

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.324 of 2010**

Madho Lal S/o Bakshilal Dewangan, Aged about 40 years, Occupation-Shopkeeper, R/o Sewatatola, Dongargaon, Tahsil-Dongargaon, Distt.-Rajnandgaon (CG)

----- Appellant/Plaintiff

Versus

1. Krishna Kumar S/o Bakshilal Dewangan, Aged about 37 years, Occupation-Teacher, R/o Sewatatola, Dongargaon, Tahsil-Dongargaon, Distt.-Rajnandgaon (CG)
2. State of Chhattisgarh, through-Collector, Rajnandgaon, Distt.-Rajnandgaon (CG)

----- Respondents/Plaintiffs

For Appellant/Plaintiff:

Mr.Abhijit Mishra, Advocate

For Respondent No.1/Defendant No.1:

None present though served

For Respondent No.2/State:

Mr.Ravi Bhagat, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

2/3/2021

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

"Whether both the Courts below are justified in dismissing the suit of the plaintiff holding that sale deed (Ex.P/1) does not confer the right title and interest of the plaintiff, by recording a finding which is perverse and contrary to the record?"

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

2. The plaintiff and defendant No.1 both are real brothers and their father is Bakshilal Dewangan. The plaintiff filed a suit that he has purchased the suit property i.e. Khasra No.383/1 from Gouribai on 4.10.86 vide Ex.P-1 and came in possession over the suit land. At the time of renumbering the revenue records khasra number has been changed from Khasra No.383/1 to Khasra No.383/7. Thereafter, on the basis of partition, defendant No.1 applied for mutation of his name before the revenue officer, which was ultimately recorded and thereafter he started construction leading to filing of suit for declaration of title and permanent injunction.

3. Resisting the suit, defendant No.1 filed his written statement and denied the averments made in the plaint stating inter-alia that the suit land has been purchased in the name of the plaintiff from Gouribai vide sale deed dated 4.10.86 (Ex.P-1) and sale consideration has been paid by their father Bakshilal Dewangan and the suit land is the part of joint Hindu family. Defendant No.1 has also denied title and possession of the plaintiff over the suit land. However, in para-3 of written statement, defendant

No.1 has categorically accepted the fact that the suit land is renumbered as Khasra No.383/7 and claimed that the suit deserves to be dismissed.

4.The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment and decree dated 8.3.2007 in second round, ultimately dismissed the suit. On appeal being preferred, the first appellate Court in second round finally dismissed the appeal affirming the judgment and decree of the trial Court, against which, this second appeal under Section 100 of the CPC has been filed by the appellant/plaintiff, in which one substantial question of law has been formulated, which has been set-out in opening paragraph of this judgment for sake of completeness.

5.Mr.Abhijit Mishra, learned counsel for the appellant/plaintiff, would submit that both the Courts below concurrently erred in holding that the plaintiff has not purchased the suit land vide Ex.P-1 and the suit land is the part of joint Hindu family in which the plaintiff has no right and title over the suit land. He would further submit that there is no pleading that the suit land is joint family property and it was purchased out of joint family income and even the sale deed (Ex.P-1) has not been questioned by

defendant No.1 by filing counter-claim etc., as such, the judgment and decree of both the Courts below deserve to be set aside.

6. None present for respondent No.1/defendant No.1 though served.

7. I have heard learned counsel appearing for the appellant/plaintiff, considered his submissions made hereinabove thoughtfully and also went through the records with utmost circumspection.

8. Admittedly, the plaintiff has purchased the suit land i.e. Khasra No.383/1 on 4.10.86 from Gouribai vide Ex.P-1 and came in possession pursuant to sale deed. In para-3 of the plaint, the plaintiff has clearly pleaded that Khasra No.383/1 which he has purchased vide Ex.P-1 has renumbered as Khasra No.383/7, which defendant No.1 while filing written statement in para-3 has also admitted that the suit land is now renumbered as Khasra No.383/7, as such, it is well established from records that the suit land i.e. Khasra No.383/1 which the plaintiff has purchased by registered sale deed dated 4.10.86 is now renumbered as Khasra No.383/7.

9. The question for consideration is whether the first appellate Court is justified in holding that the suit property is joint family property and therefore, the

plaintiff has no right and title over the suit land ?

10. It is well settled law that a person taking a defence that the suit property is joint family property has to plead and establish that the suit land has been purchased out of joint family income and joint family had a nucleus to purchase the said property.

11. The Supreme Court in the matter of Srinivas Krishnarao Kango v. Narayan Devji Kango and others¹ 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:-

"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

¹ AIR 1954 SC 379

² (1969) 1 SCC 386

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 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 another⁴ the Supreme

³ ILR 1948 Mad 440 (PC)

⁴ (2003) 10 SCC 310

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. A careful perusal of para-6 of written statement would show that defendant No.1 has only stated in written statement that the suit property is joint family property and it belongs to joint family, but it has not even been pleaded that the suit property was purchased out of joint family income and the joint family had a nucleus to purchase the said property. Merely stating that the suit property is joint family property would not fulfill the requirement of law. It has to be pleaded that the joint family had a nucleus and out of earning of joint family property, the suit property has been purchased and therefore it has to be established as a fact.

16. Defendant No.1-Krishna Kumar and Bakshiram (DW-2), father of the plaintiff and defendant No.1,

both have examined, but they are blissfully silent in their statements as to whether the joint family had a nucleus and out of that, the suit property has been purchased, as such, defendant No.1 has failed to establish that the suit property was purchased out of joint family income. Not only this, the sale deed is registered deed and unless the specific pleadings are made and clinching evidence are brought on record, the validity of registered sale deed cannot be impeached lightly by the defendants.

17. For the foregoing reasons, the judgment and decree of both the Courts below are hereby set-aside and it is held that the plaintiff is owner and titleholder of the suit land bearing Khasra No.383/1 (renumbered as Khasra No.383/7) area 4 decimal situated at village Sevtatola, Tahsil-Dongargaon, District-Rajnandgaon as shown in Schedule "A" appended with plaint, defendant No.1 is restrained from interfering with possession of the plaintiff. The substantial question of law is answered in favour of the plaintiff and against defendant No.1. Schedule "A" be made part of decree.

18. The second appeal is allowed to the extent indicated hereinabove leaving the parties to bear their own cost(s).

19. Appellate decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-