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In the Madhya Pradesh High Court

Case No : F.A. No. 449 of 1997

Smt. Rajeshwari and Others — APPELLANT

Vs

Balchand Jain and Others — RESPONDENT

Date of Decision : 27-03-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 1
Transfer of Property Act, 1882 — Section 45

Citation : AIR 2001 MP 179 : (2001) 5 MPHT 227

Hon'ble Judges : Bhawani Singh, C.J;Arun Mishra, J

Bench : Division Bench

Advocate : A.S. Usmani, for the Appellant; Sushil Agrawal, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, J.—The trial Court has decreed the suit filed by the respondent No. 1 Balchand Jain for declaration of title, partition and consequential relief to the extent of 1/3rd share of the disputed house. Another 1/3rd share was declared to be in ownership of respondent No. 2 Rajendra Kumar Jain. RespondentNo. 3 who was also one of the defendants before the trial Court was declared owner to the extent of 1/3rd share with respect to the disputed house and plot in question. The present defendants-appellants are wife and sons of respondent No. 2 Rajendra Kumar Jain who has been declared owner of 1/3rd share by the trial Court.

2. The factual matrix indicates that the plaintiff filed a suit against two of his sons, namely, Rajendra Kumar and Devendra Kumar, and also Smt. Rajeshwari wife of Rajendra Kumar and Ritesh Kumar and Tarun Kumar both sons of Rajendra Kumar, alleging that plaintiff Balchand and two of his sons Rajendra and Devendra had purchased a dilapidated house situated at Gopalganj, Brindavan Ward, Sagar for a consideration of Rs. 20,000/- by virtue of sale deed dated 23-6-1979. The plaintiff and defendants Nos. 1 and 2 had purchased the said house jointly and had constructed a four storied house. They were continuing in

joint possession and all of them were residing along with their families in the house in question. The names of defendants Nos. 3 and 4, namely, Smt. Rajeshwari and Ritesh Kumar were nominally mentioned in the sale deed dated 23-6-1979 but they had not spent any money in the purchase of the said house whereas husband of defendant No. 3 Rajeshwari and father of defendant Ritesh Kumar, namely, Rajendra Kumar was joint owner with the plaintiff. The house was having 24 rooms and there were several tenants occupying the house. In the record of Municipal Corporation, Sagar names of defendants Nos. 3, 4 and 5 were also wrongly shown as owners. The defendant No. 1 used to collect rent from the tenants and when the plaintiff asked the defendant No. 1 the accounts of the rent, their relations became strained and the defendantNo. 1 thereatened the plaintiff with dispossession.

3. It was further alleged that in the year 1987 one plot was purchased at village Karila by the plaintiff and defendants 1 and 2 from one Rameshchand son of Guljharilal Jain vide registered sale deed executed for a sum of Rs. 18,000/-. In the said sale deed also the name of defendant No. 5 was mentioned out of love and affection whereas it was also joint property of plaintiff and defendants Nos. 1 and 2. The defendant No, 5, Tarun Kumar, had not spent any money in the said purchase and the plaintiff, defendant No. 1 i.e. father of Tarun Kumar, and defendant No. 2 Devendra Kumar, were having one-third share each in the said plot. It is pleaded that the plot and the house were jointly held by the plaintiff and defendants Nos. 1 and 2 and there was no partition between the parties. It was further alleged that Rajendra Kumar defendant No. 1 being eldest son of the plaintiff was looking after the affairs of the family and taking advantage of the same he had wrongfully mentioned the names of his wife and sons in the sale deeds and wrong representation was made that plaintiff and defendants 1 and 2 were shown as purchasers. Dispute had arisen between the brothers and they had started living separately. When the plaintiff came to know that defendant No. 1 has committed wrong by mentioning the name of his son in the sale deed of plot, notice dated 14-8-95 was served through counsel which was replied by the defendants Nos. 1, 3, 4 and 5 vide reply dated 28-2-1995. They denied the right, title and interest of the plaintiff and defendant No. 2. Thus, the plaintiff prayed for the relief of declaration that defendants Nos. 3, 4 and 5 have no share in House No. 51 to 54/1 situated at GopalganJ, Sagar and that their names were mentioned nominally in the sale deed dated 23-6-1979 with respect to the house, and in the sale deed executed in the year 1987 with respect to the plot at Karila, the name of defendant No. 5 was wrongly mentioned. It was further prayed that a decree for partition of the suit property among the plaintiff and defendants Nos. 1 and 2 be passed. The accounts of rent were also sought from defendant No. 1 and the amount which may be found due to the plaintiff on such accounting was also claimed.

