

(2022) 08 CHH CK 0056
In the Chhattisgarh High Court
Case No : First Appeal No. 337 Of 2016

Bhagwati

APPELLANT

Vs

Hiraram

RESPONDENT

Date of Decision : 01-08-2022

Acts Referred:

Hindu Succession Act, 1956 — Section 14, 15, 16
Chhattisgarh Land Revenue Code, 1959 — Section 178, 257
Evidence Act, 1872 — Section 65
Prohibition of Benami Property Transactions Act, 1988 — Section 4, 4(1)

Citation : (2022) 08 CHH CK 0056

Hon'ble Judges : Goutam Bhaduri, J; Rajani Dubey, J

Bench : Division Bench

Advocate : Anurag Verma, Somnath Verma, Dr. Kumaresh Tiwari

Final Decision : Allowed

Judgement

Goutam Bhaduri, J

Heard.

1. Challenge in this appeal is to the Judgment and decree dated 14.09.2016 passed in Civil Suit No.1 A/2011 by the District Judge, Janjgir-Champa.
2. The facts of this case are that respondent No.1-Hiraram, the plaintiff, filed a suit against Bhagwati, who is his daughter, along with other daughters, who are defendant Nos.2 to 5, before the trial Court and the sons Tojendra & Rajiv (defendants No.6 & 7) and his wife Suphed Bai (defendant No.8) all being defendants. The suit was for declaration of title in respect of Khasra No.2448/1 ख admeasuring 0.11 decimal, Khasra No.2448/1 क (part) admeasuring 0.12 decimal and Khasra No.2448/1 क 4 admeasuring 0.07 decimal that the same are self acquired propertis of Hiraram and he is in possession of the said property. It was pleaded that Khasra No.2448/1 ख was purchased in his sole exclusive name, whereas the other two properties which also bear the same Khasra number with different part i.e. 2448/1 क was purchased in name of Hiraram and

Kaushalya, the mother of Hiramam and Khasra No.2448/1 क 4 purchased in name of Kaushalya, the mother of the plaintiff. It was pleaded that in respect of the said purchase, the sale consideration was paid by Hiramam. With respect to the cause of action, it was pleaded that in May, 2010 an application was filed by the daughters namely Bhagwati, Guneshwari, Rajni, Savita and Sima for partition before the Tehsildar Janjgir, therefore, necessitated to file the suit.

3. The defendant No.1 Bhagwati, who is appellant herein, denied the averments of the plaint and it was stated that the properties were purchased by Hiramam and Kaushalya jointly and the same are the ancestral properties. It was further pleaded that the said properties were purchased by the father of Hiramam while he was a minor and no cause of action has accrued to the plaintiff to file the suit.

4. On the basis of the pleading, the issues were framed and it was held by issue No.1 & 2 that plaintiff is the sole and exclusive owner of the land and the superstructure raised on it whereas issue Nos. 3 & 4 were held as not proved.

5. The plaintiff examined himself as AW-1 and one Rameshwar as AW-2. The defendant/appellant Bhagwati examined herself as NAW-1. The learned Court below held that since the property was self-acquired property as such the devolution would be according to the Hindu Succession Act, 1956 (hereinafter referred to as the Act, 1956) as per Section 16 of the Act, 1956 and held that since Kaushalya died intestate, as such her property would devolve on his son Hiramam as per Section 16.

6. Shri Anurag Verma, learned counsel for the appellant would submit that learned Court below has failed to appreciate the fact that the property was in name of grandmother namely Kaushalya and as such Bhagwati being the granddaughter, she was the co-parcener and would inherit the joint ownership. Therefore, the declaration to the effect that Hiramam is sole and exclusive owner cannot be passed. He would further submit that initially when the partition proceedings were commenced before the Tehsildar, three months time was granted to file the civil suit as per Section 178 of the C.G. Land Revenue Code, 1959 (for short 'the Code, 1959') and the civil suit was filed on 10.01.2011, therefore, by provisions of Section 257 of the Code, 1959, the civil suit was not maintainable. He would further submit that subsequently the Tehsildar has passed an order of partition on 21.12.2010 which is maintained before the Revenue Commissioner. As such finding of the learned Court below be set aside.

7. (i) Per contra Shri Somnath Verma, learned counsel for the respondent/plaintiff would submit amendment to the Hindu Succession Act bringing the daughters as co-parcners were brought in 2005 and that provision can only be made applicable to the co-parcners property. He would further submit that Hiramam had paid the entire sale consideration to sellers, as such he was the sole and exclusive owner. He would further submit that the agreement dated 18.03.2008 on which the defendant is claiming his right has not been proved before the Court and only the photocopy was placed, even otherwise it is

submitted that by virtue of agreement, the title will not pass to the appellant. Further the submission is made that Section 178 of the Code, 1959 can only be availed if a person is in possession/hold of the land and assuming application was filed for partition, respondent No.1/plaintiff being not in possession as such she was a stranger. Consequently, the order could not have been passed.

