

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.93 of 2010****Judgment Reserved on :14.01.2021****Judgment Delivered on:17.02.2021**

1. Rambai Bhave, W/o Suresh Kumar, Aged about 40 years, R/o Near Vaishnavi Mandir, House of the Plaintiff, Choukhariya Para, Tahsil & District Rajnandgaon.
2. Harish Kumar Bhave, S/o Suresh Kumar Mahobiya, Aged about 19 years, R/o Near Vaishnavi Mandir, House of the Plaintiff, Choukhariya Para, Tahsil & District Rajnandgaon.

----- Appellants/Defendants**Versus**

1. Santosh Kumar, S/o Late Lakhanlal Mahobiya, Aged about 38 years, Mahobiya Pan Shop, R/o Choukhariyapara, Distt. Rajnandgaon (CG)
2. Raju Mahobiya, S/o Late Lakhanlal Mahobiya, Aged about 40 years, Occupation:Vegetable Vender, R/o Killapara, Rajnandgaon (CG)
3. Poonam alias Leela Mahobiya, Aged about 46 years, Occupation : Agriculturist, R/o Village – Dara, Tehsil – Dongargarh, Distt. Rajnandgaon (CG)

----- Respondents/Plaintiffs

For Appellants/Defendants:-**Mr.Shobhit Mishra, Advocate****For Respondents/Plaintiffs:-****Mr.A.K.Prasad, Advocate**

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

1. The substantial questions of law involved, formulated and to be answered in this second appeal preferred by the appellants/defendants are as under:-

"1. Whether the court below has committed an

error of law in reversing the judgment and decree passed by the trial court without considering as to whether the government lease property can be declared as joint Hindu property?

2. Whether the courts below have committed an error of law in not considering the issue of limitation as the suit has been filed after 18 years after issuance of the lease deed?

3. Whether the finding arrived at by the court below is contrary to the evidence that has come on record and is therefore perverse?"

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

2. Lakhan Lal Manobiya had four sons namely Suresh Kumar, Santosh Kumar, Raju and Poonam @ Lala. Plaintiffs- Santosh Kumar Mahobiya, Raju Mahobiya and Poonam @ Lala Mahobiya are three sons of Lakhan Lal, whereas defendants No.1 and 2 are wife and son of Suresh Kumar as he has already died in the year 1989. The part of the suit land and house was purchased by Suresh Kumar on 6.3.1981 vide Ex.P-1 and in addition to this land/house, Suresh Kumar has also been allotted patta by competent authority on 5.4.83 vide Ex.D-1 and in the said land, house has already been constructed. Suresh Kumar died in the year 1989 and thereafter the

aforesaid three plaintiffs filed a suit for declaration of title, permanent injunction, possession and *mesne* profit stating inter-alia that the suit property, which is purchased on 6.3.1981 (Ex.P-1), was purchased by Lakhan Lal out of funds of joint family property, but in the name of Suresh Kumar, husband and father of the defendants. Similarly government land was allotted to Lakhan Lal, but it was named in the name of Suresh Kumar, as such, prior to death of Suresh Kumar, Lakhan Lal has allowed the defendants to stay in one room of the suit house and since then, the defendants are residing in the disputed house, as such, the plaintiffs are entitled for decree of declaration of title, permanent injunction, possession and *mesne* profit.

3. Resisting the suit, the defendants filed their written statement controverting the plaint allegations stating inter-alia that the suit land/house was purchased by Suresh Kumar, husband of defendant No.1 & father of defendant No.2 and patta was also granted by the competent authority to Suresh Kumar, as such, the plaintiffs have no right and title over the suit land and 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 22.01.2009, dismissed the suit and granted compensation of ₹2000/- to the defendants. Feeling aggrieved against the judgment and decree of the trial Court, the plaintiffs preferred first appeal under Section 96 of the CPC before the first appellate Court. The first appellate Court vide impugned judgment and decree reversed the judgment and decree of the trial Court and decreed the suit leading to filing of this second appeal under Section 100 of the CPC, in which three substantial questions of law have been formulated by this Court, which have been set-out in opening paragraph of this judgment for sake of completeness.

5. Mr. Shobhit Mishra, learned counsel for the appellants/defendants, would submit that the first appellate Court is absolutely unjustified in granting decree in favour of the plaintiffs holding that the suit property (Ex.P-1) was purchased by Lakhan Lal out of joint family income and therefore, it was joint family property. There is no pleading at all that the suit property was purchased by Lakhan Lal out of joint family income and they have stated joint family as nucleus to purchase the said property. Such a finding is perverse to record. He would further submit that the suit property was purchased by registered sale

deed way back on 6.3.1981 (Ex.P-1) and the suit was filed after death of Suresh Kumar on 1.3.2002 in order to create pressure after death of Suresh Kumar, husband of defendant No.1 and father of defendant No.2. He would also submit that patta was also granted by competent authority vide Ex.D-1 in the name of Suresh Kumar and it cannot be held that it was also granted to Lakhan Lal, but it was only in the name of Suresh Kumar, as such, the finding recorded by the first appellate Court in this regard is liable to be set aside.

6. On the other hand, Mr.A.K.Prasad, learned counsel for the respondents/plaintiffs, would submit that the first appellate Court has rightly reversed the judgment and decree of the trial Court by holding that the suit land was purchased by Lakhan Lal in the name of Suresh Kumar as it was purchased from out of joint family income and further part of the suit land has also been granted to Lakhan Lal, but it was named in the name of Suresh Kumar vide Ex.D-1, as such, the finding recorded by the first appellate Court in this regard is finding of fact based on evidence available on record. It is neither perverse nor contrary to record.

7. I have heard learned counsel appearing for the parties

and considered their rival submissions made hereinabove thoughtfully and also went through the records with utmost circumspection.

Answer to substantial questions of law Nos.1 and 3:-

8. The suit land is in two parts. One is the suit land purchased by Suresh Kumar from Smt.Fulu Bai by registered sale deed dated 6.3.1981 vide Ex.P-1 and other part is the government land which has been allotted to Suresh Kumar by the competent authority and pursuant to which his name was recorded in Ex.D-1. The plaintiffs brought a suit that the suit land was the property of their father Lakhan Lal who out of joint family income has purchased vide Ex.P-1 and got it allotted in the name of Suresh Kumar, husband of defendant No.1 and father of defendant No.2, as such, it is not exclusive property of Suresh Kumar and sought declaration of title and permanent injunction, which the trial Court has dismissed, but the first appellate Court has granted.
9. A careful perusal of Ex.P-1 would show that it was purchased by Suresh Kumar from Smt.Fulu Bai by registered sale deed dated 6.3.1981 and adjoining plot was allotted to Suresh Kumar pursuant to Revenue Case No.170A/6 89-90 dated 15.10.90.
10. The sale deed is a registered one and it is well

settled law that there is a presumption that a registered document is validly executed. A registered document, therefore, *prima facie* would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. (See **Prem Singh and others v. Birbal and others**¹.)

11. Similarly, the land shown in Ex.D-1 has been allotted to Suresh Kumar pursuant to registration of revenue case, which has been recorded in Ex.D-1. The plaintiffs claimed that the land shown in Ex.P-1 was purchased out of joint family income and the land shown in Ex.D-1 got allotted to their father Lakhan Lal, but it was named in the name of Suresh Kumar, husband of defendant No.1 and father of defendant No.2.

12. The Supreme Court in the matter of **Srinivas Krishnarao Kango v. Narayan Devji Kango and others**² 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

1 (2006) 5 SCC 353

2 AIR 1954 SC 379

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....."

13. In the matter of Mudi Gowda Gowdappa Sankh v.

Ram Chandra Ravagowda Sankh³ 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....."

14. 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 & Others**⁴ and held as under:

3 (1969) 1 SCC 386

4 ILR 1948 Mad 440 (PC)

"...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."

15. Likewise, in the matter of **D.S. Lakshmaiah and another v. L. Balasubramanyam and another**⁵ 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."

16. Reverting to the facts of the present case in the light of principle of law laid down by the Supreme Court in the above-stated judgments (supra), it is quite vivid that the suit property was purchased by late Shri Suresh Kumar, husband of defendant No.1 and

5 (2003) 10 SCC 310

father of defendant No.2 by registered sale deed, which has not been questioned in this civil suit except claiming that it was purchased from joint family income and thereafter it was recorded in revenue records also. Similarly, the part of suit land was allotted in revenue case to Suresh Kumar, who is father of defendant No.2 and husband of defendant NO.1, duly recorded in revenue records. The plaintiffs taken the specific defence that the suit property was joint family property purchased from joint family income was required to plead and establish that joint family of them had a nucleus and out of that money the suit property was purchased by joint family income and therefore, it is joint family property. The suit land shown in Ex.P-1 was purchased by Suresh Kumar by registered sale deed as noticed hereinabove and other land was got allotted to Suresh Kumar by government in duly constituted revenue proceedings.

- 17.** A careful perusal of the plaint would show that there is no pleading at all in the plaint that joint family of them had a nucleus and out of surplus of that family income, the suit property was purchased. Except in para-7 of the plaint, it has been pleaded that the suit property was purchased out of joint family income. That pleading is not at all sufficient

pleading. Similarly, there is no evidence on record to hold that the suit land (Ex.P-1) was purchased out of joint family income except self-serving statement of the plaintiffs and their witnesses, as such, the first appellate Court went wrong in holding that the suit property was purchased from the income of joint family property. It is held that the suit property was exclusive property of Suresh Kumar which defendants No.1 and 2 are entitled to hold. The first appellate Court has committed illegality in holding that the suit property was purchased by Lakhan Lal in the name of Suresh Kumar, as such, the first appellate Court committed legal error in holding so. Accordingly, substantial questions of law No.1 and 3 are answered in favour of the defendants and against the plaintiffs.

18. In view of above-stated findings, the judgments relied upon by learned counsel for the respondents/plaintiffs i.e. **Adiveppa and others v. Bhimappa and another⁶**, **V.K.Surendra v. V.K. Thimmaiah and others⁷** and **Mallesappa Bandeppa Desai and another v. Desai Mallappa alias Malesappa and another⁸** are clearly distinguishable and inapplicable to the facts of the present case.

6 (2017) 9 SCC 586

7 (2013) 10 SCC 211

8 AIR 1961 SC 1268

Answer to substantial question of law No.2:-

19. The plea of limitation is mixed question of law and fact and it has not been raised by the defendants before both the Courts below, no issue was framed, as such, the defendants cannot be permitted to raise a issue of limitation for the first time before the second appellate Court. Accordingly, the substantial question of law No.2 is answered in favour of the plaintiffs and against the defendants.
20. For the foregoing reasons, the impugned judgment and decree passed by the first appellate Court is hereby set-aside and that of the trial Court is hereby restored.
21. The second appeal is allowed to the extent indicated hereinabove leaving the parties to bear their own cost(s).
22. Appellate decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-