

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.844 of 2019

Manharan Singh, S/o Shivdayal Singh, aged about 56 years, R/o
Kalegondi, Tehsil Chhuikhadan, District Rajnandgaon (C.G.)

(Defendant No.1)

---- Appellant

Versus

1. Dhalsingh, S/o Late Manbahal Singh, aged about 42 years,
{Plaintiff No. 1(a)}
2. Chain Singh, S/o Late Manbahal Singh,
{Plaintiff No. 1(b)}
3. Man Singh, S/o Late Manbahal Singh,
{Plaintiff No. 1(c)}
4. Jitendra Singh, S/o Late Manbahal Singh,
{Plaintiff No. 1(d)}
5. Gopal Singh, S/o Late Manbahal Singh,
{Plaintiff No.1(e)}
6. Uday Singh, S/o Late Manbahal Singh,
{Plaintiff No. 1(f)}
7. Gajendra Singh, S/o Late Manbahal Singh,
{Plaintiff No. 1(g)}
8. Shivnath Singh, S/o Late Manbahal Singh,
{Plaintiff No. 1(h)}

Respondents No.1 to 8 are residents of Kalegondi, Tehsil Chhuikhadan,
Distt. Rajnandgaon (C.G.)

9. Smt. Shyam Bai, D/o Late Manbahal Singh, aged about 36 years, R/o
Village Majgawan, P.S. Sambalpur, Tehsil Bharda, District Bilaspur
(C.G.)
{Plaintiff No. 1(i)}
10. Kishore Singh, S/o Bhuneshwar Singh, R/o Village Parsuli, P.S. & Tehsil
Devri, District Balod (C.G.)
11. Sandhya Bai, D/o Late Manbahal Singh, aged about 23 years,
{Plaintiff No. 1(k)}
12. Sakun Bai, Wd/o Late Manbahal Singh, aged about 65 years,
{Plaintiff No. 1(l)}

13. Harinarayan Singh, S/o Late Brijmohan Singh,
(Plaintiff No. 2)
14. Lalendra Singh, S/o Naseeb Singh, aged about 49 years,
{Defendant No. 2(a)}
15. Lalsharan Singh, S/o Naseeb Singh, aged about 46 years,
{Defendant No. 2(b)}
16. Amrika, Wd/o (wrongly mentioned as D/o) Chandrabhan Singh, aged
about 50 years,
{Defendant No. 2(3)(1)}
17. Nirmal Singh, S/o Chandrabhan Singh, aged about 25 years,
{Defendant No. 2(3)(2)}
18. Ankur Singh, S/o Chandrabhan Singh, aged about 24 years,
{Defendant No. 2(3)(3)}
19. Pradeep Singh, S/o Naseeb Singh, aged about 41 years,
{Defendant No. 2(d)}
20. Smt. Shantibai, Wd/o Naseeb Singh, aged about 66 years,
{Defendant No. 2(h)}
- Respondent No.11 to 20 are residents of Village Kalegoni, Tehsil
Chhuikhadan, District Rajnandgaon (C.G.)
21. Smt. Jaya Thakur, W/o Vishnu Singh, aged about 39 years, R/o Thakur
Bhojnalaya, Green Market, Aamagaon, Tehsil Aamagaon, District
Gondia, Maharashtra.
{Defendant No. 2(i)}
22. Smt. Vijay Laxmi, W/o Deepak Thakur (wife of Police Constable), R/o
Behind Purana Bus Stand, Kawardha, Tehsil Kawardha, District
Kabirdham (C.G.)
{Defendant No. 2(f)}
23. State of Chhattisgarh, through the Collector, Rajnandgaon (C.G.)
(Defendant No.3)
---- Respondents

For Appellant: Mr. Rakesh Pandey, Advocate.

