

AFR

HIGH COURT OF MADHYA PRADESH, JABALPUR

Second Appeal No.09 of 2007

Kamla Prasad

Vs.

State of Madhya Pradesh and others

Present : **Hon. Shri Justice Anurag Shrivastava**

Shri Shiv Kumar Dubey, learned counsel for the appellant.

None appears on behalf of the respondents.

J U D G M E N T
(03.02.2017)

This appeal has been filed by the appellant/plaintiff against the judgment and decree dated 17.07.2006, passed by Additional District Judge, Rewa, in Civil Appeal No.59-A/2006, whereby the judgment and decree dated 16.11.2002 passed by First Additional Civil Judge, Class-I, Rewa, passed in regular Civil Suit No.216-A/2000 has been affirmed and confirmed and the suit filed by the appellant/plaintiff for declaration of half share in disputed property and its partition and possession, has been dismissed .

2. It is not disputed that plaintiff Kamla Prasad, defendants No.2 and 3 namely Shivratiya, Sarjan Prasad are children of Late Tirath Prasad. Defendant No.4 Guru Prasad is son of defendant No.3. It is also not disputed that in the life

time of Late Tirath Prasad on 24.07.1988, the partition of family property took place and a registered partitioned deed dated 24.07.1988 executed by the plaintiff and defendants. The disputed house and land were not comprised in this partition. The disputed land and plot situated in Village Ginhai and Rewa, were purchased on the name of defendant No.4 Guru Prasad vide registered sale deed dated 08.06.1987 and 14.07.1980, respectively.

3. This is plaintiff's case that the disputed land and plot were purchased from the income of joint family on the name of defendant No.4 with the consent of all the member of the family. Thus, these are the joint family properties, in which the plaintiff has right to seek partition. At the time of partition on 24.07.1987, it was amicably decided by the family members that these properties would be partitioned later on, and relying upon the assurance given by father and the brother Sarjan Prasad (D-3), plaintiff had signed the partition. Later on, after the death of father, the defendants had refused to give share to plaintiff in disputed property. It is further averred that in the suit house and the trees also, the plaintiff has not been given any share. These are also joint family properties. Therefore, the plaintiff has filed the suit before the trial Court for declaration of his half share in the disputed property and its partition.

4. In the written statement, the defendants have denied the averments of plaint and it is pleaded that the defendant No.4 is owner of the disputed land and plot, which are purchased by him from his own income. This is not a joint family property, therefore, plaintiff has no right to claim partition. It is further pleaded that in the disputed house,

plaintiff has been given share in the partition. He is in possession of house given in partition, therefore, plaintiff suit is not maintainable and liable to be dismissed.

5. The trial Court on appreciation of evidence laid by the both the parties vide judgment dated 16.11.2002 came to conclusion that the disputed land and plots are self earned properties of defendant No.4, in which the plaintiff has no right. In the house also, plaintiff has been given share in the partition dated 24.07.1987. Therefore, plaintiff has no right to claim partition in the disputed property and the suit was dismissed. The plaintiff preferred first appeal before the Additional District Judge, Rewa, which is again dismissed by recording concurrent finding.

6. In the second appeal, it is argued by the learned counsel for the appellant/plaintiff that when the disputed properties were purchased, the plaintiff and defendants were member of joint family, the properties were purchased from the income of joint family on the name of defendant No.4 only to escape from the ceiling proceedings. Therefore, disputed properties are joint family properties, in which plaintiff has share. The trial Court and appellate Court have wrongly arrived at the conclusion that the properties are self acquired properties of defendant No.4. Both the Courts below have committed an error in misconstruing the evidence and burden of proof.

7. Having heard the learned counsel for the appellant and on perusal of records of the Courts below, it is found that the disputed land bearing Khasra No.94, 95 and 152 situated in Village-Joginhai and a plot situated in Rewa, were purchased

on the name of defendant No.4. These lands are recorded on the name of defendant No.4 in revenue records. Plaintiff Kamla Prasad deposed that the joint family has only 18 acres of land and this is the only source of income of joint family. He further admits that he cultivates the fields of joint family and this was his only source of income. From the statements of Sarjan Prasad (DW-1) and Guru Prasad (DW-2), it appears that Sarjan Prasad was a teacher and his son Guru Prasad (D-4) had started a Multi Electrical Engineering Shop in the year 1980. Thereafter, in the year 1984, he has got employment in M.P. Electricity Board and was working as Assistant Operator. Plaintiff Kamla Prasad (PW-1) has admitted aforesaid facts in paras 4, 24 and 25 of his statement. Thus, it is evident that when the land and plot were purchased, the defendants have their own source of income, other than the income of joint family property.

8. It is settled law that the member of joint family can also acquire the properties on their own name from their independent income.

9. *In AIR 1984 SC 1171 Kuppala Obul Reddy Vs. Bonala Venkata Narayana Reddy, it is held that "there may be presumption that there is Hindu Joint Family, but there can be no presumption that the joint family possess joint family properties."*

10. In the case of **Surendra Kumar Vs. Phoolchand (dead) through LRs and another reported in (1996) 2 SCC 491** their Lordship held as follows:-

"It is no doubt true that there is a presumption that a family because it is joint possessed joint property and therefore, the

person alleging the property to be joint has to establish that the family was possessed of some property with the income of which the property could have been acquired. But such a presumption is a presumption of fact which can be rebutted. But where it is established or admitted that the family which possessed joint property which from its nature and relative value may have formed sufficient nucleus from which the property in question may have been acquired, the presumption arises that it was the joint property and the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family.”

11. In the present case, the plaintiff has not stated that how many members were there in family, what were the crops sown in the field, what was the yield and after deducting the expenses what was the income of the family. Thus, it is not found proved that the joint family had got the sufficient income to purchase the disputed land, whereas, from the defendants' evidence it is established that the defendant No.4 and his father had the independent source of income to purchase the disputed land. The trial Court and learned appellate Court on due appreciation of evidence have recorded concurrent findings that the disputed lands were purchased from the income of defendant No.4 and it is his self-earned property. Similarly, there is concurrent of Courts below that the plaintiff has been given share in the disputed house. These findings are based on admissible evidence considering on material facts.

12. In **Vidhyadhar Vs. Manikrao (1993) 3 SCC 573**, Hon'ble Apex Court held that:-

“concurrent findings of fact recorded by trial court and first appellate Court could not have been legally upset by High Court in second appeal unless such finding are shown to be perverse being based on no evidence or on evidence on record no reasonable person could have come to such conclusion.”

13. Thus, in view of the preceding analysis, the findings of Courts below appears to be on correct appreciation of evidence, there is no illegality or perversity found in it. It is rightly not found proved that the disputed land is joint family property and the plaintiff has any right to seek partition in the disputed land and house.

14. Therefore, no substantial question of law arises for determination in the instant appeal.

15. In view of the aforesaid, the second appeal fails and is hereby **dismissed**. However, there shall be no order as to costs.

(Anurag Shrivastava)
Judge
03.02.2017

Rashid*