

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 150 of 2015

Smt. Janki Bai D/o Late Shri Purushottam Sahu Aged About 61 Years W/o Bhagwati Sahu R/o Village Aarsnara, Post Devda, Tahsil Patan, Dist. Durg Chhattisgarh

---- Appellant

Versus

1. Smt. Shanti Bai, D/o Late Shri Purushottam Aged About 64 Years W/o Bachhan Sahu R/o Village Anjora, Tahsil & Dist. Rajnandgaon Chhattisgarh
2. State Of Chhattisgarh Through The Collector, Rajnandgaon Chhattisgarh

---- Respondents

For Appellant	:	Shri Aditya Bhardwaj, Advocate
For Respondent/State	:	Smt. M. Asha, Panel Lawyer

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

Judgment

07/01/2016

Heard.

1. This appeal is directed against the impugned order dated 19th December, 2014 by which the learned lower appellate Court has reversed the judgment and decree of the trial Court and granted decree in favour of respondent plaintiff.
2. Learned counsel for the appellant argued that the learned lower appellate Court acted perversely and illegally in holding that the appellant- defendant was already given her 1/3rd share in the joint property. He submits that the learned appellate Court relied upon so called admission of the appellant in her deposition (Ex.P-6)

recorded in Civil Suit No. 36-A/2012. It is submitted that the appellant was mentally sick and receiving treatment. Even in the present case, on behalf of the appellant, it is her husband who has deposed as her power of attorney holder.

3. The evidence of appellant recorded in Civil Suit No.36-A/2012 clearly shows that she has admitted that out of 11.50 acres of agricultural land which she along with her mother and sister- Shanti/plaintiff inherited after death of her father- Puroshootam, 3.5 acres of land was sold and out of the sale proceeds of that part, land was purchased in her name in village- Aarasnara.

The statement that at that time the appellant was not in a fit state of mind to depose, therefore, the evidence and statement made therein, does not legally constitute admission on her part, upon close examination, is liable to be rejected because the appellant has failed to lead any clinching documentary evidence of she being mentally unfit on the date when she deposed in Civil Suit No. 36-A/2012. Learned lower appellate Court has recorded that no document of treatment of appellant have been produced. The Court below has also taken note of the fact that power of attorney is said to have been executed on 6.1.2009 by the appellant in favour of her husband, whereas appellant entered the witness box and deposed in the Civil Suit No.36-A of 2012, in the year 2011. From perusal of the record in Ex.P-6, it is clear that the statement of the appellant was recorded in the other suit on 10.10.2011. If on the ground of mental illness appellant had already given power of attorney in favour of her husband on 6.1.2009, she would not have deposed in the Court in 2011. The Court has also taken into consideration that it is undisputed position that appellant- Janki Bai does not earn anything. The burden to prove that land in village- village- Aarasnara was purchased in her name by her husband and father-in-law was on the appellant which she failed to discharge. Bhagwati Prasad Sahu (D.W.1) has admitted in his cross-examination that between the period from 1988 to 1990, his father did not purchase any property for him and his brothers. There is no evidence that the sale consideration was paid by the appellant, her husband or her father in law.

4. In view of the above, the judgment and decree passed by learned lower appellate Court does not suffer from any perversity or illegality warranting interference by this

Court.

5. Therefore, no substantial question of law arises for consideration in this appeal.
The appeal is dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Praveen