

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**First Appeal No. 554 of 2018**

- Rajesh Manchandani S/o Santram Manchandani, R/o Mahamaya News Agency, Block Road Takhatpur, Police Station And Tahsil Takhatpur, Civil And Revenue District Bilaspur, Chhattisgarh

---- Appellant**Versus**

1. Santram Manchandani S/o Natthulal, Caste Sindhi, R/o Block Road Takhatpur, Police Station And Tahsil Takhatpur, Civil And Revenue District Bilaspur, Chhattisgarh
2. Smt. Maya Bai W/o Santram Manchandani, Caste Sindhi, R/o Block Road Takhatpur, Police Station And Tahsil Takhatpur, Civil And Revenue District Bilaspur, Chhattisgarh

---- Respondents

For Appellant	:	Mr. Ratnesh Kumar Agrawal, Advocate
For Respondents	:	Mr. Animesh Verma along with Mr. Ashutosh Shukla, Advocate

Hon'ble Shri Justice P. Sam Koshy**Judgement On Board****31.10.2022**

1. Since the appeal itself is being taken up for hearing finally, the two applications; one under Order 41 Rule 27 of CPC and other application under Order 13 Rule 10 calling for the records from Income Tax department, are not being pressed and considered at this stage.
2. The present is a defendant's first appeal under Section 96 of CPC. The challenge is to the impugned judgment and decree dated 29.09.2018 passed in Civil Suit No. 307-A/2014 by the 8th Additional District Judge, Bilaspur (CG). Vide the impugned judgment and decree the trial Court while allowing the suit has ordered for the

defendant to vacate the suit premises occupied by him and give vacant possession to the plaintiffs.

3. The facts of the case in brief are that both the plaintiffs are the respondents in the present appeal. The plaintiffs are the registered owner of two properties; one situates at Khasra No.152/3 measuring 0.09 acre (9 decimals) which stands in the name of plaintiff no.1 Santram Manchandani having purchased by way of a registered sale deed executed on 23.06.1982 (Ex.P-8). The said property was purchased by plaintiff No.1 from one Ashaddin S/o Sudin. The second property situates at Khasra No. 152/6 measuring 0.07 acre (7 decimals) purchased in the name of plaintiff no.2 Smt. Maya Bai vide registered sale deed executed on 05.10.2011 (Ex.P-9). The said property was purchased from Hiralal Manchandani, the uncle of plaintiff no.1.
4. The appellant herein i.e. the defendant before the Court below is the son of the plaintiffs and he was in occupation of a portion of the aforementioned two properties. Part of the said properties he was occupying for residential purposes and other part of the properties he was using as a shop from where he was operating his business. It is said that there was some dispute that arose between the plaintiffs and the defendant which finally led to the plaintiffs filing a suit for possession.
5. After the plaintiffs filed the suit and notices having been issued, the defendant entered appearance and denied the claim of the plaintiffs. In the WS the defendant had taken a categorical stand that the suit property is not one which is exclusively owned by the plaintiffs alone and that the defendant has also a share in the said property. The

said property was purchased with the money made available by the defendant to the plaintiffs at the time of construction on the said suit properties.

6. Based upon the pleadings particularly taking note of the suit for possession that the plaintiffs had filed, the Court below framed two substantial issues both of which was whether the plaintiffs are entitled for possession of the two portion of the suit properties in occupation and possession by the defendants. Based upon the evidences which have come on record the trial Court vide impugned judgment and decree dated 29.09.2018 allowed the suit and a decree was passed in favour of the plaintiffs directing the defendant to handover the peaceful possession of the suit property to the plaintiffs. It is this judgment which is under challenge in the present first appeal.
7. The contention of the learned counsel for appellant-defendant assailing the impugned judgment and decree is that the two suit properties are not self acquired properties of the plaintiffs alone and that the defendant had also contributed for purchase and construction of the properties. It is the further contention that the defendant in the instant case had taken a loan in his wife's name from the Central Bank of India, Takhatpur Branch and had given the said loan amount to the plaintiffs for construction of the house in the property which stands registered in the name of plaintiff no.1 and for purchase of the property which stands registered in the name of plaintiff no.2. It is the contention of the appellant that the trial Court while proceeding with the suit has not framed any issue in this regard enabling the defendant to lead substantive cogent evidence to establish his contribution on the purchase and also the construction raised on the

suit property. It is also the contention of the appellant-defendant that there is no specific denial of these facts by the plaintiffs nor is there any cross-examination rebutting these facts on the part of the plaintiffs. Therefore, the impugned judgment and decree passed by the trial Court cannot be said to be proper, legal and justified.

8. Per contra, learned counsel appearing for the respondents, on the other hand, submits that it is a case where from the records itself it would be evident that admittedly a loan was taken by Simran i.e. the wife of appellant-defendant from the Central Bank of India but it was the plaintiff no.1 who was made guarantor of the said loan. However, the loan was taken by the defendant for his purpose and it was never made available to the plaintiffs nor is there any evidence in this regard. On the other hand, there was a default by Simran i.e. the wife of appellant in the repayment of loan and which finally had to be discharged by the plaintiffs when notice was issued in this regard by the Bank calling for attachment of the mortgaged property. According to the plaintiffs, that cannot be a ground which could lead to a presumption that the loan amount obtained by Simran was for the purchase of property in the name of plaintiff no.2 or for that matter for raising of any construction in the suit property. According to the plaintiffs, since admittedly the defendant was the son of the plaintiffs, he had a permissive possession, that by itself would not create any indefeasible right in his favour regarding possession as the property unless otherwise proved has to be assumed to have been self acquired property of the plaintiffs themselves.
9. As regards the non-framing of issues etc., the contention of the plaintiffs is that since the suit was for possession of the said

properties, it was only possession which was the core issue that was framed and the Court below was not required to test the title or the other rights of the defendant over the suit property except for the possession part. It was also the contention of the plaintiffs that the defendant on the other hand has also not made any claim of title over the said property nor was there any cross suit filed by the defendant in respect of any claim and in the absence of which the finding given by the trial Court cannot be said to be erroneous or contrary to the evidence.

10. Having heard the contentions put forth on either side and on perusal of records what is reflected is that the plaintiffs in support of their contention have examined plaintiff no.1 as the solitary witness who has proved the two registered sale deeds; one executed in his name and other executed in his wife's name dated 23.06.82 and 05.10.11 respectively. The defendant, on the other hand, apart from recording of his evidence, has also got examined one Lalit Kumar Yadav as DW-1.

11. From perusal of the evidence that has come on record what is evident is that there is no substantive materials brought on record to show any monetary contribution made available by the defendant to the plaintiffs, either for the purchase of two properties or for raising of construction on both these properties. Further what is also evident is the fact that the two suit properties were not ancestral properties which the plaintiffs had inherited from their ancestors but the said properties were purchased directly by the plaintiffs in their name. Thus, a strong prima facie case has been made out so far as the property being a self acquired property of the plaintiffs themselves is

concerned. If the defendant disputes this fact, it is the bounden duty of the defendant to establish that it was not a self acquired property or the said property being an ancestral property.

12. The defendant had taken a specific stand that it was not the plaintiffs alone who had independently purchased or raised construction in the suit property but there was a contribution made by him also. In that event also it was the burden upon the defendant to produce cogent evidence in this regard which too is not available on record both documentary or oral. Only taking of a loan by the wife of defendant in August, 2011 by itself cannot be a ground for assuming or presuming that the amount was taken for making it available to the plaintiffs as there is no proof available on record to establish this fact neither has the appellant-defendant been able to produce documents from the Bank of having obtained loan for the purpose of purchase of the said property. In the absence of any such material evidence the contention raised by the appellant would not be acceptable or sustainable.

13. One of the contentions which the appellant has raised is that the plaintiff no.2 was not examined so far as the property which stands in the name of plaintiff no.2 is concerned.

14. The suit had been filed jointly by plaintiff no.1 and plaintiff no.2 who are husband and wife. It was the plaintiff no.1 who was pursuing the suit all along and it was he who had entered appearance to prove the two sale deeds executed. There is no factual dispute as regards the execution of the sale deeds and the seller of the two properties in the name of plaintiff Nos. 1 & 2 being made. Merely because the plaintiff no.2 has not been examined by itself would not be a case

fatal enough, when all that the plaintiffs are seeking is the possession of the said properties.

15. As regards the ground of non-framing of issues, from the pleadings and the proceedings it also appears that the defendant at no point of time had made any efforts for framing of any additional issue. If the defendant wanted, he could have done it during the proceedings of trial before the trial Court. In a suit for possession, those issues which the defendant wants to be framed as additional issues also may not have been of much relevance.

16. For all these reasons, this Court does not find any strong case made out by the appellant-defendant calling for an interference with the impugned judgment and decree. The appeal thus fails and is accordingly rejected.

**Sd/-
(P. Sam Koshy)
Judge**