

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 536 of 2014**

- Rajesh Agrawal S/o Late Shri Ramarsal Agrawal, Aged About 57 years R/O O.C.M. Chowk, Nalghar Chowk, Raipur, Distt. Raipur (C.G.)

---- Petitioner**Versus**

- Sanjay Agrawal S/o Late Shri Ramarsal Agrawal, Aged About 54 Years, R/o Baniyapara, Purani Basti, Raipur, Distt. Raipur (C.G.)
- The State Of Chhattisgarh, Through The Collector, Raipur, Distt. Raipur (C.G.)

---- Respondents

For Petitioner	:	Shri H.B. Agrawal, Sr. Advocate with Shri Preeti Yadav, Advocate
For Respondent/State:		Shri Ashutosh Pandey, PL
For Respondent No.1:		Shri Rakesh Thakur on behalf of Yogesh Pandey, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****12/03/2015**

1. This is plaintiff's petition under Article 227 of the Constitution of India challenging the trial Court's order, whereby his two interlocutory applications, one under Section 45 of the Indian Evidence Act read with Section 151 of the Code of Civil Procedure (for short 'CPC') and the other under Order 14 Rule 5 CPC have been rejected.
2. Admittedly, plaintiff has filed the suit for declaration and permanent injunction, wherein the defendant is defending the suit on the strength of will

executed by Late Ramrasal Agrawal. The plaintiff is challenging the authenticity and genuineness of the will, therefore, he moved the subject application under Section 45 of the Indian Evidence Act to examine an expert so as to disprove the will.

3. While refusing the prayer made under Section 45 of the Evidence Act, learned trial Court has observed that to prove the will, the parties are under obligation to meet the requirement of law, which does not include the examination of experts.
4. In the opinion of this Court, in view of the provisions contained in Sections 68 & 69 of the Evidence Act, the legal requirement to prove the will does not include examination of experts. The burden lies on the party to prove the authenticity of the will, who is seeking benefit from the said will.
5. Insofar as the application under Order 14 Rule 5 CPC is concerned, suffice it would be to say that the said application was presented after closure of the plaintiff's witnesses, therefore, the trial Court has rightly rejected the same. Even otherwise, the trial Court has observed that the proposed additional issue is covered under Issue No.1, already framed for adjudication.
6. In view of the above, there is no substance in this petition. It fails and is hereby dismissed.

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