

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 52 of 2005**

Smt.Shantilata Mishra (died) through

- (1) Smt. Sujata Sharma, aged about 49 years, daughter of Shri Subhash Sharma (daughter)
- (2) Sangeeta Mishra, aged about 47 years, daughter of Shri V.B. Mishra (daughter)
- (3) Saumitra Mishra, aged about 42 years, son of V.B. Mishra (son)
- (4) Satyam Mishra, aged about 35 years, son of Shri V.B. Mishra (son)

All residents of Saumitra, Civil Lines, Bilaspur (C.G).

Versus

- (1) Smt. Marisha Mishra aged 30 years, wife of late Shri Sanjay Mishra, r/o Civil Line Bilaspur (C.G)
- (2) Ku. Salviya Mishra, aged 3 years, d/o late Shri sanjay Mishra, minor through her mother as next friend C/O Guardian Smt. Marisha Mishra Civil Line, Distt. Bilaspur (C.G)
- (3) Branch Manager, Oriental Bank of Commerce, Magarpara, Bilaspur

--- Respondents

For the Appellant : Mr. H.B. Agrawal, Sr. Advocate with Ms. Deepali Dubey Advocates

For Respondents 1 & 2 : Mr. Ram Kumar Tiwari & Mr. Prashant Gupta, Advocate

Hon'ble Shri Justice Goutam Bhaduri

JUDGMENT ON BOARD

10.10.2018

1. The instant appeal is against the judgment/order dated 08th February 2005 passed by the Fifth Additional District Judge,

Bilaspur, in Civil Suit No.23-A/2004 whereby the suit filed by the plaintiff claiming declaration and partition of property i.e., jewellery was dismissed.

2. The suit was filed by one Shanti Lata Mishra against her daughter-in-law Marisha Mishra and grand daughter Ku. Salivya Mishra. The son of plaintiff namely Sanjay Mishra was married to Smt. Marisha Mishra in the year 1996. Sanjay Mishra died on 28.02.2001. The defendants (respondents herein) were wife and daughter of Sanjay Mishra. It was the case of plaintiff that in the name of Sanjay Mishra (deceased) a locker was opened in Oriental Bank of Commerce wherein different ornaments which belonged to plaintiff Smt. Shanti Lata Mishra were kept, the value of such ornaments was Rs.1,00,000/- lakh and the key of the locker was kept by defendant No.1 wife of late Sanjay Mishra. It was stated that the declaration was given in a succession proceeding bearing No.15/2001 before the Civil Judge, Class-I, wherein the order was passed on 24.04.2003 that the defendants 1 & 2 along-with plaintiff were entitled to 1/3rd share in respect of the bank account and other goods kept in locker and the succession certificate was issued in favour of the defendant wife to get the ornaments kept in the locker.
3. Subsequently the civil suit was filed for declaration claiming 1/3rd share of ornaments which are kept in the bank and wherein it was stated that the goods belonged to the plaintiff along-with defendants 1 & 2 and the right was claimed to the extent of 1/3rd share over the same. It was stated that after death of Sanjay Mishra, the plaintiff being mother is entitled along-with daughter-in-law and grand daughter to have

share in the same. It was further stated that in earlier succession proceedings, no orders were passed with respect to the goods kept in locker and the ownership thereof was not decided as such the plaintiff being sharer is entitled to claim property.

4. Defendants 1 & 2, the daughter-in-law and grand-daughter filed their written statement and contended that the ornaments worth Rs. 99,800/- which were kept in the locker were given to her by her father and it is a *Stridhan* of defendant no.2. It was stated that the plaintiff do not have any right or interest over the same as it absolutely belongs to her (defendant No.1). It is further stated that in the succession certificate exclusive rights were given to the defendants to get the property and no appeal was filed against it, as such, the plaintiff could not re-agitate the same again. It is further stated that the bank admitted to have given locker in the name of Sanjay Mishra, the deceased and after the marriage all the ornaments belonged to defendant No.1 were kept in the locker.
5. Learned court below framed six issues and held that the suit for declaration was tenable on behalf of the mother of deceased. It was held that the suit was properly valued but with respect to the property kept in the locker the plaintiff has failed to prove that the said property belonged to her.
6. Learned counsel for the applicant would submit that in earlier proceeding under Succession Act, 1/3rd share of plaintiff as a mother has been recognized which is not under challenge, therefore, the said order should have been followed and the relief of declaration and partition of

ornaments kept in the locker should have been granted. It is further submitted that the finding that the ornaments do not belong to the plaintiff or her son Sanjay Mishra cannot be sustained, therefore, it requires interference.

