

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 295 of 2011**

Anakram S/o Vishal @ Billu Satnami, R/o House No. 100/4, Chotteram Nagar, Behind Jashanmal Harimal Mill, Raipur, Chhattisgarh.

---Appellant/Defendant

Versus

1. Tulsiram S/o Vishal @ Billu Satnami, R/o Near Surya Nagar Railway Line, Village Gogaon, Raipur, Chhattisgarh.

2. Mayaram S/o Sukhchand Satnami, R/o Near Surya Nagar Railway Line, Village Gogaon, Raipur, Chhattisgarh.

--- Respondents/Plaintiffs

For Appellant	:-	Mr. B.P. Sharma and Ms. Anmol Sharma, Advocates
For Respondents	:-	Mr. Y.C. Sharma and Mr. Sachin Nidhi, Advocates

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

19/01/2021

1. This second appeal preferred by the appellant/defendant under Section 100 of CPC was admitted for hearing 20/10/2011 on the following substantial question of law :-

"Whether the findings relating to partition of the house in question of both the Courts below are perverse ?"

[The parties will hereinafter be referred as per their status and ranking shown before the trial Court.]

2. The dispute relates to the ancestral house of the parties situated at Ramnagar, Raipur.

3. Vishal had three sons namely Tulsiram i.e. plaintiff No. 1, Sukhchand who died leaving behind his son Mayaram i.e. plaintiff No. 2 and Anakram i.e. the sole defendant. It is admitted position on record that Vishal purchased the suit house in the name of his elder son plaintiff No. 1 on 07/03/1973.

4. The two plaintiffs filed a suit for possession of the suit house shown in the map annexed with the plaint stating inter alia that the total area of the suit house i.e. 460 sq. ft. was partitioned between the three brothers on 06/08/1987 and thereafter, they started living separately in their shares, but since the defendant was raising construction on the area of the suit house which fell in plaintiffs' share, they filed a report in

the police station and thereafter, filed a suit for decree for possession.

5. Resisting the suit, defendant filed his written statement stating inter alia that no such partition took place between the plaintiffs and the defendant on 06/08/1987 and in fact, on partition the plaintiffs were given the land situated at Village Datrenga and the suit house was given to the defendant. Furthermore, plaintiff No. 1 Tulsiram had already sold his land in Datrenga on 19/01/1987 and started living at Village Gogaon after constructing their house, as such, the defendant is in possession of the suit house after getting his name registered in the municipal corporation records. The defendant also stated that in the civil suit preferred by one Malti Bai being Civil Suit No. 05/1990, the defendant has already been held to be the title holder and possession-holder of the suit house.

6. Learned trial Court, after appreciating the oral and documentary evidence on record, decreed the suit vide its judgment and decree dated 31/03/2003 holding that since the suit house is admittedly the house held by the father of plaintiff No. 1 and defendant and the grandfather

of plaintiff No. 2 namely Vishal, as such, all three of them are entitled for 1/3rd share in the suit house which was affirmed by the first appellate Court in the appeal preferred by the defendant vide its impugned judgment and decree dated 09/09/2004 against which this second appeal has been preferred by the defendant in which substantial question of law has been formulated and set out in the opening paragraph of this judgment.

7. Ms. Anmol Sharma, learned counsel appearing for the appellant/defendant, would submit that both the Courts below are absolutely unjustified in decreeing the suit of the plaintiffs holding that the suit house is the ancestral house of the plaintiffs as well as the defendant, as such, each of them is entitled for 1/3rd share in the suit house. Such a finding recorded by both the Courts below is a totally perverse finding especially when Exhibit P/1 i.e. sale deed is an unregistered document and is inadmissible in evidence in view of Section 49 of the Indian Registration Act, 1908, as such, the said finding recorded by both the Courts below is liable to be set aside.

8. Mr. Sachin Nidhi, learned counsel appearing for the respondents/plaintiffs, would support the impugned judgment and decree passed by the first appellate Court affirming the judgment and decree of the trial Court and would submit that the second appeal deserves to be dismissed.
9. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the records with utmost circumspection.
10. Learned trial Court on the basis of the evidence available on record has clearly recorded the finding that it is the admitted position on record that the suit house is the ancestral property which was held by the father of plaintiff No. 1 and the defendant and the grandfather of plaintiff No. 2 namely Vishal who is said to have purchased the suit house in the name of his elder son Tulsiram and further held that since Exhibit P/1 is an unregistered document and it can only be read for collateral purpose, as such, the suit house being the ancestral property of the parties, all three of them i.e. plaintiffs No. 1 and 2 and the defendant are entitled for $1/3^{\text{rd}}$ share each. The

said finding recorded by the trial Court has also been recorded by the first appellate Court in the appeal preferred by the defendant.

11. Both the Courts below have concurrently recorded the finding that the suit house is the ancestral property of the parties having been purchased by the father of plaintiff No. 1 and defendant and grandfather of plaintiff No. 2 namely Vishal, as such, each of them is entitled for 1/3rd share in the suit house is a finding of fact based on evidence available on record which is neither perverse nor contrary to the record. I do not find any merit in the instant appeal.

12. Accordingly, the second appeal is dismissed leaving the parties to bear their own cost(s). Appellate decree be drawn up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet