

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 590 of 2003****Reserved on 28.02.2020**
Pronounced on 05.03.2020

- Devnath, S/o Bhiku, aged about 35 years, Caste-Panika, Occupation-Agriculture, R/o Village – Gheghari, Tahsil Ambikapur, District Surguja (Chhattisgarh) (Defendant)

---- Appellant**Versus**

1. Mohan Ram, S/o Besahu aged about 40 years,
2. Sohan Ram, S/o Besahu, aged about 38 years,
3. Sonsay, S/o Besahu, aged about 35 years,
4. Rampati, W/o Mohan, aged about 30 years,

All the respondents from 1 to 4 are the successors of late Maiya, Wd/o Late Besahu and are residents of village Fundurdehari Nagar, Tahsil Ambikapur, District Surguja (Plaintiffs)

5. State Of C.G. Through Collector, Surguja Ambikapur C.G.

-- Respondents

For Appellant	:	Shri Sanjay Patel, Advocate.
For Respondents No.1 to 4	:	Ms. Priyanka Mehata, Advocate.
For Respondent No.5/State	:	Shri Vimlesh Bajpai, G.A.

Hon'ble Shri Justice Sanjay S. Agrawal**C.A.V. Judgment**

1. This second appeal has been preferred by defendant No.1 under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as the CPC) questioning the legality, and propriety of the judgment and decree dated 30.08.2003 passed in Civil Appeal No.97-A/1999 by the 1st Additional District Judge, Ambikapur, Surguja, by which, the lower appellate Court while reversing the judgment and decree dated 31.08.1999 passed by the

Additional Civil Judge Class-1, in Civil Suit No.158-A/1999, has decreed the plaintiffs' claim.

2. Briefly stated the facts of the case are that plaintiff Maiya (since deceased now represented by her legal representatives) instituted a suit claiming declaration, partition and separate possession by submitting, inter alia, that the property described in plaint schedule 'A' was originally held by her father Suna. It is pleaded that after the death of Suna, it was inherited by her along with her sister Gendi Bai. It is pleaded further that the plaintiff and defendants are Panika by caste and governed by the Hindu Law, and therefore, after the death of Suna, the plaintiff and her sister Gendi Bai would inherit the property in equal share in relation to the property left by her father. According to the plaintiff, the suit property bearing Kh.No.935 admeasuring 1.87 acres, forming part of plaint schedule 'A', was sold by her sister Gendi Bai without prior permission from the Collector, therefore, the said property be adjusted in her share and pleaded further that when she demanded the partition, it was refused by defendant No.1 by saying that he had acquired his interest by virtue of the deed of relinquishment. The plaintiff has, therefore, been constrained to file the suit in the instant nature.

3. While contesting the aforesaid claim, defendant No.1 Devnath, son of Gendi Bai, stated that no sale as alleged by the plaintiff in relation to the property bearing Kh.No.935 admeasuring 1.87 acres forming part of the plaint schedule 'A' was ever made by her mother Gendi Bai. It is pleaded in the written statement that he had acquired his interest by virtue of the deed of relinquishment executed by said plaintiff and his mother Gendi Bai on 30.10.1972 and based upon that he obtained the revenue papers mutated in his name and since then he is continuously enjoying the property in question and, as such acquired his interest over the property in question by way of

adverse possession. It is pleaded further that the property in question described in plaint schedule 'B' had already been sold by plaintiff to one Smt. Vigaleshwari Devi by virtue of a registered deed of sale dated 04.05.1976, therefore, claim as made is liable to be dismissed.

4. After considering the evidence led by the parties, the trial Court, vide its judgment and decree dated 31.08.1999 has held that the plaintiff Maiya and her sister Gendi Bai had acquired the interest over the property as described in plaint schedule 'A' left by their father Suna in equal share. It held further that the property bearing Kh.No.935 admeasuring 1.87 acres forming part of said schedule was not alienated by said Gendi Bai for want of production of the registered deed of sale and held further that defendant No.1 Devnath had not acquired his right by way of adverse possession. It held further that the plaintiff has suppressed the material facts regarding the execution of the alleged registered deed of sale in favour of said Smt. Vigaleshwari Devi and, in consequence dismissed the suit.

5. Being aggrieved, the plaintiff has preferred an appeal. In appeal, the lower appellate Court arrived at a conclusion that the property described in plaint schedule 'A' was originally held by Suna and after his death, it was inherited in equal share by his daughters Maiya (plaintiff) and her sister Gendi Bai. It held further that by virtue of the registered deed of sale dated 04.05.1976 (Ex.D.12), the suit property described in plaint schedule 'A', except Kh.No. 935 admeasuring 1.87 acres, was sold by plaintiff Maiya and her sister Gendi Bai jointly. While observing as such, the lower appellate Court has declared half interest of plaintiff and her sister Gendi Bai with regard to the plaint schedule 'A' property and entitling the plaintiff 3.30 acres of land of plaint schedule 'B' property and also a separate possession of the same.

