

(2019) 10 CHH CK 0034
Chhattisgarh High Court
Case No: First Appeal No. 135 Of 2001

Mahendra Pal Singh Saluja And
Ors

APPELLANT

Vs

Ajinder Singh And Ors

RESPONDENT

Date of Decision: Oct. 4, 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: Kishore Bhaduri, Swati Upadhyay, Rahul Kumar, R.S. Marhas, Kawaljeet Singh Saini, Sharmila Singhai

Final Decision: Dismissed

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 19-9- 2001 passed by 2nd

Additional District Judge, Mahasamund (CG) in Civil Suit No. 6-A/99 wherein the said court decreed the suit in favour of respondent No.2 namely

Amarjeet Singh and against the appellant for declaration of title and delivery of possession regarding suit house No.15/20 situated at Ward No.15 at

village Pithora, Patwari Halka No.22, Tahsil and District Mahasamund.

2. The property in question is a house as mentioned above. As per the suit filed by the original respondents No. 1 to 4, the property is owned by their

father namely Sahib Singh who died on 28-8-1987 and thereafter his wife also died on 29-8-1992 leaving behind three sons namely Ajinder Singh,

Amarjeet Singh and Mahindra Singh and two daughters namely Pritam Kaur and Gurmeet Kaur. The property is not partitioned and all the five legal representatives are entitled for their share. Respondent No.5/defendant No.2 who was one of the sons of Sahib Singh executed a sale deed in favour of the appellant on 25-6-1995. As the property was not partitioned, said Mahendra Singh had only limited undivided share, therefore, he was not sole owner of the property and property could not be alienated by him. The trial court after recording evidence of both sides and after hearing the parties recorded finding that as per partition, the property was allotted in the share of respondent Amarjeet Singh, therefore, he is entitled to recover the possession of property from the appellant.

3. Learned counsel for the appellant submits as under.

i) The house is originally owned by Sahib Singh and in the year 1958 there was family partition and the property in question fall into share of respondent No.5 and he executed the sale deed in favour of appellant, therefore, finding of the trial court is against factual matrix of the case.

ii) Respondents No. 1 to 4 have not filed any suit for cancellation of the sale deed and without cancelling the sale deed, the order of delivery of possession by the trial court is not liable to be sustained.

iii) The trial court has not evaluated the evidence in its true perspective, therefore, same is liable to be set aside.

4. On the other hand, learned counsel appearing for the respondents No. 1 to 4 would submit that the house in question is solely owned by Sahib Singh

during his life time and the property in question is never partitioned, therefore, right opened only on the date of passing of Sahib Singh and all his legal

representatives are joint owners of the property which is still undivided. Respondent No.5 was not sole owner of the property, therefore, he had no

right to sell the entire house and respondents No.,1 to 4 are not party to any sale deed executed by respondent No.4, therefore, they are not required

to go for cancellation of any sale deed executed by respondent No.5. Respondent No.5 was not owner of the property, therefore, no better title can be

passed to purchaser and purchaser is also not the owner of the property. There is nothing on record to show that the property was earlier partitioned,

therefore finding recorded by the trial court is liable to be modified and respondents No. 1 to 4 are entitled for possession from the appellant.

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

6. The first question for consideration of this court is whether the house in question was ever subjected to partition as alleged by respondent

No.5/appellant. Respondents No. 1 to 4 adduced evidence of Ajinder Singh (PW/1). Appellant side adduced evidence of Mazid Khan (DW/1) and

Mahendra Pal Singh (DW/2). The evidence of Ajinder Singh (PW/1) and documents Ex.P/1 to P/2 go to show that the house was recorded in the

name of Sahib Singh upto year 1995-1996 and he was the sole owner of the house in question. As per version of the appellant (DW/2), property was

allotted to respondent No. 5 in partition, but document of partition was not produced before the trial Court. Partition deed of property valued more than

Rs.100/- is compulsorily required registration as per Section 17 of the Indian Registration Act, 1908. No document regarding partition of the house

produced before the trial court and proved. From the entire evidence it is clear that property in question was never partitioned. After passing of Sahib

Singh and his wife all his five legal representatives have jointly inherited the property in question and each one has 1/5th share in the said property.

7. The second question for consideration of this court is whether respondents No. 1 to 4 are required to ask for relief of cancellation of sale deed. Sale

deed was not executed by these respondents and they are not party to any sale deed executed regarding house in question. A person who is party in

execution of sale deed is only required to go for cancellation of sale deed. When seller of any sale deed is not having title over the property, the right

of property cannot be passed to purchaser. It is settled principles of law that any one cannot alienate better title than what he has. Respondent No.5

had only limited interest of 1/5th share in the property in question, therefore, he was not entitled to alienate property and no title is passed to appellant

by the sale deed. As the house in question is jointly owned by three sons and two daughters of Sahib Singh, the purchaser/appellant who is stranger to

the family cannot be allowed to occupy any part of the house as member of joint family, therefore, appellant cannot retain possession of property in

question and he can take legal recourse against respondent No.5 as per law of land.

8. It is further contended on behalf of the appellant that as per version of Ajinder Singh (PW/1), he admitted (para 4) that earlier partition took place

between the parties, therefore, partition between the parties is established. After going through the statement of this witness, the argument is without

substance. This witness has clearly stated that the house in question was never partitioned when the property of Sahib Singh was earlier partitioned.

The house in question was in sole ownership of Sahib Singh and this property shall be inherited by his successor after passing of Sahib Singh. After

passing of respondent No.1, his legal representatives are brought and they are mentioned as respondents No.1(A) to 1(D). These substituted

respondents and respondents No. 2, 3 and 4 are entitled for possession of the house in question from the appellant. In view of the above, argument

advanced on behalf of the appellants is not sustainable. The appeal is liable to be dismissed and decree is liable to be modified.

9. Accordingly, while dismissing the appeal the decree is modified as under:

i) The appellants shall deliver possession of house No.15/20 situated at Ward No.15 at village Pithora, Patwari Halka No.22, Tahsil and District

Mahasamund to respondents No.1-A, 1-B, 1-C, 1-D and respondents No. 2, 3 and 4 and they all are title holders with respondent No.5.

ii) Appellants to bear the cost of respondents No.1 to 4 through out.

iii) Pleader's fee, if certified, be calculated as per schedule or as per certificate, whichever is less.

iv) A decree be drawn up accordingly.