

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**FA No. 84 of 2011**

**Reserved on.10.09.2021**

**Pronounced on.17.09.2021**

1. Sheikh Mohammad, aged 24 years S/o Meem Mohammad Mussalmaan, Occupation-Agriculture, R/o Masjid Para, Ward No.10, Gandai, Tehsil-Chhuikhadan, District-Rajnandgaon (C.G.).
2. Smt. Jainab Bee, aged 22 years, D/o Meem Mohammad Mussalmaan, Occupation-Agriculture, R/o Masjid Para, Ward No.10, Gandai, Tehsil-Chhuikhadan, District-Rajnandgaon (C.G.)

**---- Appellants/Plaintiffs**

**Versus**

1. Meem Mohammad, aged 55 years S/o Nawaz Mohammad Mussalmaan, R/o Masjid Para, Ward No.10 Gandai, Tehsil-Chhuikhadan, District-Rajnandgaon, Chhattisgarh.
2. Smt. Jaitoon Bee, aged 45 years, D/o Nawaz Mohammad Mussalmaan, R/o Jamniya Para, Tehsil-Lohara, District-Kabirdham (CG), Ration Card No. 60-61.
3. Smt. Savitri Sinha, W/o Santosh Sinha Occupation-Agriculture, R/o Narmada (Chaknaar), Tehsil-Chhuikhadan, District-Rajnandgaon (C.G.).
4. Government of Chhattisgarh, through Collector Rajnandgaon, Chhattisgarh.

**---- Respondents/Defendants**

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| For Appellants:              | : Shri Kshitij Sharma appears on behalf of Shri Manish Sharma, Advocate. |
| For Respondents No. 1 and 2: | : None.                                                                  |
| For Respondent No.3          | : Shri Rakesh Pandey, Advocate                                           |
| For Respondent No.4/State    | : Ms. Reena Singh, P.L.                                                  |

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**Single Bench: Hon'ble Shri Sanjay S. Agrawal, J**  
**CAV Judgment/Order**

1. This appeal has been preferred by the plaintiffs under Section 96 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC') questioning the legality and propriety of the judgment and decree dated 28.01.2011 passed in Civil Suit No. 4-A of 2008, whereby the learned Additional District Judge, Khairagarh, District-Rajnandgaon (C.G.) has dismissed their claim. The parties to this

appeal shall be referred hereinafter as per their description before the Court below.

2. Briefly stated the facts of the case are that the plaintiffs instituted a suit claiming declaration to the effect that the registered deed of sale dated 23.02.2007 executed by Defendant 1-Meem Mohammad and Defendant 2-Smt. Jaitoon Bee, who are their father and Bua respectively in favour of Defendant 3-Smt. Savitri Sinha with regard to the property in question bearing Khasra No. 276/1, admeasuring 8.60 acres, as described in Plaint Schedule-A situated at village Kritbaans, Tahsil- Chhuikhadan, District Rajnandgaon be declared as null and void. According to them, since it was their ancestral property, and therefore, Defendants 1 and 2 have no right to alienate the same as such.
3. While denying the aforesaid claim, it is pleaded by Defendants 1 and 2 that the alleged sale was validly executed by them as plaintiffs have no right over it as they relinquished their right by living separately. While, Defendant 3, the purchaser, has contested the claim on the ground that she acquired her valid right, title and interest over the property in question under the registered deed of sale dated 23.02.2007 and contested further on the ground that since plaintiffs are the Mohammedan and governed by their personal Law, therefore, the allegation as made by them in the plaint that the property in question is the ancestral property is not sustainable and claim is, therefore, liable to be dismissed.
4. The trial Court, after considering the evidence led by the parties, arrived at a conclusion that the property in question is neither the ancestral property nor there is any presumption of undivided family

property, like the Hindu in Mohammedan Law and, the plaintiffs have, therefore, no right over it. In consequence, the trial Court has dismissed the claim.

5. Learned counsel appearing for the Appellants/plaintiffs submits that the finding of the Court below holding that the property in question is not the ancestral property is apparently contrary to law. It is contended further that although the concept of joint property is not applicable under the Mohammedan Law, but unless and until the determination is made amongst the heirs of the deceased Muslim, it cannot be alienated to the exclusion of the interest of other's heirs. It is, therefore, contended that the alleged registered deed of sale as executed on 23.02.2007 affecting the interest of the plaintiffs is invalid and would not confer any right or title upon the purchaser of it.
6. On the other hand, learned counsel appearing for the Respondent No.3/Defendant 3 has supported the impugned judgment and decree as passed by the Court below.
7. I have heard learned counsel for the parties and perused the entire record carefully.
8. The question which arises for determination in this appeal is as to "Whether the property in question bearing Khasra No. 276/1, admeasuring 8.60 acres is the ancestral property and/or, the alienation of it as made by Defendants 1 and 2 under the registered deed of sale dated 23.02.2007 (Ex.P-1) in favour of Defendant 3-Smt. Savitri Sinha could be held to be invalid?"
9. From perusal of the record it appears that the authenticity of the alleged registered deed of sale dated 23.02.2007, purported to

