

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 159 of 2001****Order reserved on : 18.03.2019****Order delivered on : 28.03.2019**

1.A Smt. Rekha Budhiya, W/o Rajendra Kumar Budhia, aged about 38 years,

B. Krishna Kumar Budhiya, S/o Rajendra Kumar Budhiya, aged about 18 years,

C. Kumar Swati Budhiya, D/o. Rajendra Kumar Budhiya, aged about 16 years,

D. Ravi Kumr Budhiya, D/o Rajendra Kumar Budhiya, aged about 14 years,

E. Alpa Budhiya, D/o Rajendra Kumar Budhiya, aged about 12 years,

Sl.No.C to E Minors through their mother and natural guardian Smt. Rekha Budhiya, All R/o-Sadar Road, Ambikapur, District Sarguja, C.G.

2.A Smt. Shobha Budhiya, W/o Late Shiv Kumar Budhiya, aged about 36 years,

B. Ashutosh Kumar, S/o Late Shiv Kumar Budhiya, aged about 36 years,

C. Ku. Namrata Budhiya, D/o Late Shiv Kumar Budhiya, age 5 years,

Both through their mother and natural guardian Smt. Shobha Budhiya, All R/o Sadar Road Ambikapur, District Sarguja, C.G.

3. Shri Kailash Kumar Budhiya, S/o. Late Rameshwar Prasad Budhiya, All R/o. Sadar Road, Ambikapur, District Sarguja, C.G.

4. Ku.Aarti Budhiya, D/o Late Rameshwar Prasad Budhiya, aged about 22 years, Occupa. Household.

5. Kumari Punam Budhiya D/o Late Rameshwar Prasad Budhiya, aged about 18 years, Occupa. Student.

6. Kumari Jyoti Budhiya, D/o. Late Rameshwar Prasad Budhiya, aged about 16 years,

All R/o-Sadar Road, Ambikapur, District Sarguja, C.G.

---- Appellants/Defendants

Versus

1.A. Rashtriya Swyam Sevak Sangh, Ambikapur, Through Zila Karyawahak-Rashtriya Swyam Sevak Sangh, Ambikapur.

B. Kaleshwar Ram, Acharya, Saraswati Vidya Mandir, Swyam Sevak Sangh, Ambikapur.

2.A Surendal Pal Singh Bhambra S/o Udhan Singh, aged about 58 years.

B. Gurusaran Singh Bhambra S/o Udham Singh, aged about 50 years.

C. Manjeet Singh Bhambra S/o Udham Singh, aged about 48 years,

D. Kulwant Singh Bhambra S/o Udham Singh Singh, aged about 44 years,

E. Prakash Kaur D/o Udham Singh, aged about 60 years,

All R/o Mahamaya Road, Ambikapur, District Sarguja (CG)

2.F(i) Jagmohan Singh, son of Late Awatar Singh, Municipal Gali, Imlipara, Ambikapur, District Surguja (CG)

2.F(ii) Situ, son of Late Awatar Singh, Municipal Gali, Imlipara Ambikapur, District Surguja (CG)

2.F(iii) Titu, on of Late Awatar Singh, Municipal Gali, Imlipara Ambikapur, District Surguja (CG)

2.F(iv) Latte, son of Late Awatar Singh, Municipal Gali, Imlipara Ambikapur, District Surguja (CG)

2.F(v) Neelu, daughter of Late Awatar Singh, Municipal Gali, Imlipara Ambikapur, District Surguja (CG)

2.F(vi) Amrit Kaur, daughter of Late Awatar Singh, Municipal Gali, Imlipara Ambikapur, District Surguja (CG)

3.A. Surendra Singh S/o Late Preetam Singh, aged about 52 years, R/o Nagar Ambikapur, Mahamaya Road, Ambikapur, District Surguja (CG)

3.B. Guruwant Kaur, aged about 54 years, W/o Gurucharan Singh Hora R/o Nagar Ambikapur, Mahamaya Road, Ambikapur, District Surguja (CG)

3.C Smt. Nindi W/o Dari Sahab, aged about 50 years, R/o Dayalband Bilaspur, District Bilaspur (CG)

4. The State of M.P. (Now C.G.) Through Collector, Sarguja, Ambikapur.

---- Respondents

For appellants : Mr. Sunil Otvani, Advocate.

