SYED ROSHAN ZAMIR ALI

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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

FA No. 443 of 2019

1. Govind Prasad S/o Ishwar Prasad Aged About 56 Years
2. Neelmani S/o Ishwar Prasad Aged About 53 Years
3. Baijnath S/o Ishwar Prasad Aged About 50 Years
4. Suresh Kumar S/o Ishwar Prasad Aged About 46 Years
5. (A) Smt. Chandrika Soni Wd/o Dinbandhu Soni Aged About 57 Years By Caste-Soni,

5.1 - (B) Umashankar S/o Dinbandhu Soni Aged About 38 Years

5.2 - (C) Devika Soni D/o Dinbandhu Soni Aged About 29 Years

6 - Amrika, D/o Ishwar Prasad Aged About 54 Years

All are by Caste -Soni, resident of Village Umreli, Tahsil Kartala, District Korba (CG)

... Appellants/Plaintiffs

versus

1. Satyaprakash Gupta (Dead) Through Lrs.,

1.1 - Smt. Suman Gupta W/o Late Satyaprakash Gupta, Aged About 55 Years

1.2 - Shubham Kumar Gupta S/o Late Satyaprakash Gupta, Aged About 21 Years

Both are resident of Gupta Clinic, Near Loins Chowk, Champa, District - Janjgir - Champa (CG)

2. Hutas Prasad Soni S/o Ganga Prasad Soni, Aged About 65 Years R/o Village Umreli, Tahsil Kartala, District Korba (CG)
3. State Of Chhattisgarh Through The Collector, District Janjgir Champa (CG)
4. Pushpa D/o Ishwar Prasad Aged About 48 Years R/o Village Umreli, Tahsil Kartala, District Korba (CG) (Plaintiff No. 7).

... Respondents

For Appellant	:	Mr. Rahul Mishra, Advocate
For Respondent No.2	:	Mr. R.S.Patel, Advocate with Mr. Sharda Prasad and Mr. Ankur Diwan, Advocates
For Respondent	:	

DB: Hon'ble Mr. Justice Parth Prateem Sahu,J
& Hon'ble Mrs. Justice Sushma Sawant, J

CAV Order

Per Parth Prateem Sahu, J

1. Challenge in this first appeal is to the judgment and decree dated 22.8.2019 passed in Civil Suit No.12A/2018 by which learned District Judge, Janjgir Champa has non-suited the plaintiffs/appellants herein.

2. Facts of the case, in brief, are that plaintiffs preferred a suit against the defendants seeking declaration of title, sale deed dated 07.04.2018 registered on 15.5.2018 in favour of defendant No.1 by defendant No.2 in respect of land bearing Khasra No.930/7 & 930/8 area 0.020 hectare & 0.008 hectare respectively situated in village Champa, Tahsil Champa, District Janjgir Champa (CG) (henceforth 'the suit land') to be null and void and for permanent injunction. It was pleaded in the plaint that Ishwar Prasad, predecessor of plaintiffs, out of his personal

income, had purchased the suit land through registered sale deed dated 30.10.1963 and 29.04.1964 and his name was also mutated in revenue records and reamined in possession. After the death of Ishwar Prasad, the suit land came to be recorded in the name of plaintiffs in revenue records. On coming to know about mutation of suit land in favour of defendant No.2 vide order dated 29.6.2015, plaintiffs submitted an objection before the Tahsildar against the order of mutation dated 29.6.2015 passed in favour of defendant No.2. Vide order dated 4.7.2015, the order of mutation dated 29.6.2015 was set aside. Again on 14.9.2015 the Tahsildar has passed an order holding the order dated 29.6.2015 to be valid and in accordance with law and further observing that the order dated 4.7.2015 was contrary to the legal provisions of law. Thereafter, plaintiffs have filed writ petition bearing WPC No.2504/2016 before the High Court challenging the order dated 14.9.2015. WPC No.2504/2016 was disposed of vide order dated 11.1.2017 with an observation/direction to petitioner therein to file an appeal/revision and further directed the parties to maintain status quo with respect to possession of thel and till decision on the appeal/revision. In compliance thereof, plaintiffs submitted an appeal before the Sub-Divisional Officer (R) Champa which was dismissed vide order dated 14.12.2017 against which an appeal is pending consideration in the Court of the Commissioner, Bilaspur Division, Bilaspur.

During pendency of proceeding before the Commissioner, defendant No.2 sold the suit land to defendant No.1 on 15.5.2018 through registered sale deed. It was pleaded that aforesaid sale deed being executed by unauthorized person during pendency of proceedings in revenue Courts is null and void and not binding on the plaintiffs. Defendant No.1 does not derive any right, title over the suit land from the said sale deed and even defendant No.1 has not received the possession and still the plaintiff are in possession.

