HIGH COURT OF MADHYA PRADESH,

PRINCIPAL SEAT AT JABALPUR

(SINGLE BENCH : HON'BLE SHRI JUSTICE J.P.GUPTA)

Second Appeal No.1930/2006

Sanjay Rai and others

Vs.

Govind Rao and others

Shri M.L.Jaiswal, Senior Advocate with Shri K.K.Gautam and R.K.Samaiya, Advocate for the appellants.
Shri A.P.Singh, Advocate with Shri Tarun Sengar, Advocate for the respondent No.3.
None for other respondents though served.

Whether approved for reporting : (Yes/No).

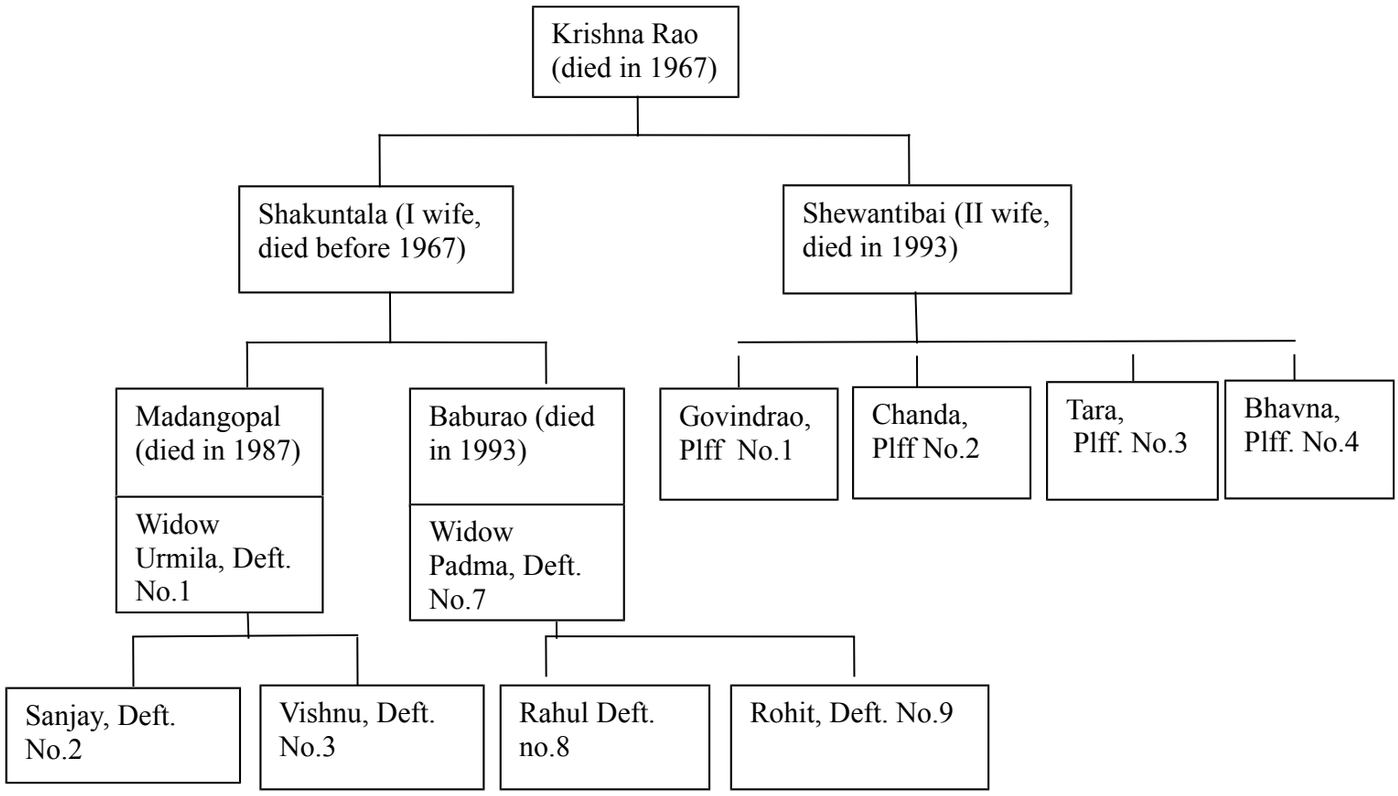
J U D G M E N T
(29.07.2019)