have been executed by Defendants 1 and 2 in favour of Defendant 3, has been questioned mainly on the ground that since the property in question bearing Khasra No. 276/1, admeasuring 8.60 acres as described in Plaint Schedule-A is the ancestral property, and therefore, in absence of the determination of shares of all the heirs, it cannot be sold as such. The plaintiffs are, therefore, required to establish the fact with regard to the nature of the property in question sold under the alleged sale. However, it appears from perusal of the alleged sale and the Revenue Papers, like the Kistbandi Khtauni and Khasra Panchsala attached with it would show that it is recorded in the name of Defendants 1 and 2. It appears further that after its alienation, it was mutated in the name of purchaser Smt. Savitri Sinha vide order dated 28.04.2007 as evidenced by Namantaran Panji (Ex. P-2) and Revenue Papers (Ex.P-3 and Ex.P-4) were accordingly recorded in her name. Ex.P-5 is the Khasra Panchshala for the year 2007-08 which is shown to be recorded in Defendant's father, namely, Nawaj Mohammad and his brothers Ramjan Mohammad and Sahbaj Mohammad with regard to the property bearing Khasra No. 101, Area 0.089 acres of village Gindai which is, however, distinct from the property in question sold under the alleged sale (Ex.P-1). The plaintiffs have thus, failed to produce any document showing that the property in question was recorded in the name of their grandfather so as to observe that it is the ancestral property as alleged by them.

10. Be that as it may, parties are admittedly governed by Mohammedan Law and there is no presumption of their undivided family property as held by the Supreme Court in the matter of **Syed**

**Shah Gulam Ghouse Mohiuddin and others v. Syed Shah Ahmad Mohiuddin Kamisul Qadri (dead) by his legal representatives and others**, reported in **1971(1) SCC 597**, wherein it was observed at paragraph 21 as under:-

20.....In Mohammedan Law the doctrine of partial partition is not applicable because the heirs are tenants-in-common and the heirs of the deceased Muslim succeed to the definite fraction of every part of his estate. The shares of heirs under Mohammedan Law are definite and known before actual partition. Therefore on partition of properties belonging to a deceased Muslim there is division by metes and bounds in accordance with the specific share of each heir being already determined by the law.

11. Similar is the view taken by Madhya Pradesh High Court in the matter of **Bashiruddin and another v. Jameela Khatoon and others** reported in 1994 JLJ 610, wherein it has been observed at paragraph 7 and 8 as under:-

“7. Under the Mohammedan Law, jointness of family is not recognised at all, though various members of a Mohammedan family live in commensality, they do not form a joint family in the sense in which that expression is used with regard to Hindu Law, and there can be no presumption of jointness in favour of the joint family. See paragraph 57 of Mulla's Principles of Mohammedan Law, Nineteenth

Edition.”

8. As there is no presumption of jointness in favour of the joint family as in Hindus, a Mohammedan succeeds individually and the succession opens at the time of death of holder with the shares clearly and specifically defined. But where the heirs continue to hold the estate without dividing it, they continue to hold it as tenants-in-common and one can bring a suit for recovery of his share.....,”

12. In view of the aforesaid principles of law, no fruitful purpose would be served if the application filed during the pendency of this appeal under Order 41 Rule 27 of C.P.C., seeking production of additional documentary evidence, like mutation order (Namantaran Panji) dated 31.08.1995 revealing the facts that Defendants 1 and 2 have received the property as legal heirs of Nawaj Mohammad is allowed, as under the Mohammedan Law, they continue to hold the estate as tenants-in-common and, as such, the plaintiffs can not claim their interest during their life time. In view thereof, the said application is rejected.
13. Consequently, the entire claim of the plaintiffs based upon the premises that since the property in question is the ancestral property, therefore, the alienation of it under the alleged sale (Ex.P-1) cannot be held to be valid one is thus, liable to be and is hereby rejected.
14. In the result, the appeal has no merit and is dismissed with no order as to costs.

15. A decree be drawn accordingly.

Sd/-  
(Sanjay S.Agrawal)  
**JUDGE**

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