

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 79 of 2016

- Abdul Anvar S/o Late Shri Abdul Sattar, Aged About 36 Years
R/o Gaura Chowk, Beside of Bhola Mishtri, Indrawati,
Rajatalab, Raipur, Police Station & Post Raipur, Civil and
Revenue District Raipur (Chhattisgarh).....(Plaintiff)
--- **Petitioner**

Versus

- Smt. Shahjadi Begum W/o Fahim Ahmad Khan, Aged About
55 Years R/ Gaura Chowk, Beside of Bhola Mishtri, Indrawati,
Rajatalab, Raipur, Police Station & Post Raipur, Civil And
Revenue District Raipur (Chhattisgarh).....(Defendant)
--- **Respondent**

For the appellant : Mr. Manoj Paranjpe, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

JUDGMENT ON BOARD

02.05.2016

1. The instant appeal is by the plaintiffs against the judgment and decree dated 26.11.2015 passed in Civil Appeal No. 29-A/2011 by the IV Additional District Judge, Raipur (C.G) whereby the judgment & decree dated 19.11.2010 passed by the II Addl. Judge, Class-II, Raipur to the Court of 1st Civil Judge, Class-II, Raipur in Civil Suit No. 63-A of 2010 has been affirmed.
2. The suit was filed by Shajadi Begum wife of Fahim Ahmad Khan against the present appellant Abdul Anwar son of Abdul Sattar wherein a counter claim was made by the defendant, appellant herein. The instant appeal is against the dismissal of counter claim. It was pleaded that plot No.12 (block No.115) situated at Rajatalab, Raipur, admeasuring 2100 sqft along-with the residential house built therein was given by the State in favour of Mrs. Bachha Bi on permanent lease for

the residential use. The original Patta holder Bachha Bi had two issues i.e., one daughter namely Smt. Saheb Bi and one son namely Hussain Khan. Bachhabi's son Hussain Khan did not reside along-with her and as such to look after her during old age, her daughter Smt. Saheb Bi was got married to Abdul Rajak and both her daughter and son-in-law were residing along-with Bachha Bi. After death of Saheb Bi, her son Abdul Sattar who was minor at that time was brought up by Bachha Bi and was got married to Meharunnisa. It was stated that since Bachha Bi has become old and since her only son Hussain Khan had left her, consequently Bachhabi had brought up her daughter's son Abdul Sattar and kept him alongwith her and thereafter Abdul Sattar used to look after Bachha Bi. Subsequently Bachha Bi breathed her last. It was pleaded that before death, Bachhabi gifted the property along-with the house in favour of Abdul Sattar and thus as a result of Hiba, Abdul Sattar became owner of the land and the house which was constructed over the plot No.12 at Block No.115. It was further pleaded by way of counter claim that on the basis of such oral gift (Hiba), name of Abdul Sattar was recorded and accordingly, tax of Municipal Corporation was paid by Abdul Sattar. It was further stated that one Hussain Khan had earlier filed a suit against Abdul Sattar in the court of Civil Judge, Class II, Raipur vide Civil Suit no.177-A/1982 with respect to the land and house of Bacha Bi for declaration of title/possession. However, since the said civil suit was not properly valued by plaintiff Hussain Khan, it was dismissed as withdrawn.

3. The trial Court after evaluating the evidence and facts dismissed the suit filed by Shahjadi Begum which was for declaration and permanent injunction and also at the same

time dismissed the counter claim of the present appellant. So the appeal was preferred and the first appellate court also dismissed the appeal filed against the dismissal of counter claim. Hence the second appeal.

4. Learned counsel for the appellant would submit that the findings recorded by both the courts below are perverse and contrary to the evidence on record. He further submits that both the courts below have failed to take into account the Hiba which was executed in favour of the appellant and accordingly it should have been held that Hiba is incorrectly pleaded and proved. It is, therefore, submitted that the perversity needs to be corrected at this stage and the appeal may be admitted for hearing by framing substantial question(s) of law.
5. I have heard learned counsel for the appellant and have also perused the records.
6. A perusal of the record would show that Shahjadi had filed a suit against Abdul Anwar, the present appellant for declaration and permanent injunction. In such civil suit a counter claim was preferred by the defendant (appellant herein). The civil suit was dismissed in default on 13.10.2010, however, the suit proceeded further on the basis of counter claim. In evidence, the defendant/appellant claimed that the suit property was devolved on Abdul Sattar who is the father of appellant Abdul Anwar and stated that it was devolved by way of oral gift (Hiba). A perusal of the written statement would show that such pleadings are absent that the property initially devolved by way of Hiba in favour of Abdul Sattar, the father of the appellant. Therefore, there is divergence of pleading and proof. Further it was stated by the defendant that the subject land

was leased out in favour of Bachha Bi on permanent lease. The records would show that such permanent lease has not been proved by the defendant by calling the necessary witness with the document. Perusal of the the record would also show that in respect of the property, name of Smt. Shahjadi Begum is also recorded along-with Abdul Anwar and as such it has not been proved that the suit property exclusively belonged to defendant/ appellant Abdul Anwar.

7. In the result, the findings recorded by both the courts below that the defendant appellant has failed to prove his counter claim and there is divergence of pleading and proof cannot be faulted. Thus after the entire perusal of the record, I do not find that any perversity has been committed by both the courts below which may give rise to frame a substantial question of law.
8. In the result, no substantial question of law arises for consideration in this appeal. The appeal is dismissed at the motion stage.

**Sd/-
GOUTAM BHADURI
JUDGE**