

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL

SECOND APPEAL No. 839 of 1998

Between:-

1. **JANKI PRASAD, S/O SHRI LAXMIPRASAD
LODHI, AGED ABOUT 21 YEARS,
OCCUPATION-AGRICULTURIST R/O
GONGVARIYA, TAHSIL-NAGOD, DISTRICT-
SATNA, M.P.**

.....APPELLANT

**(BY SHRI R.P. AGRAWAL, SENIOR ADVOCATE
WITH SHRI SARANSH KULSHRESHTHA,
ADVOCATE AND SHRI RAHUL GUPTA,
ADVOCATE)**

AND

1. **RAMBALI S/O SHRI GAYA PRASAD LODHI,
AGED ABOUT 35 YERS, R/O ITORAKALA,
TAHSIL-NAGOD, DISTRICT-SATNA, M.P.**
2. **MUKESH KUMAR, S/O LATE SHRI
LAXMIPRASAD, AGED NOT KNOWN, R/O
GANGVARIYA, TAHSIL-NAGOD, DISTRICT-
SATNA, M.P. (DEAD AND DELETED)**
3. **MST. BUDHIYA, W/O LAXMIPRASAD LODHI,
AGED ABOUT 46 YEARS R/O GANGVARIYA,
TAHSIL-NAGOD, DISTRICT-SATNA, M.P. (DEAD
AND DELETED)**
4. **RAMSAKHI, D/O LAXMIPRASAD, AGED
ABOUT 30 YEARS**
5. **KALLI, D/O LAXMIPRASAD LODHI, AGED
ABOUT 21 YEARS**
6. **CHORIYA, D/O LAXMIPRASAD LODHI, AGED
ABOUT 19 YEARS**

**RESPONDENTS 4 TO 6 ARE R/O UJNEHI
TAHSIL-NAGOD, DISTRICT-SATNA, M.P.**

- 7. STATE OF MADHYA PRADESH THROUGH
COLLECTOR, SATNA, DISTRICT-SATNA, M.P.**

.....RESPONDENTS

(NONE FOR THE RESPONDENTS)

Reserved on : 17/11/2022

Pronounced on : 28/11/2022

This second appeal was heard and reserved for judgment, coming on for pronouncement this day, the court passed the following :

JUDGMENT

This second appeal has been filed by the plaintiff-Janki Prasad challenging the judgment & decree dated 09.03.1998 passed by learned 3rd Additional District Judge, Satna in Civil Appeal No. 10-A/89 confirming the judgment & decree dated 11.07.1989 passed by learned 2nd Civil Judge Class-I, Satna in Civil Suit No. 9A/82 (old no.97-A/73) and 9A/1/82 dismissing both the civil suits.

2. In short the facts are that the plaintiff/appellant instituted civil suit No. 9A/82 for declaration that the sale deed dated 18.05.1972 (Ex.P/11-c) executed by his father Laxmiprasad in favour of defendant 1-Rambali to be null & void. Another civil suit No. 9A/1/82 was also filed by plaintiff/appellant for declaring the sale deed dated 03.07.1970 (Ex.P/11) null & void executed by his father Laxmiprasad in favour of Gayaprasad, who is father of Rambali.

Both these civil suits were consolidated by learned trial Court and by passing the impugned judgment & decree dated 11.07.1989 were disposed off and dismissed.

3. The said civil suits were filed for declaring the sale deeds dated 03.07.1970 and 18.05.1972 as null and void on the ground that plaintiff-Janki Prasad's father Laxmiprasad did not possess any legal right to alienate undivided joint Hindu family property to the purchasers Rambali and Gayaprasad and there was no legal necessity to alienate undivided joint Hindu family property. With these allegations the suits were filed.

4. The respondent/defendant 1 appeared and filed written statement denying the plaint allegations and contended that the sale deeds were executed for legal necessity and for repayment of government dues and possession was also handed over to the defendant 1, which was executed by him as Karta Khandan after receipt of an amount of Rs.11,500/-. In the mutation proceedings, Laxmiprasad raised objection but the Tahsildar ordered mutation of the name of the defendant 1-Rambali. The suit has been filed under the instructions of Laxmiprasad in the name of his son and he himself is contesting the suit and father of the plaintiff-Laxmiprasad was having right to alienate the suit property, in pursuance of which, the defendant is in cultivating possession. On inter alia contentions, the suit was prayed to be dismissed.

5. The defendants 2-6 also appeared and filed written statement admitting the plaint allegations and prayed that decree be passed in favour of the plaintiff.

6. On the basis of pleadings, learned trial Court framed issues and recorded evidence of the parties and after due consideration of the same, dismissed both the suits vide common judgment & decree dated 11.07.1989 and held that the property in question was the joint Hindu family property, which was sold during the minority of plaintiff vide registered sale deeds dated 03.07.1970 and 18.05.1972 and defendant has failed to prove that the alienation was for legal necessity but dismissed the suit on the ground that alienation in question is not void but voidable, which has been challenged only by the plaintiff, who has only 1/6 share in the property and other co-sharers have not challenged the same. Further, during pendency of suit there was partition of joint Hindu family property in which the disputed property was adjusted in the share of Laxmiprasad, therefore, the disputed sale deed is binding on Laxmiprasad.

7. Aggrieved thereby, the plaintiff/appellant preferred only one and single civil appeal, which was also dismissed vide judgment & decree dated 09.03.1998 affirming the judgement and decree of learned trial Court.

8. This Court vide order dated 29.03.2012 admitted the second appeal on the following substantial question of law:-

“Whether in view of the fact that property in question is situate in Vindhya Pradesh region, one co-owner could have alienated the suit property without the consent of other co-owner in view of decisions reported in 1963 MPLJ Note 116 and 1990 JLJ 569 ?”

9. Learned senior counsel appearing for the appellant submits that despite recording all the requisite findings in favour of the plaintiff, learned Courts below have erred in dismissing the suit on the ground that the disputed property was adjusted in the share of Laxmiprasad in the partition affected during pendency of the suit. Although there is no pleading in the written statement about the said partition but the learned Courts below have taken into consideration the statement of plaintiff-Jankiprasad (PW4) made in para 19, which could not have been considered. By placing reliance on the decision of Supreme Court in the case of **Ganga Bai Vs. Vijay Kumar and others 1974 MPLJ 629**, he submits that subsequent partition of the property does not affect the sale made by Karta of the family. By placing reliance on the decisions in the case of **Rammilan Vs. Bhagwat 1963 MPLJ SN 166; Bhagwati Prasad Vs. Chandrabhanu and others 1990 JLJ 569; and Bhagwandas Vs. State of M.P. and another 2001 (1) MPLJ 248** he submits that the manager of the joint Hindu family was not competent to alienate any part of the undivided joint Hindu family property even to the extent of his share. Accordingly, he prays for allowing the second appeal.

10. Heard learned senior counsel for the appellant and perused the record.

11. So far as the question of competency of Manager of joint Hindu family to alienate any part of the undivided joint Hindu family property even to the extent of his share, is concerned, co-ordinate bench of this Court has in the similar facts, in the case of **Shakuntala Tiwari Vs. Mohammad Ramjan, Second Appeal No.**

829/1996 decided on 7.12.2011 reported in 2011 STPL 33520 MP, considered the decision in the case of Bhagwandas Vs. State of M.P. and another 2001(1) MPLJ 248 but followed the decision of the Supreme Court in the case of Ramdas Vs. Sitabai and ors. (2009) 7 SCC 444, in which the Supreme Court has held as under :-

“19. In view of the aforesaid position there could be no dispute with regard to the fact that an undivided share of co-sharer may be a subject-matter of sale, but possession cannot be handed over to the vendee unless the property is partitioned by metes and bounds amicably and through mutual settlement or by a decree of the court.”

12. The Supreme Court in the case of Ramdas Vs. Sitabai and ors. (2009) 7 SCC 444 has considered and followed the decision of Sidheshwar Mukherjee Vs. Bhubneshwar Prasad Narain Singh and others AIR 1953 SC 487, in which the effect of alienation made by a coparcener governed by Mitakshara law was considered as under :-

“9. It is true that under the Mitakshara law, as it is administered in the State of Bihar, no coparcener can alienate, even for valuable consideration, his undivided interest in the joint property without the consent of his coparceners: but although a coparcener is incompetent to alienate voluntarily his undivided coparcenary interest, it is open to the creditor, who has obtained a decree against him personally, to attach and put up to sale this undivided interest, and after purchase to have the interest separated by a suit for partition.”

Since, the aforesaid judgement was not considered by M.P. High Court in any of judgements in the case Bhagwati Prasad, Rammilan and Bhagwandas (supra), therefore, I am bound by the law declared by the Supreme Court, therefore, in view of the aforesaid legal position settled by the Supreme Court in the case of Ramdas (supra), the sale deed executed by Laxmiprasad cannot be said to be void but it was valid to the extent of share of Laxmiprasad. Further, the alienation in question is not void but voidable, which has been

challenged only by the plaintiff, who has only 1/6 share in the property and other co-sharers have not challenged the same and during pendency of suit there was partition of joint Hindu family property, in which the disputed property was adjusted in the share of Laxmiprasad, therefore, the disputed sale deed is binding on Laxmiprasad.

13. Accordingly, aforesaid substantial question of law is decided against the appellant.

14. Bare perusal of the judgment & decree passed by learned Courts below shows that learned Courts below have found the property under the two sale deeds to be the joint Hindu family property, which was sold during the minority of the appellant/plaintiff, who had undivided 1/6 share only and the defendant has also failed to prove the alienation for legal necessity. Although there is no case of partition of the joint Hindu family pleaded by defendant but plaintiff Jankiprasad (PW-4) himself in para 19 of his statement deposed as under:- " मेरे पिता के नाम 117 बीधा जमीन है। मेरे पिता जी पिछले साल 45-45 बीधा का पट्टा हम दोनों भाइयों के नाम तथा अपने नाम कराया है पिछले साल हम और हमारा भाई तथा मेरे पिता अलग-अलग हो गये इसके पहले शामिल सरीक थे। पिता के नाम 37 बीधा जमीन है क्योंकि जो जमीन गया प्रसाद को बेचा था उसके हिस्से में जोड़ दी गई। "

15. In the light of the aforesaid admission it is clear that as on today Laxmiprasad is owner/bhumiswami of the land in question due to adjustment/settlement of the disputed land in the share of Laxmiprasad, therefore, section 43 of the Transfer of Property Act can easily be pressed into service, which is quoted as under :-

"43. Transfer by unauthorised person who subsequently acquires interest in property transferred.

Where a person [fraudulently or] erroneously represents that he is authorised to transfer certain immoveable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists.

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option."

16. As such, even if, it is presumed that Laxmiprasad was not competent to alienate the suit land without consent of Janki Prasad and other co-sharers, but in view of the subsequent partition and adjustment of the disputed land in the share of Laxmiprasad, the sale deed executed by Laxmiprasad cannot be declared as null and void because on account of subsequent partition, he has acquired exclusive right in the suit property.

17. It is pertinent to mention here and as has been narrated on first page of the impugned judgment and decree dtd. 9.3.1998, there were two civil suits filed by the plaintiff-Jankiprasad (bearing civil suit no. 9A/82 and 9A/1/82), which were decided by common judgment and decree dtd. 11.7.1989, which as per narration made in para 1 of the impugned judgment dtd. 11.7.1989, were consolidated. For the reasons best known to the plaintiff, against the decision in both the civil suits given on 11.7.1989, only one and single civil appeal was filed before 3rd Additional District Judge, Satna, which was decided and dismissed by learned first appellate Court vide judgment and decree dtd. 9.3.1998. After dismissal of the civil appeal, instant single second appeal was filed by the plaintiff.

18. As per provisions contained in order 41 rule 1 CPC, even in case of consolidation of two suits, the aggrieved party is required to file two separate appeals against the common judgment & decree passed in two civil suits. As has been held in the case of Sheodan Singh v. Daryao Kunwar AIR 1966 SC 1332; Maniram Saikia vs. Shri Hira Bordoloi and others AIR 1990 Gauhati 32; and P.N. Kesavan and another v. Lekshmy Amma Madhavi Amma and others AIR 1968 Kerala 154 and in my considered opinion, there being two civil suits filed before trial Court, two separate civil appeals before the first appellate Court, were required to be filed and similar is the position before this Court, where the appellant was required to file two separate second appeals, if he wanted to argue in respect of both the civil suits. Consequently, single appeal filed before the first appellate Court was not maintainable and consequently before this Court also only one and single second appeal is not maintainable on account of principle of res-judicata.

19. Resultantly, the second appeal fails and is hereby dismissed. However, no order as to costs.

20. Pending application(s) if any, shall stand disposed off.

(DWARKA DHISH BANSAL)

JUDGE

Pallavi