7(ii) Learned counsel for the respondent further submits that it is the settled proposition that agreement will not pass a title and an agreement dated 18.03.2008 is placed with photocopy and no application was filed under Section 65 of the Evidence Act to lead secondary evidence, therefore, any such agreement which is relied upon would be in-admissible in evidence. It is further submitted that the sale deed (Ex. P-1) would show that the purchaser was exclusively Hiraram, therefore, the inference cannot be drawn that it was an ancestral property. Attacking Ex. D-1 further it is submitted that no devolution of any property was given, as such it is a scrap of paper. Further it is submitted that the order of the Tehsildar dated 21.12.2010 is not on record and, as such, no reliance can be placed on oral evidence. It is further submitted that the civil suit was filed on 10.01.2011 and the proceeding under Section 257 of the C.G. Land Revenue Code, 1959 (for short 'the Code, 1959') should have been filed when the claim was denied under Section 178 of the Code, 1959 within three months. As such, the civil suit is also barred and the finding of the learned Court below is well merited which do not call for any interference.

8. We have heard learned counsel for the parties at length and perused the documents and evidence.

9. Perusal of the suit would show that it was filed by Hiraram. The relief in the suit was for declaration that the plaintiff i.e. the respondent No.1 herein is the sole and exclusive owner of the suit property and he is in possession of the house. With respect to the suit property, three separate sale deeds are shown in para 1 of the plaint. In the plaint, the appellant herein, who is the daughter of Hiraram, was made defendant No.1; respondent Nos. 2 to 5 namely Guneshwari, Rajni, Savita & Sima, who are the other daughters, were arrayed as defendant Nos.2 to 5; respondents No.6 & 7, who are the sons namely Tojendra & Rajiv were arrayed as defendant Nos.6 & 7; and respondent No.8, who is the wife, was arrayed as defendant No.8. The pleading in the plaint shows that Hiraram claimed that he purchased the property in his name and in name of his mother therefore the effect of pleading would be it was a Benami transaction and entire money was paid by Hiraram, therefore, declaration was sought for that he is the sole and exclusive owner of the said property.

10. The submission of the appellant that she was a co-owner and would derive right from Kaushalya Bai, who was her grandmother, cannot be accepted for the reason that Section 14 of the Hindu Succession Act, 1956 (hereinafter referred to as 'the Act, 1956') prescribes that the property of a female Hindu to be her absolute property and the general rules of succession in the case of female Hindus have been prescribed in Section 15 of the Act, 1956. Therefore, under

Section 15, the appellant, who is the granddaughter, cannot be treated as a co-parcener.

11. The properties for which the injunction was sought for are as under:-

(a) Ex. P-1 is the sale deed document in respect of the land bearing Khasra No.2448/1 ख admeasuring 0.048 hectares at village Janjgir which was purchased from one Poonam Rai and Rameshwar Prasad dated 19.07.1980. The said property was purchased exclusively in name of Hiraram.

(b) Ex. P-2 is the second sale deed in respect of the property Khasra No.2448/1 क (part) admeasuring 0.12 decimal was purchased on 28.01.1959 and the seller of this property was Neelkanth Gopal and purchaser was Hiraram and Mussamat Kaushalya Bai, therefore, two purchasers were made party.

(c) Ex. P-3 is the third sale deed dated 12.07.1984 in respect of Khasra No.2448/1 क 4 admeasuring 0.07 decimal, wherein seller is Shankar Lal and the purchaser is Kaushalya Bai.

12. Perusal of the aforesaid exhibited sale deeds for which the exclusive declaration of ownership was sought for would show that only one property bearing Khasra No.2448/1 ख admeasuring 0.048 hectares at village Janjgir was in exclusive name of Hiraram; whereas the other property bearing Khasra No.2448/1 क (part) admeasuring 0.12 decimal was in joint name of Hiraram and his mother Kaushalya and Khasra No.2448/1 क 4 admeasuring 0.07 decimal was purchased in name of Kahushalya Bai. Hiraram filed a suit claiming entirety and declaration that he is the owner of all the properties.

13. The Prohibition of Benami Property Transactions Act, 1988 (hereinafter referred to as 'the Act, 1988') was promulgated on 05th of September, 1988. Section 4 of the Act, 1988 gives a prohibition of the right to recover property held benami. Section 4 of the Act, 1988 reads as under:-

"4. Prohibition of the right to recover property held benami. -

(1) No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.

(2) No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property."

