

Mohit Ram Sahu Vs Bisauha Ram Sahu And Ors

Court: Chhattisgarh High Court

Date of Decision: Oct. 24, 2019

Acts Referred: Code Of Civil Procedure 1908 " Section 96

Hon'ble Judges: Ram Prasanna Sharma, J

Bench: Single Bench

Advocate: Parag Kotecha, Shubha Shrivastava

Final Decision: Dismissed

Judgement

Ram Prasanna Sharma, J

1. The appellant has preferred this appeal under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decreed dated 30- 4-2008

(Annexure A/1) passed by the Additional District Judge, Bhatapara, District Raipur (CG) in Civil Suit No. 24-A/2007 wherein the said court dismissed

the suit filed by the appellant/plaintiff for declaring his title over property bearing survey No. 554/3 area 0.673 hectares again Survey No. 553/3 area

0/673 hectares and survey No. 552/1 area 0.397 hectares situated at village Pendry, Tahsil Bhatapara and for possession of the same.

2. Original respondent No.1 Bisauha Ram Sahu was father of the appellant and Kewra Bai is mother of the appellant. Kewra Bai executed sale deed

in favour of respondent No.5 Sukhmati Bai for land bearing Khasra No.554/3 area 0.673 hectares as per Ex.P/2 and in favour of respondent No.6

Smt. Mohar Bai for the land bearing survey No. 554/3 area 0.673 hectares as per Ex.P/3 while Bisauha Ram Sahu executed sale deed in favour of

respondent No.2 Mohanlal for the land bearing survey No. 552/1 area 0.397 as per Ex.P/4. As per appellant decree was passed in Civil Suit No. 7-

A/2005 vide judgement and decree dated 28-6-2008 for partition and appellant is joint owner of the property, therefore, sale deed executed by his

father and mother is illegal, therefore, decree ought to have been passed in his favour but the trial court dismissed the suit contrary to factual matrix

and legal aspect of the matter.

3. Learned counsel for the appellant submits as under.

i) Property was co-parcenary property, therefore, father and mother of the appellant have no right to alienate the same.

ii) The trial court has not recorded finding in its true perspective, therefore, same is liable to be set aside and decree should be passed in favour of the

appellant.

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

5. The first question for consideration of this court is whether the sale deed executed by Bisauha Ram Sahu and Kewra Bai is illegal. From the oral

and documentary evidence, it is clear that land measuring 4.548 hectares is recorded in the name of Bisauha, Nandu, Phoolwati and Shirvantin Bai.

Bisauha and Nandu are real brothers and Phoolwati and Shirvantin Bai are their sisters. Again land measuring 9.698 hectares is recorded in the name

of Bisauha and Nandu as per Ex.D/2. Admittedly, Bisauha had three sons namely Mohanlal Sahu, Khorbahara Ram Sahu and appellant Mohit Ram.

The other sons of Bisau Ram Sahu have not challenged the sale deed executed by Bisauha Ram Sahu and Kewra Bai. Only appellant Mohit Ram has

challenged the sale deed. For challenging the sale deed executed by father, appellant has to prove that the property is not sold for legal necessity.

When father of the appellant has alienated the property, the consequence is dealt with by Mulla in Hindu Law. While dealing with the right of a father

to alienate any ancestral property Article 254 of the said Law may be read as under:

"254. Alienation by father - A Hindu father as such has special powers of alienating coparcenary property, which no other coparcener has. In the

exercise of these powers he may alienate the property for legal necessity".

6. What was legal necessity was also succinctly said by Mulla in Article 241 which reads as under:

241. What is legal necessity - The following have been held to be family necessities within the meaning of Article 241.

(a) payment of government revenue and of debts which are payable out of the family property;

(b) Maintenance of coparceners and of the members of their families. XXXXXX XXXXX XXXX XXXXXX XXXXXX...

7. The aforesaid law gives right to a father to alienate property for maintenance of coparceners and of the members of their families. When any

alienation by father is challenged by son, he must plead and prove that property was not alienated for maintenance of coparceners and of the members

of their families. There is no pleading or proof regarding maintenance of family of coparcener. It is also not clear from evidence as to who maintained

the coparcener, therefore, alienation made by Bisauha who is father of the appellant is valid .

8. As per pleading of the appellant in Civil Suit No. 7-A/2005 a decree of partition is passed but he has not mentioned as to which part of the property

comes within share of the appellant. Cause of action will arise only when property of the share of the appellant is sold by other co-sharer but that is

not the case here. The appellant has not pleaded that the property came into his share which is alienated by Kewra Bai, therefore, he cannot challenge

the sale deed which is executed by his mother Kewra Bai. The trial court has rightly concluded that relief cannot be granted to the appellant.

Argument advanced on behalf of the appellant is not sustainable and the appeal is liable to be dismissed.

9. Accordingly, decree is passed in favour of the respondents and against the appellant as under:

i) The appeal is dismissed with cost.

ii) Appellant to bear the cost of the respondents 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.