

(2009) 08 CHH CK 0054
In the Chhattisgarh High Court
Case No : Second Appeal No. 286 of 1996

Mehtar Alias Chandra Kumar and Another	APPELLANT
Vs	
Smt. Phuleshwari Bai and Another	RESPONDENT

Date of Decision : 04-08-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 54
Hindu Succession Act, 1956 — Section 15, 15(1), 16
Limitation Act, 1963 — Article 65
Registration Act, 1908 — Section 17
Transfer of Property Act, 1882 — Section 9

Citation : (2009) 3 CGLJ 428 : (2009) 4 MPJR 59

Hon'ble Judges : T.P. Sharma, J

Bench : Division Bench

Advocate : Parag Kotecha, for the Appellant; P.K.C. Tiwari Rakesh Thakur and Sushil Dubey, Government Advocate, for the Respondent

Judgement

T.P. Sharma, J.—This second appeal is directed against the judgment and decree dated 5.9.95 passed by the Third Additional District Judge, Durg, in Civil Appeal No. 37-A/94 allowing the appeal and decreeing the suit of the Plaintiff/ Respondent No. 1 and setting aside the judgment and decree passed by the Sixth Civil Judge Class-II, Durg, in Civil Suit No. 34-A/92 dated 20.10.1992. By this judgment and decree impugned, learned lower appellate Court has declared that present Respondent No. 1 owner of the property receiving in lieu of golden and silver ornaments and also entitled for 1/3rd share over the rest property. Cross appeal has also been filed by the Respondent No. 1 in which it has been claimed that present Respondent No. 1 is entitled for 3/8th share instead of 1/3rd share.

2. Brief facts giving rise to filing of this appeal is that Abhay Ram (original owner of the property shown in para-3 of the plaint) father of the Appellants and Respondent No. 1 died leaving the property shown in para-3 of the plaint. According to claim of Respondent No. 1, she had given 20 tolas of gold and 500

tolas of silver articles to her father and after death of her father, land bearing khasra No. 85 area 1.41 acres, khasra No. 149/1 area 0.16 acre, khasra No. 150/1 area 0.29 acre, khasra No. 150/2 area 0.08 acres, khasra No. 208/8 area 0.52 acre, khasra No. 219 area 0.49 acre and khasra No. 220 area 1.65 acres = 4.60 acres of land was given in the year 1967 to her and since 1967 she came into possession over the said property. Rest land was in joint possession of the Appellants and Respondent No. 1. She demanded partition in the year 1983 and after direction of the Tahsildar she filed civil suit for declaration of her land given in family arrangement and 1/3rd share over the property.

3. The present Appellants contested the suit and specifically alleged that part of the property shown in para-3 of the plaint was never given to Respondent No. 1. Respondent No. 1 is not entitled for any share over the property. Earlier she had filed suit in which she had claimed that Appellant No. 1-Mehattar is not son of Abhay Ram, but it was decided that Mehattar is son of Abhay Ram.

4. On the basis of the averments made by the parties, the trial Court has framed the issues and after affording an opportunity of hearing to the parties, held that in the absence of written deed of transfer of the land which was compulsorily registrable u/s 17 of the Registration Act, 1908 (in short "the Act, 1908"), no title over the property has been passed upon Respondent No. 1 and dismissed the suit.

5. Judgment and decree was challenged by the present Respondent No. 1 in appeal and learned lower appellate Court has held that the land about 4.60 acres was given in lieu of gold and silver ornaments under family arrangement which does not require any registration and also decreed 1/3rd share over the rest property and allowed the appeal.

6. For decision of this appeal, following substantial questions of law and additional substantial were formulated vide orders dated 27.1.96 and 26.2.2009:

1. Whether on the facts and in the circumstances of the case any transfer of the property which is tangible immoveable property worth more than Rs. 100/- was legal without there being any registered document in favour of the transferee

2. Whether on the facts and in the circumstances of the case the findings recorded by the learned first appellate Court are perverse?

3. Whether Court below has erred in law in not awarding 3/8th share to Respondent No. 1 ?

7. I have heard Mr. Parag Kotecha, counsel for the Appellants, Mr. P.K.C. Tiwari, Senior counsel with Mr. Rakesh Thakur, counsel for the Respondent No. 1 and Mr. Sushil Dubey, Government Advocate for Respondent No. 2 and perused the judgment and decree and records of the Courts below.

8. Learned Counsel for the Appellants vehemently argued that according to claim of Respondent No. 1, about 4.60 acres of land was given to her in lieu of gold

and silver ornaments and same is transfer under the law. Learned Counsel further submits that the transfer of any interest valued more than Rs. 100/- requires compulsory registration u/s 17 of the Act, 1908 and in the absence of registered document, such transfer is not admissible in evidence even for collateral purpose. Learned Counsel further argued that the present Respondent No. 1 has filed suit in the year 1980. She was not in possession since 1967 after death of her father, therefore, suit for possession and partition filed after 12 years is barred by time and same is not maintainable in accordance with Article 65 of the Limitation Act, 1963 (in short "the Act, 1963"). Learned Counsel also argued that originally suit was for 1/4th share over the rest property but subsequently it was amended for 1/3rd share. 1/3rd was also claimed in the appeal, therefore subsequently claimed of 3/8th share by way of cross-appeal is not maintainable by claiming 1/3rd or 1/4th share on behalf of Respondent No. 1. She had relinquished her rest share exceeding 1/3rd or 1/4th share over the property. Learned Counsel placed reliance in the matter of Avinash Kumar Chauhan v. Vijay Krishna Mishra AIR 2009 SCW 979 in which the Apex Court has held that unregistered deed of sale is not admissible in evidence even for collateral purpose.

9. On the other hand, learned Counsel appearing for the Respondent No. 1 supported the judgment and decree impugned and argued that all transaction of transfer is not compulsorily registrable under the Act, 1908. Section 17 of the Act, 1908 does not include the family arrangement or family settlement. The present Appellants have admitted in their evidence that they have given about 4.60 acres of the land to Respondent No. 1 in lieu of gold and silver ornaments. She is in possession over the said property since 1967.

10. Undisputedly, she is daughter of Abhay Ram. After death of Abhay Ram, his self-acquired property was inherited of his son Mehattar from his wife. Appellant No. 2 Roop Sagar and Respondent No. 1 Phuleshwari from second wife Gouri Bai of deceased Abhay Ram and they will take 1/4th share. After deduction of the lands given to present Respondent No. 1 under family arrangement, all 4 heirs continued as owner of remaining part of the property. During pendency of the suit, Gouri Bai died and according to Section 15 and 16 of the Hindu Succession Act, her share was inherited by her natural children i.e. daughters Appellant No. 2 and Respondent No. 1. Appellant No. 1 is not natural son of Gouri Bai, therefore, he is not entitled to receive any share on account of death of Gouri Bai. Under bonafide mistake and advice, the present Respondent No. 1 has earlier claimed 1/3rd share over the remaining property but by filing cross-appeal she has claimed 3/8th share (including 1/4th her share and 2/8th share succeeded after death of Gouri Bai). Present Respondent No. 1 is entitled for 3/8th share under the law. Learned Counsel also argued that in case of transfer of the land, registration of deed is required. There was no transfer between the parties but there was settlement of the property, succeeded in partition, therefore, no deed or registration of the deed was required. Even every transfer property does not require registration. Transfer may be oral in accordance with

the provisions of Section 9 of the Transfer of Property Act, 1882 (in short "the Act, 1882").

11. Learned Counsel placed reliance in the matter of Krishna Beharilal Vs. Gulabchand and Others, in which the Apex Court has held that if a person having full knowledge of his rights as a possible reversioner enters into a compromise which settles his claim as well as the claim of the opponent at the relevant time, he cannot be permitted to go back on that arrangement when reversion actually opens. Learned Counsel further placed reliance in the matter of Digambar Adhar Patil Vs. Devram Girdhar Patil (died) and another, in which the Apex Court has held that under the Hindu Law, it is not necessary that partition should be effected by a registered partition deed. Even a family arrangement is enough to effectuate the partition between coparceners and co confer right to a separate share and enjoyment thereof.

12. In order to appreciate the contentions of the parties and to decide the substantial questions of law. I have examined the material adduced on behalf of the parties. Section 17 of the Act, 1908 deals with the compulsory registration of document substantially relating to the transfer of the right over the property. According to the case of Respondent No. 1. present Appellants have not transferred the property to her and she has not purchased the property. She has received the property under family settlement or family arrangement which does not require any written document or registration.

13. In the matter of Kale and Others Vs. Deputy Director of Consolidation and Others, the Apex Court has held that the family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family. The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence. It is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing but memorandum prepared after the family arrangement does not require any registration.

