

HIGH COURT OF MADHYA PRADESH**Bench: Hon'ble Justice Dwarka Dhish Bansal****Date of Decision: 24th May 2024**

SECOND APPEAL No. 1063 of 2000

Kallo Bai ...APPELLANT**Versus****Tekchand and Others ...RESPONDENTS****Legislation:**

Hindu Women's Rights to Property Act, 1937

Hindu Succession Act, 1956

Civil Procedure Code, 1908

Subject: Civil appeal arising from judgments affirming the decree for declaration of ½ share, partition, and possession in a joint family property dispute.

Headnotes:

Property Law – Joint Hindu Family Property – Succession Rights under Hindu Women's Rights to Property Act, 1937 – Applicability to Agricultural Land - High Court examined the applicability of the Hindu Women's Rights to Property Act, 1937, to the agricultural land. Upon the death of Kanhaiya in 1941, the Court found that his wife, Kala Bai, acquired the same rights in the joint family property under the Act, despite her husband's death prior to the extension of the Act to agricultural lands in 1942. This extension was applied retrospectively, granting Kala Bai a half share in the property which she held in her own right until her death in 1960. Consequently, the plaintiffs, being the daughters of Kanhaiya and Kala Bai, inherited the property upon the enactment of the Hindu Succession Act, 1956, affirming their right to partition and possession. [Paras 2, 11-12]

Property Acquisition – The High Court held that the land area of 1.14 acres, acquired by Harlal through a registered sale deed in 1954, was his self-acquired property and not part of the joint family estate. The trial court's finding of the sale deed as bogus was reversed by the first appellate court and upheld by the High Court, determining that this land should not be included in the decree for partition. The Court modified the trial court's decree accordingly, excluding this specific land from the plaintiffs' share. [Paras 5, 14-15]

Decision – Appeal Partially Allowed – Held – The appeal is allowed to the extent of excluding the self-acquired property of Harlal (1.14 acres) from the partition decree. The judgment and decree of the lower courts are modified to this extent, confirming the plaintiffs' entitlement to half of the remaining joint family property. No order as to costs. [Paras 15-17]

Referred Cases:

- Potti Lakshmi Perumallu v. Potti Krishnavenamma, AIR 1965 SC 825
- Chinthamani Ammal v. Nandagopal Gounder, (2007) 4 SCC 163
- B.K. Babu Rao & Ors. v. Smt. A. Jaya Lakshmi, AIR 2008 A.P. 78
- Alamelu Ammal v. Chellammal, AIR 1959 Mad 100

Representing Advocates:

Ms. Sudipta Choubey for the appellant

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J U D G M E N T

This second appeal has been preferred by the appellant/ defendant 2-Kallo challenging the judgment and decree dated 24.06.2000 passed by Second Additional District Judge, Hoshangabad in RCA No.6-A/2000 affirming the judgment and decree dated 17.12.1999 passed by First Civil Judge Class-I, Hoshangabad in Civil Suit No.143-A/1999, whereby Courts below have decreed respondents 1-3/plaintiffs' suit for declaration of ½ share, partition and possession.

2. In short the facts are that one Pirga had two sons namely, Kanhaiya and Harlal. Kanhaiya died in the year 1942 leaving behind her wife - Kalabai and two daughters namely, Maitha and Mathariya whereas Harlal had died in the year 1980 leaving behind him his wife Sarju (now dead, defendant 1) and Kallo (defendant 2). It is alleged in the plaint that suit property belonged to Pirga, and Kanhaiya & Harlal were members of joint family, which remained in their joint possession. After death of Kanhaiya in the year 1942, his wife Kalabai remained in possession of land with Harlal. Kalabai had died in the year 1960 and Harlal died in the year 1980. With these allegations the suit was filed claiming 1/2 share, partition and possession.
3. The defendants filed written statement denying the plaint allegations. It was denied that the property was joint Hindu family property of Kanhaiya and Harlal. As they were separated during their life time, hence it was exclusive property of Harlal. The defendants further pleaded that suit property bearing nos. 16 area 1.03 acre and 17 area 0.11 acre = 1.14 acre, was purchased by Harlal vide registered sale deed dated 15.05.1954 and by way of Will he had given entire suit property to Kallo Bai. The defendants also took the plea of adverse possession. On inter alia contentions the suit was prayed to be dismissed.
4. On the basis of pleadings of the parties, trial Court framed as many as 12 issues and recorded evidence of the parties. In support of their case, the plaintiffs examined Prabhu (PW/1), Munshilal (PW/2), Maithabai (PW/3) & Tekchand (PW/4). Similarly, the defendants in support of their case examined Manaklal (DW/1), Ramdayal Singh (DW/2), Kallo Bai (DW/3), Sarju Bai (DW/4), Ram Singh (DW/5), R.S. Sahu (DW/6), Rameshwar (DW/7) & Chandanalal (DW/8) and adduced documentary evidence also.
5. After due consideration of the material available on record, trial Court vide judgment and decree dated 17.12.1999 decreed the suit in toto holding the sale deed dtd. 15.05.1954 (Ex.D/2) (of the favour of Harlal) to be bogus and the plaintiffs to be sharers of 1/2 share as well as partition and possession. Upon filing appeal by defendant 2 - Kallo Bai, findings on issue no. 8 were set aside by first appellate Court, however judgment and decree of trial Court was affirmed vide impugned judgment and decree dated 24.06.2000.
6. Upon filing second appeal by defendant 2 - Kallo Bai, it was admitted for final hearing on 01.08.2002 on the following substantial question of law :-

“Whether the plaintiff will get any right in the property, while husband of Kala Bai died in 1941 and in view of this Kala Bai will not get any right in joint Hindu family property ?”

7. Learned counsel for the appellant submits that as per findings of Courts below, property in question was joint Hindu family property, therefore, upon death of Kanhaiya on 02.12.1941, his wife Kala Bai would not get any right in the suit property, who before his death in the year 1960 did not claim any right or partition of land, therefore, Courts below have committed illegality in decreeing the suit filed by her daughters (Maitha and Mathariya). She also submits that out of total 11.04 acres of land, an area 1.14 acre was purchased by Harlal vide registered sale deed dated 15.05.1954, therefore, the land purchased by Harlal should not have been included in the decree, which has been found valid by first appellate Court by reversing findings on issue no.8. In support of her submissions she placed reliance on decisions of Hon'ble Supreme Court in the case of Potti Lakshmi Perumallu vs. Potti Krishnavenamma **AIR 1965 SC 825**, Chinthamani Ammal vs. Nandagopal Gounder and another **(2007) 4 SCC 163** as well as decision of Andhra Pradesh High Court in the case of B.K Babu Rao & Ors vs. Smt. A. Jaya Lakshmi **AIR 2008 A.P. 78** and decision of Madras High Court in the case of Alamelu Ammal and others vs. Chellammal (died) and others **AIR 1959 Madras 100**. With these submissions she prays for allowing the second appeal and dismissal of suit in toto.
8. None for the respondents, though served and represented.
9. Heard learned counsel for the appellant/defendant 2 and perused the record.
10. Although the defendants had come with the case that Kanhaiya and Harlal became separate in their life time but plea of partition taken by the defendants has not been found proved by Courts below, by holding concurrently that suit property was joint property of Kanhaiya and Harlal and no partition took place of the joint Hindu family property, which is a pure finding of fact based on oral evidence and admissions of parties. At the same time Courts below have also negated the plea of adverse possession taken by the defendants. Apparently, no substantial question of law has been framed in respect of aforesaid findings.
11. In the light of said findings, Courts below have held that upon death of Kanhaiya somewhere in the year 1941-42, his wife namely Kala Bai acquired same right by virtue of provisions of the Hindu Women's Rights to Property Act, 1937, which Kanhaiya was having prior of his death and she held the

property in her own rights up to her death in the year 1960. It is also held that after death of Kala Bai the plaintiffs 1-2 Maitha (whose LRs. are Tekchand and Harishankar) and Mathariya, who being daughters of Kanhaiya and Kala Bai, succeeded the property upon coming into force of the Hindu Succession Act, 1956.

12. The Hindu Women's Rights to Property Act, 1937 came in existence on 01.01.1937, operation of which was extended to agriculture lands also with retrospective effect vide Central Provinces and Berar Hindu Women's Rights to Property (Extension to Agricultural land) Act, 1942. As such even death of husband of Kala Bai in the year 1941, would not make any difference and she will get $\frac{1}{2}$ share in the property left by her husband.
13. In view of the aforesaid factual scenario the decisions in the case of Potti Lakshmi Perumallu (**supra**); Chinthamani Ammal (**supra**); B.K Babu Rao & Ors (**supra**); and Alamelu Ammal and others (**supra**) do not give any support to the case of the appellant.
14. So far as the ownership of defendants over land area 1.14 acre out of entire disputed land (bearing nos. 16 area 1.03 acre and 17 area 0.11 acre = 1.14 acre) is concerned, it is self acquired property of Harlal, which he purchased by way of regd. sale deed dtd. 15.05.1954 (Ex.D/2). It is apparent from the record that trial Court while deciding issue no. 8 had held the sale deed to be a bogus document and this finding has been reversed by first appellate Court holding it to be a valid document of sale, however, first appellate Court has held this land also belonging to joint Hindu family of the parties. Perusal of plaint shows that neither any pleading has been made in plaint to the effect that the land area 1.14 acre was purchased in the name of Harlal from income of joint Hindu family nor any relief has been sought regarding the said sale deed, in absence of which and in presence of unchallenged finding on issue no. 8 recorded by first appellate Court, it cannot be said that plaintiffs are entitled for declaration of share in respect of land bearing no. 16 area 1.03 acre and 17 area 0.11 acre = 1.14 acre also.
15. In view of aforesaid discussion and in the light of findings recorded by this Court in aforesaid paragraph no. 14, judgment and decree of trial Court is modified to the extent that suit shall stand decreed except the land bearing nos. 16 area 1.03 acre and 17 area 0.11 acre = 1.14 acre.
16. Accordingly, the substantial question of law framed by this Court is decided and the judgement and decree of Courts below are modified to the extent indicated above. Decree be drawn accordingly.

17. No order as to costs.
18. Misc. application(s), pending if any, shall stand closed.

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