4. The defendants Nos. 1, 3, 4 and 5 filed joint written statement before the trial Court. They contended that the house situated at Gopalganj was purchased by defendants Nos. 1 and 3 from their self-acquired money and Stridhan and

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defendants 4 and 5 also obtained money from their maternal side. The plaintiff and defendant No. 1 had not invested any amount in the purchase of the disputed house and plot. The names of the plaintiff and defendant No. 2 were mentioned in the sale deeds by Rajendra Kumar, defendant No. 1, who was elder son in the family, out of love and affection. The plaintiff and defendant No. 2 were not thus the actual owners. The defendant No. 1 had initially worked as a typist at the District Court and thereafter he started a typing institute near Jhirna. From the said typing training institute he earned money and established Subhash-Typing, Duplicating and Photocopier. He earned money by his own efforts and purchased the house. The plaintiff and defendant No. 2 were living in a rented house at Badabazar. They had not spent any money towards construction of the house. The plaintiff and defendant No. 2 had shifted to the house in question in the year 1993 and they were occupying the house on monthly rent of Rs. 200/- and 300/- respectively. Defendant No. 3 contributed to the purchase of house by utilising her Stridhan and defendant No. 4 had obtained money from maternal grandmother. Money was advanced by maternal grandmother on the condition that the house would be purchased in the name of defendant No. 4 also. Hence it was denied that the plaintiff and defendant No. 2 had spent any money for purchase of the disputed house. The plot was also purchased by defendant No. 5 Tarun Kumar and the source of money was again pleaded to be payment by maternal grandmother. The plaintiff and defendant No. 2 Devendra Kumar were working as labourers. Hence they were not entitled to any partition. No fraud was committed by the defendant No. 1 as alleged in the plaint. As the defendant No. 1 had spent the money in the construction, the plaintiff and defendant No. 2 would not be entitled to obtain their 1/5th share in the house until they make the payment of 1/5th portion of the money spent on purchase and construction of the house. A plea as to suit being barred by limitation was also raised.

5. The defendant No. 2 Devendra Kumar filed written statement admitting the claim of the plaintiff and asserted his own share in the house and plot to the extent of 1/3rd.

6. The trial Court had declared the plaintiff, defendant No. 1 and defendant No.2 as owners of the house and the plot to the extent of 1/3rd share each and has further held that the names of defendants Nos. 3, 4 and 5 were mentioned in the sale deeds by Rajendra Kumar who is the father of defendants Nos. 4 and 5 and husband of defendant, No. 3 out of love and affection and the house and plot were purchased out of the joint earnings and was joint property of the plaintiff and defendants 1 and 2.

7. In the present appeal, the learned counsel appearing for the appellants who are defendants Nos. 3, 4 and 5 has submitted that the judgment and decree passed by the trial Court is contrary to law. The provisions u/s 45 of the Transfer of Property Act have been ignored. He has further submitted that the evidence on record indicates that the property was purchased from the Stridhan of

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Rajeshwari, appellant No. 1, and the money given to Ritesh Kumar and Tarun Kumar by their maternal grandmother. He has further submitted that the findings recorded by the trial Court are perverse and evidence on record has not been properly appreciated.

