

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 75 of 2004

Haridas Vaishnav, son of Late Mohan Das Vaishnav, aged about 46 years, Agriculturalist, Village Darra Bandha, Tah:Dongargaon, Occupation Clerk, B.N.C Mills, Rajnandgaon, Tahsil & Distt. Rajnandgaon (C.G)

---- Appellant/Defendant

Versus

Smt. Ritika Das, daughter of Shri Haridas Vaishnav, Wife of Vinod Kumar, son of Mathura Prasad Sharma, aged about 23 years, R/o Lakholi Ward, Rajnandgaon, Tah. & District Rajnandgaon (C.G).

---- Respondent /Plaintiff

For Appellant	:	Mr. V.K. Sharma, Advocate.
For Respondent.	:	Mr. Ashok Das Vaishnav, Advocate.

HON'BLE SHRI JUSTICE GOUTAM BHADURI

JUDGMENT

06/07/2015

1. This is an appeal against the judgment and decree dated 02.01.2004 passed in Civil Suit No.15-A/2003 by the District Judge, Rajnandgaon.
2. Brief facts of the case are that a suit was filed by one Smt. Ritika Das against Haridas Vaishnav. It is not in dispute that the parties i.e., the plaintiff and defendant are interse related to each other. The plaintiff is daughter of late Raja Rani Das @ Radha Rani who was daughter of one Chandra Bhushan Das. It is not in dispute that the mother of plaintiff was married to defendant Haridas Vaishnav and out of the wedlock, plaintiff Smt. Ritika Das was born on 15.08.1978. After birth, the mother namely Raja Rani died on 18.08.1978

and the plaintiff was looked after by her maternal grandfather. It was further pleaded that the land bearing land Kh.No.528/1 admeasuring 0.14 decimal was purchased in the name of Raja Rani Das by registered sale deed. It was further stated that for the said land, the application for mutation of name was given by the defendant and an exparte order of mutation was passed against the plaintiff. It was further stated that certain properties which were shown in Schedule-A of the Plaint also devolved on the mother of the plaintiff through Krishna Kumari Devi by virtue of a Will. Therefore, in order to construct a house over the land bearing Khasra No.528/1, which devolved on the plaintiff through mother was sold for an amount of Rs.56,000/- and the house was constructed. It was further pleaded that after death of plaintiff's mother Radha Rani Das, the defendant got remarried and started living in the said house. Therefore, it was pleaded that the suit house belonged to the mother of the plaintiff and it was property in the nature of *Stree-Dhan*. Consequently, it was prayed that the plaintiff be declared the owner of the suit house along-with the land and the possession of the land be handed over to her.

3. The defendant stated that the grand father of the plaintiff had kept the plaintiff as memory of his daughter and in order to grab the properties of late Krishna Kumari, the said suit has been filed. It was further pleaded that the property actually belonged to one Krishna Kumari Devi who also looked after Raja Rani and the land was given to Raja Rani by late Krishna Devi wherein the defendant had constructed a house in the year 1983 and is in possession thereof. It is further stated that as long as the defendant is alive, the plaintiff was not entitled to sue for property and consequently, it was further pleaded that the plaintiff be non-suited.

4. The learned court below after evaluating the facts and evidence has framed the issues and decreed the suit in favour of the plaintiff and the decree was passed that the house constructed over the land bearing Khasra No.528/1 admeasuring 0.14 decimal, the plaintiff is entitled for half of the share and the plaintiff is also entitled to 1/2 share of the property. The permanent injunction was also passed in favour of the plaintiff that in respect of half of the property, the defendant shall not disturb the possession of the plaintiff and the revenue authorities were also directed to mutate the name of plaintiff along-with defendant. Hence, the instant appeal is by the defendant.
5. Mr. V.K. Sharma, learned counsel appearing on behalf of the appellant defendant would submit that the dispute is about the land bearing Khasra No.528 along with house situated at village Nandai admeasuring 14 decimals. He further submits that the land was initially donated to Raja Rani @ Radha Rani by one Krishna Kumari Devi. It is further stated that Raja Rani was the first wife of the appellant/defendant and after the plaintiff was born on 15th August, 1978, she died. The property is in the name of Raja Rani. He further submits that according to the plaintiff's witness namely Chandra Bhushan Das, the house was not constructed by the plaintiff and the same is also corroborated by the statement of plaintiff which would be evident from the admission made on suggestions. He went through the statement of the witness namely Chandra Bhushan Das the maternal grand father of the plaintiff and submits that in view of the evidence which has come on record, the decree passed by the learned court below cannot be sustained and prays to set aside the same.

6. Per contra, Mr. Ashok Das Vaishnav, appearing on behalf of the respondent plaintiff would submit that the case is between the father and daughter. He further submits that as per the evidence on record, the land in question was given to the mother of plaintiff i.e., Radha Rani and the evidence has come on record that after sale of certain properties which were bequeathed in favour of Radha Rani, particulars of which have been shown in schedule-A of the plaint and the Will Ex.P-3(c). It is further contended that the money was raised by sale of properties of Will and by sale proceeds, the house was constructed over the said land. He further submits that in any case, the document Ex.P-4 which is in favour of the plaintiff cannot be ignored which shows that the property is in the name of the mother of the plaintiff. It is stated that therefore, the decree passed by the learned court below is well merited. It is further contended that the appellant/defendant has only claimed the title over the right of property by virtue of being husband of Radha Rani, mother of plaintiff, but no contribution was made to acquire any disputed property. He, therefore, submits that in view of this fact, the judgment of the Court below is well merited which do not call for any interference.
7. I have heard learned counsel for the parties at length and have also perused the document and evidence on record.
8. A perusal of the pleadings and averments made in the plaint would show that the plaintiff has stated that the property admeasuring 14 decimal of land situated at village Nandai which comes within the municipal limits of Rajnandgaon was purchased by her grand-father in favour of his mother in the year 1972. She has further stated that her aunt Smt. Krishna Kumari was issueless and her aunt also bequeathed her share

