

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 468 of 2016

1. Reyajuddin S/o. Late Rahmat Miyan, Aged About 75 Years R/o- Village- Kusmi, Tahsil- Samri Kusmi, District- Surguja, Now Balrampur- Ramanujganj, Chhattisgarh.
2. (a). Habibulla, S/o. Reyajuddin, Aged About 40 Years R/o- Village- Kusmi, Tahsil- Samri Kusmi, District- Surguja, Now Balrampur- Ramanujganj, Chhattisgarh.
- 2 (b).- Mujeeb, S/o. Reyajuddin, Aged About 38 Years R/o- Village- Kusmi, Tahsil- Samri Kusmi, District- Surguja, Now Balrampur- Ramanujganj, Chhattisgarh.

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Versus

1. Jamhur Hussain S/o. Late Alijan Hussain, Aged About 51 Years R/o- Kusmi, Tahsil- Samri Kusmi, District- Surguja, Now Balrampur- Ramanujganj, Chhattisgarh.
2. Mohd. Murtza, S/o. Shamsuddin, Aged About 50 Years Sadar, Madarsa Evum Masjid Amiriyah, Kusmi, R/o- Kusmi, Tahsil- Samri Kusmi, District- Surguja, Now Balrampur- Ramanujganj, Chhattisgarh.
3. a) Subeda, W/o. Wali Miyan, Aged About 55 Years R/o- Village- Kusmi, Tahsil- Samri Kusmi, District- Surguja, Now Balrampur- Ramanujganj, Chhattisgarh.
- 3.b)- Jubeda, Wd/o. Late Hadis Miyan, Aged About 52 Years R/o- Village- Kusmi, Tahsil- Samri Kusmi, District- Surguja, Now Balrampur- Ramanujganj, Chhattisgarh.
4. State Of Chhattisgarh, Through Collector, Balrampur, District- Balrampur, Ramanujganj, Chhattisgarh.

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For Appellants:	: Shri Manoj Paranjpe, Advocate.
For Respondent No. 1:	: Ms. Priyanka Mehta, Advocate.
For Respondent No. 2:	: Shri Sunil Sahu, Advocate.
For Respondent No. 4:	: Shri Shakti Singh Thakur, P.L.

Single Bench: Hon'ble Shri Sanjay Agrawal, J
Order On Board

02.05.2019

1. This appeal has been preferred by the plaintiffs under Section 100 of

the Code of Civil Procedure, 1908 questioning the propriety of the judgment and decree dated 12.08.2016 passed by the 3rd Additional District Judge Ambikapur, Sarguja in Civil Appeal No. 71-A/2012 by which, the Lower Appellate Court while affirming the judgment and decree dated 28.07.2012 passed by the Second Civil Judge Class-II, Ambikapur District Sarguja in Civil Suit No.72-A/2011, has dismissed the plaintiff's claim.

2. Learned counsel for the Appellants submits that the judgment and decree as passed by the Courts below holding that original Defendant No. 1, Amiran Bibi is the legally wedded wife of one Kamruddin, the erstwhile owner of the suit property, and plaintiffs, Reyajuddin and Tetri are not the brother and sister of said Kamruddin is apparently contrary to law. He submits that a bare perusal of the oral statements made by the parties, it is evident that said Amiran Bibi is not the legally wedded wife of Kamruddin and plaintiffs are brother and sister of him (Kamruddin). According to his further submission, since Amiran Bibi was not the legally wedded wife of Kamruddin, therefore, the registered deed of gift (Ex.P-2) which was executed by her on 29.08.1980 in favour of "Madarsa and Masjid Amira" regarding plaint schedule "ख" property would not confer any right, title or interest upon the said Madarsa. Without considering the evidence of the parties in its proper manner the Courts below have erred in dismissing the plaintiffs' claim.
3. I have heard learned Counsel for the Appellants and perused the entire record carefully.
4. A suit was instituted by the plaintiffs claiming declaration of title, partition and separate possession with regard to the property in

question described in plaint schedule “क” by submitting *inter-alia* that original Defendant No. 1, Amiran Bibi is not the legally wedded wife of Kamruddin, the erstwhile owner of the suit property. It is pleaded further that the gift deed (Ex.P-2) which was executed on 29.08.1980 by said Amiran Bibi in favour of “Madarsa and Masjid, Amira” in relation to plaint schedule “ख” is therefore a void document. According to the plaintiffs, after the death of Kamruddin, Defendant No. 2, with the connivance of Revenue Authorities have obtained the Revenue papers mutated in the name of Defendant No. 1, namely, Amiran Bibi on 30.01.1978 (Ex.P-3), however, no notice prior to the said mutation proceeding was issued to them. It is pleaded further in the plaint that the plaintiffs are brother and sister of said Kamruddin and, therefore, they alone are entitled to inherit the property after his death.

5. Based upon the aforesaid averments made in the plaint, the burden is heavily upon the plaintiffs to establish the fact that original Defendant No.1, Amiran Bibi was not the legally wedded wife of said Kamruddin and also required to establish the fact that the plaintiffs are brother and sister of said Kamruddin. The initial burden was thus upon the plaintiffs to prove the said facts. However, they failed to establish this fact by producing any cogent and reliable evidence in this regard. Even, plaintiff No. 1 Reyazuddin has not entered into the witness box for the reasons best known to them. Besides, Ex.D-1, Ex.D-2 and Ex.D-3 are the registered deed of sales, produced by defendants, which were executed by Sekhdani, Tejan and Hussaini respectively in favour of original Defendant No.1, Amiran Bibi, would reveal the fact that she is the wife of said Kamruddin and the endorsement made as such could

not have been rebutted by the plaintiffs. That apart, perusal of oral statements by the parties, it is evident that plaintiffs, namely, Reyazuddin and Tetri are not the brother and sister of said Kamruddin. After considering the evidence of both the parties vis-a-vis the registered deeds of sale Ex.D-1 to Ex.D-3, the Courts below have rightly come to the conclusion that original Defendant No. 1 Amiran Bibi is the legally wedded wife of said Kamruddin, the erstwhile owner of the property in question and plaintiffs are not the brother and sister of said Kamruddin. This finding is based upon due and proper appreciation of the evidence led by the parties, therefore, it observes to be and is hereby affirmed.

6. In view of the foregoing discussion, I do not find any question of law much less the substantial question of law which arise for determination in this appeal. Accordingly, the appeal is dismissed at the admission stage itself. No order as to costs.

Sd/-

(Sanjay Agrawal)
JUDGE