This second appeal has been filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 29.11.2006 passed by the First Addl. District Judge, Damoh, in Civil Appeal No.18-A/2006, confirming the judgment and decree dated 16.2.2005 passed by the Civil Judge Class II, Damoh in Civil Suit No.14-A/2004 whereby it was declared that the suit property was self-acquired property of Krishna Rao and after his death his heirs are co-owners of the property and the appellants are occupying the suit premises as a tenant and they were directed to vacate the suit premises as against them, grounds of eviction under section 12(1)(a) and 12(1)(c) of the M.P. Accommodation Control Act have been found to be proved and further directed to pay arrears of rent and

after delivering the possession, shall not make any interference in the possession except following the due process of law.

2. Facts giving rise to filing of present appeal, briefly stated, are that plaintiffs no.1 to 4 filed the suit for ejectment of the appellants from suit House bearing Nagar Palika No.180/07/185/08 for possession, arrears of rent, declaration and permanent injunction. It is averred that disputed house and the vacant land was in the ownership of Krishnarao along with other two houses. In this case, there is a dispute between heirs of Krishnarao and the appellants with regard to the suit premises. The appellants who have purchased the suit premises are claiming their title on the strength of the sale-deed executed by respondents no.5 to 7 as heirs of Madangopal, who was son of Krishnarao. The property in dispute was self-acquired property of Krishnarao who died in the year 1967.

3. It is not disputed that Krishnarao solemnized two marriages. His first wife was Shakuntala and out of the said wedlock two sons viz. Madangopal and Baburao, were born. Madangopal died in the year 1987 leaving behind his widow Urmila, defendant no.1, Sanjay defendant no.2 and Vishnu, defendant no.3. Baburao died in the year 1993 leaving behind his widow Padma, defendant no.7, and two sons namely Rohit, defendant no.8 and Rahul, defendant no.9. After the death of Shakuntala, Krishnarao married with Shewantibai and out of the said wedlock plaintiffs Govindrao, Chanda, Tarabai and Bhawna were born. Shewantibai expired in the year 1993. Genealogical tree of heirs of Krishnarao, is quoted hereinbelow :-



4. That, initially the suit was filed by plaintiffs no.1 to 4 namely Govindrao, Chanda, Tara, Bhawna and defendants no.7 to 9 namely Padma, Rohit and Rahul. But, during the pendency of the suit Padma sold her share to the appellants in the year 2001, therefore, during the trial they were transported as defendants no.7 to 9. Govindrao has also withdrawn his claim in the suit property; but, his name continues as the plaintiff. The case of the plaintiffs Tara, Chanda and Bhawna is that the suit premises was the self-acquired property of Krishnarao and appellant/defendant Leeladevi entered into the suit premises as tenant and paying rent at the rate of Rs.50/- per month to Shewantibai and after the death of Shewantibai she did not pay the rent. The appellant no.1 is son of appellant no.2 and appellant no.3 is her husband. On demand of notice no arrears of rent was paid and the suit premises are required bonafidely for use of the plaintiffs. Appellants/ defendants no.4 to 6 have started claiming that they have purchased the suit premises from defendants no.1 to 3/respondents no.5, 6, and 7 Urmila, Sanjay and Vishnu, while defendants no.1, 2 and 3 have no right to sold out the

suit premises as there was no partition of the property amongst the heirs of Krishnarao. Hence, it was prayed that the sale-deed be declared to be null and void and the appellants be evicted from the suit premises on the ground of non-payment of arrears of rent and of disclaiming of the title of the plaintiffs and bonafide need of the premises and also be directed to pay the arrears of rent and after delivering the possession do not interfere in the property.