7. Respondents are represented by Mr. Prashant Gupta and Mr. Ram Kumar Tiwari, Advocates.
8. Perused the documents filed along-with the petition and except the fact that the plaintiff has failed to prove that the property kept in the locker belonged to her, other issues are in her favour. The Court held that the ornaments kept in the locker of the Bank belonged to defendants No.1 & 2, the daughter in law and grand daughter. Therefore, the finding is considered qua the evidence with respect to the ownership of the ornaments which were kept in locker.
9. Plaintiff Shanti Lata Mishra (since deceased) was examined as P.W.1. She stated that the defendant Marisha Misha is her daughter-in-law and Salivya is grand daughter. She further stated that respondent no.1 was married to her son Sanjay who died. She stated that her son Sanjay had opened a locker in the Bank wherein her ornaments were kept and she may be given her right over the ornaments worth Rs.1,67,000 to 1,68,000 which belonged to her and the said jewelery was purchased from a shop known as Anupchand Trilokchand Jewellers of Raipur. In the cross examination, she stated that the receipt of such cash memo of ornaments has not been filed. She further admits the fact that the cash memo and bill are still in her possession. As against, the statement of the respondent wife Mariya Mishra shows that property ornaments were stated to have been given to her

during her marriage by her father as a *Stridhan*.

10. The plaintiff contended that before the marriage of her son Sanjay, the locker was opened and ornaments were kept. Except such bald statements, no document has been placed on record by calling the respective registers of bank and the evidence of key movement which are recorded in the Bank at the time of opening of locker and subsequent operation of locker. The fact that before the marriage the ornaments were kept in bank could have been proved by calling the officer from the Bank along-with the registers to adduce evidence which she failed to do.
11. P.W.2 Sangeeta Mishra, daughter of plaintiff stated that her brother Sanjay was married on 25th November, 1996 and in the month of October, she along-with her brother Sanjay, younger brother Soumitra and mother and father went to Raipur and purchased the ornaments. She has further stated that the mother has given Rs.1 lakh to Sanjay and had given the same for purchase of ornaments and by such money the ornaments were purchased. It is stated that after purchase of the ornaments, the same was kept in the locker of Sanjay since the Bank was near the house. This witness has admitted the fact that bill of ornaments was not produced. A perusal of evidence of P.W.2 further shows that it was not stated that from which Bank Rs. 1 lakh was withdrawn and the fact of source of raising money by which the ornaments were purchased has not been substantiated. The payment of Rs.1 lakh by the mother further could have been proved by the documentary evidence of any withdrawal from the Bank of like nature to show the cash in hand and it is improbable

to accept that cash amount to such extent was kept in the house which was given by her mother and in absence of such evidence adverse inference can be drawn looking to the background of the parties.

12. Defendant No.1 Marisha Mishra initially stated that all the ornaments were given by her mother and father. Subsequently she amended her version that the ornaments were given by her father. Though the plaintiff stated that the ornaments belonged to her and the particulars of the ornaments were given, still the same could not be established by acceptable plausible evidence before the court that the ornaments which were kept in the locker belonged to the plaintiff. The defendants on the contrary has stated that all the ornaments were given to her by her father as a gift as such it would be her *Stridhan*, and the same exclusively belonged to her. Against such statement, no material cross examination is on record to rebut the same. Except the suggestion was given that the key of locker was kept by the husband of the plaintiff.
13. Therefore after evaluating the evidence, I am of the opinion, that the appellant failed to prove the fact that the ornaments kept in the locker belonged to her and were given by her to her son Sanjay to keep the same in safe custody. The statement of the appellant is contrary and she has also failed to place the document to prove ownership. Though it was stated that the documents were in her possession, but the same were not produced. So adverse inference has to be drawn.

14. In the result, after evaluating the statements and evidence, I am of the opinion that no interference can be made by this Court in the impugned judgment/order dated 08.02.2005. The appeal has no merit and is liable to be dismissed. Accordingly, it is dismissed. No order as to cost.

**Sd/-
GOUTAM BHADURI
JUDGE**

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