3. After service of summons of civil suit, defendant No.1 appeared before the trial Court and filed his written statement. Defendant No.1-purchaser has pleaded that he has bona fidely purchased the suit land through registered sale deed after making payment of full consideration and came into possession of the same and and since then he is in continuous possession of it.

4. Defendant No.2 filed separate written statement raising almost identical contentions as raised by defendant No.1 in his written statement. It was denied by defendant No.2 that suit land was purchased by Ishwar Prasad on 30.10.1963 and 29.4.1964 and he was exclusive owner of the same. In fact, it was purchased from the income of joint family property of Ishwar Prasad and defendant No.2 and the same was received by defendant No.2 in the family partition between him and Ishwar Prasad in the year 1977. Suit land was mistakenly continued in revenue records in

the name of Ishwar Prasad. The suit land was mutated in favour of defendant No.2 after affording opportunity of hearing to the plaintiffs and following due process of law. Appeal filed against the mutation order was dismissed by the Sub-Divisional Officer (R) Champa on 29.12.2007. Since the date of oral partition till execution of sale deed in favour of defendant No.1, the defendant No.2 was in continuous possession of the suit land, which was never challenged by plaintiffs. Eviction proceeding instituted by plaintiffs was also dismissed by the Court of Revenue. Plaintiffs got mutated their name without impleading defendant No.2 as a party to mutation proceeding.

5. The trial court framed as many as five issues based on pleadings of the parties. The parties led evidence in support of their respective cases. Upon appreciating the pleadings and evidence (oral and documentary), learned trial Court concluded that defendant No.2 on the preponderance of probabilities had been able to discharge the onus of demonstrating a joint family property or nucleus enough to acquire the suit land drawing resources therefrom, the same was received in oral partition between defendant No.2, on the date of institution of civil suit defendant No.2 was in possession of the suit land and as such, defendant No.2 has the right to transfer the suit land in favour of defendant No.1. Consequently, by judgment and decree dated 22.8.2019, the learned trial Court dismissed the suit of plaintiffs

for declaration of title, declaration that sale deed executed by the defendant No.2 in favour of defendant No.1 as null and void and for permanent injunction.

6. Learned counsel appearing on behalf of the plaintiffs/appellants herein submits that the impugned judgment is passed on the presumption that suit land belonged to joint family property without there being any supporting evidence that the suit land is purchased out of nucleus of joint family income. He submits that the suit land was purchased by Ishwar Prasad, out of his own income vide registered sale deeds dated 30.10.1963 and 29.04.1964 and after his death in the year 1992, the same devolved upon the plaintiffs/appellants herein. Perusal of sale deeds clearly reveal that the same are in the individual name of Ishwar Prasad. Supporting evidence led by plaintiffs further indicates that Ishwar Prasad was recorded as exclusively owner of the suit land and in possession of the same since 1963-64. When the sale deeds and revenue documents were in the individual name of Ishwar Prasad, it cannot be presumed that suit land was purchased from the nucleus of joint family.

7. He further submits that Late Gangaprasad, father of Ishwar Prasad and Hulas, never constituted a joint family with his sons in respect of suit land and therefore joint family nucleus never existed. Mere existence of a joint family at the time of purchase of suit land does not lead to a presumption that the property held

by any member of such family in his own name would automatically become the joint property of each member of the family. Burden to prove such property to be joint lies on the person who asserts so. In case at hand, defendant No.2 though asserted that the suit land was purchased from the nucleus of joint property, it was not exclusive asset of Ishwar Prasad and he received the same in an oral partition between the parties in the year 1977, but he miserably failed to prove that the suit land belonged to the joint family or that it was purchased in the name of Ishwar Prasad from the nucleus of joint family and as such, learned trial Court has committed an illegality in passing the impugned judgment and decree.

8. He further submits that inference of jointness of the suit land drawn by learned trial Court from the pleadings made in Civil Suit No.4A/2016 (Ex.D-1) filed by plaintiffs at an earlier point of time is not sustainable for the reason that the suit land was not the subject matter of the said civil suit and such exclusion proves that the suit land was never the part and parcel of joint properties purchased by Late Gangaprasad or included in the family partition which took place subsequent to the purchase of suit land i.e. in the year 1977. It is further submitted that in aforementioned civil suit, plaintiffs have never admitted that suit land was partitioned between plaintiffs and defendant No.2 in the year 1977.

