(2018) 08 CHH CK 0131

Chhattisgarh High Court

Case No: First Appeal No. 18 Of 2000

Krishna Kumar Tiwari		APPELLANT
	Vs	
Bharat Prasad Tiwari died And Ors		RESPONDENT

Date of Decision: Aug. 9, 2018

Acts Referred:

- Code Of Civil Procedure 1908 - Section 96

Hon'ble Judges: Ram Prasanna Sharma, J

Bench: Single Bench

Advocate: Prafull N. Bharat, B.P. Sharma, Arun Kumar Shukla, Sameer Behar

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 and decree dated 18-10-2000

passed by the Additional District Judge, Ambikapur, District Surguja (CG) in Civil Suit No. 37-A/87 whereby the said court dismissed the suit filed by

the appellant for declaring the suit property situated at Ramanujganj bearing survey numbers as mentioned in Schedule-A of the plaint area 10.43

hectares to be joint property of the appellant Bharat Prasad Tiwari and Mashumati Devi and in the said suit relief was also sought for proportionate

rent of godown to the appellant.

2. As per the case of the appellants, the entire property of Schedule-A and various other property are the joint Hindu Family Property, amongst

appellant, defendant No.1 namely Bharat Prasad Tiwari and Masumati Devi and defendants No. 7 to 9 namely Saraswati Devi, Shakuntala Devi and

Kalawati Devi as they are legal representatives of Rameshwar Pujari, who was father of the appellant. As per averments, Rameshwar Puari was

having a grain merchant in the township of Ramanujganj and having land at villages Lurgi and Leelapathhar. Land of Schedule-A was originally

owned by Smt. Durga Devi Kejrival, who wanted to dispose off the property and certain advance was paid to her out of joint Hindu Family Property.

The appellant came to know that sale deed of land Schedule-A dated 13-4- 1987 was executed in favour of respondent No.2 Vidyavati Devi. On

enquiry, it was discovered that the sale deed for consideration of Rs.40,000/- which has been shown is paid by respondent No.2. As the property was

purchased out of profit and earnings of joint Hindu family and as respondent No.2 was having no independent source of income and was living as

house wife of original respondent No.1 namely Bharat Prasad Tiwari and sale price is paid by said respondent No.1 out of earning of joint Hindu

family, the property is belonging to joint Hindu family.

3. On the contrary, it is the case of said respondents No. 1 and 2 that respondent No.2 was having Rs.20,000/- of her own from various cash gifts

received by her during various occasions and again Rs.20,000/- was taken as loan from her brother and then only the said property is purchased,

therefore, it is not a property of joint Hindu family,

4. Learned counsel for the appellant submits as under:

i) Respondent No.2 was living as house wife of said respondent No.1 and was having no independent source of income to purchase the suit land

mentioned in Schedule A and earning of Rs.20,000/- from cash gifts and loan of Rs.20,000/- from her brother seem to be unjust and creature of after-

thought.

ii) The finding of the trial Court that there was no income of joint Hindu Family in the year 1972 and respondent No.1 had separated from business in

the year 1975 is not sustainable. Again, the finding of the trial Court that the property of joint Hindu Family was partitioned in the year 1982 is also

wrong assumption.

iii) Respondent No.2 did not choose to enter into witness box for supporting her case of independent purchase, therefore, adverse inference should be

drawn again her.

iv) All the revenue records of the joint Hindu Family Property are still on the joint names of the members which goes to show that partition had never

taken place.

v) The trial Court has given undue importance to the document (Ex.D/6) and has wrongly held that the same goes to show separate cultivation and in

fact partition between the brothers and the mother.

5. On the other hand, learned counsel for the respondents would submit that the property in question is self-acquired property of respondent No.2 and

the finding arrived at by the trial Court is based on proper appreciation of oral and documentary evidence adduced by the parties which is not liable le

to be interfered with while invoking jurisdiction of the appeal.

6. I have heard learned counsel for the parties and perused the record and judgment and decree passed by the trial Court.

7. The first question for consideration of this court is whether the the property mentioned in Schedule-A is acquired out of joint Hindu Family Property.

Rameshwar Puari was father of the appellant and as per finding of the trial Court he died in the year 1962-1963. In Ex. D/9 which is assessment of

tax it is mentioned that Rameshwar Pujari died in the month of September, 1963 and there is no reason against oral and documentary evidence to say

that he died in some different year, therefore, it is established that Rameshwar Pujari died in the year 1962-63. As per evidence, Rameshwar Pujari

was engaged in a business of grain merchant and after his death one Vishwanath was conducting the business as Manager but due to mismanagement

the same business was closed in the year 1972. When the business of grain was closed in the year 1972 , no one appeared before the trial Court to

say that he was maintaining the account of grain business and there is no document regarding income of the said business, therefore, it is not

established before the trial Court that any regular income was accounted for the business or any savings are accounted for that business. In absence

of oral and documentary evidence, it is not established that any money is saved out of grain business which may be termed to be a deposit of the joint

Hindu family. On overall assessment of the evidence, it is not established that there was any balance amount regarding business of grain merchant.

8. It is alleged in the plaint by the appellant that the land area 42.83 hectare was joint property at village Lurgi and land area of 4.60 was joint property

at village Leel Bandariya, but there is no oral or documentary record regarding regular cultivation of whole land. As per oral evidence of both sides,

after marriage of said respondent Bhagwat Prasad Tiwari, he was cultivating certain land and was in possession of certain land and again appellant

was also cultivating some land which is mentioned in Ex.D/6 which is a report of spot inspection of Tahsildar, Ramanujganj. As per spot inspection,

Bharat Prasad Tiwari was cultivating 7.303 hectare of land and Krishna Prasad was cultivating 8.592 hectare of land. It is also mentioned in Ex.D/6

that the other lands are not cultivated and there is nothing on record to show as to who was in possession of other land as the other land was not

cultivated by anyone or to say it was infertile and there was no income from the said land. Land separately cultivated by appellant and respondent

Bharat Prasad Tiwari has no account regarding any income from the said property.

9. On overall assessment of the oral and documentary evidence, it is established that no one has accounted for income of cultivated land, therefore, it

was not established that any income was accrued by any one from the said land. It has come in the evidence that one truck was registered in the

name of the appellant and one Tractor was registered in the name of said respondent No.1 but both have not stated regarding income from truck or

tractor. The trial Court has elaborately discussed the issue and recorded its finding that business of grain merchant was closed in the year 1972 and

said respondent No.1 and the appellant were cultivating some land separately from the year 1975. The finding of the trial Court is based on proper

appreciation of evidence and this court has no reason to interfere with the same.

10. It is contended on behalf of the appellant that two demand drafts of Rs.5000/- each was given to the seller of the property which shows that the

property in question is purchased out of income of joint Hindu family property.

11. In view of this court, when there is no evidence regarding income of joint Hindu family property, on the contrary, parties were in separate

possession of land and no one has clearly stated that income is earned from anyone from joint Hindu family, therefore, income of joint Hindu family is

not established. Again there is no pleading regarding giving of two demand drafts to the seller in the plaint. It is settled law that no amount of evidence

could be looked into apart from pleading, therefore, argument on behalf of the appellant on this score must fail. The trial Court has given cogent reason

as per evidence of brother of respondent No.2 that he helped for Rs.20,000/- to her, therefore, looking to the economic status of the parties, it can be

inferred that respondent No.2 has given Rs.20,000/- for consideration amount and the same is based on the evidence adduced before the trial Court

and this court has no reason to record a different opinion. When brother of respondent No.2 entered into witness box, his evidence was sufficient for

establishing that he provided money to his sister and non- examination of respondent No.2 will have no effect looking to the financial position of the

parties as Rs.20,000/- given by her brother Balwant Pandey and Rs.20,000/- of gift is not huge amount which cannot be collected through gifts during

life time.

The finding of the trial Court is not liable to be interfered while invoking jurisdiction of the appeal.

12. Accordingly, decree is passed against the appellant and in favour of respondents No. 1 and 2 as under:

(i) The appeal is dismissed with cost.

(ii) Appellant to bear the cost of respondents No. 1 and 2.

(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.