8. On the other hand, the learned counsel appearing for the respondent No. 1-plaintiff has submitted that there is variance between the pleadings and evidence led by the defendants Nos. 1, 3, 4 and 5. Their initial case was that the property was purchased by the self-acquisition of defendant No. 1 Rajendra Kumar which was abandoned at the stage of evidence and there is no convincing evidence that money was paid by maternal grandmother to Ritesh and Tarun Kumaj for the purchase. He has further submitted that it has not been established that Rajeshwari was having gold and silver as Stridhan and evidence on this aspect is contradictory. The learned counsel further submitted that the purchase of house property on 23-6-1979 was in the joint names of plaintiff Balchand, one of his sons Devendra Kumar, wife of plaintiff s elder son Rajendra Kumar, namely, Rajeshwari, their son Ritesh Kumar and of plot in the name of minor son Tarun Kumar. But the actual joint ownership was that of plaintiff Balchand and that of his sons Rajendra Kumar and Devendra Kumar and with respect to house an agreement was entered into exclusively by Balchand, the plaintiff and respondent No. 1 with Sureshchandra Shrivastava, the vendor. It is further submitted that the business of Subhash Typing Institute was established by Balchand as is apparent from Certificate of Shop Establishment which stood in the name of Balchand, and it was a joint excursion of plaintiff Balchand and defendants Nos. 1 and 2. Rajendra Kumar was looking after the affairs of the family as the elder son and taking advantage of the confidence and faith in him, he had purchased the plot in the year 1987 in the name of Tarun Kumar, his minor son. Rajendra Kumar had admitted that plot or house was not purchased from his earnings and the evidence is lacking that any money was paid by maternal grandmother, hence preponderence of probabilities lies in favour of the plaintiff. Learned counsel further submitted that when the case has turned up mainly on the oral evidence led by the parties, in the light of the principles enunciated by the Apex Court in the case of Madhusudan Das Vs. Smt. Narayanibai (Deceased) by Lrs. and Others, , the findings of the trial Court are entitled to great weight. There is no perversity in the findings and the view adopted by the trial Court is such that it could reasonably be arrived at. Hence, no interference in the present appeal is called for by this Court.

9. With respect to the house in question situated at Gopalganj, Sagar, it may be seen that it was purchased vide registered sale deed dated 23-6-79 for a sum of Rs. 20,000/-. As purchasers the names of plaintiff Balchand, defendant No, 2 Devendra Kumar who was minor at the relevant time, Rajeshwari (defendant No. 3) wife of Rajendra Kumar, Ritesh Kumar (defendant No. 4) son of Rajendra Kumar were mentioned. Rajendra Kumar defendant No. 1 was present and is mentioned as Manager of the joint family who had accepted the sale deed on behalf of Balchand, plaintiff; Devendra Kumar, defendant No. 2 and other

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persons being his wife and son mentioned in the sale deed. It is also not in dispute that plaintiff Balchand, defendant No. 2 Devendra Kumar and the family of Rajendra Kumar were residing at the time of filing of the suit in the house in question. Balchand and Devendra Kumar had shifted after reconstruction of the house into a four storeyed one. In the Municipal register Ex. P/6, the names of plaintiff Balchand, defendants Devendra Kumar, Rajeshwari and Ritesh are mentioned as owners and for the purpose of saving property tax, it has come in the evidence, the house was divided in four different numbers. There is further evidence on record (Exs. P/7 to P/9) which indicates that light and extravangancy tax was paid by plaintiff Balchand. Other receipts of property tax and other municipal dues are on record from the year 1990 to 1997 (Exs. P/10 to P/23). Ex. P/24 is electricity bill. Ex. P/25 is property tax receipts for the year 1995. All these documents indicate that plaintiff Balchand had paid the property tax and other dues to the Municipal Corporation, Sagar. It may further be seen that Ex. P/4 is the agreement entered into by plaintiff Balchand with Suresh Chandra Shrivastava on 15-4-1979 and earnest money of Rs. 6000/- was also paid under the agreement vide Cheque No. SBH/AQ 099286 by plaintiff Balchand. The sale deed was executed in the same very year on 23rd June, 1979. The plaintiff has deposed that Rajendra Kumar was his eldest son and was looking after all the affairs of the family hence he was sent to get the sale deed executed. Taking advantage of the same he had included the names of his wife and minor son instead of his own name and this finds support from the sale deed Ex. D/12 on record which mentions that Rajendra Kumar had purchased the house and had obtained the conveyance in his capacity as Manager of the joint family. This recital finds place in the sale deed itself. ''Man may tell lie but circumstances do not'' is a cardinal principle of evolution of evidence, and the documentary evidence has to normally prevail over the oral evidence until and unless it is rebutted. Not only that there was an agreement evincing payment of earnest money, Ex. P/5 is a certificate of account/ ledger folio of State Bank of India, filed by the plaintiff, which indicates that gold was pledged in the bank by the plaintiff and he had obtained the payment from the bank. Case of the plaintiff is that he had paid the money to the purchaser on different dates even after the execution of the sale deed. In this regard, not only Ex. P/5 is a document of bank, but Ex. P/26 is also account book for the year 1978-79 filed by P. W. 4 Babulal. Babulal (PW 4) deposed that in order to make the payment of purchase price of the house, loan was, obtained by the plaintiff from him. He has proved the entries in the account books (Exs. P/26 to P/34). Thus, a total sum of Rs. 20500/- was accepted as loan by the plaintiff from July, 1979 to December, 1979. Learned counsel for the appellants has submitted that these amounts were obtained subsequent to the sale deed, but that stands explained by the agreement Ex. P/4. The agreement, as a matter of fact, was for Rs. 43,000/-. The amount of Rs. 6000/- was paid on 15-4-79 by cheque by Balchand and it is the case of the plaintiff that he had taken the loan from the bank in order to pay the price of the house. There is no other evidence on record to suggest that the loan from the bank was obtained for any other purpose.

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10. The defendant No. 2 though has admitted the claim of the plaintiff in his written statement and has claimed his 1 /3rd share, has also led further evidence to show that he was also working jointly with his father Balchand and brother Rajendra Kumar. In order to show that he was working in the typing shop, he has placed on record documentary evidence in the shape of Ex. P/1 certificate issued by the Board of Shorthand and Typing Examination, Madhya Pradesh dated 20-11-1977. Ex. D/2 is the certificate of obtaining the first price in Hindi typing competition held at Sagar. A similar certificate of the year 1988 is also on record as Ex. D/3 which goes to show that Devendra Kumar was involved in typing and another certificate is on record as Ex. D/11 which indicates that he participated in the Speed Typing Championship conducted by Godrej Prima. The certificate of Shop and Establishment (Ex. P/3) dated 21-4-1969 in the name and style of ''Subhash Photo Copy Centre'' is on record in which the owner is mentioned as Balchand Jain, the plaintiff. Thus, there is corresponding evidence furnished by the typing certificates produced by Devendra Kumar that he was also working in Subhash Typing Institute. The oral evidence thus finds support from the documentary evidence. It may further be seen that municipal taxes were also paid by Devendra Kumar with respect to the house in question for the years 1990-91, 1991-92. 1992-93, 1995-96, 1996-97 (Exs. D/4 to D/10 on record). Payment of municipal taxes is an incident of exercise of right of ownership and it is further corroborated by the fact that name of Devendra Kumar was shown as one of the purchasers in the sale deed Ex. D/ 12 on record and he was admittedly in occupation of a part of the house on the date of filing of the suit. Defendant No. 1 Rajendra Kumar stated that his brother was occupying the house in the capacity of tenant not in the capacity of owner. The payment of the taxes indicates that Devendra Kumar was occupying the house by virtue of his ownership and not as tenant of his brother Rajendra Kumar. Similarly, defendant No. 1 Rajendra Kumar has failed to establish that his father was occupying the house as tenant. There was no evidence produced in that regard. Thus the joint enjoyment of the house in question is established. Similarly, it is made out from the evidence that the house in question was constructed by the joint efforts and earnings of plaintiff and his two sons Rajendra Kumar and Devendra Kumar.

11. It may be seen that dispute arose between the parties from year 1994-95 and their relations got strained. Police report was lodged by Devendra Kumar on 13th July, 1995 complaining that Rajendra Kumar was trying to take photo copy machine from the shop. Devendra Kumar also filed a suit (C.S. No. 22-A/95) in the Court of II Civil Judge Class II, Sagar against Rajendra Kumar and others in which the present plaintiff Balchand was a party. The reply was filed by defendants Nos. 2, 3 and 4 namely Rajendra Kumar, Rajeshwari and Ritesh. Out of them two are appellants before this Court and Rajendra Kumar is respondent. The reply to the application under Order 39, Rules land 2, C.P.C, filed by them indicates that the father was also working in the same shop in which the business was carried on and it was also admitted that they had allowed the plaintiff and defendant No. 1 to reside in the house on their assurance of

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payment of rent. An affidavit of Rajendra Kumar (Ex. P/15) has been placed on record in which it was mentioned that his wife was also working in the shop and used to obtain payment and wages in lieu of the work done by her. Ex. D/16 is an order of injunction passed in the said case. Counter-foil of cheque book has been submitted by Devendra Kumar as Ex. P/18.

12. On behalf of the contesting defendants Nos. 1,3, 4 and 5, Rajendra Kumar and his family, defendant No. 1 Rajendra Kumar himself has been examined as D.W. 3. Rajeshwari D.W. 4 has been examined as D.W. 4 and Kapoorchand Jain, brother of Rajeshwari, was examined as D.W. 5. Certain documents in the shape of rent note Ex. D/-24 dated 12-4-72 in favour of Rajendra Kumar executed by Ganesh Kumar; agreement dated 6-6-81 Ex. D/-25 executed by Mukundi in favour of plaintiff Balchand which relates to purchase of certain land; another similar agreement dated 17-5-79 (Exs. D/27 and D/29) have been filed by Rajendra Kumar to show that his father used to lend money in lieu of the agreements. Certificate Ex. D/-26 dated 15-9-74 issued by Deputy Collector, Sagar which indicates income of Balchand to be Rs. 1100/- per month does not show for what purpose the said certificate was issued and whether any enquiry was conducted by the Deputy Collector prior to issuance of the same. Submission of the learned counsel for the appellants that plaintiffs income was inadequate, hence he could not have purchased the property, based on this certificate, is fallacious. Firstly, income of Rs. 1100/- per month in the year 1974 carried much value. Secondly it has not been proved that this certificate was issued pursuant to any enquiry and it has not been made clear by the Deputy Collector who had issued it as to for what purpose it was issued and whether it was a public document. The agreements which have been placed on record indicate that the father was having the money and Rajendra Kumar used to look after the work.

13. It is a settled principle that there is no presumption that joint family possesses joint property. Merely because a family is joint, every property purchased or held by its members is not a property of joint family. The burden of proving it to be so is on the party asserting it. Plaintiff Balchand has deposed that initially he was doing typing and photo copy business and subsequently he also started tailoring business. Rajendra Kumar and Devendra Kumar used to assist him in the business. He has further deposed that he had purchased a house on 23-6-1979 from Sureshchandra and paid the consideration of Rs. 20,000/- to Sureshchandra. He is supported by documentary evidence i.e. Shop and Establishment Certificate (Ex. P/3), Agreement (Ex. P/4) and the bank loan document Ex. P/5 and other documentary evidence in the shape of municipal receipts Exs. P/7 to P/23. He has further deposed that he had purchased the plot at Karila for a sum of Rs. 18,000/-in the name of his sons. The money was paid from the typing shop for the purpose of purchase of the said plot at Karila. When the shop was established in the year 1969, Rajendra Kumar was young and Subhash Typing Institute was initially started in the ownership of plaintiff Balchand, later on the said business was joined by two of his sons Devendra Kumar and Rajendra Kumar and the plaintiff, besides the typing business, was

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also doing tailoring business in the same premises. The other evidence led by the plaintiff in the shape of Madhav Prasad Shukla (PW 1) who has proved the entries in the municipal register with respect to the house. Ramesh Kumar was examined as P.W. 3 who also stated that there was joint business of plaintiff and defendants Nos. 1 and 2. Ramesh was having special means of knowledge as he is son-in-law of Balchand. Babulal was examined to prove the payment of loan for the purchase of the house. Manorama Upadhyaya was examined as P.W. 5 who deposed that it was the plaintiff who had got constructed the house after dismantling the dilapidated house. It was a joint venture of plaintiff Balchand and his two sons Rajendra Kumar and Devendra Kumar. Dayashankar Pandey (PW 6) stated that plaintiff and defendants were doing joint business. Defendant No. 2 Devendra examined himself as D. W. 1 and stated that house and plot were purchased out of joint earnings of his father Balchand, himself and brother Rajendra Kumar and they were doing joint business. Money was not invested by Rajendra Kumar alone. It was out of hotchpot that the properties were purchased. He has examined another witness Rajesh Kumar Namdeo to support his case, who deposed that Subhash Typing Institute was joint business of the plaintiff and respondents Nos. 1 and 2. Thus, from the evidence led by the plaintiff as well as defendant No. 2 who has admitted the claim of the plaintiff it is clear that the plaintiff, defendant No. 1 and defendant No. 2 were doing the common business and their earnings were not segregated.

14. It has to be examined whether presumption arises from the evidence led by plaintiff and defendant No. 2 that other defendants Nos. 1, 3, 4 and 5 have been able to show that house as well as the plot in question were not the joint property and they had purchased it from their own self earning. The defendants 1, 3, 4 and 5 i.e. the family of Rajendra Kumar have led evidence. Three witnesses were examined, namely, defendant No. 1 Rajendra Kumar (D.W. 3), defendant No. 3 Smt. Rajeshwari (DW 4) and Kapoorchand Jain (DW 5). The pleading in the written statement was that the house was purchased by self earned income of Rajendra Kumar and Stridhan of defendant No. 3 Rajeshwari and property obtained by defendants Nos. 4 and 5 from maternal side. It was not pleaded in the written statement as to what was the extent of property obtained by defendants Nos. 4 and 5 from the maternal side. As to construction of the house, it was pleaded in the written statement by them that it was constructed by Rajendra Kumar from self earning and when the house was constructed the maternal grandmother of the defendant No. 4 had advanced the money only on the condition that name of Ritesh Kumar would be mentioned in the sale deed. How much money was advanced was not pleaded in the written statement for purchase of the house. As to purchase of the plot, in para 6 of the written statement the plea taken by the contesting defendants was that the maternal grandmother had purchased the plot for Tarun Kumar, defendant No. 5.

15. At the stage of evidence, defendants Nos. 1, 3, 4 and 5 had departed from their joint written statement and Rajendra Kumar had candidly admitted in para 46 of his deposition that in the purchase of disputed plot and the house, he had

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not invested any money, but only the money of his wife and sons was used. He had not incurred any expenditure. Thus, there is variance between pleadings and evidence with respect to investment made by Rajendra Kumar from his self acquired money in the purchase of house. It may further be seen that with respect to the plot situated at Karila, District Sagar, Rajendra Kumar (DW 3) had deposed that 4 k.g. silver of his wife was utilised for purchase of the plot. Thus, there was departure again from the pleading in the written statement that purchase was made by maternal grandmother of Tarun Kumar for the benefit of Tarun Kumar. In para 50 the witness could not state as to whom the silver was sold or at whose shop it was sold. He expressed his ignorance as to the facts. Thus, it is clear that Rajendra Kumar''s version is not acceptable that Karila plot was purchased by sale of silver belonging to his wife. It was not the pleading in written statement and further factum of sale itself is not established. In paragraph 16 of his statement, this witness has further stated that his wife was not given any gold from her parental side. He has further deposed that Ritesh Kumar had obtained 400 grams of gold which was sold for the purpose of construction of the house whereas the written statement is that the house was constructed by his self-acquired funds and the fact of sale of gold and giving the gold to Ritesh Kumar itself has been rightly found not established by the evidence of Rajeshwari (D.W. 4) and Kapoorchand (D.W. 5). Entirely different set of story as to source of money has been advanced by D.W. 4 Rajeshwari. She deposed that she had borrowed a sum of Rs. 16,000/- from her father and she had Rs. 4500/- in her bank account and Rs. 2000/- she was having with her. She had given Rs. 22,000/- to her husband Rajendra Kumar for the purchase of the house. This is contradicted by the written statement wherein it was mentioned that her Stridhan was used, and the earnings of Rajendra Kumar as well as the money paid to Ritesh by his maternal grandmother was also used. This story has been changed to name the father of Smt. Rajeshwari, no bank account has been produced, and on the contrary, bank account has been filed by the plaintiff Balchand which stood in his name. Again, with respect to the construction of the house she stated that she obtained money from her father to the tune of Rs. 80-90 thousand. There are material contradictions in the statements of the husband and wife i.e. defendant No. 1 Rajendra Kumar and defendant No. 3 Rajeshwari with respect to the source of money. According to D.W. 4 Rajeshwari she obtained money from her father which has not been pleaded in the written statement. With respect to the purchase of Karila plot, there is departure from the written statement and she stated that she sold 4 k.gs. of silver which was with her whereas the written statement, as mentioned above, was that maternal grandmother had purchased the plot for defendant No. 5 Tarun Kumar and sale of silver was not mentioned as the source of money for purchase of Karila plot. She also could not state where the gold or silver was sold. She has further deposed that no amount of earning of her husband was invested either in the house or the plot which is contrary to the pleadings in the written statement. Kapoorchand (DW 5) has deposed that his grandmother had given certain gold and 4 k.gs. of silver to Rajeshwari. Rajeshwari had served grandmother and as

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such she (grandmother) had given gold and silver to her. At the relevant time Rajeshwari was 11-12 years. He has further deposed that no other ornaments, etc. were given to other sisters. Such gift has been rightly disbelieved by the trial Court. Thus, the plaintiff''s evidence has not been rebutted by the defendants. However, the mere fact that somebody''s name is mentioned in the sale deed, who is member of the family, would not make him the owner when the evidence on record is clear that there was no other source of income with defendants Rajendra Kumar, Rajeshwari, Ritesh and Tarunkumar. It is apparent that there was joint business and there was no partition of the house and they were all residing in the house. The source of money for Karila plot also appears to be the joint earning. The i presumption u/s 45 of the T. P. Act is not attracted in the present case.

16. The findings of the trial Court are mainly based upon the oral testimony coupled with overwhelming documentary evidence in favour of plaintiff''s case. In such event, these findings are entitled to respect as per the law laid down in the case of Madhusudan Das Vs. Smt. Narayanibai (Deceased) by Lrs. and Others, . No infirmity or perversity could be pointed out by the learned counsel for the appellants in the findings recorded by the trial Court that Balchand, Rajendra Kumar and Devendra Kumar are having 1/3rd share each in the house and plot in question. Thus the appellants have also got right in the property qua Rajendra Kumar. No other point was raised in the present appeal.

17. In the result, the appeal fails and is hereby dismissed. However, in the circumstances, the parties are directed to bear their own costs as incurred in this appeal.

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