute did not form part of joint Hindu family property of Totaram, Holaram or other persons. According to the defendants, Totaram played fraud and executed sale deeds in respect of various parts and parcel belonging to Holaram in favour of large number of persons including – Rishabh Jain.

4. On the basis of pleadings, learned Trial Court framed following issues -

- “1. क्या प्रतिवादी तोताराम वादभूमि को विक्रय करने में सक्षम था ?
2. क्या वादी विक्रय दिनांक से वादभूमि का स्वामी एवं आधिपत्यधारी है ?
3. क्या वादी स्थाई निषेधाज्ञा प्राप्त करने का अधिकारी है ? ”

5. The main issue arising for consideration before the learned Trial Court was whether Totaram had valid title and ownership in respect of the property in dispute and whether he was competent to execute sale deed passing valid title in favour of the plaintiff. Learned Trial Court held that the plaintiff failed to prove by leading cogent and clinching, oral and documentary evidence that Holaram and Totaram

belonged to joint family and were holding joint family property including the disputed property. Learned Trial Court also held that the plaintiff failed to prove the so called partition vide partition deed dated 21/01/1988 (Ex.P/36) and it was not reliable piece of evidence. Holding that the said document was instrument of partition, therefore, was required to be compulsorily registered, held it to be inadmissible in evidence. As the entire case of the plaintiff was based on the pleadings and evidence that the disputed property form part of the share received by Totaram under partition evident from memorandum of partition dated 21/01/1988, the said finding of the learned Trial Court eventually resulted in dismissal of the suit, giving rise to F.A.No.463/2017.

The other appeal F.A.No.466/2017 arises out of judgment and decree passed by the Trial Court in a suit filed by the appellant / plaintiff – Abhay Kumar Jain on similar pleadings against Holaram, Suresh, Totaram and State of Chhattisgarh. The plaintiff made similar pleadings as in the connected case that he had purchased land admeasuring 1626 sq. ft. situated in khasra No.448/51 and 723 sq. ft. situated in khasra no.448/52 vide two registered sale deeds dated 23/10/2000 and 28/10/2000 from defendant – Totaram by paying consideration and obtained possession upon acquisition of valid title. In this case also, defendant - Holaram and Suresh filed their written statement raising identical pleadings as in the suit filed by Rishabh Kumar Jain that the property in dispute belong to them; Totaram was not related to them; The property did not form part of the joint family property; There was no occasion for partition as the property was not joint family property of Holaram and Totaram. In that suit, issues were framed and the plaintiff and defendants led similar evidence in support of their cases. In this case also, the plaintiff - Abhay Kumar Jain relied upon the same memorandum of partition dated 21/01/1988 (Ex.P/36). In this case also, learned Trial Court recorded similar findings as in the suit of connected appeal to hold that

the plaintiff failed to prove that a valid title transferred in his favour on the findings that the plaintiff failed to lead cogent and clinching, oral and documentary evidence to prove that Holaram and Totaram were related to each other, property in dispute form part of share, claimed to have allotted as share of Totaram under the so called partition evident from partition deed dated 21/01/1988 (Ex.P/36) and thus, dismissed the suit, giving rise to the present appeal.

6. In both the appeals, learned counsel for respective appellants, raise foremost contention that the issue as to whether Totaram had valid title to sell the properties on the basis of partition of joint family property held by him jointly along with Holaram, evident from memorandum of partition dated 21/01/1988 (Ex.P/36), has been comprehensively examined and decided by this Court in another batch of five appeals vide judgment and decree dated 05/03/2019, those arising from judgments and decree in suits filed by various purchasers against Holaram, Suresh and Totaram involving identical issue regarding title of Totaram on the strength of family partition. It is, therefore, submitted that present appeal also deserves to be allowed and decree passed in favour of the appellants in their respective suits on the finding that by virtue of sale deed executed in favour of respective appellants by Totaram, respective appellants / plaintiffs acquired valid title. Learned respective counsel in two appeals would submit that since this was the key issue, no other submission is being advanced except relying upon the aforesaid judgment and decree passed by Coordinate Bench of this Court in batch of appeals.

7. Learned counsel appearing for the respondent / defendants - Holaram and Suresh would submit that the judgments passed in batch of appeals arose from judgment and decree passed in suits filed by different purchasers of Totaram involving different parcel of property and merely because all these properties including those involved in the present case form part of the property claimed to be

allotted to the share of Totaram, the respondent / defendants are not bound by the said judgment and this appeal is required to be decided independently on consideration of pleadings of respective parties and oral and documentary evidence led by the parties in each case. Learned counsel for the respondents argued that the entire claim of appellants in two appeals rests on so called memorandum of partition dated 21/01/1988 (Ex.P/36) and pleadings that Holaram and Totaram belong to one family and the property in dispute earlier form part of the joint family property and later on, partitioned. According to learned counsel for the respondents, the plaintiff in two cases failed to lead any cogent and clinching evidence to prove that Holaram and Totaram belong to a joint Hindu family, therefore, in the absence of there being any specific evidence, the learned Trial Court, in both the cases, has rightly held that the plaintiffs failed to prove that Holaram and Totaram were related to each other and the property in dispute was either inherited by them from their common ancestors or Holaram and Totaram jointly purchased the property in dispute.

8. On the contrary, it is argued, a clear evidence has been led that the disputed property form part of larger chunk of land which was purchased by Giddumal, father of Holaram. Therefore, after death of Giddumal, the property devolved by way of succession upon, Holaram and his son – Suresh Peswani. In the absence of proof that Holaram and Totaram belong to one joint family and the property in dispute belong to joint family property, learned Trial Court rightly held that Totaram had no title in respect of the disputed property and the suit was rightly dismissed.