9. He further submits that after purchase of suit land, name of father of plaintiffs was mutated in land records and after his death, plaintiffs were recorded as owner. However, at no point of time, defendant No.2 has raised any objection to said mutation proceedings, which is suggestive of the fact that defendant No.2 was well aware that suit land is not the part and parcel of joint property. Further, the factum of oral partition has not been established by defendant No.2 for the sole reason that it had never taken place because plaintiffs are the exclusive owner of the suit property. Defendant No.2 in collusion with the revenue authorities got illegally mutated his name in the revenue record by taking undue advantage as also without issuing any notice to the plaintiffs. Defendant No.2 failed to disclose on what basis his name was mutated in respect of suit land. No proceedings of revenue authorities were filed by defendant No.2 to show that any enquiry was conducted, which goes to show that the revenue authorities without any basis and without giving any notices to the successors of Ishwar Prasad i.e. plaintiffs, had mutated name of defendant No.2 in revenue records.

In support of his contention, he placed reliance upon the judgments delivered in case of Shrinivas Krishnarao Kango vs Narayan Devji Kango and others; AIR 1954 SC 379; Mudi Gowda Gowdappa Sankh v. Ram Chandra Ravagowda Sankh; (1969) SCC 1 386; Randhi Appalaswami v. Randhi

Suryanarayanmurti & others, ILR 1948 Mad. 440; D.S. Lakshmaiah and another v L. Balasubramanya and another; (2003) 10 SCC 310; Appasaheb Peerappa Chamgade vs Devendra Peerappa Chamdgade and others (2007) 1SCC 521; Chinthamani Ammal vs Nandagopal Gounder and another, (2007) 4 SCC 163 and Jitendra Singh v State of Madhya Pradesh, AIR Online 2021 SC 887.

10. On the other hand, learned counsel appearing on behalf of respondents have opposed the submissions of learned counsel for appellant and vehemently submitted that the suit land was purchased from the nucleus of joint family and it was not exclusive asset of Late Ishwar Prasad, who had no income to purchase lands in the year 1963-64. It was incumbent upon the plaintiff to furnish details in regard to independent earning capacity of Ishwar Prasad to make the payment for purchase of the land and to prove that their father had separate income to provide amount of sale consideration to purchase the suit land, which they have not been able to prove. He further submitted that Gangaprasad, predecessor of parties to lis, had constituted a joint Hindu family along with his four sons. He had purchased several lands and houses at different places from the joint family income in the name of his four sons. Prior to 1997, there was no partition by metes and bounds in the joint Hindu family. Merely because a property was purchased in the name of a member of

an undivided Hindu family out of the income or funds of the joint family, would not, by itself, confer any exclusive right, title or interest in the said property upon the member in whose name the property stood.

11. He also submitted that an oral family partition among members of joint family took place in the year 1977, which is admitted by plaintiffs before various Courts, and in said partition the suit land had fallen in the share of defendant No.2 and he was in continuous possession of it. Upon unsuccessful attempt of plaintiffs before the Tahsildar to challenge the possession of defendant No.2 over suit land, defendant No.2 applied for mutation of suit land in his name which was done after following due process. Being in possession and exclusive owner, defendant No.2 transferred the suit land to defendant no.1 vide registered sale deed dated 7.4.2018, along with possession and based upon which name of defendant No.1 has also been mutated in land record following due process. He submits that all aspects having been duly appreciated by the trial Court, which finding is just and proper and not liable to be interfered with in the present Appeal. The learned Trial Court was justified in holding that the suit land constitutes joint family property as the same was purchased prior to the partition of the joint family effected in the year 1977.

12. Heard learned counsel for respective parties and perused the record of learned trial Court including the impugned judgment.

13. Admitted facts of the case, as per pleadings and documents on record, are that Ishwar Prasad, father of plaintiffs, and defendant No.2-Hulas Prasad Soni, are sons of Late Ganga Prasad, who was a Malguzar possessing lands in different villages Umreli, Nawapara, Amaldiha, Karrapali, Darrabhata, Budhiyapali, Auraai and Ganiyari of District Korba. Ganga Prasad, during his lifetime, got recorded and transferred his various lands in the name of his four sons namely Ishwar Prasad, Jeevanlal, Dorilal and Hulas Prasad by way of division of account or execution of sale deed in their favour. Some lands had also been sold to other persons also for domestic need etc. Registration of sale deed dated 30.10.1963 and 29.04.1964 in favour of Ishwar Prasad and mutation of his name in revenue records. Partition between the members of joint family had taken place in the year 1977. It is also not in dispute that civil suit bearing CS No.4A/2016 was instituted by plaintiffs for grant of permanent injunction and restraining defendants therein from interfering with their possession over land bearing Khasra No.1212 (Part) area 02 decimal situated in village Umreli. Tahsil Kartala, District Korba, which they received in family partition took place in the year 1977, and the same was decreed in favour of plaintiffs and against defendant No.2.

