

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 198 of 2003

- Shrimati Sushila Pande, D/o Lalaram, Aged About 45 Years
R/o Permanent Addressat Kasdol Tahsil Kasdol District Raipur
(C.G.)

---- Appellant

Versus

1. Rishiram (Dead) Through-Lrs
 - (a) Smt. Vidya Chaturvedi & Ors. S/o Rishiram Pande R/o Kasdol Tahsil Kasdol, Distt. Raipur C.G.
 - (b) Smt. Asha D/o Rishiram Pande R/o Kasdol Tahsil Kasdol, Distt. Raipur C.G.
 - (c) Gajendra Kumar S/o Rishi Ram Pande R/o Kasdol Tahsil Kasdol, Distt. Raipur C.G.
2. Smt. Nirmala W/o Ramkumar Behar Aged About 35 Years R/o At Raipur Distt. Raipur C.G.
3. Rajendra S/o Rishiram Mishra R/o Kasdol Tahsil Kasdol, Distt. Raipur C.G.
4. State of Chhattisgarh Through Collector Raipur Distt. Raipur C.G.

---- Respondents

For Appellant : Mr. Janak Ram Verma, Advocate
For State : Mr. Sameer Behar, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

29/06/2016

1. This is plaintiff's second appeal filed under Section 100 of the Code of Civil Procedure, 1908 (for short, 'the Code'). The plaintiff's civil suit filed for declaration of title that she and defendant No.2 both were having 1/2 – 1/2 shares in the suit property based upon the will deed dated 31.07.1980 was dismissed by the trial Court holding that the plaintiff has failed to prove execution and attestation of will deed dated 31.07.1980 against which the first appeal was preferred by

the plaintiff. The first appellate Court also dismissed the first appeal and affirmed the finding of the trial Court, against which this second appeal has been preferred by the plaintiff.

2. Learned counsel for the appellant / plaintiff would submit that both the Courts below have committed legal error in dismissing the suit holding that the will by her father Lalaram in favour of plaintiff and defendant No.2 is not proved. He would further submit that the application for amendment & plaint claiming right based on succession was also rejected by the trial Court and same raises a substantial question of law for determination.
3. I have heard learned counsel for the appellant / plaintiff and perused the record of the Courts below.
4. The trial Court has clearly recorded a finding that the execution and attestation of will has not been proved beyond doubt by the appellant / plaintiff which has been affirmed by the first appellate Court and I do not find any illegality in the said finding. So far as the application for amendment is concerned, it was filed in the fag end of trial, which was rejected by the trial Court finding no merit, which has also been affirmed by the first appellate Court.
5. After hearing learned counsel for appellant / plaintiff, I do not find any illegality in the said finding. The concurrent finding recorded by both the Courts below are based on evidence available on record and neither perverse nor contrary to the record. Amendment application claiming right based on

succession was filed much belatedly few days prior to the date of judgment of the trial Court, in which I do not find any illegality. I do not find any substantial question of law to be formulated for admission of this appeal. The second appeal deserves to be and is accordingly dismissed at the admission stage itself. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Chandra