

John Peter Vs Balraj Yadav

Court: Chhattisgarh High Court

Date of Decision: March 7, 2014

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 100
Transfer of Property Act, 1882 â€” Section 55

Citation: (2014) 3 CGLJ 203 : (2014) 5 MPHT 84 : (2014) 4 MPJR 47

Hon'ble Judges: Sanjay K. Agrawal, J

Bench: Single Bench

Advocate: Awadh Tripathi, Advocate for the Appellant

Final Decision: Dismissed

Judgement

Sanjay K. Agrawal, J.

1. This is plaintiff's Second Appeal u/s 100 of the CPC (for short "the CPC") against the judgment and decree dated 1.12.2000 passed by VIth

Additional District Judge, Raipur in Civil Appeal No. 4-A/2000, reversing the judgment and decree dated 19.04.2000 passed by Vth Civil Judge,

Class I, Raipur in Civil Suit No. 102-A/2000.

[For sake of convenience, the parties would be referred hereinafter as per their status before the trial Court]

The necessary facts required for determination of this appeal are as under.--

1.1 Plaintiff - John Peter filed a suit for possession against the defendant pleading inter alia that he has purchased the suit house bearing Municipal

No. 17/617 constructed on 100 sq.ft. of a plot 9 x 34" = 306 sq.ft. situated at Kathipara, Pandari, Raipur from Jagannath Yadav by registered

sale deed dated 17.10.1990 for a sale consideration of Rs. 10,000/- and the plaintiff was assured that defendant Balraj Yadav would deliver the

vacant possession of the suit house but since he has not vacated the suit house and he has no right to continue in its possession, therefore, he is

entitled for possession of the suit house.

1.2 Defendant - Balraj Singh, by filing written statement, has denied the averments made in the plaint stating inter alia that the suit accommodation

is the ancestral property which was in the name of his father Pardeshi Yadav and after his death, he and his brother Jagannath Yadav both had

succeeded the suit house which is duly recorded in the Municipal record and therefore, Jagannath Yadav alone had no right to sell the suit

property.

2. The trial Court by its judgment & decree dated 19.04.2000 decreed the plaintiff's suit holding that the plaintiff has purchased the suit house

from Jagannath Yadav - exclusive owner of the suit house and in which the defendant is only licensee and, therefore, the plaintiff is entitled for

possession of the suit house.

3. Defendant preferred first appeal there against. The First appellate Court allowed the appeal holding that Shri Jagannath Yadav, from whom the

plaintiff has purchased the suit house was only co-owner of the suit property, has sold only 306 Sq.ft. of land out of total land area 1020 Sq.ft.

and, therefore, though the plaintiff has acquired the title over 306 sq.ft. of land out of total land area 1020 Sq.ft. but the remedy of the purchaser-

plaintiff to file a suit for partition as the defendant being the co-owner of the suit house cannot be dispossessed as no decree could be granted for

possession without suit for partition.

4. Shri Awadh Tripathi, learned counsel appearing for the appellant would submit that both the courts below have concurrently fallen into error in

dismissing the suit and the finding being pervers, it give rise to substantial question of law for determination in this appeal.

5. I have heard learned counsel appeal appearing for the appellant and perused the records of both the courts below.

6. The first appellate Court has clearly recorded a finding that the suit property is jointly owned by defendant-Balraj Yadav and Jagannath Yadav

as they have inherited the property from their father late Shri Pardeshi Yadav and since one of the co-owner Jagannath Yadav has sold 306 Sq.ft.

of the land out of 1020 sq.ft. of land, therefore, remedy of the purchaser-plaintiff is to file suit for partition. Thus, the first appellate Court has

reached to the above conclusion which is in accordance with law.