For Respondent No.23 / State: -

Mr. Ravi Kumar Bhagat, Deputy Government Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

26/02/2020

1. Heard on admission and formulation of substantial question of law for determination in the second appeal preferred by the appellant herein / defendant No.1.
2. By the impugned judgment & decree, the first appellate Court has affirmed the judgment & decree of the trial Court decreeing the suit.
3. Brijmohan Singh died leaving his widow – plaintiff No.3 Radha Bai, his two sons – plaintiffs No.1 & 2 and third son Naseeb Singh – defendant No.2. Defendant No.2 sold 1.11 acres of land to defendant No.1 on 15-6-1995 (Ex.P-1) i.e. out of 42.97 acres of the property / coparcenary property, less than his share and delivered possession of the said land against which three plaintiffs filed suit for declaration of the sale deed Ex.P-1 that it is not binding on them and the mutation order is also not binding on them and sought possession that defendant No.2 could not have alienated the suit property being the coparcenary property without the consent of other coparceners which was accepted by the trial Court by decreeing the suit by directing delivery of possession and affirmed by the first appellate Court in the first appeal preferred by defendant No.1 / appellant herein against which this second appeal has been preferred.
4. Mr. Rakesh Pandey, learned counsel appearing for the appellant herein / defendant No.1, submits that defendant No.2 – coparcener had sold only 1.11 acres of land which was less than his share in the coparcenary property, therefore, defendant No.2 was entitled to alienate the coparcenary property, therefore, both the Courts erred in granting decree for delivery of possession. In alternative, he would further

submit that since defendant No.1 is in possession of the suit property purchased from the coparcener, he be granted the relief of staying the execution proceeding in terms of the decision of the Full Bench of the M.P. High Court in the matter of Ramdayal v. Manaklal¹.

5. The Supreme Court in the matter of Peethani Suryanarayana and another v. Repaka Venkata Ramana Kishore and others², reviewing the case law on the point has clearly held that purchasers of joint family property are not entitled to possession of the land what they have purchased, they have in law merely acquired a right to sue for partition and therefore remedy is to file suit for partition in respect of the property which was joint family property. (See paragraphs 12 and 13 of the report.)
6. In view of the aforesaid settled legal position, though defendant No.2 was entitled to alienate the property in favour of defendant No.1, but he could not have delivered the possession of the property purchased by defendant No.1 and in that view of the matter the decree of the two Courts below cannot be taken exception to and in view of that, the two Courts below are justified in decreeing the suit of the plaintiffs and justified in directing recovery of possession to the plaintiffs, but the Full Bench of the M.P. High Court in Ramdayal (supra) has held that coparcener selling less than his share and putting purchaser in possession – non-alienating coparceners suing for possession – Court can while decreeing possession direct stay of execution for certain period to allow purchaser to sue for general partition. The M.P. High Court in Ramdayal (supra) further held that if the purchaser has obtained

1 1973 M.P.L.J. 650

2 (2009) 11 SCC 308

possession, the non-alienating coparceners are entitled to sue for and recover possession of the property for the benefit of the joint family, including the vendor. However, in that case, the Full Bench granted six months' time to the purchaser from the coparcener to file suit for partition. Their Lordships of the Full Bench observed as under: -

"5. Under the circumstances, we are of the opinion that the direction of staying the execution proceedings for a certain period enabling the purchaser from a coparcener to file a partition suit and, if the suit is filed within that period, to stay the execution till the decree in the partition suit, can be legally given where the property in possession of the purchaser from a coparcener is not in excess of the share of the coparcener. In other cases, such a direction may be said to be inequitable.

6. In this particular case, from the material on record it appears that the property purchased by the appellant is less than the share of his vendor or approximately equals it. Under the circumstances, the appeal is allowed only to this extent that a further direction be added to the decree passed by the Courts below to the effect:—

"The execution of the decree in so far as it directs the purchaser to deliver possession of the property to the plaintiff be stayed for a period of six months and if before the expiry of that period the purchaser brings a suit for general partition, then the stay should continue until the disposal of the suit but if no such suit is brought within that period, then the stay of execution will stand cancelled.""

7. Following the decision of the M.P. High Court, the execution of the decree insofar as it directs the purchaser / appellant herein to deliver possession of the property to the plaintiffs is stayed for a period of six months and if before the expiry of that period, the purchaser – defendant No.1 brings a suit for general partition, then the stay should continue until the disposal of the suit, but if no such suit is brought within that period, then the stay of execution shall stand cancelled.

8. Concludingly, judgments & decrees of both the Courts below are affirmed and the appeal is dismissed *in limine*, without notice to the other side, as no substantial question of law is involved but with the aforesaid direction. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma