

(2018) 05 CHH CK 0057
In the Chhattisgarh High Court
Case No : FA No. 176 of 1998

Sompal Singh Died Chandra Bhushan Through Lrs And Ors.	APPELLANT
Vs	
Ben Kumari Died Chandra Pratap Singh And Ors.	RESPONDENT

Date of Decision : 10-05-2018

Acts Referred:

Citation : (2018) 05 CHH CK 0057

Hon'ble Judges : MANINDRA MOHAN SHRIVASTAVA, J

Bench : Single Bench

Advocate : H.S.Patel, Satish Gupta

Final Decision : Dismissed

Judgement

1. This appeal is directed against impugned judgment and decree dated 07/03/1998 passed in Civil Suit No.6-A/91 by which, the learned Trial Court has dismissed the suit of the plaintiff.

2. The appellants/ plaintiff filed a suit seeking a declaration on the pleadings inter alia that the plaintiffs and respondent No.1 belong to a joint Hindu

family, they are tribals and the disputed property belongs to joint family of Vishal Singh and Surajbhan. Surajbhan had one son -Satyanarayan and

Vishal Singh had four sons namely Harnarayan, Tribhuwan, Jagmohan and Budhram. After death of Satyanarayan, he left behind his widow -

Benkumari (defendant No.1). Budhram died issueless. Sompal Singh, the plaintiff is the son of Jagmohan. Chamarin Bai is widow of Tribhuwan.

Harnarayan has no issues. Case of the plaintiffs was that the joint family property of Surajbhan and Vishal Singh was held by plaintiffs and Benkumari

jointly and there was no partition of the joint holding situated in different villages of Tahsil-Katghora. According to the plaintiffs, the joint holders which

includes plaintiffs and defendant No.1 were jointly cultivating land and holding possession. Cause of action arose for filing suit when the plaintiffs

came to know that defendant no.1 " Benkumari (widow of Satyanarayan) started selling the joint family property by various sale deeds executed in

the year 1987 and later on. On these pleadings and cause of action, the plaintiffs brought the suit for declaration that the property in dispute is a joint

family property and the plaintiffs are entitled to be recorded as joint holders in possession.

3. The case of defendant No.1 -Benkumari was that the property was already partitioned way back in the year 1976 amongst Satyanarayan, Sompal

Singh (son of Jagmohan), Chamarin Bai (widow of Tribhuwan Singh) and Harnarayan under revenue proceedings drawn by Tahsildar in the year

1976 and thereafter, the parties were cultivating over their separate shares and therefore, the suit is liable to be dismissed.

4. On the basis of pleadings of the parties, learned Trial Court framed as many as seven issues, one of them being whether a partition was effected

amongst the plaintiff and defendant No.1, in which, parties had taken their respective shares.

5. Learned Trial Court held that the property in dispute was already partitioned, relying upon the evidence led by the defendants and disbelieving the

plaintiffs' version that there was no partition.

6. Learned counsel for the appellant argued that the learned Trial Court fell in error in recording the finding that the partition had taken place even

though the plaintiffs witnesses clearly deposed that no partition had taken place in the past and certain documents were created for limited purpose of

avoiding the consequences under ceiling proceedings without there being any intention of partition amongst the parties. It is submitted that Benkumari

never entered the witness box and her nephew namely Vijay Kumar Singh (DW1) stated that no partition took place. It is submitted that the learned

Trial Court relied upon the orders passed by the revenue authorities and a report dated 18/07/1976 said to be signed by Chamarin Bai, Harnarayan,

Sompal Singh and Satyanarayan ignoring that Chamarin Bai, Harnarayan, and Sompal Singh have clearly deposed that their signatures were obtained

on blank papers and it was not known to them that it is being used as document of partition.

7. On the other hand, learned counsel for the respondent supports the judgment and decree of the Trial Court by submitting that the Trial Court has relied upon the document (Ex.P/3) which bears the signature of all the parties which was sought to be denied by saying that signatures were obtained on blank papers and it was only a sham partition and for name sake to avoid ceiling proceedings. The partition had taken place under revenue proceedings in which the order was passed by the Tahsildar way back in the year 09/07/1976, mentioned in Ex.D/3. These orders and revenue proceedings were never challenged by the plaintiffs. He would further submit that a perusal of Ex.D/3 would show that the branch of Surajbhan, Satyanarayan received 71.53 acres whereas in the branch of Vishal Singh, brother -Surajbhan, Sompal Singh, Chamarin Bai and Harnarayan were allotted more than 78 acres of land. Therefore, judgment and decree passed by the Trial Court does not warrant any interference.

