

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 227 of 2007

Radhabai D/o Anujram, aged 49 years, R/o Mohadi, Tahsil Kota, District- Bilaspur (CG)

---- Petitioner

Versus

1. Tilakram, S/o. Shyamlal Jaiswal, aged 40 years, Resident of Village Amne, Tahsil Kota, District- Bilaspur (CG)
2. State Of CG Through : Collector Bilaspur, Distrit- Bilaspur (CG)

---- Respondents

For Petitioner	:	Shri Atul Pandey, Advocate
For Respondent/State	:	Shri Neeraj Sharma, Dy. Govt. Advocate

S.B.:Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

04/11/2015

Heard on admission.

1. This appeal is directed against the impugned judgment and decree dated 27.4.2007 passed by learned lower appellate Court by which decree passed in favour of respondent -plaintiff has been affirmed and appeal dismissed.
2. Learned counsel for the appellant argued that the Courts below committed gross illegality and perversity in holding Will Deed (Ex.P-2) proved though the plaintiff failed to prove the same in accordance with law. It is submitted that there were two attesting witnesses of the Will Deed. However, only Shyamlal, who is father of Tilak, the plaintiff, has been examined. In view of serious allegation that the Will Deed is forged, the Courts below ought not to have relied upon the evidence of Shyamlal to hold the Will Deed proved when other attesting witness namely Ganesh was not examined by the plaintiff.

Next submission of learned counsel for the appellant is that as at earlier point of time on 8.5.1991 a Gift Deed was executed by Anuj in favour of plaintiff-Tilak Ram, subsequent execution of Will Deed would not give title to plaintiff -Tilak after death of Anujram as the Will Deed itself was void.

The other submission of learned counsel for the appellant is that the Courts below also recorded perverse finding that property in dispute was self-acquired property of Anuj as against clear pleading and evidence that Anuj purchased the land in dispute by way of sale deeds in the year 1962, 1964 and 1977 after selling out ancestral property situated in Village- Bharari.

3. In order to record a concurrent finding of fact that the land in dispute was self acquired property of Anuj, the Courts below have relied upon the sale deed (Ex.P-3) dated 22.12.1962, dated 18.1.1964 (Ex.P-4) and sale deed dated 21.1.1977 (Ex.P-5) which prove purchase of land by Anujram. The Courts below have also taken into consideration the registered Gift -Deed dated 13.10.1949 (Ex.P-6) executed in favour of Anuj.
4. As against this, the appellant came out with bare oral evidence without there being any details much less any documentary evidence to prove that the land were purchased vide Ex.P-3, Ex.P-4, Ex.P-5 out the proceeds of sale of land situated in Village -Bharari. There is no documentary evidence or any clinching evidence on record to prove that the land situated in village Bharari was ancestral property of Anuj. For that reason, the Courts below have disbelieved the plea set up by the appellant- defendant that Anuj purchased the land in the year 1962, 1964 and 1977 from the sale proceeds of ancestral property situated in Village -Bharari.
5. As far as proof of Will -Deed executed (Ex.P-2) is concerned, there is no requirement of law that in order to prove Will -Deed, all the attesting witnesses are required to be examined to prove execution of Will -Deed.
6. Shyam Lal (P.W.3) is one of the attesting witness and he has proved execution of Will Deed and his signature on the Will Deed. Merely because he happened to be father of the plaintiff, that by itself, does not render his evidence inadmissible. All that is required under the law is that in such a situation, the Court has to be conscious and careful in scrutinizing the evidence of such witness who himself is interested in proof of the execution of Will. Nothing has been pointed out before this Court so as to reject the evidence of Shyam Lal (P.W.3) as one of the attesting

witnesses.

7. Moreover, the scribe of the Will namely Durga Prasad Yadav (P.W.5) has also proved preparation and execution of Will, by clearly stating in his evidence that he had prepared the Will as stated by Anujram and has further stated that in his presence, Anuj had signed the Will and Shyamlal and Ganeshram signed will as attesting witnesses
8. The last submission that as there was a Gift Deed executed in favour of plaintiff on 8.5.1991, the Will Deed dated 4.7.1991 was incapable of any legal consensuses, is also liable to be rejected. The Gift Deed dated 8.5.1991 was an un-registered document and did not pass any title in favour of appellant though it could be used only for collateral purposes. Therefore, at the time of execution of Will, the title of the land in dispute remained with Anujram.
9. In view of the above consideration, I do not find any substantial question of law involved in the appeal.
10. The appeal is therefore dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge