

HIGH COURT OF MADHYA PRADESH**BENCH AT GWALIOR****SINGLE BENCH****BEFORE JUSTICE S.K.AWASTHI****Second Appeal No.160/2014**

Sushila Bai and others

Versus

Smt. Rajkumari and others

Shri Vilas Tikhe, learned counsel for the appellants.

Shri R.K.Upadhyay, learned counsel for the respondents.

J U D G M E N T**(03.11.2016)**

The subject matter of the present second appeal is the judgment and decree dated 18.12.2013 passed in Civil Appeal No. 29A/2012 by Additional District Judge, Chachoda, District Guna (M.P.), whereby the judgment and decree dated 7.5.2012 passed in Civil Suit No. 1A/2012 by the Additional Judge to the Court of Civil Judge Class-1, Chachoda, District Guna, rejecting the suit filed by the present appellants/plaintiffs has been affirmed.

2. The facts in brief necessary for adjudication of the instant appeal are that the appellants/plaintiffs are the daughters of the deceased defendant No.1 Shrilal, who expired during the course of consideration of the first appeal. The deceased defendant No.1 Shrilal was a coparcener with his father Shri Biharilal being the Karta of the Hindu Undivided Family (for brevity, 'HUF'). The defendant No.1 had two brothers, who further have their

children. After the death of Biharilal, the remaining coparceners, i.e., the defendant No.1 and his two brothers, entered into family settlement and carried out partition of the properties in the name of HUF. Subsequent to partition, the defendant No.1 acquired the ownership of survey No. 503 admeasuring 3.166 hectares, survey No. 875/1 admeasuring 4.682 hectare, survey No. 876 admeasuring 0.084 hectares, survey No. 532/2 admeasuring 1.902 hectares, and survey No. 778 admeasuring 0.052 hectares in village Bhamawat, Tahsil Kumbhraj, District Guna (M.P.).

3. During the life time of deceased defendant No.1, he had sole possession over the land in question described above. As indicated above, the defendant No.1 had three daughters, who are the plaintiffs. The defendant No.1 parted with his ownership from the land in question by executing three separate sale deeds on 7.9.2010. Vide the first sale deed (Ex.D/2), the land of survey No.503 was sold to the defendant No.2. The second sale deed (Ex.D/3) was executed for transfer of a part of survey No.875/1 and 876 in favour of defendants No.4 and 5. The third sale deed (Ex.D/1) was executed for transfer of the land of survey No.532/2, 778 and remaining portion of survey No.875/1 in favour of defendant No.3.

4. The appellants/plaintiffs have objection to the transfer of property in question on the ground that they have coparcenary rights in the property in question, as they are the daughters of the defendant No.1. In order

to substantiate this ground, the appellants/plaintiffs relied on the amendment carried out in the year 2005 under the Hindu Succession Act, 1956, by which the rights have been conferred on the Hindu females to have coparcenary rights in the property of HUF. Consequently, the suit for declaration and permanent injunction has been filed before the Court of Civil Judge Class-1 to declare the sale deeds dated 7.9.2010 as null and void.

5. It is borne out from the record that the plaint has been framed in a manner that the appellants/plaintiffs have admitted the status of the property in question to be a separate property and not the property under HUF, as the partition has already taken place amongst the coparceners of the HUF prior to coming into force of the amendment of 2005 in the Hindu Succession Act, 1956. The record further reveals that in the cross-examination, the appellants/plaintiffs have admitted that they are born post the year 1956. On a cumulative consideration of these facts and the evidence brought on record by both the parties, the trial court vide judgment dated 7.5.2012 dismissed the suit.

6. The appellants/plaintiffs challenged the judgment pronounced by the trial court by ~~the~~ way of appeal under Section 96 of the Code of Civil Procedure, 1908 before the First Appellate Court, District Guna in an appeal bearing Civil Appeal No. 29A/2012 and canvassed the same grounds that they have interest in the property of the deceased defendant No.1 Shrilal

and, therefore, execution of sale deeds dated 7.9.2010 is null and void as the transfer is without the consent of the appellants/ plaintiffs. The First Appellate Court after carefully examining the record of the case and arguments advanced by both the parties came to conclusion that the judgment dated 7.5.2012 does not suffer from any infirmity warranting interference. Consequently, the First Appellate Court vide judgment dated 18.12.2013 dismissed the appeal affirming the findings of the trial court.

7. Feeling aggrieved by the concurrent finding recorded by both the courts below, the instant appeal has been preferred under Section 100 of the Code of Civil Procedure.

8. The primary contention of the appellants/plaintiffs is that the property in question was acquired by the funds of HUF during the life time of their grandfather Shri Biharilal and as per the Personal Law prevailing at the point of time, all the coparceners have equal interest in the property acquired from the funds of the HUF. It has also been contended that the share of Hindu woman has been recognised by the Legislature in the year 2005 whereas the sale deeds have been executed in the year 2010. Therefore, the appellants/plaintiffs are women and may not have right prior to 2005 but the facts in hand refer to the transaction with coparcenery property in the year 2010 when the rights of the appellants/plaintiffs had been duly recognised.

9. Learned counsel for the appellants has placed

reliance on the judgment pronounced by the Hon'ble Apex Court in the case of **Sheela Devi and others vs. Lal Chand and others (2006) 8 SCC 581**, to submit that the Court clearly recognised the fact that if, at the time of dealing with the property of HUF a birth in the family had taken place then by virtue of Mitakshara School of Hindu Law, without the consent of the coparcener disposition of the property cannot be done.

10. On the contrary, learned counsel for the respondent/defendant submitted that the law relating to birth right has undergone a change in the year 1956 by introduction of Hindu Succession Act, 1956 and, therefore, any birth which has taken place post the year 1956 will have no rights in the HUF property. The learned counsel referred to the statements of the appellants/ plaintiffs in which an admission with regard to their date of birth to be post the year 1956 has been made. Therefore, it is contended that the courts below have not committed any error in dismissing the suit of the appellants/plaintiffs. In order to substantiate the contentions, learned counsel for the respondents/ defendants placed reliance on the judgments in the cases of **Chandrakanta and another vs. Ashok Kumar and others, 2002 (3) MPLJ 576; Anil and others vs. TGattulal and others, 2004 RN 109; Ghanshyam vs. Kanhiyalal, 2007 (4) MPLJ 418; Babulal vs. Ramkali Bai, 2012 (II) MPWN 58; Bipta Bai (Smt.) vs. Smt. Shipra Bai & ors., I.L.R. [2009] M.P. 1402; and Rajesh vs. Keshar Singh, I.L.R.[2012] M.P., 951.**

11. Having regard to the submissions advanced by all

the parties, it is appropriate to first refer to the legal position with respect to the property in question. It is admitted amongst the parties that prior to execution of sale deeds dated 7.9.2010 the partition amongst the members of HUF had taken place. In fact the property in question described above was received by the defendant No.1 after the partition. Therefore, the point for determination is that after the division of HUF property what are the rights of the holder of the divided HUF property ?

12. At this juncture, reference to judgment of Apex Court in the case of **Hardeo Rai vs. Sakuntala Devi and others, (2008) 7 SCC 46**, is relevant. The Apex Court while dealing with the similar issue about the status of the divided HUF property after partition observed in the following manner :-

"22. For the purpose of assigning one's interest in the property, it was not necessary that partition by metes and bounds amongst the coparceners must take place. When an intention is expressed to partition the coparcenary property, the share of each of the coparceners becomes clear and ascertainable. Once the share of a coparcener is determined, it ceases to be a coparcenary property. The parties in such an event would not possess the property as "joint tenants" but as "tenants-in-common". The decision of this Court in SBI v. Ghamandi Ram (1969) 2 SCC 33, therefore, is not applicable to the present case.

23. Where a coparcener takes definite share in the property, he is owner of that share and as such he can alienate the same by sale or mortgage in the same manner as he can dispose of his separate property."

13. The reproduced portion of the judgment of the

Apex Court in **Hardeo Rai (supra)** leaves no iota of doubt that the holder of the divided HUF property after partition has unfettered rights to deal with the separated property which includes alienation by sale or mortgage in the same manner as he can dispose of a self acquired property.

14. At this stage, the judgment of Apex Court relied upon by learned counsel for the appellants/ plaintiffs in the case of **Sheela Devi (supra)** is required to be appreciated in the light of the facts of the present case. A fair reading of the judgment clearly indicates that the Apex Court in an unambiguous manner has held that the birth right in the HUF property is only available to the person who has taken birth prior to the year 1956. However, in the facts of the present case it is an admitted position that the appellants/plaintiffs are born post the year 1956, therefore, the judgment does not help cause of the appellants/plaintiffs.

15. The next contention advanced by the appellants/ plaintiffs is that by introduction of the amendment in the year 2005 in Hindu Succession Act, 1956, the appellants/plaintiffs have equal share as that of a male member of the family. It is true that the Legislature has duly recognised the long due rights of the woman in the property held by a Hindu family but it is also true that right which is referred to will have significance only in the case the holder/owner of the property dies since section 164 of the M.P. Land Revenue Code, 1959, which deals with the devolution of right over agricultural

lands, clearly provides that the interest or right shall only devolve after the death of the holder. To put it differently, the holder of the land can dispose of his property in any manner as he deems fit but his successor will have interest over the said property only when he expires and the property held by him still remains whereas in case he sells off the entire property then the question of succession does not arise.

16. In view of the above discussion made herein above, the contentions canvassed by learned counsel for the appellants/plaintiffs deserve to be repelled. It is the settled position of law that the appeal preferred under Section 100 of the Code of Civil Procedure, 1908 can only be entertained if there exists a substantial question of law for adjudication. However, in the case at hand, there appears no substantial question of law involved and in the light of the settled legal position, no interference with the concurrent finding recorded by both the courts below is mandated. Consequently the appeal is dismissed. The costs to be borne by respective parties.

(S.K.Awasthi)
Judge.

(yogesh)