

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 58 of 2009**

S. Venkatraman, S/o S. Prabhakar Rao, Aged about 43 years, R/o Near Congress Bhawan, Tilak Nagar, Bilaspur, Distt. Bilaspur, Chhattisgarh.

---Appellant/Plaintiff

Versus

1. Smt. Anuradha @ Anuradha Thakur, Aged about 34 years, W/o Surendra Singh Thakur, R/o Near Bhatkande Sangeet School, Dayalband, Bilaspur, Distt. Bilaspur, Chhattisgarh.

2. S. Prabhakar Rao, S/o S. Venkatrao, Aged about 75 years, R/o Near Congress Bhawan, Tilak Nagar, Bilaspur, Distt. Bilaspur, Chhattisgarh.

--- Respondents/Defendants

For Appellant :- Mr. Ravindra Agrawal, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

10/07/2020

1. Proceedings of this matter have been taken up through video conferencing.
2. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellant/plaintiff under Section 100 of the CPC against the impugned judgment and decree passed by the first appellate Court affirming the judgment and decree by which the trial Court dismissed the

suit of the plaintiff for declaration of title, permanent injunction and for declaring the gift deed dated 16/06/1994 executed by defendant No. 2 in favour of defendant No. 1 as null and void.

3. Mr. Ravindra Agrawal, learned counsel for the appellant/plaintiff would submit that both the Courts below have concurrently erred in holding that entire property held by defendant No. 2 was his self-acquired property and he has rightly gifted the suit property admeasuring 1192.5 sq. ft. and the house situated therein out of his total property in favour of defendant No. 1 (his daughter), and the plaintiff is not entitled for declaration of title as well as declaration of gift deed dated 16/06/1994 as null and void and is further not entitled for $1/3^{\text{rd}}$ share in the entire property, as such, the appeal deserves to be admitted by formulating substantial question of law in this regard.

4. A careful perusal of the record would show that the total property admeasuring 6211 sq. ft. Plot No. 34 Sheet No. 7 situated at Tilak Nagar, Bilaspur was gifted to defendant No. 2 by his parents which has been found to be established by both the Courts below and in turn, defendant No. 2 has only gifted 1192 sq. ft. of land out of the total property as

well as the house situated therein to defendant No. 1 (his daughter), which the plaintiff (son of defendant No. 2 and brother of defendant No. 1) has called in question by instituting the instant suit claiming $1/3^{\text{rd}}$ share in the entire property and has also sought declaration of gift deed dated 16/06/1994 executed by defendant No. 2 in favour of defendant No. 1 as null and void.

5. Both the Courts below have rightly and concurrently held the suit property to be the self-acquired property of defendant No. 2 which he received as a gift from his parents and therefore, he was fully entitled to gift the said suit property admeasuring 1192 sq. ft. of land and the house situated therein in favour of his daughter defendant No. 1 by gift deed dated 16/06/1994. The aforesaid finding is a finding of fact which suffers from no illegality and much less no perversity could be shown by learned counsel for the appellant/plaintiff despite his long submission. Even otherwise, the gift deed dated 16/06/1994 which is sought to be declared as null and void by the plaintiff was not brought on record.

6. In my considered opinion, the finding recorded by both the Courts below *qua* nature of the property held by defendant No. 2 and out of that, suit

property gifted by him in favour of his daughter defendant No. 1 is a pure and simple finding of fact. I do not find any reason to interfere with the said finding of fact recorded by both the Courts below.

7. Accordingly, the second appeal deserves to be and is hereby dismissed *in limine* without notice to the other side. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet