

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 5919 OF 2011**

Prahlad Pradhan & Ors. ...Appellants

versus

Sonu Kumhar & Ors. ...Respondents

J U D G M E N T

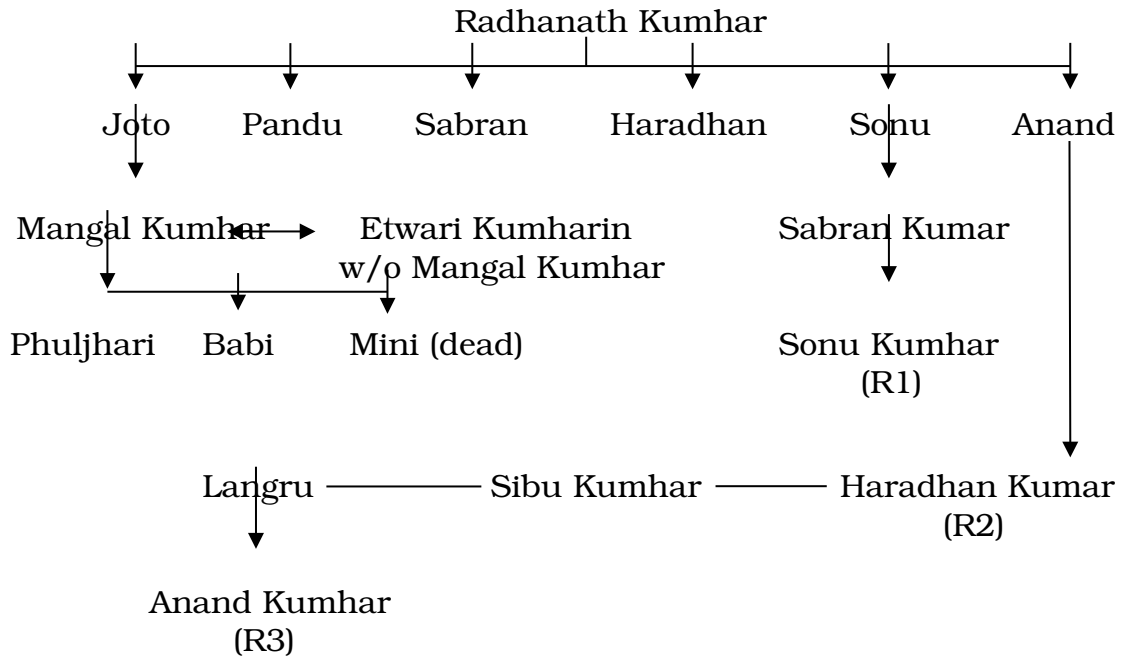
INDU MALHOTRA, J.

1. The present dispute arises out of a Civil Suit filed by the Respondents for a Declaration that the Sale Deed dated 22.10.1973 executed by one Etwari Kumharin in favour of the Appellants was void and illegal, and a further declaration of the Respondents' title over the Suit Property.

2. Briefly stated, the present Civil Appeal arises in the following factual matrix :-

2.1 Radhanath Kumhar was the owner of agricultural land and a house in Mouza Nalita, P.S. Toklo (Singhbhum). Radhanath Kumhar died intestate, and his property devolved upon his legal heirs and

descendants. The genealogy of Radhanath Kumhar's family is set out hereinbelow for ready reference :-



2.2 The present case pertains to Plot No. 614 admeasuring 35 decimals in Khata No. 145, Mouza Nalita, P.S. Toklo (Singhbhum) (hereinafter referred to as the "Suit Property"), which was a part of the estate of Radhanath Kumhar.

2.3 After Mangal Kumhar's death, his widow Etwari Kumharin purported to sell the suit property for a consideration of Rs. 1,000/- to the Appellants *vide* a registered Sale Deed dated 22.10.1973.

2.4 Respondent Nos. 1 to 3 who are legal heirs of two sons of late Radhanath Kumhar i.e. Sonu and Anand filed Title Suit No. 14/1986 before the Court of Munsif at

Chalibasa, Jharkhand against the Appellants on the ground that the Suit Property was ancestral property, and Etwari Kumharin had no right to sell it.

The Plaintiffs/Respondents herein impleaded the legal heirs of Mangal Kumhar and Etwari Kumharin i.e. daughters *viz.* Phuljhari and Babi, and grandchildren *viz.* Kamla and Rangu as proforma defendants.

The Plaintiffs/Respondents herein *inter alia* prayed for a Declaration that the Sale Deed dated 22.10.1973 was void and illegal; Declaration of title of the Plaintiffs and proforma defendants over the suit property, and confirmation of their possession over the suit property, or in the alternative, for recovery of possession from the Appellants.

Since Respondent Nos. 1 to 3 were minors at the time of filing the Suit, the Suit was filed through their next friend Sibum Kumhar. Respondent No. 2 is the brother of Sibum Kumhar, and Respondent Nos. 1 and 3 are the nephews of Sibum Kumhar.

Sibum Kumar was subsequently discharged as next friend *vide* Order dated 29.08.1989, after the

Plaintiffs/Respondents herein attained the age of majority.

2.5 The Trial Court decreed the Suit in favour of the Plaintiffs/Respondents herein *vide* Judgment and Decree dated 09.02.1990. It was held that the Suit Property was a part of the joint family property of the common ancestor Radhanath Kumhar. Since there was no partition of the properties owned by Radhanath Kumhar between his legal heirs, the widow of Mangal Kumhar had no right to sell a part of the ancestral property. Furthermore, Mangal Kumhar's share in the joint family property was not specified, and hence, he could not be considered to be the exclusive owner of the suit property.

The Trial Court further held that upon Mangal Kumhar's death, his widow Etwari Kumharin did not acquire any exclusive right, title or interest in the suit property, and was not competent to transfer the suit property in favour of the Appellants *vide* Sale Deed dated 22.10.1973.

It was further held that Etwari Kumharin was not a necessary party in the Suit because after executing the Sale Deed dated 22.10.1973, she had no interest in the suit property.

It was further held that the daughters of Mangal Kumhar and Etwari Kumharin had not executed the Sale Deed dated 22.10.1973, nor given any No Objection for the sale.

The Trial Court passed a Decree declaring the Sale Deed dated 22.10.1973 to be void and illegal, and confirmed the possession of the Plaintiffs/Respondents herein and the proforma defendants over the suit property. It was further directed that if the Plaintiffs/Respondents herein and the proforma defendants are found to have been dispossessed from the suit property during the pendency of the Suit, they shall be at liberty to recover possession after getting the decree executed through process of the court.

2.6 Aggrieved by the aforesaid Judgment and Decree, the Appellants filed Title Appeal No. 8/1990 before the

Additional District Judge, Fast Track Court Vth, West Singhbhum at Chalibasa, Jharkhand.

The Appellate Court dismissed the Appeal *vide* judgment dated 19.05.2004. It was *inter alia* held that the Appellants had failed to adduce any evidence to prove that the suit property was self-acquired property of Mangal Kumhar. As a consequence, Etwari Kumharin had no exclusive right over the suit property, and was not entitled to execute the Sale Deed in favour of the Appellants.

It was further held that the legal heirs of Mangal Kumhar i.e. his daughters and grand-children, had supported the case of the Plaintiffs/Respondents herein.

2.7 Aggrieved by the aforesaid judgment, the Appellants filed Second Appeal No. 378/2004 before the Jharkhand High Court.

The High Court *vide* impugned Judgment and Order dated 28.04.2009 dismissed the Second Appeal on the ground that no substantial question of law had arisen for consideration.

3. Aggrieved by the judgment in the Second Appeal, the Appellants have filed the present Special Leave Petition. This Court *vide* Order dated 22.07.2011, granted special leave to appeal.
4. The Courts below have found on the basis of the evidence adduced by the parties, that the Appellants had failed to prove that the suit property was the self-acquired property of Mangal Kumhar.

The burden to prove that the Suit Property was the self-acquired property of Mangal Kumhar was on the Appellant – Purchasers. Reliance is placed on this Court’s judgment in *Adivappa & Ors. v. Bhimappa & Ors.*,¹ wherein it was held that :-

“22. It is a settled principle of Hindu law that there lies a legal presumption that every Hindu family is joint in food, worship and estate and in the absence of any proof of division, such legal presumption continues to operate in the family. The burden, therefore, lies upon the member who after admitting the existence of jointness in the family properties asserts his claim that some properties out of entire lot of ancestral properties are his self-acquired property. (See-Mulla-Hindu Law, 22nd Edition Article 23 “Presumption as to

1 (2017) 9 SCC 586.

co-parcenary and self acquired property” - pages 346 and 347).”

(emphasis supplied)

The Appellants have failed to discharge the burden to prove that the suit property was separate or self-acquired property of Mangal Kumhar.

5. The contention raised by the Appellants is that since Mangal Kumhar was the recorded tenant in the suit property as per the Survey Settlement of 1964, the suit property was his self-acquired property.

The said contention is legally misconceived since entries in the revenue records do not confer title to a property, nor do they have any presumptive value on the title. They only enable the person in whose favour mutation is recorded, to pay the land revenue in respect of the land in question.²

As a consequence, merely because Mangal Kumhar's name was recorded in the Survey Settlement of 1964 as a recorded tenant in the suit property, it would not make him the sole and exclusive owner of the suit property.

² *Bhimabai Mahadeo Kambekar (D) th. L.R. v. Arthur Import and Export Company & Ors.*, (2019) 3 SCC 191; *Narasamma & Ors. v. State of Karnataka & Ors.*, (2009) 5 SCC 591; *Balwant Singh & Anr. v. Daulat Singh (dead) by L.Rs. & Ors.*, (1997) 7 SCC 137; *Sawarni (Smt.) v. Inder Kaur*, (1996) 6 SCC 223.

6. The Appellants have failed to adduce any evidence whatsoever, apart from the Survey Settlement of 1964 to establish that the suit property was the self-acquired property of Mangal Kumhar.

7. Since Mangal Kumhar did not have an exclusive right, title or interest in the suit property, his widow Etwari Kumharin was not legally competent to sell the suit property to the Appellants, purporting to be the sole owner of the property.

Reliance is placed on *Eureka Builders & Ors. v. Gulabchand & Ors.*,³ wherein this Court held :-

“40. It is a settled principle of law that a person can only transfer to other person a right, title or interest in any tangible property which he is possessed of to transfer it for consideration or otherwise.

41. In other words, whatever interest a person is possessed of in any tangible property, he can transfer only that interest to the other person and no other interest, which he himself does not possess in the tangible property.

42. So, once it is proved that on the date of transfer of any tangible property, the seller of the property did not have any subsisting right, title or interest over it, then a buyer of such property would not get any right, title and interest in the property purchased by him for

³ (2018) 8 SCC 67.

consideration or otherwise. Such transfer would be an illegal and void transfer.”

(emphasis supplied)

8. It is pertinent to record that the other legal heirs of Mangal Kumhar i.e. his two daughters *viz.* Phuljhari and Babi, were not parties to the execution of the Sale Deed dated 22.10.1973. Etwari Kumharin was not entitled to execute the Sale Deed in question as the sole owner of the suit property.

The two daughters of Mangal Kumhar were joined as proforma defendants in the Suit filed by the Respondents herein. Summons were duly served upon the proforma defendants. The proforma defendants filed a common written statement wherein they have fully supported the case of the Plaintiffs/Respondents herein, and have prayed that the claims of the Plaintiffs are true, and that the Suit is liable to be decreed.

The said averments have been duly considered by both the Trial Court and the First Appellate Court, while decreeing the Suit in favour of the Plaintiffs/Respondents herein.

9. The Courts below have clearly held that the suit property was not the separate or self-acquired property of Mangal Kumhar.

Furthermore, Etwari Kumharin had no exclusive right to execute the Sale Deed dated 22.10.1973 in favour of the Appellants. The said Sale Deed is not legal or binding upon the Plaintiffs/Respondents herein and the proforma defendants.

10. The non-joinder of Etwari Kumharin in the Suit filed by the Respondents would not be of any consequence, as Etwari Kumharin had no surviving interest in the suit property after the execution of the Sale Deed dated 22.10.1973.
11. The concurrent findings of the Trial Court and the First Appellate Court are based on a proper appreciation of the pleadings and evidence on record.

The High Court held that no substantial question of law arose, and rightly dismissed the Second Appeal.

In light of the aforesaid discussion, the Judgment and Order dated 28.04.2009 passed by the High Court is confirmed, and the present Civil Appeal is dismissed.

The Decree dated 09.02.1990 passed by the Trial Court in Title Suit No. 14/1986 stands affirmed.

All pending Applications, if any, are accordingly disposed of.

Ordered accordingly.

.....**J.**
(INDU MALHOTRA)

.....**J.**
(KRISHNA MURARI)

New Delhi;
October 16, 2019