

R.S.A. NO. 110 OF 2009

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**Appeared in this case by Hybrid Arrangement
(Virtual/Physical Mode)**

CORAM:

MR.JUSTICE D. DASH

Date of Hearing : 13.12.2021 : Date of Judgment :03.01.2022

By the said judgment and decree, the First Appeal filed by the Respondent No.1(Plaintiff) has been allowed and the judgment and decree passed by the Trial Court have been set aside. The First Appellate Court thereunder has passed an order of decree injunctioning the Appellants and Respondent No.4 (Defendant) from interfering with the peaceful

possession of the Plaintiff in any manner in respect of half share over the suit land towards the Northern side.

2. For the sake of convenience, in order to avoid confusion and bring in clarity, the parties hereinafter have been referred to as they have been assigned the position in the Trial Court.

3. Plaintiffs Case is that although the suit land stood jointly recorded in the name of Defendant No.4 and one Kanduri Lenka, the original Defendant (the said Kanduri having died, in his place his sons Defendant Nos. 1 to 3 have come on record). It is stated that though the property was their self-acquired property, it has been so recorded in the record of right with other joint family properties. The suit land measures Ac.0.04.5 decimals appertaining to Plot No.1555 on its north. Plaintiffs state that since the year, 1985, there being severance of status between Babaji and Kanduri, they were in separate possession of the properties. The Plaintiffs thus has prayed the half of the land under Plot No.1555 which was being exclusive possession of Babaji and it was so purchased by the registered sale-deed dated 13.01.2004. He further stated that after the purchase, the Babaji has delivered possession over the same to him and thus he is continuing to possess as like the vendor-Babaji. The Defendant No.2 is a witness to the said sale-deed and he had all the knowledge of the transactions as well as the factum of delivery of possession of the land in suit by that Babaji to Plaintiff. It is also stated that the Defendant No.1 to 3 have sold their share of joint family property, Plot No.1544 under Khata No.182 registered sale-deed dated 04.05.2005 to the Plaintiff. The Defendant when created disturbance in the peaceful possession of the suit land by the Plaintiff in the year, 2005; the suit has been filed. The

Defendant No.4 coming to contest the suit as stated that he and his father Kanduri as purchased the land under Plot No.1547 appertaining to Khata No.271, both of them are in possession of the respective portions, the suit land was under his exclusive possession and he admits to have sold the property to the Plaintiffs.

The Defendant Nos. 1 to 3 in their written statement contended that there was no partition of joint family in metes and bounds. Though their separate possession of sum portions of the joint family property; possess for mere convenience. It is stated that the suit property was under their possession and the Plaintiff is a stranger to the same. They stated that it was the self-acquired property of Kanduri and Babaji, the Defendant No.4 has practicing fraud has got his name and entered into the record of right. So, Babaji having no right over the land in question have sold the same to the Plaintiff and the sale-deed as projected by the Plaintiff has no value in the eye of law.

4. On the above rival submission, the Courts below having framed four issues has dismissed the suit in arriving at such result, it has been stated that the purchaser of joint family property from the co-sharers when has steps into shoes to the co-sharers, he has got the right to posses his share as his vendor was enjoying and sold with other co-sharers having such right and enjoyment and in the absence of any partition in metes and bounds, the Plaintiff is not entitled to the relief of permanent injunction as prayed for.

The First Appellate Court in the touchstone of the pleadings and the obtained evidence available on record has arrived at a conclusion that the Plaintiff having purchased the property by valid instrument under Ext.A and being in possession of the property covered under the Defendants

being the legal heirs of Kanduri have any right to interfere with the peaceful possession. It has again been said, based upon the title coupled with the possession in respect of the suit land resting with the Plaintiff, is entitled to decree for a permanent injunction.

5. Heard learned Counsel for the Appellants in the matter of admission of this Appeal. He submitted that the lower Appellate Court is not corrected in granting the decree for permanent injunction in respect of a stranger purchaser of a property which has not been partitioned in metes and bounds amongst the co-sharers. It was also submitted that the possession of the Plaintiff in respect of the suit land ought not to have holding to be exclusive as admitted, there was no partition of the entire joint family property among the joint family property in metes and bounds. He, therefore, contended that the Appeal to be admitted framing the above substantial question of law for being answered.

6. Keeping in view the submissions made and I have carefully gone through the judgments passed by the Courts below. The First Appellate Court being quite alive to the fact that the property as per record is jointly recorded as found the Plaintiff to have purchased the half share of Babaji as one of the recorded tenants by registered sale-deed dated 13.01.2004 to the north. The Defendant Nos. 1 to 3 is on the score that they are possessing the suit land separately granting to their convenience. The D.W.1 in cross-examination has admitted that they were cultivating the land separately and it is the evidence of D.W.2 that Kanduri and Babaji being separated since 15 to 20 years. Babaji was in possession of his half share; whereas Kanduri was in possession of the rest half after the separation. It is also his evidence that Defendant No.4 had separately taken

possession and they are possessing separately. The Defendant No.2 being one of the heirs of Kanduri has been a witness standing in favour of the Plaintiff i.e., Ext.1 which clearly speaks of possession of distinct land by the vendor of the Plaintiff and delivery of possession of the said land to the Plaintiff of which he cannot wriggle out. The Plaintiff has laid evidence and established the Defendant Nos.1 to 3 have as their 50% share towards northern side to the Plaintiff vide Ext.2, the registered sale-deed. Under such circumstances, the Ext.1 and 2 are not under challenge and contains Ext.2 also run on this score that Defendant Nos. 1 to 3 being in separate possession of that land towards southern side has sold the same to the Plaintiff. In my considered view, the First Appellate Court did commit no mistake in passing the impugned judgment and decree. The submission of the learned Counsel for the Appellants thus being not accepted, it is held that the Appeal does not merit admission.

7. In the result, the Appeal stands dismissed.

D. Dash,
(Judge).