of property mentioned in Plaint Schedule A situated at village Nandai in favour of mother of plaintiff i.e Raja Rani by a registered Will and after death of her mother, the said land of 4.00 acres was sold through one Durga Prasad Shukla for an amount of Rs.56,000/- and by virtue of such sale proceeds, the house was constructed over the subject suit land bearing Khasra No.528/1 at Nandai. It is further stated that when the application was filed by the plaintiff to mutate her name, it was objected by the father. Ex.P-4 is sale deed which purports that the said subject land i.e., Abadi land admeasuring 0.14 decimal (0.57 hectares) of P.H.No.37 situated at village Nandai, alongwith a Kachha house was sold by Krishna Kumari Devi in favour of Radha Rani. A perusal of statement of Chandra Bhushan Das (P.W.6) also reveals that he deposed that he had purchased the land bearing Khasra No.528/1 admeasuring 14 decimal for a sale consideration of Rs.500/- in the name of his daughter vide Ex.P-4. So, irrespective of source of acquisition the subject property stood in the name of mother of plaintiff.

9. The said document Ex.P-4(c) dated 25.9.1972 which is a sale deed shown to be executed by Krishna Kumari Devi in favour of Raja Rani is further corroborated by P.W.4. If the plaintiff's evidence is further perused, she has stated at Para 14 that out of love and affection, the said subject land was given by Krishna Kumari Devi. In any case, the document Ex.P-4 which is registered deed wherein the beneficiary and purchaser is shown as Radha Rani has not been challenged by the appellant/defendant. Consequently, the disputed land i.e., part of Khasra No.528/1 admeasuring 14 decimal situated at Gram Panchayat Nandai, Block Rajnandgaon is held to be the property of Radha Rani.

10. The evidence has come on record that according to the statement of P.W.6 Chandra Bhushan, Radha Rani died after birth of plaintiff on 18.8.1978 and thereafter, the plaintiff was brought up by him. He further stated that in respect of the land bearing Kh.No.528, the plaintiff had filed an application for mutation of her name which was objected by the defendant in the year 1985-86. As per the facts, though the Will dated 11.6.1969 marked as Ex.P-3(C) was existing in favour of Raja Rani and it was bequeathed by Krishna Kumari Devi, but Raja Rani predeceased Krishan Kumari Devi. Thereafter, after death of beneficiary the executor of the Will executed a power of attorney in favour of one Durga Prasad Shukla who was Patel of village Nandai. The lands which were bequeathed in favour of Raja Rani on her death were sold by owner of land Krishna Kumari Devi through Durga Prasad Shukla to construct a house over the suit land. The said lands as shown in Ex.P-3C were sold and out of sale proceeds of Rs.56,000/-, a house was constructed on the land bearing Kh. No.528/1 for the plaintiff. As against this, the appellant defendant has stated that the house was constructed by the appellant/ defendant from his self earning, but the same is not supported by any evidence.
11. It is stated by the defendant that in the year 1980, the suit house was constructed by the defendant/appellant out of the income from the properties which he received from his father. However, in order to establish the fact no document is placed. The appellant /defendant in his cross examination has stated that he was working as a clerk at BNC Mills but no document i.e any pass book of bank or any pay slip is filed to substantiate the income. As against this, it has been admitted by the defendant that the house was already constructed

during life time of Krishna Kumari Devi. In such event, it becomes highly improbable that the disputed land though was in the name of plaintiff but appellant/defendant was allowed to raise the superstructure over the same. The sale-deed Ex.P-4, the nucleus of title shows that the property is in inclusive name of Radha Rani, the mother of plaintiff, therefore, in the light of evidence and in absence of challenge to the same, the defence raised by the appellant cannot be appreciated.

12. In view of the foregoing discussion, it is held that the suit property was in the name of Radha Rani which comprises of 0.14 decimal of land and Radha Rani was the owner to the exclusion of others. In absence of any challenge to the same, any oral evidence to rebut or overcome such registered document cannot be permitted. So by appreciation of evidence it is observed that the property which was in the name of Radha Rani wherein the house was constructed belonged to Radha Rani to whom the appellant defendant got married and therefore, he is the husband. As per the claim of parties, Radha Rani died intestate. This fact is also not in dispute that the plaintiff is daughter of Radha Rani while defendant is the husband. In view of this, since Radha Rani died intestate, as per Section 15(a) of the Hindu Succession Act, 1956 the plaintiff being daughter as also the defendant being husband shall be entitled to inherit the property of late Smt. Radha Rani. So, as per the Scheme of sub-section (1) of Section 15, since the husband and daughter are included in clause (a) of sub-section (1) of Section 15, both of them shall be entitled to inherit the property left by such Hindu female namely Radha Rani who died intestate. Consequently, the finding arrived at by the learned court below whereby the plaintiff and defendant have been given half share each in

respect of the property in the house of Khasra No.528 do not require any interference.

13. In the result, after due appreciation of evidence, I am of the opinion that the appeal having no merit deserves to be dismissed. The findings of the learned court below do not require any reconsideration. The decree of the learned Court below is affirmed. Accordingly, the appeal is dismissed. The appellant shall bear the cost of litigation, that of respondent also.

Sd/-
GOUTAM BHADURI
JUDGE