14. In the matter of Ponnammal v. R. Srinivasarangan and Ors. AIR 1956 SC 162 the Apex Court has held that family arrangement in which half of the property was given for the benefit of some members of the family and beneficiary was placed in possession of the said property i.e. 10.16 acres of wet land and 5.73 acres of dry land to one member and 8.20 acres of wet land and 4.22 acres of dry land to other members is permissible under the law.

15. In the case of Digambar Adhar Patil (supra) the Apex Court has held that under the Hindu Law, it is not necessary that partition should be effected by a registered partition deed. Even a family arrangement is enough to effectuate the partition between coparceners and co confer right to a separate share and enjoyment thereof.

16. In accordance with Section 17 of the Act, 1908. the transfer of property

worth more than Rs. 100/- requires compulsory registration and without any registration, such document would not be legal. In this case, the Appellants have not alleged that they have transferred the property by any unregistered instruments. Respondent No. 1 has also not deposed and adduced any material that she has purchased the property from the Appellants by any registrable instruments. It has been specifically mentioned in para-3 of the plaint that it was done under the oral family arrangement.

17. For family arrangement or even partition by family arrangement, no written document is required and share may be allotted to coparcener or co-sharer by the family arrangement orally and need not require registration. Memorandum of such family arrangement or partition also need not require any registration.

18. In the present case, Respondent No. 1 has not based her claim upon any transfer of property but has based her claim upon family settlement/family arrangement between co-sharers of the Joint Hindu Undivided Property. In absence of any transfer and claim over the property on the basis of family settlement or family arrangement, which even does not require any written document or registration u/s 17 of the Act, 1908, substantial issue No. 1 is decided as negative.

19. As regards the question of perversity of the finding of the first appellate Court is concerned, the trial Court and the first appellate Court have come into conclusion that Respondent No. 1 is in possession of some acres of the land since 1967 after death of her father. The trial Court has decided the issue against Respondent No. 1 but the appellate Court has decided the suit in favour of Respondent No. 1. Burden to prove the fact that some acres of the lands were given to her under family arrangement or family settlement was upon Respondent No. 1. Respondent No. 1 has examined herself, Mishrilal (PW-2), Mohku Ram (PW-3), and Brijlal (PW-4) who have deposed that after death of her father she demanded ornaments but Appellants have refused to give the ornaments then village meeting was convened and panchas were directed to Respondent No. 1 to bring ornaments from her parental house. When she went to take ornaments at that time the Appellants locked the house then panchas decided to allot the aforesaid land to Respondent No. 1. One document was written. Phuleshwari Bai (PW-1) has deposed in her evidence that she has also signed other document finally it was destroyed after lapse of time. Mishri Lal (PW-2) has corroborated the statement of Phuleshwari Bai, but Mohku Ram (PW-3) has deposed that in the village panchayat meeting, mother of Respondent No. 1 and Appellant No. 2 agreed to give the aforesaid land in lieu of ornaments to Respondent No. 1 which has been corroborated by Brijlal (PW-4) but such transaction of providing land in lieu of ornaments has not been supported by Appellant No. 2 in her evidence.

20. From perusal of para-3 of the plaint, it reveals that family settlement was oral means it was not reduced into writing but Respondent No. 1 has deposed that it was reduced into writing and even signed by her upon the revenue stamp

and members of panchayat have decided to give about 4.60 acres of the land to Respondent No. 1 in lieu of ornaments. Same has been corroborated by Mishri Lal (PW-2). Mehku Ram (PW-3) and Brijlal (PW-4) have deposed that Appellant No. 2 and mother of Appellant No. 2 agreed to give 4.60 acres of the land in lieu of ornaments. Brijlal (PW-4) has also stated in para-8 of his evidence that agreement was written in plain paper and signed by Respondent No. 1, her mother and other persons.

21. According to para-3 of the plaint, family arrangement was oral but evidence adduced on behalf of Respondent No. 1 reveals that it was decision of the panchayat and same was written and signed by Respondent No. 1, Appellant No. 2 and her mother. Pleading relating to family arrangement is very specific but the evidence adduced by Respondent is not in consonance with the pleading. The present Appellants have not admitted the factum of family arrangement in their pleading. Present Appellant No. 2 has also not admitted the factum of family arrangement in her evidence but she has deposed that present Respondent No. 1 is in possession of about 4.60 acres of the land after death of their father and she had taken forceful possession.

22. Burden to prove the factum of family arrangement and that too oral family arrangement was on Respondent No. 1 but her pleading and evidence are self-contradictory not sufficient to prove the factum of such family arrangement and on the basis of such arrangement, possession over the aforesaid land as owner of the property. Even Respondent No. 1 has not filed any application for mutation on the basis of alleged acquisition of right over such land especially when the relation between the parties were not cordial and Respondent No. 1 had earlier filed suit against the Appellants that Appellant No. 1 Mehattar is not son of Abhay Ram. After the death of her father, she was never member of family of the Appellants. Present Respondent No. 1 has failed to discharge her burden to prove family arrangement and in the absence of such prove, Respondent No. 1 is not owner of any land under any family arrangement and finding relating to ownership of Respondent No. 1 on the basis of family arrangement is perverse.

23. The present Appellants have filed cross-appeal for allotment of 3/8th share. In the absence of any family arrangement and in the absence of claim of adverse possession, heirs of Abhay Ram continued as co-sharer upon the property left by deceased Abhay Ram and present Appellants, Respondent No. 1 and mother of Respondent No. 1 (original Defendant No. 2) were entitled for 1/4th share. The present Appellant No. 1 is not natural son of deceased Gouri Bai (original Defendant No. 3), but he is stepson of deceased Gouri Bai. After death of Gouri Bai, her 1/4th share will devolve in accordance with Section 15 of the Hindu Succession Act, 1956 firstly upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband and secondly, upon the heirs of the husband.

24. In the present case, Appellant No. 2 and Respondent No. 1 are natural daughters of deceased Gouri Bai and heirs specified in Clause (a) of Sub-section

(1) of Section 15 of the Act, 1956.

25. As regards the entitlement of share of Appellant No. 1 Mehattar is concerned, Mehattar is not natural son of deceased Gouri Bai, but Mehattar is heir of deceased Abhay Ram i.e. husband of Gouri Bai. As held by the Apex Court in the matter of Lachman Singh Vs. Kirpa Singh and Others, that step son is not entitled to claim share in the property of her step mother.

26. Present Appellant No. 1 Mehattar will not succeed the property of Gouri Bai and after death of Gouri Bai her share will devolve upon heirs in accordance with the provisions of Clause (a), of Sub-section (1) of Section 15 of the Act, 1956 i.e. upon Appellant No. 2 and Respondent No. 1 and they will get equal share. As a result, the property left by deceased Abhay Ram will firstly devolve upon his heirs namely, Appellants, Respondent No. 1 and deceased Gouri Bai. Each will get equal share i.e. 1/4th share. After death of Gouri Bai, her 1/4th share will be devolved upon her natural daughters i.e. upon Appellant No. 2 and Respondent No. 1 namely Roop Sagar and Smt. Phuleshwari Bai and they will get equal share i.e. half of 1/4th share means 1/8th share each.

27. In the absence of any partition between Joint Hindu Family Property of the parties, Appellant No. 1 is entitled for 1/4th share, Appellant No. 2 and Respondent No. 1 are entitled for $1/4\text{th} + 1/8\text{th share} = 3/8\text{th share}$ each upon the property left by deceased Abhay Ram.

28. As a result, Appellant No. 1 will take 2/8th share and Appellant No. 2 and Respondent No. 1 will get 3/8th share each upon the property left by deceased Abhay Ram and deceased Gouri Bai. Present Respondent No. 1/Plaintiff has not claimed 3/8th share after death of Gouri Bai and even in appeal but present Respondent No. 1 is entitled for 3/8th share under the law and principle of estoppels is not applicable against the law.

29. For the foregoing reasons, the substantial question No. 1 is decided as negative and substantial question No. 2 is decided as positive and additional substantial question of law is also decided as positive relating to entire property left by deceased Abhay Ram.

30. As a result of finding on the substantial questions of law formulated for decision of this appeal, the appeal and counter appeal are allowed. judgment and decree of first appellate Court is hereby set aside and suit is decreed in the following terms:

(i) Appellant No. 1 is entitled for 2/8th share over the property left by deceased Abhay Ram.

(ii) Appellant No. 2 and Respondent No. 1 each will get 3/8th share each upon the property left by deceased Abhay Ram.

31. Parties shall bear their own costs.

32. Advocate fee as per schedule.

33. Decree be drawn up accordingly.

The trial Court shall send a copy of decree to the Collector of concerned district for effecting partition u/s 54 of the Code of Civil Procedure, 1908.