

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 594 of 2014

1. Shakuntala Bai (Since Dead) Love Kumar Agrawal S/o Vipin Bihari Agrawal Age 34 Yrs R/o Datan Tahsil and P.S. Palari, Distt. Baloda Bazar C.G.
2. Kush Kumar Agrawal S/o Vipin Bihari Agrawal Aged About 34 Years R/o Datan Tahsil P.S. Palari, Distt. Baloda Bazar C.G.

---- Petitioners

Versus

1. Shriram Sahu S/o Vishnu Sahu Aged About 48 Years R/o Village-Datan R.I.C. and Tahsil P.S. Palari, Distt. Baloda Bazar C.G.
2. Shivprasad Sahu S/o Vishnu Sahu Aged About 46 Years R/o Village-Datan R.I.C. and Tahsil P.S. Palari, Distt. Baloda Bazar C.G.
3. Shiv Kumar Sahu S/o Shri Vishnu Sahu Aged About 44 Years R/o Village-Datan R.I.C. and Tahsil P.S. Palari, Distt. Baloda Bazar C.G.
4. Radheshyam Sahu S/o Khorbahra Sahu Aged About 48 Years R/o Village-Datan R.I.C. and Tahsil P.S. Palari, Distt. Baloda Bazar C.G.
5. Sitaram Sahu S/o Khorbahra Aged About 40 Years R/o Village-Datan R.I.C. and Tahsil P.S. Palari, Distt. Baloda Bazar C.G.
6. Rikhiram Sahu S/o Khorbahra Aged About 40 Years R/o Village-Datan R.I.C. and Tahsil P.S. Palari, Distt. Baloda Bazar C.G.
7. The State Of Chhattisgarh Through The Collector Balodabazar, District-Balodabazar-Bhatapara (C.G.)

---- Respondents

Shri Prateek Sharma, counsel for the petitioners.
Shri Dilman Rati Minj, Dy. A.G. for the State/respondent No.7.
None for respondents No.1 to 6.

Order On Board

18/09/2015

Heard.

1. This petition is directed against order dated 17.07.2014 by which the Court below has rejected petitioners' application for being substituted as legal representative on the strength of a registered will dated 29.05.2012 said to be executed by deceased

Shakuntala Bai (deceased appellant in the pending appeal before the Court below).

2. Learned counsel for the petitioners submits that even though petitioners moved application for being substituted as legal representative on the strength of her registered will, the Court below on irrelevant and untenable ground, without getting an enquiry made with regard to the execution of will in favour of the petitioners, dismissed the application.

3. Shakuntala Bai (deceased) filed a suit against respondents No.1 to 6 in the Court of Civil Judge, Class-II Baloda Bazar seeking decree of declaration of title and permanent injunction. The suit was filed by the deceased Shakuntala Bai through her power of attorney Vipin Bihari Agrawal. The suit was, however, dismissed vide judgment and decree dated 14.12.2012. Thereafter, Shakuntala Bai filed first appeal through her power of attorney. During the pendency of the appeal, Shakuntala Bai died on 05.11.2013. Thereafter, the petitioners moved application for being substituted as legal representative of deceased Shakuntala Bai on the strength of a registered will dated 29.05.2012. However, the Appellate Court rejected the application.

4. Learned Lower Appellate Court has rejected the application assigning reason that the suit and appeal both were filed by the power of attorney holder of the deceased. That appears to be the main operative reason for rejecting the application for substitution of applicants as legal representative. The learned Lower Appellate Court neither made any enquiry with regard to the veracity of the will nor obtained any finding from the trial Court on the aspect of proof of will in favour of the petitioners.

In this case, application was made for being substituted as legal representative of the deceased on the strength of a will, the Appellate Court ought to have directed the trial Court to return a finding on proof of registered will relied upon by the petitioners. This having not been done and the application rejected only on the ground that the suit and the appeal were filed by power of attorney holder, impugned order is patently illegal. The learned Lower Appellate Court has failed to exercise jurisdiction vested in it under the law by not obtaining finding report from the Trial Court with regard to proof of the will relied upon by the petitioners. The Court below was completely oblivious of the legal position that upon death of Shakuntala Bai, the power of attorney attained its nature demise by operation of law.

5. In the result, the writ petition is allowed. The Appellate Court is directed to send the matter to the Trial Court for returning a finding of fact after recording the evidence of

both the parties on the issue of proof of registered will dated 29.05.2012. Thereafter on the basis of the evidence collected by the Trial Court in the matter of proof of will, the Appellate Court shall decide petitioner's application under Order 22 Rule 3 CPC.

Sd/-

Manindra Mohan Shrivastava

J U D G E

Rekha