5. Defendants no.1 to 3/respondents no.5 to 7 filed their written statement contending that the suit premises was the ancestral property and Krishnarao inherited it from his father Mullu Jadhav and after his death it was co-parcenery property of Krishnarao, Madangopal, Baburao and Govindrao who were the sons of Krishnarao and during the lifetime of Krishnarao, the co-parcenery property was partitioned in which the suit premises came into share of Madangopal and other property fallen into share of other heirs. The property which fallen into the share of Shewantibai has been sold by her in the year 1980 and the suit premises was given on rent by Madangopal. On 5.4.1995 defendants no.1 to 3/respondents no.5 to 7 being legal heirs of Madangopal sold out the aforesaid property to defendants no.4 and 5/appellants no.1 and 2 by sale-deed, Ex.D/1 and D/2. Therefore, the plaintiffs have no right, title and interest in the property and are not entitled to possession of the property from the appellants.

6. Appellants/defendants also filed separate written statements on the same footing. But, after transporting the names of Padma, Rohit, Rahul from the array of plaintiff to defendants no.7, 8 and 9, they have not filed any written statements.

7. In the trial court, on behalf of plaintiffs/respondents no.2 to 4 Chandabai (PW1) has given her statement and on behalf of the defendants, the defendants, the appellants, Urmila Jadhav, DW1, Padma Jadhav, DW2, Jeewanlal Chadhar, DW3, Dhanraj, DW4 and

Sukhchain, DW5 have been examined. After appreciating the oral and documentary evidence the trial court arrived at the conclusion that the suit property is the self-acquired property of Krishnarao and no partition has taken place. Heirs of Madangopal, namely, Urmila, Sanjay and Vishnu have no right to sold out the specific portion of the property. The plaintiffs being the co-owner of the property have a right to get vacant possession from the appellants/tenant and against them grounds under sections 12(1)(a) and 12(1)(c) of the M.P. Accommodation Control Act have been found to be proved. Therefore, the suit was decreed as mentioned above. On appeal preferred by the appellants, the learned first appellate court also confirmed the aforesaid finding. Hence, this second appeal.

8. This appeal has been filed on the ground that execution of the sale-deed by Padma, Sanjay and Vishnu, defendants no.1 to 3 to appellants No.1 and 2 are not challenged, therefore, they acquired status of co-owners with the plaintiffs and a co-owner cannot get the relief of eviction against another co-owner who earlier occupied the suit premises as a tenant and the learned court below have ignored the aforesaid legal aspects involved in the present dispute. Division Bench of this Court in the case of ***Hameeda Begum V. Champa Bai Jain and others 2004(1) MPLJ 50***, has categorically held that such relief cannot be granted to the plaintiff. Apart from it, learned both the courts below have failed to appreciate the evidence on record in right perspective. Plaintiff Chandabai, PW1, herself has admitted that during the lifetime of Krishnarao partition had taken place amongst him and Madangopal, Baburao, and Govindrao and the properties was distributed in four parts. Plaintiffs Chanda, Tara and Bhawna after marriage were living in their matrimonial houses and much amount was spent on their marriage. Therefore, no share was given to them and Madangopal got the share in suit premises by partition and after the death of Madangopal being his heir, defendants no.1 to 3 were the owners of the property and they have right

to sell the property which cannot be questioned by the plaintiffs. Therefore, the finding that the plaintiffs are the co-owners of the suit property is perverse. Therefore, judgment and decree passed by the courts below be set aside.

9. On hearing learned counsel for the appellants/defendants, this appeal has been admitted on 5.1.2007 on following substantial questions of law :-

i) Whether the appellants who have purchased the property through co-owner and stepped into the shoes of the co-owner could have been evicted by the respondents in a suit filed on the basis of the tenancy ?

ii) Whether after sale in favour of the appelaltns, the suit as filed by the respondents/plaintiffs was maintainable in view of the law laid by this Court in ***Hameeda Begam, Vs. Champa Bai Jain and others, 2004(1) MPLJ 50***?

iii) Whether the finding recorded by the Court below that the suit property is joint Hindu family property is perverse as plaintiff no.1 Govind Rao and other defendants who were co-owners of the property admitted that the property was partitioned and after partition it was sold to the appellants ?"

10. Having heard learned counsel for both the parties and on perusal of the record, in view of this Court, the aforesaid questions no.1 and 2 have been answered by the Division Bench of this Court in the case of ***Hameeda Begam Vs. Champa Bai Jain and others, 2004(1) MPLJ 50*** in which following legal questions were framed inter alia :-

i) Whether the co-owner (co-landlord) can file a suit for eviction against the tenant if other co-owner objects to the eviction of the tenant ?

ii) Whether the tenant who has purchased the undivided share of one of the co-owner is liable to be evicted at the instance of other co-owners and then it is for him to bring a suit for partition and separate possession ?

11. In the aforesaid judgment, the Division Bench having considered various pronouncements of the Apex Court and other High Courts, after lengthy and laborious discussions, answered the aforesaid questions in following terms.

i) The co-owner/landlord cannot file a suit for eviction against the tenant if other co-owners objects.

ii) If the tenant who has purchased the property from a co-owner and gets into the shoes of the co-owner need not file a suit for partition and separate possession and there is no obligation on his part to handover possession and thereafter sue for partition and separate possession. Any co-owner who wants to have possession, by metes and bounds may file a suit for partition and claim separate possession and thereafter seek eviction of the tenant from the part of reversion falling to his share after partition.

12. In the present case, the appellants have purchased the property through co-owner and stepped into the shoes of the co-owner, therefore, they have acquired the status of co-owners with the plaintiffs/respondents and their status as tenant ceased and other co-owner cannot treat them as tenant and till the status of co-owner is not ceased by partition or any other legal transaction, cannot bring the suit for eviction on the basis of relationship of landlord and tenant. Therefore, in view of the law laid down in the case of *Hameeda Begam* (supra), this suit of the plaintiffs/respondents based on co-ownership against the tenant who purchased the premises from other co-owners is not maintainable for eviction on the basis of relationship of landlord and tenant. Accordingly, aforesaid questions no.1 and 2 are answered.

13. So far as question no.3 is concerned, it is a factual question. Ordinarily, in Second Appeal, the concurrent findings of both the courts below cannot be reappreciated or reconsidered except when the findings are perverse. In this case, it is argued that findings of both the courts below with regard to status of joint Hindu Family property among the plaintiffs and defendants except appellants is perverse as one of the plaintiff Govindrao and other defendants who were co-owners of the property admitted that the property was partitioned and after partition it was sold to the appellants.

14. In the present case, Govindrao joined as plaintiff no.1; but, during trial he withdrew himself from the litigation even though his name continued as plaintiff no.1; but, he has not entered into the witness box to support or oppose the claim of any party. The submission of any application with affidavit and averments in favour of one co-owner or other co-owners cannot be considered as a piece of evidence. Similarly, so far as admission by other defendants with regard to partition of the property in their pleadings are concerned, the same cannot be considered as a piece of evidence to prove the fact of partition against the plaintiffs. Any admission in the pleading by any party is binding and evidence against the party who has pleaded. This admission cannot be considered as a piece of evidence against other party.

15. In this case, it is also argued on behalf of learned counsel for the appellants that plaintiff Chandabai, PW1, has categorically admitted the fact that during the lifetime of Krishnarao, the property was partitioned among Madangopal, Baburao, Govindrao and Krishnarao and after partition they have exclusive possession of their shares and all were satisfied with the partition and heirs of Madangopal and Baburao, who are defendants in this case, have sold out their shares to the appellants by registered sale-deed. She has also admitted that she herself and her mother have sold out their share to other persons. This evidence is sufficient to prove the fact that there

was no status of joint Hindu family property. But, learned both the courts below have committed legal error in discarding the aforesaid best evidence. On this count also, the aforesaid finding is perverse.

16. Learned counsel appearing on behalf of the respondent no.3 plaintiffs have submitted that Chandabai, PW1, has categorically denied the fact that actual partition has taken place among Krishnarao and his sons Madangopal, Babalal and Govindrao. It is the pleading of defendants including the appellants that the property was the joint Hindu family property and partition was taken place during the lifetime of Krishnarao. Therefore, burden is on the plaintiffs/respondents and on behalf of them no reliable evidence has been adduced as discussed by both the courts below and both the courts below have rightly and legally held that there was no actual partition except family arrangement for peaceful and separate residence of the family members. Therefore, it cannot be said that partition took place by metes and bounds. Hence, in this second appeal, the aforesaid finding of both the courts below based on meticulous appreciation of evidence does not require any interference.

17. On perusal of the record, on behalf of the defendants including the appellants with a view to prove the fact of partition Urmila, DW1, wife of Madan Jadhav, Padma, DW2, wife of Baburao, Jeewanlal, DW3, Dhanraj, DW4 and Sukhchain, DW5, have given their statements. So far as statements of Padma, DW2, Jeewanlal, DW3, Dhanraj, DW4 and Sukhchain, DW5 are concerned, they have admitted that before them partition was not taken place. On the basis of information of other persons they have stated that the property was partitioned. Therefore, the trial court and the first appellate court have not committed any legal error in discarding the aforesaid evidence. So far as Urmilabai, DW1, is concerned, she has stated that during the lifetime of Krishnarao, the property was partitioned amongst Krishnarao and his three sons namely Madangopal, Baburao and Govindrao; but, her statement has been discarded on the

ground that she has stated in the cross examination that the partition was taken place in the year 1979 while death of Krishnarao had taken place in the year 1967. However, in her chief, she has categorically stated that during the lifetime of Krishnarao, the partition had taken place and at the time of giving statement she was 70 years old. Therefore, merely on the basis of aforesaid discrepancy with regard to the year of partition, it cannot be held that she has given incorrect statement. This statement of the witness is required to be appreciated in the light of the statement of Chandabai, PW1. Plaintiff Chandabai, PW1, in paragraphs 17, 20 and 21 of her statement, which has been referred by the learned trial court in paragraph 19 of the judgment has admitted that during the lifetime of Krishnarao the property was partitioned among Krishnarao and his sons Madangopal, Baburao and Govindrao and they all were in exclusive possession of their respective shares and all were satisfied with the partition. Thereafter, she also said that no complete partition was taken place and the learned trial court and the first appellate court have considered this statement that the aforesaid affair only show family settlement with regard to peaceful arrangement to reside in the property. It cannot be considered as partition by metes and bounds, which is necessary for partition. This approach of learned both the courts below for partition is contrary to law. If the family settlement is accepted then it would be deemed that the severance of the family has taken place and status of joint family will be deemed to be ceased. Apart from it, in this case, wife of Krishnarao, Shewantibai and Chanda, plaintiff/respondent have also sold out their shares in the property showing exclusive specific part of their share. This circumstance also establishes that there was partition of the property and aforesaid evidence corroborates the statement of defendant Urmila, DW1 and establishes that the property was partitioned.

