
(2018) 05 MP CK 0180
In the Madhya Pradesh High Court
Case No : First Appeal No.300 Of 2003

Lalsingh

APPELLANT

Vs

Tarabai and others

RESPONDENT

Date of Decision : 28-05-2018

Acts Referred:

Indian Evidence Act, 1872 — Section 114
Indian Penal Code, 1860 — Section 420

Citation : (2018) 05 MP CK 0180

Hon'ble Judges : VIVEK AGARWAL, J

Bench : Single Bench

Advocate : K.N.Gupta, R.S.Dhakad, Prashant Sharma

Final Decision : Dismissed

Judgement

This First Appeal has been filed on behalf of the defendant No.1/appellant being aggrieved by the judgment and decree dt.14.11.2003 passed by the

Second Additional District Judge, Fast Track Court, Ganjbasoda, District Vidisha in Civil Suit No.12A/2003, whereby the judgment and decree has

been passed in favour of the plaintiffs holding them to be entitled to have share in the suit property and holding that defendant No.2 Sandhyabai,

daughter of the plaintiff No.1 has equal share in the suit property contained in survey No.403/1 measuring 1.672 hectare at village Beelkhedi and the

sale deed so executed in favour of the defendant No.1 (appellant) on 19.6.2000 by father-in-law of the plaintiff No.1 Tarabai is null and void.

2. It is not in dispute that Sikan Singh had five children, namely; Mohan Singh, Bachha Bai, Munnibai, Shagunbai and Bhanwar Bai. Plaintiff No.1 is

the wife of Mohan Singh, who died before filing of the suit. Plaintiff No.2 and 3 are respectively daughters of Mohan Singh and Tarabai. Defendant

No.2 Sandhyabai is also daughter of Mohan Singh and Tarabai.

3. Defendant No.1 Lal Singh is the son of Bhanwarbai, who is married to Imrat Singh. Defendant No.5 Bhanwarbai is wife of Imrat Singh.

Defendants No.3,4 and 6 are also daughters of Sikan Singh.

4. The dispute is in regard to the land measuring 1.672 hectare sold by Sikan Singh in favour of Lal Singh vide sale deed dt.19.6.2000 ten days prior to his death.

5. It is appellant's contention that there is no evidence that the property in question is ancestral property of Sikan Singh or there was any nexus with

the Sub Registrar. It is further submitted that proper court fee has not been paid and there are no averments in regard to status of the property.

6. Learned counsel for the appellant has placed reliance on the judgment of the Hon'ble Supreme Court in the case of Mudigowda Gowdappa Sankh

and others Vs. Ramchandra Revgowda Sankh (dead) by his legal representatives and another as reported in AIR 1969 SC 1076 to submit that under

Hindu law there is no presumption that a Hindu family merely because it is joint, possess any joint property. The burden of proving that any particular

property is joint family property, is, therefore, in the first instance upon the person who claims it as coparcenary property. But if the possession of a

nucleus of the joint family property is either admitted or proved, any acquisition made by a member of the joint family is presumed to be joint family

property. This is however subject to the limitation that the joint family property must be such as with its aid the property in question could have been

acquired. It is only after the possession of an adequate nucleus is shown, that the onus shifts on to 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. It is also held that for severance of joint

status, definite and unequivocal expression of intention is necessary.

7. Reliance has also been placed on the judgment of this High Court in the case of Rajendra Prasad Dwivedi Vs. Atul Kumar Dwivedi and others as

reported in 2004 (4) MPLJ 126, wherein it has been held in para 11 that it is not open to the third party to raise a contention about the non payment of

the consideration as has been held by the Division Bench of this court in the case of Ramjilal Tiwari Vs. Vijay Kumar and others, 1970 JLJ 20. It has

been further held that as per Section 114 of the Indian Evidence Act, there is

presumption that judicial and official acts have been regularly performed and therefore, if the sale deed is registered by a Sub-Registrar under Indian Registration Act in his official capacity it would deem that it is duly executed unless and until it is refuted by some cogent evidence.

8. On the contrary, learned counsel for the plaintiff /respondent in this appeal namely Tarabai and respondent No.3/defendant No.2 Sandhyabai before

the trial court, submits that in para 21 of the impugned judgment, learned Additional District Judge has discussed the aspect of suit property to be

ancestral property of Sikan Singh. A finding has been recorded that no challenge has been offered in cross-examination of the plaintiff, rather there is

an admission in para 11 to 14 of the deposition of defendant No.5 Imrat Singh that Sikan Singh was resident of Bhojpura. He had purchased 20 bigha

of land at Kothi Char after migrating from Bhojpura. He also admitted that other brothers of Sikan Singh are still stationed at Bhojpura and are

performing agricultural operation. No evidence was led to show that Sikan Singh had any other occupation to earn money and purchase land at Kothi

Char. Therefore, a presumption has been drawn that Sikan Singh had sold his share in the ancestral property at Bhojpura or from the profits derived

from such ancestral property had purchased property at Kothi Char. It is also submitted that Lalsingh (D.W.1) has admitted that plaintiff's witness

Gajraj Singh is his Mousa. He has also admitted that Tarabai had filed objections to mutation and she has filed appeal before the Commissioner. She

has also filed a complaint under Section 420 of IPC in the police station. In para 13, he has admitted that from where Sikan Singh got the land is not

known to him. In para 17, this witness has mentioned that money was given in cash and the denomination of notes was 10, 20 and 50.

9. There are two witnesses to the sale deed (Ex.D/2), namely; Prabhulal and Vinay Singh. Prabhulal (D.W.2) has categorically mentioned that he is

not aware as to for which reason Sikan Singh had sold the land. He has admitted in para 12 that on sale deed (Ex.D/2) he had signed in front of Vinay

Singh and Vinay Singh had signed in front of him and nobody had put his signature or thumb impression in front of him. It shows that Sikan Singh had

not put his thumb impression on Ex.D/2 in front of witnesses. It has also come on record in para 8 that when Prabhulal (D.W.2) was giving his

evidence and was subjected to cross- examination, Lalsingh was prompting the

witness, which demonstrate the demeanor of the present appellant before the trial court, the inference of such demeanor shall be given separately. D.W.2 has given denomination of notes as 6 bundles of 100 each and 3 bundles of Rs.10/-. This is contradictory to the evidence given by Prabhudayal (D.W.1).

10. Vinay Singh (D.W.3) has also given statement to the effect that the land was sold as money was required for the treatment. He has admitted that he is not aware that how Sikan Singh had brought land at Kothi Char. He had no discussion with Sikan Singh in regard to sale of the land.

11. Uchchav Bai (D.W.4) in para 2 of her affidavit has submitted that her father had no land at Bhojpura but in cross examination she admitted that her grandfather had property at Bhojpura and it was given to her father and uncle. For what amount such land or house was sold to her uncle is not known to her. Thus, it is apparent that the issue of joint family nonetheless stands proved from the evidence of Uchhavbai (D.W.4) that there was no shift in the nucleus as Sikan Singh had purchased the land of Kothi Char after disposing of his ancestral property at Bhojpura.

12. Therefore, in the light of the law laid down in the case of Mudigowda Gowdappa (supra), it is apparent that the joint family property at Bhojpura was such that with its aid the property in question at Kothi Char was acquired and therefore the burden of proof of partition and so also that property was self acquired by Sikan Singh without any aid from the family property was on the defendant No.1 i.e. appellant before this court. Similarly, in the light of the law laid down by this court in the case of Rajendra Prasad Dwivedi (supra), it is true that no payment of consideration could have been challenged by the plaintiffs but plaintiffs were not precluded from leading cogent evidence to refute such presumption. Evidence has been led and it has come in the cross examination of Lalsingh (D.W.1) and Prabhudayal (D.W.2) that they have given different description of denomination of the property. Similarly, Prabhudayal (D.W.2) has admitted of signing the sale deed in presence of Vinay Singh (D.W.3) and has not said that sale deed was signed or his thumb impression was put by the seller in his presence. Therefore, a rebuttable presumption has been raised by the plaintiffs as to the authenticity and genuineness of the sale deed especially when plaintiffs have produced a document Ex.D/5 to show that Sikan Singh used to sign and

was not putting his thumb impression. Therefore, again burden was on the defendant No.1 to prove that under what circumstances such thumb

impression was obtained on the sale deed (Ex.D/2).

13. In view of such facts and the law laid down by the Hon'ble Supreme Court in the case of Mst.Sethani Vs. Bhana as reported in AIR 1993 SC 956,

wherein it has been held that where sale deed has been executed by a tribal woman, who was old, illiterate and blind, in favour of her relative with

whom she was living till her death and was dependent on him, a purchaser was in position to dominate and take advantage over her, onus lies on him

to prove that sale deed was not executed under undue influence, after appreciating material on record and the evidence led by rival parties and looking

to the demeanor of defendant No.1/appellant in relation to cross examination of Prabhudayal (D.W.2), as has been noted by the trial court in para 8,

this court is of the opinion that the learned court of Additional District Judge was justified in decreeing the suit holding that the suit property was

purchased from the ancestral property and there was no effective partition between plaintiff No.3 (who was minor), defendants No.3,4,5 & 6 and

defendant No.2 Sandhyabai (who was minor) at the time of transaction and are entitled to 6/10 share in 1.672 hectare of land situated at village

Beelkheda contained in survey No.403/1. Thus, the appeal fails and is dismissed.