For respondents : Ms. Priyanka Mehta, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

[C.A.V.] Order

1. Heard on admission and formulation of substantial question of law in the second appeal preferred by plaintiffs/appellants herein.
2. The plaintiffs/appellants filed a civil suit claiming permanent injunction and for declaring the gift deed dated 12.04.1965 void and inoperative. That suit was dismissed by the trial Court and first appeal preferred against that judgment and decree was also dismissed, against which, this second appeal under Section 100 of the Code of Civil Procedure has been filed by the plaintiffs.
3. Learned counsel for appellants/plaintiffs would submit that both the Courts below are concurrently erred in dismissed the suit filed by the plaintiffs as barred by limitation by recording a finding which is not only perverse, but contrary to record, which gives rise to substantial question of law for determination.

4. Shri Rameshwar Prasad Budhia – predecessor in title of the plaintiffs being title and possession holder of suit land bearing Khasra No. 2366/3 area 0.25 acre gifted the said land to defendant No.1 by registered gift deed dated 12.04.1965 for the specific purpose of construction of Gymnasium. It is case of the plaintiffs that defendant No.1 did not take any steps for construction of Gymnasium by taking possession of suit land, therefore, the plaintiffs are still in possession of suit land as gift was not accepted and since considerable time has elapsed from the date of gift, gift has become inoperative. The suit was instituted by legal representatives of donor-Rameshwar Prasad Budhia after his death on 26.06.1981. Defendant No.1 took up a plea that suit is barred by limitation. The trial Court as well as the first appellate Court both have dismissed the suit as barred by limitation.
5. The gift of suit land was made by Shri Rameshwar Prasad Budhia by registered instrument on 12.04.1965 to defendant No.1. Shri Budhia died on 15.08.1980 and after his death, his successor in interest/plaintiffs filed the suit for declaring the gift deed dated 12.04.1965 inoperative and void on the ground that it was not acted upon by defendant No.1. The suit was filed on 26.6.1981, both the Courts below have held that it is barred by limitation. The gift deed was admittedly made for the purpose of

construction of Gymnasium for the use of citizens of Ambikapur and it was not alleged to have been constructed by defendant No.1 within the reasonable time from the date of making the gift, but the original donor – Shri Rameshwar Prasad Budhia remained alive till 15.08.1980, he neither revoked the gift deed nor brought any action against the defendants, only after his death, the instant action for declaring the gift deed dated 12.04.1965 void was brought as late as on 26.6.1981. The plaintiffs being sons and daughters were naturally aware of gift made by their father Shri R.S. Budhia in favour of defendant No.1, yet decided to question the said gift deed with a delay of 15 years and after death of their father stating that gift deed has become void as defendant No.1 has not taken possession of suit land and defendant No. 2 and 3 are trying to dispossess them, they are entitled to maintain their possession, as such, they ought to have filed the suit within 3 years from the date of gift as they were aware of gift of suit land as well as fact that defendant No.1 has not constructed Gymnasium within the reasonable period from the date of gift, as such, suit has rightly been held to be barred by limitation. Even otherwise, registered gift has not been revoked under Section 126 of Transfer of Property Act, 1882, as such, both the Courts below are absolutely justified in dismissing the suit holding so. I do not find any illegality or perversity much less substantial question of law of determination.

6. Their Lordships of the Supreme Court have held that it is not permissible for the High Court to interfere with the concurrent finding of fact recorded by two courts below unless findings are perverse. {See : Aftaruddin (Dead) represented through legal representatives v. Ramkrishna Datta alias Babul Datta and others¹ and Rajkumari and another v. Ravinder Kumar (deceased) through legal representatives and others²}.
7. Accordingly, the second appeal being devoid of merit is liable to be and is hereby dismissed in *limine*, without notice to other side. No cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

1 (2018) 11 SCC 77

2 (2018) 12 SCC 681