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**(2019) 08 CHH CK 0103**

**Chhattisgarh High Court**

**Case No:** First Appeal No. 351 Of 2018

Ganeshram Soni And Ors

APPELLANT

Vs

Marutisharan Soni And Ors

RESPONDENT

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**Date of Decision:** Aug. 19, 2019

**Acts Referred:**

- Code Of Civil Procedure 1908 - Section 96
- Registration Act, 1908 - Section 17

**Hon'ble Judges:** Ram Prasanna Sharma, J

**Bench:** Single Bench

**Advocate:** Ratnesh Agrawal, Purnendra Khichariya, R. K. Pali, Smita Jha

**Final Decision:** Partly Allowed

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### **Judgement**

Ram Prasanna Sharma, J

1. This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decreed dated 20-02- 2018 passed by the

Additional District Judge, Bemetara, District Bemetara (CG) in Civil Suit No. 5-A/2012 wherein the said court decreed the suit filed by Pardeshi Ram

Soni for declaration of title over the land baring Survey No. 1735 area 0.04 hectare situated at village Saja Tahsil Saja, District Bemetara and for

partition of land baring survey No. 1736 area 0.02 hectare situated at same place and for injunction. Present respondents are legal representatives of

said Pardeshi Ram Soni.

2) As per suit averment which was filed by Pardeshi Ram Soni, his father Fudulram Soni had two sons and two daughters namely late Pardeshi Ram,

late Mehtar Ram Soni, Panchvati Bai and Kumari Bai. During life time of Fudulram he purchased land bearing survey No. 1736 area 0./02 hectare

which is situated at village Saja. Padeshiram Soni filed a suit for declaration of title of Survey No. 1735 and partition of Survey No. 1736 which was

decreed by the trial Court. As per the appellant who is son of late Mehtar Ram Soni, land bearing survey No. 1735 area 0.04 hectare was purchased

by Mehtar Ram Soni and therefore, Pardeshi Ram Soni has no right over the said land. Survey No. 1735 is purchased by Mehtar Ram Soni and it was

never joint family property. The trial court recorded finding contrary to sale deed executed in favour of Mehtar Ram Soni.

3. Learned counsel for the appellant submits as under.

i) As the trial Court has ignored the material document and evidence in regard title, the finding of the trial court is liable to be set aside.

ii) Earlier land in question was Survey No. 1172/1 and 1175 area 0.01 decimal which was re-numbered as Survey No.1736 and 1735. The sale deed

for survey No. 1172 and 1175 was executed in favour of Mehtar Ram Soni through sale deed dated 23-12-1970.

Iii) There is nothing on record that the said property is purchased out of income of joint family property, therefore, finding of the trial Court is not sustainable.

4) On the other hand, learned counsel for the respondents/plaintiffs would submit that Ganesh Ram Soni (DW/1) deposed before the trial court that

they were living jointly, therefore, property in question is joint family property.

5) I have heard learned counsel for the parties and perused the record of court below including the judgment and decree.

6) From the oral and documentary evidence adduced as Ex.D/2 it is established that Survey No.1172/1 and 1175 area 0.10 decimal was purchased by

Mehtar Ram Soni on 23-12-1970 from Latal Ram. After re-numbering the said land is survey No. 1735 and as per documents Ex.P/2 and P/3 land

bearing survey No. 1735 area 0.04 hectare is recorded in the name of legal representatives of Mehtar Ram Soni. One of the legal representatives of

Mehtar Ram Soni is appellant who is also recorded as owner in the said land along with other legal representatives of Mehtar Ram Soni. There is no

documentary or oral evidence regarding income of joint family property. No account was produced before the trial Court to show that there was

earning from joint family property in the year 1970 and property as mentioned above was purchased from income of joint family property. In absence

of any account of income, it is not established that the land bearing survey No. 1735 area 0.04 hectare is purchased out of income of joint family

property, therefore, this land is not joint family property. Survey No. 1736 area 0.02 hectare is recorded in the name of legal representatives of Fudul

Ram namely Mehtar Ram Soni, Pardeshi Ram Soni, Panchvati and Kumari Bai. The right of legal representatives of Fudul Ram opened in the year

1995. As per record, this property is not ancestral property, therefore, all four share-holders will get the property in equal ratio. Respondents No.1 to 9

being successors of Pardeshi Ram who filed the suit will get  $\frac{1}{4}$  share in the said property. All the other three share holders will get  $\frac{1}{4}$  share each

in the said property.

7) It is contended on behalf of the respondents/plaintiffs that there was earlier partition as per Ex.P/13, therefore, respondents are owners of the land

bearing survey No. 1735.

8) In view of this court, Ex.P13 is not a registered partition deed as per Section 17 of the Registration Act, 1908, therefore, same is unenforceable for

extinguishing any right over the property. In the said document no survey number is mentioned and the document is vague in nature, therefore,

argument advanced on behalf of the respondents is without substance. The decree passed by the trial Court is liable to be modified.

9) Accordingly, appeal is partly allowed and decree is passed in favour of the respondents as under:

i) Legal representatives of Mehtar Ram will get  $\frac{1}{4}$  share. Legal representative of Pardeshi Ram will get  $\frac{1}{4}$  share of land bearing survey No. 1736

area 0.02 hectare situated at village Saja, Patwari Halka No.9, Tahsil Saja District Bemetara. Panchvati Bai and Kumari Bai each will get  $\frac{1}{4}$  share

of the said land.

ii) Rest of the claim of the respondents is dismissed with cost.

iii) Parties to bear their own costs.

iv) Pleader's fee, if certified, as per schedule or whichever is less.

v) A decree be drawn up accordingly.