7. In case of Ramdayal Vs. Manaklal, the Full Bench of the High Court of Madhya Pradesh has held that a coparcener may sell, mortgage or

otherwise alienate for value his undivided interest in the coparcenary property without consent of other coparceners but he has not right to alienate,

as his interest, any specific property belonging in to the coparcenary, for no coparcener can before partition claim any such property as his own;

and if he does alienate, the alienation is valid to the extent only of his own interest in the alienated property. If the purchaser of to the extent only of

his own interest in the alienated property. If the purchaser of the undivided interest of a coparcener has obtained possession, the non-alienating

coparceners are entitled to sue for any recover possession of the whole of the property for the benefit of the joint family including vendor. The

purchaser is not entitled in such suit to an order for partition, either of the specific property sold to him or of the joint family properties in general;

he must, if he wants to realize his vendor's interest, bring a suit of his own for a general partition. Where a suit therefore, is brought by the non-

alienating coparceners for possession, the proper decree to be passed would be an order directing the purchaser to deliver possession to the

plaintiffs of the whole property, and declaring that the purchaser is entitled to a declaration that he has acquired the undivided interest of his vendor

in the property and that he is entitled to take proceedings to have that interest ascertained by partition. However, to protect the purchaser, a further

direction be added that the execution of the decree, so far as it directs the purchaser to deliver possession to the plaintiffs, be stayed for specified

period and if, before expiry of that period, the purchaser brings a suit for a general partition against the plaintiffs, then the stay should continue until

the disposal of that suit, but if no such suit is brought within that period, then the stay of execution will stand cancelled.

8. The Supreme Court in case of Pavitri Devi and Another Vs. Darbari Singh and Others, in para. 7 of the judgment has held that the Karta or the

Manager of the Hindu Joint Family has a right to alienate undivided interest in the Hindu joint family property for valid consideration for family

necessary. Karta or coparcener has right to alienate his undivided share in coparcenary property and the purchaser acquires only the equitable

right to allotment of his predecessor's share at a partition. The purchaser is entitled to the allotment of the specific property sold and to be put in

possession, so far as possible, subject to equities.

9. The Supreme Court in Ramdas Vs. Sitabai and Others, while dealing with Section 55 of the Transfer of Property Act, 1882 observed in para.

15 and 16 as under:--

75. Without there being any physical formal partition of an undivided landed property, a co-sharer cannot put a vendee in possession although

such a co-sharer may have a right to transfer his undivided share. Reliance in this regard may be placed to a decision of this Court in Mamidi Venkata

Satyanarayana Manikyala Rao and Another Vs. Mandala Narasimhaswami and Others, wherein (sic) Court stated as follow:

Now it is well settled that the purchaser of a co-parcener's undivided interest in the joint family property is not entitled to possession of what he

had purchased. His only right is to sue for partition of the property and ask for allotment to him of that which, on partition, might be found to fall to

the share of the co-parcener whose share he had purchased.

10. It may be mentioned herein that the aforesaid findings and the conclusions were recorded by the Supreme Court by placing reliance upon an

earlier judgment of this Court in Sidheshwar Mukherjee Vs. Bhubneshwar Prasad Narain Singh and Others, , wherein this Court held as under:

All that (vendee) purchased at the execution sale, was the undivided interest of co-parcener in the joint property. He did not acquire title to any

defined share in the property and was not entitled to joint possession from the date of his purchase. He could work-out his rights only by a suit for

partition and his right to possession would date from the period when a specific allotment was made in his favour.

(Emphasis added).

11. The Supreme Court in case of Gajara Vishnu Gosavi Vs. Prakash Nanasahed Kamble and Others, has held in para. 11 as under:

11. Thus, in view of the above law emerges to the effect that in a given case an undivided share of a coparcener can be a subject matter of

sale/transfer, but possession cannot be handed over to the vendee unless the property is partitioned by metes and bounds, either by the decree of a

Court in a partition suit, or by settlement among the co-sharers.

12. It is well settled principle of law that remedy of purchaser of the undivided share of a co-parcener in the joint property is to file a suit for

partition and the said purchaser is not entitled for possession unless the property is partitioned by metes and bounds, either by the decree of a

court in a partition suit, or by settlement among the co-sharers.

13. Having ascertained the legal position and keeping in mind the principles laid down in the above referred cases, the first appellate Court has

rightly held that the plaintiff being the purchaser of the undivided share is not entitled for decree for possession and his remedy is to file suit for

partition. Thus, I do not find it either perverse or contrary to record and no question of law much less substantial question of law is involved in this

appeal. For the reasons mentioned hereinabove, the appeal fails and is hereby dismissed at motion stage itself. No order as to costs.