8. The pivotal issue arising for consideration in the present case is whether the partition was proved by the defendants.

9. The case of the plaintiffs has been that the property in dispute was joint family property of Surajbhan and Vishal Singh and plaintiff and defendant

no.1 are successors of Surajbhan and Vishal Singh. Admittedly, Satyanarayan was son of Surajbhan whereas Budhram, Jagmohan, Tribhuwan and

Harnarayan were sons of Vishal Singh. It is also not in dispute that Benkumari is the widow of Satyanarayan, Sompal Singh is the son of Jagmohan

and Chamarin Bai is widow of Tribhuwan.

10. From the pleadings of the plaintiffs, it is clear that even according to the pleadings, the property was joint family property of Surajbhan and Vishal

Singh but the case of the plaintiffs is that there had been no partition of the joint holding. In the pleadings, it has been stated that arrangement letter

dated 07/12/1973 was only a sham document of partition on the basis of which, Revenue Case no.10/A-27/75-

76 was registered in which the order was passed on 02/07/1976. Further pleadings is that it was only for name sake. There was actually no partition

and the parties continued to hold the joint family property and cultivated the same jointly without there being any partition. It was further pleaded that

the partition shown were only for name sake but the jointness continued.

11. Chamarin Bai (PW1) has deposed in her evidence that the property was joint

in nature originally belonging to three brothers, one being her father-in-law / Vishal Singh. She, however, states that she does not know the names of other two brothers of her father-in-law. According to her evidence, all the parties jointly held the land and there was no partition. In para 6 of her evidence, she has stated that no partition had taken place in the year 1973 and in order to save the land from ceiling, Dadu Satyanarayan obtained thumb impression on a blank paper and she was not read over the contents of the same. She admits that she has passed 3rd standard and puts thumb impression. In her cross examination, she states that the paper on which her signatures were obtained, were kept by her brother-in-law (Jeth). In para 17 of her testimony, she states that she never made any complaint regarding thumb impression taken on blank papers. In para 21, she admits having given certain land to Kanhaiyya, Dujram and Chhattar but admits that they are joint family property. She further deposes that the lands which have been given by her to aforesaid persons are her own property which was given to her by her father-in-law for maintenance. In para 22, she admits that she sold an acre of land to Roopnarayan two years before without taking consent of Benkumari, which was explained by stating that the land was given to her by her father-in-law. This witness, thus admits that she had put her thumb impression on the documents but denies contents of the same saying that her thumb impressions were taken on blank papers. She states that she never made any complaint regarding the same. It has further been stated by her in her cross examination that she had not only sold the land to other persons but also sold the land to others without taking any consent by Benkumari which is sought to be explained by stating that the land was given to her by her father-in-law. Therefore, it is proved is that Chamarin Bai does not dispute her thumb impression but seeks to explain by stating that it was obtained on blank paper in respect of which, she never made any complaint. She also admits having herself sold the land without taking any permission of Benkumari.

12. Harnarayan Singh (PW2) though deposes that no partition has taken place and all are enjoying the property and cultivating jointly. He also admits that he has put thumb impression on blank papers. In his cross examination, he deposes that he does not know as to what is the total extent of joint family property, what is the revenue payable and paid.

13. Sompal Singh (PW3) deposes in his examination-in-chief that no partition proceedings had taken place in the Tahsil office. In his cross

examination, he has denied that any partition had taken place. With reference to document dated 18/07/1976 (Annexure D/3) submitted in the Court of

Nayab Tahsildar in the matter of partition, this witness states in cross examination that his signatures were obtained on a blank paper but he admits

that he did not make any complaint to anybody. Bisahu Ram (PW4) and Bandhu Singh (PW5) supported the case of the plaintiffs by deposing that

partition had not taken place. These are villagers and not members of the family of plaintiffs.

14. The defendant No.1 did not enter the witness box and on behalf of defendant No.1, two witnesses were examined, namely Vijay Singh and Omkar

Singh. Omkar Singh is the son of Jagmohan Singh. Vijay Singh (DW1) who is the nephew of Benkumari has admitted in para 6 of his cross

examination that according to him, partition had not taken place. In para 7 of his deposition, he, however, denies suggestion that plaintiffs and

defendant No.1 are joint family members and jointly cultivating. This witness is not party to the partition amongst the joint holders i.e. Satyanarayan,

Budhram, Sompal Singh, Chamarinbai and Harnarayan. Omkar Singh (DW2) deposes that the parties are cultivating their lands separately since last

50 years. Witness No.1 of defendant No.2 to 11 has been examined to depose regarding pendency of litigation between him and Sompal Singh and

has produced order of the Board of Revenue as Ex.D/2. He has also produced copy of the report said to be signed by the parties before Nayab

Tahsildar as Ex.D/3.

15. The oral and documentary evidence of the parties prove that initially, the parties were jointly holding the disputed properties but as far as issue of

partition is concerned, there is a dispute. The plaintiff witnesses, however, admit that their signatures were taken on certain documents but say that

their signatures were taken on blank papers, in respect of which, they did not make any complaint. The defendants have placed before the Court an

order (Ex.D/2) passed by the Board of Revenue which refers to a proceeding of partition between the parties and an order passed therein on

09/07/1976 by Nayab Tahsildar. The relevant extract of the said order in para 5 are as below -

Â â??bl izdkj ds cVokjs dk ifj.kke mHk; i{kksa dks Hkksxuk pkfg;SA vij dyDVj ds vfHkys[k Ik`""B 19&21 ij uk;c rglhynkj ds vkns'k fnukad 09-07-76

ds vkns'k dh izekf.kr izfrfyfi dh QksVks izfr layXu gS ftlesa uk;c rglhynkj }kjk ;g vkns'k ikfjr fd;s x;s gSa fd &

4- izdj.k dh mi;qZDr foospuk ds vk/kkj ij dafMdk &3 esa of.kZr xzkeksa dh Hkwfe vkosndksa ds gd ,oa tehu dh gSfl;r ds vuqlkj foHkkftr dh tkrh gSA

vkns'k ikfjr ,oa vkosndksa dks lwfpr fd;kA

5- iVokjh g-ua-45 dks vkns'k fn;k tk; fd og [kkksa dk foHkktu dj izfrosnu vxyh frfFk rd U;k;ky; essa izLrqr djsaAâ??

16. Ex.D/3 is the certified copy of a document of partition dated 18/07/1976 submitted before the Nayab Tahsildar, Katghora which refers to order

dated 09/07/1976 of Nayab Tahsildar, Katghora. It gives the details of various shares of partition proceedings. This document is said to be containing

thumb impression of Harnarayan, Sompal, Chamarinbai and Satyanarayan. This Court finds that in this document, the total extent of land given to the

share of Satyanarayan is 71.53 acres whereas the total extent of land fell to the share of Sompal, Chamarinbai and Harnarayan is more than 78 acres.

It has to be noted that Satyanarayan alone represented the branch of Surajbhan whereas Sompal Singh, Chamarin Bai and Harnarayan represented

together the branch of Vishal Singh. It is not in dispute that the property was jointly held by Surajbhan and Vishal Singh. Thus, an equitable partition

would involve equal distribution of shares amongst successors of Surajbhan and Vishal Singh. In the said document, share of Satyanarayan is stated to

be 71.53 acres whereas Sompal Singh, Chamarin Bai and Harnarayan belonging to the branch of Vishal Singh have taken more than 78 acres as their

share. Thus, it appears that under this partition, the branch of Vishal Singh had taken more share than what was given to Satyanarayan which is

approximately 9 acres more.

17. This Court also notices the admission on the part of Chamarinbai (PW1) that she has already partitioned and sold that land without taking consent

of Benkumari which also supports the case of the defendant that the partition had already taken place. The explanation given by her that this land

which she sold and parted with was given to her by father-in-law for her maintenance, has not been disclosed in her plaint and appears to be an

afterthought.

18. Therefore, in view of above consideration, this Court does not find any ground to interfere with the impugned judgment. The appeal is accordingly dismissed. Decree be accordingly drawn. Parties to bear their costs as per certificate given in this regard.