

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 274 of 2017

Reserved on : 05.09.2019

Delivered on : 18.09.2019

Suresh Kumar Jagatramka, S/o Shri Banwari Lal Jagatramka, aged about 55 years, R/o Gandhi Putla Chauk, Raigarh, District- Raigarh, Civil & Revenue District- Raigarh (C.G.)

---- Appellant

Versus

1. Mahesh Kumar Jagatramka, S/o Banwari Lal Jagatramka, aged about 60 years, R/o 3-A, Sidheshwari Road Kolkata 29, at present Hotel Arpan Darogapara (Station Road) Raigarh (C.G.)
2. Smt. Pushpa Sharaf, W/o Shri Prem Kumar Sharaf, aged about 58 years, R/o 3-A, Sidheshwari Road Kolkata 29, at present Hotel Arpal Darogapara (Station Road) Raigarh (C.G.)
3. Director Shri Bharat Agrawal, S/o Shri Vijay Agrawal, aged about 30 years, R/o Chakardhar Nagar, Raigarh, P.S. & Tahsil- Raigarh, District- Raigarh (C.G.)
4. Deputy Registrar, Registration Office, Collectorate, Raigarh, District- Raigarh (C.G.)
5. State of Chhattisgarh, through District Collector, Raigarh, District- Raigarh (C.G.)

---- Respondents

For Appellant	:	Mr. Suresh Kumar Jagatramka, appellant in person with Dr. Shailesh Ahuja, Advocate.
For Respondents	:	None.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This first appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against judgment/ decree dated 06.01.2017 passed

by First Additional District Judge, Raigarh (C.G.) in Civil Suit No. A/116/2011, wherein the said court dismissed the suit filed by the appellant/plaintiff for declaring sale-deed dated 05.09.2011 & 09.09.2011 void executed by respondent No. 1 & 2 in favour of respondent No. 3 regarding land bearing Sheet No. 44, plot No. 3 in which a house is constructed situated at Raigarh (C.G.).

2. As per the appellant/ plaintiff, the suit property is situated in Gandhi Chowk, Raigarh and it was given by his grandfather to his mother and as the same is ancestral property, the appellant has legal right over it by birth. The property in question was earlier recorded in the name of mother of the appellant, but respondent No. 1 taking advantage of recording name of his mother, got registered the sale-deed without information of his mother. Mother of the appellant died in the year 1995 thereafter, respondent No. 1 got recorded his name in the property in question. The appellant filed a suit before the trial court, but the said court dismissed the suit contrary to the facts and legal aspects of the matter.
3. Learned counsel for the appellant submits as under:-
 - (i) As the property is ancestral property, the appellant is having right over the property since birth, therefore, sale-deed executed by respondent No. 1 & 2 is contrary to law.
 - (ii) Respondent No. 1 & 2 have never been in possession of the property and their name has been fraudulently recorded.

(iii) The trial court has not evaluated the evidence in its true perspective, therefore, the finding arrived at by the trial court is liable to be set aside

4. I have heard learned counsel for the appellant and perused the record in which judgment and decree has been passed.
5. First question for consideration before this Court is whether the property in question is ancestral property. No document is filed on behalf of the appellant that the property in question was ancestral property. It is also not established by evidence that respondent No. 1 & 2 got mutated their name without knowledge of other share holders. No such questioned sale-deed was filed before the trial court.
6. In absence of document regarding the property, the trial court was not in a position to record finding that the property in question is ancestral property. When the property was recorded in name of respondent No. 1 & 2, they were having right to alienate the same. The evidence adduced by the appellant before the trial court is not establishing his title over the property in question. In absence of title over the property, the trial court is right in holding that the relief cannot be granted to the appellant.
7. The trial court has elaborately discussed the entire evidence and after reassessing the same, this Court has no reason to take a contrary view. Argument advanced on behalf of the appellant is not sustainable.

8. Accordingly, the appeal is liable to be dismissed. The decree is passed against the appellant and in favour of the respondents on the following terms and conditions:-

- (i) The appeal is dismissed with cost.
- (ii) Parties to bear their own costs.
- (iii) Pleaders' fee, if certified be calculated as per certificate or as per schedule whichever is less.
- (iv) A decree be drawn up accordingly.

Sd/-
(Ram Prasanna Sharma)
Judge