

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 460 of 2019**

1. Smt.Shail Chelak W/o Late Prakash Chelak Aged About 52 Years Resident Of Middle School Malviya Nagar, Durg, Tahsil And District Durg Chhattisgarh
2. Gourav Chelak S/o Late Prakash Chelak Aged About 23 Years Resident Of Middle School Malviya Nagar, Durg, Tahsil And District Durg Chhattisgarh
3. Riya Chelak S/o Late Prakash Chelak Aged About 21 Years Resident Of Middle School Malviya Nagar, Durg, Tahsil And District Durg Chhattisgarh

---- Appellants**Versus**

1. Chherkin Bai W/o Mohani Chelak Aged About 75 Years R/o Village Chhanta, Post Gondpendri, P.S. And Tahsil Patan, District Durg Chhattisgarh
2. M/s Ganpati Motors Through Partner, Devendra Madhyani, S/o Shri Khemamal Madhyani, Aged 35 Years, R/o G.E. Road Supela Bhilai, Tahsil And Dist. Durg Chhattisgarh
3. State Of Chhattisgarh Through Collector, Durg Distt. Durg Chhattisgarh

---- Respondents

For Appellant : Shri Palash Agrawal, Advocate

For State : Shri Ankur Kashyap, Panel Lawyer

D.B.:- Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Vimla Singh Kapoor****Order On Board****24/01/2020**

Heard on admission.

1. This appeal arises out of order dated 08/05/2019 passed by the learned Trial Court by which, the appellants' plaint has been rejected holding it to be barred by law.
2. The appellant / plaintiff filed a suit seeking declaration and other analogous

reliefs in respect of the property in dispute on the pleadings that the property in dispute was received by the respondent – Chherkin Bai by way of succession from her father. An application under Order 7 Rule 11 of CPC came to be filed by defendant No.1 that according to plaintiff's own pleadings, the property was received by Chherkin Bai from her own father, the plaintiff cannot claim any interest in the property during her lifetime, therefore, no decree of declaration in the suit or interest in the property during lifetime of the mother could be granted.

3. The aforesaid objection found favour and the learned Trial Court rejected the plaint.

4. Learned counsel for the appellant would argue that even if plaintiff's own pleadings is that the property in dispute was received by defendant No.1 - Chherkin Bai from her own father, still the plaintiffs are entitled to claim interest in the property because plaintiff No.1 is the daughter-in-law and plaintiffs 2 and 3 are grandson and grand-daughter of Chherkin Bai.

5. Once the appellant's own pleadings is that the property in dispute was received by Chherkin Bai – defendant No.1 from her own father, apparently, the plaintiffs, who are daughter-in-law, grandson and grand-daughter, have no claim over the property during the life time of Chherkin Bai. It is not a case where the property is claimed to be joint family property or acquired by Chherkin Bai from the funds provided either by the plaintiffs or by her son – namely Prakash Chelak, the husband of plaintiff No.1- Smt. Shail Chelak.

6. The only conclusion in law in view of the provisions contained in Hindu Succession Act, 1956 and the decision relied upon by the learned Trial Court is that the plaintiff has no triable cause of action.

Even though the suit cannot be said to be barred by law, the aforesaid consideration clearly reveals that the plaintiff has no triable cause of action and the suit is a frivolous one. Therefore, we are not inclined to interfere with the order of the Court below. The appeal is, accordingly, dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Vimla Singh Kapoor)
Judge