9. We have heard learned counsel for the parties.

10. The submission confined as to whether these two appeals deserve to be allowed in view of specific finding recorded by the Coordinate Bench of this Court

in its common judgment dated 05/03/2019 passed in batch of appeals arising out of Civil Suit filed by other purchasers of Totaram.

11. Having given our anxious considerations and perusal of the judgment of the Coordinate Bench, we are of the view that as far as issue of Totaram acquiring valid title over the disputed property under a partition is concerned, evident from memorandum of partition dated 21/01/1988 (Ex.P/36), this issue was considered in the aforesaid batch of appeals and the Coordinate Bench of this Court has held that memorandum of partition dated 21/01/1988 (Ex.P/36) was not instrument for partition but memorandum of partition, therefore, did not require registration. Considering the above, this Court held that the plaintiffs in these cases succeeded in proving that the property in dispute in those cases form part of larger chunk of property which earlier formed part of joint Hindu property of Holaram and Totaram and under a partition, Totaram was allotted share which comprised of disputed properties involved in different suits which were sold by Totaram to different purchasers / plaintiffs in those cases. In these cases also, similar pleadings, oral and documentary evidence, including memorandum of partition dated 21/01/1988 (Ex.P/36) were led in evidence. The main issue arising in those cases are also identical to the issue raised in the present appeals, which is clear from the contents of para 7 of the said judgment as below -

“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.”

12. The findings recorded in the aforesaid cases are as below -

“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."

It is, thus, crystal clear that in the aforesaid batch of appeals, identical issue as arising in these two appeals, was considered by the Coordinate Bench mainly as to whether Totaram had valid title to execute sale deeds claiming disputed properties in that case to be part of his share.

13. Though learned counsel for the respondents in the present two appeals has come out with the case that in a pending suit between Holaram and Totaram, involving *inter se* dispute, after the judgment dated 05/03/2019 passed by the Coordinate Bench in batch of First Appeals, a decree has been passed in favour of Holaram and against Totaram, in view of the judgment of the Coordinate Bench, we do not consider it proper to take a view different from what has been taken in

batch of appeals by the Coordinate Bench, of which, one of us (Smt. Vimla Singh Kapoor, J.) was a member.

14. Learned counsel for the respondents - Holaram and Suresh Peswani could not dispute and it is also proved from the details contained in memorandum of partition dated 21/01/1988 (Ex.P/36) that disputed properties which were subject matter of dispute in the batch of appeals decided by the Coordinate Bench vide judgment and decree dated 05/03/2019 in batch of appeals and the disputed properties which are subject matter of the two appeals in hand, form part and parcel of the allotted share of Totaram under memorandum of partition dated 21/01/1988 (Ex.P/36). Present is not a case that the disputed properties in the present case are outside the parcel of lands which were allotted to Totaram under partition between him and Holaram. There is no other point urged before us that even if the issue with regard to title of Totaram is held in favour of plaintiffs, the plaintiffs are required to be non-suited on any other grounds.

15. In the result, applying the principles of amity and comity as applied in the case of **Shankara Cooperative Housing Society Limited v. M. Prabhakar and others, (2011) 5 SCC 607**, we are inclined to hold that Totaram had valid title in respect of disputed property and therefore, sale deed executed by him in favour of the plaintiffs Rishabh Kumar Jain and Abhay Kumar Jain in two appeals transfer valid title in favour of those appellants / plaintiffs.

16. In the result, we are inclined to allow these two appeals. The judgment and decree passed by the learned Court below in two appeals are set aside. The suit of plaintiff – Abhay Kumar Jain in F.A.No.466/17 and suit of Rishabh Kumar Jain in F.A.No.463/17 are consequently decreed.

In Civil Suit No.139-A/2015 (*Rishabh Kumar Jain v. Holaram @ Holamal*

and ors.), it is declared that by virtue of sale deed dated 23/10/2000 (Ex.P/1) and sale deed dated 28/10/2000 (Ex.P/2) in respect of land admeasuring 1626 sq.ft. situated in khasra no.448/47 and land admeasuring 723 sq.ft. situated in khasra no.448/48 situated in village – Ameri, P.H.No.26 as described in schedule - A appended to the plaint, Revenue Circle – Sakri, Tahsil – Takhatpur, Bilaspur, plaintiff – Rishabh Kumar Jain acquired valid title. Defendants – Holaram, Totaram and Suresh Peswani are restrained from interfering in any manner, possession and peaceful enjoyment of the plaintiff over the suit property.

In Civil Suit No.140-A/2015 (*Abhay Kumar Jain v. Holaram @ Holamal and ors.*), it is declared that by virtue of sale deed dated 23/10/2000 (Ex.P/1) and sale deed dated 28/10/2000 (Ex.P/2) in respect of land admeasuring 1626 sq.ft. situated in khasra no.448/51 and land admeasuring 723 sq.ft. situated in khasra no.448/52 situated in village – Ameri, P.H.No.26 as described in schedule - A appended to the plaint, Revenue Circle – Sakri, Tahsil – Takhatpur, Bilaspur, plaintiff - Abhay Kumar Jain acquired valid title. Defendants – Holaram, Totaram and Suresh Peswani are restrained from interfering in any manner, possession and peaceful enjoyment of the plaintiff over the suit property.

Let separate appellate decree be accordingly drawn in the aforesaid two appeals. Parties to bear their respective costs.

Sd/-
(**Manindra Mohan Shrivastava**)
Judge

Sd/-
(**Vimla Singh Kapoor**)
Judge