14. Suit of the plaintiffs for declaration of title, sale deed dated 7.4.2018 registered in respect of suit land to be null and void and permanent injunction was based on the ground that the suit land is their self-earned property which is substantiated from the revenue records stood in name Ishwar Prasasd based on sale deeds executed in his favour. Defendant No.2 had illegally and fraudulently got mutated his name against suit land by getting name of plaintiffs deleted. Suit was resisted by defendants by filing separate written statements and denying the plaint averments. Crux of submissions of defendant No.2 was that the suit land was purchased out of nucleus of joint family income and hence it assumes character of joint Hindu family. On the aforementioned ground and others submissions made in written statement, they have sought dismissal of suit.

15. The learned trial court considered the pleadings of the parties as well as the evidence, oral and documentary, placed on record and dismissed the suit of plaintiffs. Learned trial Judge has recorded in impugned judgment that Late Ganga Prasad had partitioned his entire immovable properties among his four sons in the year 1977 and prior to that, his family was a joint family and nucleus of the joint family was about 61.54 acre and 23.528 hectare land situated in vilalge Budhiyapali, Darrabhata and Umreli. Hence, defendant No.2 has been able to establish with preponderance of probabilities that the suit land was purchased

by Late Ganga Prasad from the income of joint family property and it was received by defendant No.2 in the partition took place in the year 1977.

16. It is the above facts and contentions, which have to be re-appreciated by this Court in the present appeal. In effect, what is required to be re-appreciated is;

- Whether the suit land is self-acquired property of Late Ishwar Prasad or it is joint family property even though it stand in the name of Late Ishwar Prasad?
- Whether the learned trial Court was justified in dismissing the civil suit of plaintiffs ?

17. It is settled legal position that a civil dispute is decided on the preponderance of probabilities. After both the parties complete their pleadings and lead evidence, the entire cases of the respective parties are thereafter put in a scale, and it is decided in whose favour the scale is tilted, i.e the civil suit is decided by preponderance and balance of probabilities. Recently, in case of **Gastrade International vs Commissioner Of Customs**, reported in **(2025) 8 SCC 342**, Hon'ble Supreme Court has considered the expression 'preponderance of probabilities' and observed thus:-

> "74. At this juncture it may be apposite to dwell briefly upon the meaning of the expression "preponderance

of probability" in contradistinction to "proof beyond reasonable doubt".

"76. Different standards of proof have evolved in criminal and civil jurisdictions in course of time considering the differential stakes involved in these proceedings. In a criminal proceeding, the stakes are higher for a defendant as it involves precious rights and liberties of the person with a potential to lose the same if convicted of the offence charged. On the other hand, civil liability is less blameworthy, and penalty, if any, is less severe."

18. After discussing the provision of law as also golden principle applicable in civil cases, we shall now proceed to examine whether the suit land is self-acquired or joint family property. This is a pure question of fact and can be answered based on the documents and evidence available on record. However, before we proceed further, the exposition of legal position as discerned from various decisions is required to be discussed.

19. In case of **Modi Govada Gowdappa Sankh and others V/s. Ramchandra Revgowds Sankh (supra),** which was also relied upon by learned counsel for plaintiffs/appellants,

plaintiff claiming himself to adopted son of one of co-sharers of joint family property filed civil suit challenging the partition deed executed between two brothers on the ground that it was intended to defeat

the rights of the widows; it was never acted upon and that the family continued to be joint. The trial court granted a decree for partition with appropriate directions in favour of plaintiff. The defendants took the matter in appeal to the High Court. The plaintiff also filed a cross-objection. The High Court dismissed the appeal and allowed the cross-objection of the plaintiff. In the aforementioned facts and circumstances of the case, the Hon'ble Supreme Court posed unto itself a question whether the partition deed executed was a sham transaction and not intended to be effective. Both the trial court and the High Court have reached a concurrent finding after an elaborate examination of the evidence that the partition deed was not genuine, and that it was effected for an ulterior purpose in order to defeat the rights of the widows in the joint family. Thereafter, it was held thus:

> "There is no presumption that Hindu family merely because it is joint, possesses any joint properties. The burden of proving that any particular property is joint family property, is, therefore, in the first instance upon the person who claims it is coparcenery property. But if the possession of a nucleus of the joint family property is either admitted or prove, any acquisition made by a member of the joint family is presumed to be a joint family property. This is however subject to the limitation that the joint family property must be such as with its and the property in question could have been acquired.

> It is only after the possession of an adequate nucleus is shown, that the onus shifted on 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."

20. In case of **Surendra Kumar vs Phoolchad (dead) through LRs and another,** reported in **(1996) 2 SCC 491**, Hon'ble Supreme Court has held that where it is established or admitted that the family which possessed joint property which from its nature and relative value may have formed sufficient nucleus from which the property in question may have been acquired, the presumption arises that it was the joint property and the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family funds.

21. In case of **D.S. Lakshmaiah (supra)** which was also relied upon by learned counsel for plaintiffs/appellants, plaintiffs/respondent therein filed a civil suit for declaration of their 2/3rd share, partition and possession thereof in respect of two properties described in plaint on the ground that the same are acquired out of joint Hindu family funds, whereas defendant/appellant therein was trying to alienate the suit property for his benefit and not for the benefit of the members of joint family. Trial Court decreed the suit of plaintiffs holding them entitled for 2/3 share etc. Appellate Cout set aside the judgment of trial Court holding that plaintiffs

failed to prove that Item No.2-property was joint family property. The High Court restored the judgment and decree of the trial court, set aside that of the first appellate court. In these circumstances, Hon'ble Supreme Court has held as under:-

" Placitum-A:-

Hindu law- joint family- whether joint family property or self acquired- property cannot be presumed to be joint family property merely because of existence of a joint family- burden to prove the property to be joint lies on the person who asserts so - but if he proves that family possessed sufficient nucleus with the aid of which and joint family property could be acquired, then presumption would be that the property is joint and onus would shift on the person claiming it to be self acquired- on failure to establish the nucleus, held, burden of proof would remain on the person who asserts the property to be joint."

"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."

22. In case of **Appasaheb Peerappa Chandgade (supra)**, which was also relied upon by learned counsel for plaintiffs/appellants, the claim of plaintiff-Appasaheb was that all the properties mentioned above were the joint family properties, whereas claim of defendants was that the properties mentioned in the suit schedule are self-acquired properties. The trial court decreed the suit of the plaintiff. The High Court in the appeal reversed the finding of the trial court and dismissed the suit. In such a situation, Hon'ble Supreme Court after referring its various decisions, has observed as under:-

"17. Therefore, on survey of the aforesaid decisions what emerges is that there is no presumption of a joint Hindu family but on the evidence if it is established that the property was joint Hindu family property and the other properties were acquired out of that nucleus, if the initial burden is discharged by the person who claims joint Hindu family, then 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 by cogent and necessary evidence."

23. In **Civil Appeal No.5401/2025,** parties being **Angadi Chandranna vs Shankar & ors**, **decided on 22.4.2025**, neutral citation 2025 INSC 532. Hon'ble Supreme Court has observed thus:-

> "13.Further, it is a settled principle of law 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, then 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. That apart, while considering the term 'nucleus' it should always be borne in mind that such nucleus has to be established as a matter of fact and the existence of such nucleus cannot normally be presumed or assumed on probabilities…."

24. Recently, in Civil Appeal Nos. 2129-2130 of 2012 (Dorairaj Vs Doraisamy (Dead) Through LRs & Ors.), decided on 05.02.2026

(neutral citation **2026 INSC 126**), Hon'ble Supreme Court has held thus:-

> "29. The principal contention by the Appellant before the High Court, and reiterated before us, is that the First Appellate Court erred in holding that the suit properties were joint family properties, particularly in the absence of what was described as an "income-bearing joint family nucleus". The High Court primarily placing its reliance on MLJ (II) 1976 225 (Pattusami Padayachi v. Mullaiammal and others); 1954 1 SCC 544 Shrinivas Krishnarao Kango v. Narayan Devji Kango and Ors. noted that proof of the mere existence of a joint family does not by itself render all properties as joint family properties, but equally, once it is established that ancestral properties yielding income existed and acquisitions were made during the continuance of the joint family, the burden shifts to the person asserting self-acquisition.
>
> 30. In this context, the High Court undertook a detailed examination of Item No(s). 14 and 15, which were admittedly ancestral properties. The plea of the Appellant that these lands were perpetually water-logged, and incapable of yielding income was carefully examined. On the contrary, reliance was placed on revenue records (Ex(s). B-201 to B-206), which categorically evidenced

cultivation over several fasli years and disclosed the existence of wells and oil-engine pump sets. The HighCourt further examined the Appellant's reliance on the alleged independent income of Sengan (D1). It accepted that Sengan had engaged in various jobs over his lifetime, including service and contractual work. However, it correctly rejected the simplistic assumption that the mere existence of some independent earnings would automatically negate the contribution of joint family income. The High Court observed that Hindu law does not require other coparceners to establish with precision the exact source of funds for each acquisition made by the Karta. Where acquisitions are made during the subsistence of the joint family, and where ancestral properties yielding income are shown to exist, properties acquired in the name of karta are ordinarily regarded as joint family properties unless the contrary is proved. "

25. The presumption regarding the coparcenary property vis-a-vis separate property and the person on whom the burden lies has also been succinctly stated in Mulla Hindu Law, 23rd Edition, Page 347 in paragraph No.231 as follows:-

- *(2) No Presumption that a joint family possesses joint property*-- There is no presumption that a family because it is joint, possesses joint property or any property. When in a suit for partition, a party claims that the any

particular item of the property is joint family property, or when in a suit for a mortgage, a party contends that the property mortgaged is joint family property, the burden of proving it rests on the party asserting it.

- Strong evidence is required to show that a property is joint, no presumptive value can be attributed in the absence of clinching evidence of jointness.

> " To render the property joint, the plaintiff must prove that the family was possessed of some property with the income of which the property could have been acquired or from which the presumption could be drawn that all the property possessed by the family is joint family property or that it was purchased with joint family funds, such as the proceeds of sale of ancestral property or by joint labour. None of these alternatives is a matter of legal presumption. It can be brought to the cognizance of a Court in the same way, as any other fact, namely, by evidence.
>
> Where it is established or admitted 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 presumption arises that it was joint property and the burden shifts to the party alleging self acquisition to establish affirmative that the property was acquired without the aid of the joint family. However, no such presumption would arise if the nucleus is such that with its held the property claimed to be joint could not have been acquired. In order to give rise to the presumption the nucleus must be such that with its

held the property claimed to be joint could have been acquired. A presumption that properties in the hands of individual coparcener is coparcenary property would arise only if family nucleus is proved. In the absence of proof of nucleus the members would only be co-sharers and on death, such property would devolve by inheritance, and not by survivorship."

26. Reading of above makes it clear that in order to prove purchase of the property through joint family income, it was incumbent for the person claiming to prove that there existed a nucleus in the form of income of joint family and that the purchase was done through that nucleus. Once joint family nucleus is either proved or admitted so as to draw inference that such property could have been acquired out of joint family funds, the burden shifts to the party alleging self-acquisition, to establish affirmatively, that such property was acquired without the aid of joint family. Initial burden always lies upon the party asserting that any item of property is joint family property.

27. Thus, where a property has been purchased in the name of one of the members of a joint Hindu family, if another family member desires to prove that the property was purchased for the joint family, it becomes incumbent for him/her to prove :

(i) existence of joint family,

(ii) existence of joint family income,

(iii) purchase of property through nucleus of joint family income.

Claim of such family member that purchase of property was for the benefit of joint family can be upheld only if aforementioned three elements are established by him/her. Failure to prove even a single factor would lead to presumption of property being self-acquired by person in whose name sale deed is executed.

28. Bearing in mind the above principles, we shall now discuss the evidence available in this case.

29. In case at hand, as the documents are in favour of Ishwar Prasad, therefore, initial onus would be upon defendant No.2 to prove that the suit lands are not self-acquired properties of Ishwar Prasad and they are joint family properties, and therefore, we will first examine as to whether defendant No.2 has been able to discharge his onus to prove that there was a joint family nucleus.

30. Defendant No.1 is the person in whose favour defendant No.2 has transferred the suit land vide registered sale deed in question. He has stated that he is bona fide purchaser of the suit land and before execution of sale deed, he had verified that the name of defendant No.2 is recorded in revenue record.

31. Defendant No.2 examined on his own behalf as DW-1 has deposed in his evidence that his father Ganga Prasad and grandfather Manoharlal were members of a joint family. During

their lifetime, they had purchased lands and houses at various places out of the income and funds of the joint family, in the names of different members of joint family, according to convenience. Any property purchased in the name of a particular member of joint family did not thereby become the exclusive property of that individual purchaser. Rather, each member of the undivided joint family of my father Ganga Prasad and grandfather Manohar Lal had joint ownership and rights therein. Therefore, merely because the suit land was purchased in the name of Ishwar Prasad, Ishwar Prasad has no exclusive right, title or interest therein, nor was he ever in possession of the suit land. Oral partition took place between the parties in the year 1977 and in above oral partition, defendant No.2 received suit land and since then he alone was in possession of suit land till 7.1.2018. Factum of partition took place in the year 1977 was admitted by plaintiffs in the Courts at Kartala, Barpali and Korba. His possession over suit land was never interfered by his brothers or their legal heirs. Being in possession of suit land, the Naib Tahsildar had issued ration card in his favour in the year 1980 and thereafter ownership certificate in respect of house constructed on suit land was issued by Municipalities in the year 1995.

In his cross-examination, he admitted that suit land was purchased in the name of Ishwar Prasad but the consideration

was paid by their father. He also admitted that suit land came to be mutated in the name of Ishwar Prasad but denied that during his lifetime, suit land was continuously recorded in his name. He shown his ignorance about division of accounts between him and his brothers in the year 1964 by his father. Partition proceeding took place in the year 1977 was not reduced into writing and any outsider was not present at the time of partition. In the year 1978, he got constructed a house over the suit land.

32. Babulal Dewangan (DW-2), Shantilal Mannewar (DW-3) and Shyamlal Vaishnav (DW-3) have showed their unawareness about the partition.

33. Defendant No.2 has exhibited as many as 50 documents which were marked as Ex.D-1 to Ex.D-51 which includes certified copy of order dated 26.6.2015 passed by Tahsildar Champa in Case No.197/A-6/2013-14; record of rights of joint account in the name of defendant No.2, Ishwar Prasad, Jeevan, Dorilal and other revenue documents.

34. Ex.D-1 is the certified copy of civil suit bearing No.4A/2016 filed by plaintiffs herein against defendant No.2 here and others before the Court of Civil Judge Class II Korba. In said civil suit, plaintiffs herein have pleaded as under"-

> "12. यह कि स्व. गंगा प्रसाद ने अपने चारों पुत्रों के मध्य पारिवारिक रहन-सहन के विवाद को देखते हुए वर्ष 1977 में अंतिम रूप से पारिवारिक खान-पान, रहन-सहन खेती बाड़ी का बटवारा अपने चारों

पुत्रों के मध्य पूर्व में किये गए खाता विभाजन को आधार बताते हुए एवं भूमियों की उपयोगिता तथा मूल्यांकन को दृष्टिगत रखते हुए कर दिया।.....”

14. यह कि स्व. गंगा प्रसाद ने वर्ष 1977 के बटवारा में ग्राम उमरेली की परिशिष्ट ग की भूमि को अपने जीवन काल तक जीवन-यापन करने हेतु अपने बॅटवारा सुरिक्षत रखे .....”

15. यह कि स्व. गंगा प्रसाद के द्वारा किये गए वर्ष 1977 के बटवारा के अनुसार उनके चारों पुत्र स्वयं सहमत एवं संतुष्ट होकर अपने-अपने हिस्से का उपयोग एवं उपभोग करते रहे .....”

16. यह कि वादी गण को वर्ष 1977 के बटवारा में प्राप्त ग्राम उमरेली की भूमि खसरा ....”

35. From the above discussed evidence available on record, it is evident that Ganga Prasad was a Malguzar and possessed lands in several villages, namely Umreli, Budhiyapali, Karrapali, Navapara, Amaldih, Darrabhantha, Aurai and Ganiyari. The lands are agricultural lands, it could safely be presumed that those properties were income generating properties. Both the parties have not disputed existence of joint family till the year 1977. Even in a separate proceeding instituted by plaintiffs themselves in respect of different properties of joint family i.e. Civil Suit No.4A/2016, it is their specific stand that final partition between members of joint family of Late Ganga Prasad took place in the year 1977. Existence of the joint family nucleus at the time when suit lands were purchased in the year 1962 was thus admitted by the plaintiffs. In view of the admission of plaintiffs with regard to

the existence of the joint family, in the opinion of this Court, defendant No.2 has been able to discharge initial burden of proving existence of joint family and income generating nucleus property at the time of purchase of suit land.

36. Since the defendant No.2 has discharged the primary burden shouldered on him regarding the fact that there was a joint family nucleus, let us see whether the plaintiffs have been able to discharge the onus to prove regarding self-acquisition of the suit lands.

37. Plaintiff No.1-Govid Prasad has deposed in his evidence that family partition took place in the year 1962 and not in the year 1977. His father Ishwar Prasad was engaged in agriculture work as also running grocery shop. However, he himself admitted that he does not possess any document relating to grocery shop. He has further admitted that in Civil Suit No.4A/2016 filed by him before the Court at Kartala there is mention that partition took place in the year 1977. He has further denied that the suit land was received by defendant No.2 in the partition took place in the year 1977. Ramesh Kumar Soni (PW-2) has stated in his cross-examination that he does not know as to who, when and for how much amount purchased the suit land. Jagdish Prasad (PW-3) has stated that suit land was in possession of Ishwar Prasad and after his death his heirs are in possession.

