

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 26 of 2009**

{Arising out of judgment and decree dated 16-9-2008 passed by the 9th Additional District Judge (Fast Track Court), Bilaspur, in civil suit No.27-A/2008}

1. Smt Anuradha Thakur, W/o Shri Surendra Singh Thakur, aged about 35 years, R/o Tilak Nagar, Bilaspur, Tahsil and District Bilaspur (CG)

---- Appellant**Versus**

1. Ajay Shrivastava, aged about 36 years, S/o Late J.P. Shrivastava, R/o Behind Chhattisgarh Bhawan, Tilak Nagar, Bilaspur, Tahsil and District Bilaspur (CG)
2. S. Prabhakar Rao Naidu, aged about 74 years, S/o Late S. Venkatrao Naidu, R/o Behind Congress Bhawan, Tilak Nagar, Bilaspur, Tahsil and District Bilaspur (CG)
3. S. Venkat Raman, aged about 39 years, S/o Shri S. Prabhakar Rao, R/o Opposite Congress Bhawan, Tilaknagar, Bilaspur, Tahsil and District Bilaspur (CG)

---- Respondents

For Appellant	Shri Devesh G. Kela, Advocate
For Respondent No.1	Shri Ramakant Pandey, Advocate
For Respondent No.2	Shri Ravi Mohabia, Advocate
For Respondent No.3	None

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board**By****Prashant Kumar Mishra, J.**

26/09/2017

1. This is plaintiff's appeal challenging the judgment and decree passed by the trial Court dismissing her suit for declaration that the sale deed dated 23-4-2007 executed by the defendant No.2 S. Prabhakar Rao Naidu in favour of the defendant No.1 Ajay Shrivastava be declared null & void, as also for declaration of half share in the property and permanent injunction.
2. The suit property is land with superstructure admeasuring 2016 sq.ft. situated at Tilak Nagar, Bilaspur, Nazul Sheet No.7, Plot No.34. The plaintiff/appellant is the daughter of the defendant No.2 whereas defendant No.3 is the plaintiff's brother, being son of the defendant No.2. The defendant No.1 is the purchaser by way of sale deed dated 23-4-2007.
3. The lis between the parties lies in a narrow compass. Admittedly, the property was in the name of Radha Bai, mother of the defendant No.2, from whom the defendant No.2 had acquired the title. While the plaintiff asserts that the defendant No.2 has received the property in a family partition, defendants would aver that the defendant No.2 has received the property by way of gift deed dated 29-11-1966. There is another gift deed executed by the defendant No.2 in favour of the plaintiff

on 16-6-1994 for an area of 1192 sq.ft. with superstructure. At the time of execution of said gift deed in favour of the present plaintiff, the defendant No.2 has claimed the property to be his self acquired property and the present plaintiff is beneficiary of the gift deed.

4. In the above background, the plaintiff has made a different plea in the present suit that the property is, in fact, joint family property in the hands of the defendant No.2, therefore, he could not have executed the sale deed in favour of the defendant No.1.
5. In the present suit the defendants are claiming that the property is self acquired property. Yet another suit preferred by the defendant No.3 - S. Venkat Raman against the present plaintiff challenging the gift deed dated 16-6-1994, has been dismissed by both the Courts below and SA No.58 of 2009 (**S. Venkatraman v. Smt. Anuradha @ Anuradha Thakur & Another**) is pending between the parties. In the said suit, while upholding the gift deed in favour of the present plaintiff/appellant, it has been concurrently held that the suit property was self acquired property in the hands of the defendant No.2, therefore, the gift deed in favour of the present plaintiff does not

suffer from any infirmity or incapacity of the defendant No.2 to execute the gift deed.

6. Based on the pleadings of the parties, the trial Court has framed 7 issues for determination, however, the pivotal question, on which the fate of litigation depends, is as to whether the property was self acquired or joint property in the hands of the defendant No.2.
7. As earlier stated, both the parties have made inconsistent or contradictory pleadings in both the suits. In order to defend the gift deed in her favour, which is challenged in the suit filed by the defendant No.3, the present appellant has projected the property to be self acquired property of the defendant No.2 whereas in the present suit she is raising just contrary plea that it is a joint property of the defendant No.2 and his two children i.e. plaintiff and the defendant No.3.
8. Per contra, in the earlier suit the defendants No.2 & 3 herein have pleaded that the property is joint property, however, in the present suit they are claiming the property to be self acquired property. Thus, both the parties have been making inconsistent plea to suit their own defence or ground of challenge in the respective suits. In both the suits the gift deed

dated 29-11-1966 has not been exhibited albeit xerox copy of the said gift deed is available in the record of the present suit.

9. We have perused the xerox copy not to consider the same as an admissible piece of evidence, but in order to assess the veracity of the stand taken by the parties to suit. Since the said gift deed of the year 1966 has been averred or admitted by either of the party in either of the suit, it is more or less admitted between the parties that such a gift deed was executed by Radha Bai in favour of the defendant No.2. The present would, thus, become a case of oath against oath where both the parties are trying to take benefit of their own wrong in one or the other suit. The plaintiff having acquired the title over the property gifted to her on 16-6-1994 from the defendant No.2, it is too late for her to raise a different plea that the property was joint property belonging to her (plaintiff), her father (defendant No.2) and her brother (defendant No.3).
10. As a matter of fact, it is highly dangerous for the appellant/ plaintiff to plead that the property is joint property because if such finding is record in the present suit, the gift deed executed in her favour would be nullity, therefore, once having benefited

from the act of the defendant No.2, the plaintiff cannot approbate and reprobate to raise a different plea just to call in question the sale deed executed by the defendant No.2 in favour of the defendant No.1.

11. For the above-stated reasons, we are fully satisfied that the trial Court has not committed any error of law or fact while holding that the suit property is self acquired property of the defendant No.2, therefore, the sale deed executed by him in favour of the defendant No.1 does not suffer from any legal infirmity or incapacity.
12. As an upshot, the present first appeal, sans substratum, is liable to be and is hereby dismissed, leaving the parties to bear their respective cost(s).
13. Decree be drawn accordingly.

Sd/-

Judge
Prashant Kumar Mishra

Sd/-

Judge
Arvind Singh Chandel

Gowri