6. Being aggrieved by the aforesaid judgment and decree, defendant No.1 Devnath has preferred this appeal.

7. By order dated 21.11.2014, this Court has framed the following substantial questions of law:

- “1. Whether the finding of the 1st appellate Court was justified in allowing the First Appeal of the plaintiff and creating a right in her favour ignoring the fact that the plaintiff had failed to prove beyond reasonable doubt about her being the legal heir of late Suna?
2. Whether the 1st appellate court could have decided the title and ownership of the suit property only on the basis of the entries made in the revenue records?
- 3 Whether the finding of the 1st appellate court is perverse and contrary to the evidence that has come on record?”

8. During the course of arguments, the following substantial question of law has been framed on 25.03.2019 as under:

“Whether under the facts and circumstances of the case, decree as drawn by the Court below is just and proper?”

9. Shri Sanjay Patel, learned counsel for the appellant submits that the judgment and decree as passed by the lower appellate Court entitling the plaintiff 3.30 acres of land of plaint schedule 'B' property is apparently contrary to law. He submits further that once it has been held that Kh.No.935 admeasuring 1.87 acres of land forming part of plaint schedule 'A' property was not alienated, as alleged by the plaintiff, the decree as such ought not to have been drawn. He submits further that the appellant had acquired his interest by virtue of the deed of relinquishment executed by her mother Gendi Bai and plaintiff Maiya in his favour and as such acquired his interest by way of adverse possession.

10. On the other hand, Ms. Priyanka Mehta, learned counsel for respondents No. 1 to 4/plaintiffs, while supporting the judgment and decree, submits that the lower appellate Court has rightly held that the plaintiff and her sister Gendi Bai had acquired their interest by way of inheritance with regard to the property in question left by their father Suna, and therefore, the findings as recorded by the lower appellate Court be affirmed.

11. I have heard learned counsel for the parties and perused the entire record carefully.

12. A suit was instituted by plaintiff Maiya on the ground that the property described in plaint schedule 'A' was originally held by her father Suna. According to the plaintiff, the property bearing Kh.No.935 admeasuring 1.87 acres, forming part of plaint schedule 'A' property, was sold by Gendi Bai, therefore, this property be adjusted in her share, the mother of defendant No.1 Devnath. Perusal of the pleadings of the parties would show that plaintiff Maiya is also the heir of said Suna, the erstwhile owner of the property in question as the said fact is rather not in dispute in the matter. The contention of the plaintiff that the suit property bearing Kh.No.935 admeasuring 1.87 acres of land, forming part of plaint schedule 'A' property, was sold by her sister Gendi Bai is, however, noted to be rejected as no sale as such was produced by the plaintiff in this regard. The Courts below have, therefore, rightly disbelieved the contention of the plaintiff in this regard.

13. Perusal of the record would reveal further that the plaint schedule 'A' property, except Kh.No.935 admeasuring 1.87 acres, was in fact sold jointly by plaintiff Maiya and her sister Gendi Bai to one Vigaleshwari Devi by way of registered deed of sale dated 04.05.1976 (Ex.D.12) and this fact has been taken note of by the Courts below that both plaintiff Maiya and her sister

Gendi Bai, who had equal interest over the property in plaint schedule 'A', had sold the said property as such jointly to said Vigaleshwari Devi.

14. In view of the foregoing discussions, all the substantial questions of law framed on 21.11.2014 are answered accordingly in favour of the plaintiff and, it is accordingly held that plaintiff Maiya being the legal heir of said Suna, the owner of the property in question, had acquired her interest by way of inheritance over the property in question in equal share along with her sister Gendi Bai, the mother of defendant No.1 (Devnath). However, the substantial question of law framed on 25.03.2019 as to “whether the decree has rightly been drawn by the lower appellate Court” is answered in negative and it is held that plaintiffs would be entitled to half share in respect of plaint schedule 'B' property along with the property in question bearing Kh.No.935 admeasuring 1.87 acres of land forming part of plaint schedule 'A' property. Since the property in question described in plaint schedule 'A', except Kh.No.935 area 1.87 acres was sold by both Maiya Bai and her sister Gendi Bai on 04.05.1976 (Ex.D.12) to one Vigaleshwari Devi, therefore, they will be bound by the same.

15. With the aforesaid modification in the decree impugned, the appeal is accordingly disposed of. No order as to costs.

16. A decree be drawn accordingly.

Sd/-
(Sanjay S. Agrawal)
Judge