

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 569 of 2016**

(Arising out of judgment/order dated 27.10.2016 in Civil Appeal No. 5-A/2016 of the learned 3rd Additional District Judge, Bastar, Jagdalpur)

- Smt. Mahadai W/o Hadipa, Aged About 59 Years R/o Village Kopaguda, Tahsil Jagdalpur, District Bastar, Chhattisgarh(Plaintiff)

---- Petitioner

Versus

1. Hadipa S/o Late Sonadhar, Aged About 64 Years R/o Village Kopaguda, Tahsil Jagdalpur, District Bastar, Chhattisgarh
2. N.Ramanna S/o N.Sita Ramaiyya, Aged About 32 Years R/o Balaji Ward, Jagdalpur, Tahsil Jagdalpur, District Bastar, Chhattisgarh
3. State Of Chhattisgarh, Through: Collector, Bastar, At Jagdalpur, District Bastar, Chhattisgarh(Defendants)

---- Respondents

For Appellant	:	Shri Manoj Paranjpe with Shri Anurag Singh, Advocate
For Respondent No.2	:	Shri Keshav Dewangan, Advocate
For Respondent No.3/State	:	Shri V.B.Singh, P.L.

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****05/12/2017**

1. Heard on admission.
2. This is plaintiff's second appeal preferred under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code of 1908 in short) against the judgment and decree dated 27.10.2016 passed by the 3rd Additional District Judge, Bastar, place at Jagdalpur in Civil Appeal No. 05-A/2016, by which, the lower appellate Court, while reversing the judgment and decree dated 23.11.2015

passed by the 5th Civil Judge, Class-2, Bastar, in Civil Suit No.51-A/2012, has dismissed the plaintiff's claim.

3. The undisputed facts of the case are that the plaintiff Smt. Mahadai instituted a suit praying for declaration that the registered deed of sale, dated 01.05.2012 executed by her husband (defendant No.1) in favour of defendant No.2, namely, N. Ramanna be declared as null and void. It is pleaded in the plaint that the properties described in plaint para – 3 are recorded jointly in the name of plaintiff and her husband, i.e., defendant No.1 in revenue papers and without her consent, defendant No.1 has sold the suit property bearing Kh.No. 147/1 admeasuring 0.170 hectares, described in Schedule – 'A' to said defendant No.2, namely N. Ramanna. It is pleaded further that since the alleged sale was executed by her husband (defendant No.1) without her consent and knowledge, therefore, she has been constrained to file the suit in the instant nature.

4. Defendant No.1 has supported the plaintiff's claim while defendant No.2 has contested on the ground that the suit property was the self-acquired property of defendant No.1 as he purchased the same by virtue of registered sale deed dated 02.04.1997 from one Jhitru and as such, had acquired valid title upon it. It is pleaded further that by virtue of the registered deed of sale dated 01.05.2012, he has acquired valid title upon the suit land by paying entire sale consideration to defendant No.1. The claim of plaintiff is, therefore, liable to be dismissed.

5. The trial Court, after considering the evidence led by the parties has observed at para – 12 of its judgment that the suit property is the self-acquired property of plaintiff's husband Hadipa and that by relying upon the revenue entries, held that it is the joint property of plaintiff and her husband. It held further that since there was no partition effected between them, therefore, the registered deed of sale, dated 01.05.2012 executed by defendant No.1 in favour of defendant No.2 without the consent and knowledge of the plaintiff is null and void. As a

consequence, the trial Court has decreed the plaintiff's claim.

6. The aforesaid finding of the trial Court has been reversed by the lower appellate Court in an appeal preferred by defendant No.2 N. Ramanna. It has been observed that the suit property is the self-acquired property of defendant No.1 and was entitled to alienate the property according to his own wishes. It held further that plaintiff has not produced any documentary evidence by which it could be presumed that she has purchased the suit property along with her husband and mere entries in revenue record, would not confer any right or interest upon her. In consequence, plaintiff's claim has been dismissed.

7. Being aggrieved, the plaintiff has preferred this appeal. Shri Manoj Paranjpe, learned counsel for the appellant submits that the judgment and decree as passed by the lower appellate Court while reversing the finding of the trial Court by holding that defendant No.1 alone was the exclusive owner of the property in question and was entitled to execute the sale in favour of defendant No.2, is apparently contrary to law. He, therefore, submits that the judgment and decree as passed by the lower appellate Court be set aside.

8. I have heard learned counsel for the appellant and perused the entire record carefully.

9. The plaintiff's suit is essentially based on the ground that since the suit property was recorded jointly in the name of herself and that of her husband's name, therefore, her husband alone was not entitled to execute the sale deed in favour of defendant No.2 without her consent. Under such circumstances, the burden was heavily upon the plaintiff to establish the fact that she was also the co-owner of the suit property. However, the plaintiff has failed to produce any documents, except revenue papers, in order to acquisition of the suit property. Had there been any document filed by the plaintiff to show her ownership, it could be

presumed that the plaintiff was one of the owners of the suit property, but, none of the documents as such were placed on record by her. Having failed so, the Court below has rightly come to the conclusion that her husband (defendant No.1) alone was the owner of the suit property purchased under the registered deed of sale, dated 02.04.1997 (Ex.D.1) from one Jhitru and has accordingly sold the suit property to defendant No.2.

10. Pertinently to be observed further that defendant No.1, being executor of the alleged registered deed of sale (Ex.P.1), has never questioned the same and at the instance of the plaintiff, it cannot be declared as null and void. Since defendant No.1 alone was the owner of the suit property, therefore, no consent whatsoever was required from the plaintiff prior to alienation of the said sale. Accordingly, the lower appellate Court has rightly come to the conclusion that defendant No.2 N. Ramanna has acquired his interest by virtue of the registered deed of sale, dated 01.05.2012 (Ex.P.1) executed by defendant No.1 in his favour. Consequently, the finding, as recorded by the lower appellate Court, deserves to be and is hereby affirmed.

11. In view of the foregoing discussions, I do not find any question of law, much less, the substantial questions of law which arise for determination in this appeal. Accordingly, the appeal, being devoid of merit, is hereby dismissed at admission stage itself. There shall be no order as to costs.

Sd/-
(Sanjay Agrawal)
Judge