38. Plaintiffs have produced sale deeds executed in favour of Ishwar Prasad as Ex.P-1 and Ex.P-2; sale deed dated 9.4.2018 executed in favour of defendant No.1 by defendant No.2; B-1 of the year 1994-95 as Ex.P-3; Khasra Pancshala of 1994-95 to 19898-99 as Ex.P-5; B-1 of the year 2003-04 as Ex.P-6 and Khasra Panchsala of 2004-05 to 2008-09 as Ex.P-7 and copy of order dated 11.1.2017 as Ex.P-8. Plaintiffs have not led any evidence to establish separate income of Late Ishwar Prasad.

39. The position that emerges from above discussed evidence, oral and documentary, of the plaintiffs, is plaintiffs though claimed that their father Ishwar Prasad was engaged in agriculture and was also running a grocery shop and he had purchased the suit lands from his independent income. However, except this oral evidence, no documentary evidence has been produced by the plaintiffs to support their say that the suit lands were purchased by Ishwar Prasad from his independent income. There is no evidence demonstrating that the consideration for purchase of the suit property was actually paid by Ishwar Prasad out of his alleged independent earnings. In a case where the character of the property is seriously in dispute and the defence specifically claimed that the acquisition was made out of joint family funds, mere fact that the registered instrument of purchase stands in the name of Ishwar Prasad cannot, by itself, conclusively establish that the consideration was paid from his separate

resources. The source of consideration assumes material significance in determining the true character of the acquisition. It is well settled that the property purchased in the name of one of members of joint family cannot become his/her individual property unless it is proved by such member with cogent and concrete evidence as to his/her independent source of income. Same is the situation in the present case. In case at hand, there is no manner of doubt that appellant miserably failed to prove independent source of income of Late Ishwar Prasad to purchase the suit lands.

40. It is true that except raising a plea that the suit lands was received by him in oral partition of joint family that took place in the year 1977, defendant No.2 has not produced any evidence before the trial Court to substantiate his claim regarding oral partition effected. Plaintiffs though denied that defendant No.2 received the suit lands in partition of the year 1977, but admitted oral partition between the family members in the year 1977 and its implementation. This gives corroboration to the version putforth by defendant No.2 regarding the partition in the year 1977. Even otherwise, it is well settled principle of law that the plaintiff, who approaches the Court seeking any relief in his/her favour, need to prove his/her case on her/his own and the plaintiff cannot succeed in the litigative battle by picking loop holes in the case of the defendant or taking benefit of weakness

in the case of defendant. This principle has been laid down by Hon'ble Supreme Court in its decision rendered in case of **Punjab Urban Planning & Development Authority vs Shiv Saraswati Iron & Steel Re-rolling Mills,** reported in (1998) 4 SCC 539, relevant portion of which reads as follows:-

> "10. ..... The plaintiff/appellant must succeed or fail on his own case and cannot take advantage of weakness in the defendant/ respondent's case to get a decree."

41. In case of **Union of India vrs. Vasavi Co-op. Housing Society Ltd & Ors.** reported in **2014 AIR SCW 580** Hon'ble Supreme Court has held as under:-

> "15. The legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not. We are of the view that even if the title set up by the defendants is found against, in the absence of establishment of plaintiff's own title, plaintiff must be non-suited."

42. As discussed above, that civil suits are decided on the basis of preponderance of probabilities, which in the facts of the case and evidence available is titled in favour of defendant No.2 in the present case. Defendant No.2 has been able to establish that at the time of purchase suit lands, there existed a nucleus of a joint

family. The plaintiffs have failed to prove, even by remotest of probabilities, Ishwar Prasad's independent source of income and that he had acquired the suit property from his independent income. Accordingly, appreciation of evidence by trial Court cannot be termed as perverse warranting interference in exercise of appellate jurisdiction. Being so, the learned trial Court was justified in dismissing the suit of the plaintiffs/appellants.

43. As regards the decisions relied upon by learned counsel for appellants, the same need not to be discussed separately inasmuch as the law that has been settled by those decisions, has already been considered and applied in the preceding paragraphs of this judgment while examining the issue regarding existence of a joint family nucleus and determining whether the suit lands are self-acquired property of Late Ishwar Prasad.

44. In the result, the appeal being sans merit is liable to be and is hereby dismissed. Parties are left to bear their own cost. A decree be drawn up accordingly.

Sd/-
(Parth Prateem Sahu)
Judge

Sd/-
(Sushma Sawant)
Judge

roshan/-