14. The Supreme Court in R. Rajagopal Reddy (DEAD) BY LRS. Versus Padmini Chandrasekharan (DEAD) BY LRS. {(1995) 2 SCC 630} promulgated that Section 4

(1) of the Act, 1988 which creates a bar to bring a suit, claim or action to enforce any right in respect of any property held benami though was inserted on 19.05.1988 but even if the property was purchased prior to that the suit to declare it Benami shall be permitted to be filed or entertained or admitted to the portals of any Court. The Supreme Court at para 11 has held that clear legislative intention is seen from the words "no such claim, suit or action shall lie", meaning thereby no such suit, claim or action shall be permitted to be filed or entertained or admitted to the portals of any Court for seeking such a relief after coming into force of Section 4 (1). It has further held that with respect to the view taken by that Section 4 (1) would apply even to such pending suits which were already filed and entertained prior to the date when the Section came into force and which has the effect of destroying the then existing right of plaintiff in connection with the suit property cannot be sustained in the face of the clear language of Section 4(1). The Supreme Court also held that it has to be visualised that the legislature in its wisdom has not expressly made Section 4 retrospective. Then to imply by necessary implication that Section 4 would have retrospective effect and would cover pending litigations filed prior to coming into force of the Section would amount to taking a view which would run counter to the legislative scheme and intent projected by various provisions of the Act to which we have referred earlier.

15. The said proposition further followed in *G. Mahalingappa Versus G.M. Savitha* {(2005) 6 SCC 441} wherein the Supreme Court reiterated the judgment rendered in *R. Rajagopal Reddy* (supra) and held thus in para 18 & 19:-

18. In para 11 of the said decision of this Court, the Supreme Court further observed:

"On the contrary, clear legislative intention is seen from the words "no such claim, suit or action shall lie", meaning thereby no such suit, claim or action shall be permitted to be filed or entertained or admitted to the portals of any court for seeking such a relief after coming into force of Section 4(1)."

19. In the same paragraph the Supreme Court observed:

"With respect, the view taken that Section 4(1) would apply even to such pending suits which were already filed and entertained prior to the date when the section came into force and which has the effect of destroying the then existing right of plaintiff in connection with the suit property cannot be sustained in the face of the clear language of Section 4(1). It has to be visualized that the legislature in its wisdom has not expressly made Section 4 retrospective. Then to imply by necessary implication that Section 4 would have retrospective effect and would cover pending litigations filed prior to coming into force of the section would amount to taking a view which would run counter to the legislative scheme and intent projected by various provisions of the Act to which we have referred earlier. It is, however, true as held by the Division Bench that on the express language of Section 4(1) any right inhering in the real owner in respect of any

property held benami would get effaced once Section 4(1) operated, even if such transaction had been entered into prior to the coming into operation of Section 4(1), and henceafter Section 4(1) applied no suit can lie in respect to such a past benami transaction. To that extent the section may be retroactive."

16. Applying the aforesaid principles in the facts of the present case, it would show that one property was in exclusive name of Hiraram; one property was held jointly by Hiraram with his mother; and one property was exclusively in name of his mother Kaushalya. The suit was filed to declare that Hiraram is the exclusive owner of the entire suit properties. There is no pleading that Kaushalya the mother of Hiraram whether had other sons or daughters i.e. otherwise to say Hiraram had other brothers and sisters. Instead Hiraram arrayed the daughters, sons and wife and claimed the property to be the exclusive of his own. Therefore, prohibition created under Section 4 of the Act, 1988, would apply specifically when no pleading was made that Hiraram was the sole & exclusive owner. It is also not clear before us that whether the other brothers & sisters of Hiraram were alive or not? or only pleading is made that he is entitled to the entire suit property as Kaushalya, the mother, is no more. The faint statement without any furtherance of proof of existence and on vague facts & pleading, presumption otherwise cannot be drawn in favour of plaintiff Hiraram.

17. Accordingly, we are of the opinion that the decree of the suit in its entirety to declare Hiraram the exclusive owner of the property Khasra No.2448/1 क (part) admeasuring 0.12 decimal and Khasra No.2448/1 क 4 admeasuring 0.07 decimal would be barred and no suit for such declaration was maintainable in view of the specific bar of Section 4 (1) of the Act, 1988. In view of the aforesaid discussion, the decree passed by the Court below is modified and it is ordered that the decree shall apply to the sale deed Ex. P-1 in respect of the land bearing Khasra No.2448/1 ख admeasuring 0.048 hectares at village Janjgir which is exclusively in name of Hiraram; whereas in respect of sale deed Ex. P-2 for the property Khasra No.2448/1 क (part) admeasuring 0.12 decimal

and sale deed Ex. P-3 which is in respect of Khasra No.2448/1 क 4 admeasuring 0.07 decimal, the suit was not maintainable.

18. In a result, the judgment and decree of the Court below is modified to the above extent that the declaration would not apply to the property Khasra No.2448/1 क (part) admeasuring 0.12 decimal and Khasra No.2448/1 क 4 admeasuring 0.07 decimal.

19. The appeal is allowed to the extent indicated above.

20. A decree be drawn accordingly.