18. Apart from it, in this case, it is undisputed that death of Krishnarao was taken place in the year 1967 and the aforesaid family settlement or agreement or arrangement had not been challenged by

the plaintiffs before filing of this suit on 9.10.1995. This circumstance shows that the aforesaid family settlement was also acceptable by the plaintiffs. The partition of self-acquired property by family settlement by father is not prohibited. In some cases it is legal, as has been held by the Apex Court in the case of ***Bhagwan Krishna Gupta Vs. Prabha Gupta and others, reported in (2009)11 SCC 33***, wherein it is held that when a property is self-acquired one, the doctrine of family settlement strict sensu may not be applicable but in a case of this nature where both the children declare each other to be the owners of the property having equal share therein, an arrangement between them by way of family settlement is permissible in law. Such a family settlement was not only in relation to the title of the property; but, also in relation to the use and possession thereof. Similarly, Madras High Court in an unreported judgment dated 21.9.2016 in the case of ***Ashokarajan Vs. Dr.Padmarajan***, passed in Second Appeal Nos.146 and 147/2011, has held that though law prohibits the brothers to claim share over the self-acquired property of the father as a matter of right during his life time, it should be borne in mind that no law prohibits a father from treating his self-acquired property as a joint family property, so as to divide the same among the members of joint family. For that matter, it is open to any of the members of joint family to throw their self-acquisition into common hotch pot. Needless to state that a self-acquired property need not necessarily be a selfishly acquired property. No morally responsible father would ever say its mine, you children keep away. Equally no responsible and dutiful children will ever drive their father to say so.

19. Accordingly, considering the statements of Urmila, PW1 and Chandabai, DW1 and conduct of the parties dealing with the properties came in their shares after family settlement, this Court has no hesitation in holding that findings of both the courts below that the suit property is a joint Hindu family property is perverse as the

courts below have completely failed to appreciate the evidence in accordance with law by ignoring the aforesaid piece of evidence or misinterpretation of the term of family settlement. Hence, it is held that the suit property was partitioned among Krishnarao and his three sons namely Madangopal, Baburao and Govindrao and thereafter it was sold to the appellants. Accordingly, the question no.3 is adjudicated.

20. In view of the aforesaid adjudication of substantial questions of law, the impugned judgment and decree passed by both the courts below deserves to be set aside as neither the plaintiffs are owner of the suit premises nor the appellants are their tenants. Hence, the judgment and decree dated 29.11.2006 passed by the First Addl. District Judge, Damoh, in Civil Appeal No.18-A/2006 so also the judgment and decree dated 16.2.2005 passed by the Civil Judge Class II, Damoh in Civil Suit No.14-A/2004 are set aside and the suit of the plaintiffs is dismissed.

21. In the facts and circumstances of this case, parties to appeal will bear their own cost.

(J.P.Gupta)
JUDGE

HS

HEMANT SARAF

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HIGH COURT OF MADHYA PRADESH :

PRINCIPAL SEAT AT JABALPUR

1	Case Number	Second Appeal No.1930/2006
2	Parties Name	Sanjay Rai & ors. Vs. Govind Rao & ors.
3	Date of Order	29/07/2019
4	Bench Constituted of	Hon. Shri Justice J.P. Gupta
5	Judgment delivered by	**Hon. Shri Justice J.P. Gupta**
6	Whether Approved For Reporting (AFR)	**YES**
7	Name of the counsel for the parties	Shri M.L.Jaiswal, Senior Advocate with Shri K.K.Gautam and R.K.Samaiya, Advocate for the appellants. Shri A.P.Singh, Advocate with Shri Tarun Sengar, Advocate for the respondent No.3. None for other respondents though served.
8 & 9	Law Laid down & Significant paragraph numbers 12 & 18.	i) The person who have purchased the property through co-owner and stepped into the shoes of the co-owner cannot be evicted by the co-owner in a suit filed on the basis of tenancy. (See Hameeda Begum V. Champa Bai Jain and others 2004(1) MPLJ 50). ii) The self-acquired property by father in his lifetime may be partitioned among his heirs and relatives by way of family settlement and the family settlement may be oral or in writing.

(J.P.GUPTA)
JUDGE

HS