

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 180 OF 2016**

1. Chandu Lal, aged about 62 years, S/o Mana, R/o Village Bana, Tahsil Arang, District Raipur (C.G.)
2. Munni Bai Yadav, aged about 42 years, W/o Phool Chand Yadav, R/o village Akoli Whaya Ferfod, Tahsil Arang, District Raipur (C.G.)

---- Appellants**Versus**

1. Shiv Yadav, aged about 50 years, S/o Phool Chand Yadav @ Phool Singh, R/o Village Rani Sagar, Tahsil Arang, District Raipur (C.G.)
2. State of Chhattisgarh, through District Collector, Raipur (C.G.)

---Respondents

For Appellants	: Mr. H.B. Agrawal, Sr. Advocate with Ms. Nand Kumari Kashyap, Advocate
For Respondent No. 2/State	: Mr. Neeraj Nain, Govt Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****24/06/2016**

1. Plaintiffs' filed suit for declaration of title and permanent injunction based on will dated 15/02/2009 (Exhibit P-1) allegedly executed by Fulwa Bai. In the said suit, defendant No. 1 set up a plea that Fulwa Bai executed will dated 24/01/2004 in her favour.

2. The trial Court upon appreciation of oral and documentary evidence on record dismissed the suit holding that defendant No. 1 has proved execution of valid will in her favour dated 24/01/2004 (Exhibit D-1) and plaintiffs have failed to prove will executed by Fulwa Bai in their favour by Exhibit P-1 dated 15/02/2009.

3. On appeal being preferred, the First Appellate Court upon due consideration dismissed the first appeal holding that plaintiffs have failed to prove execution and attestation of will in their favour by Fulwa Bai and found will in favour of the defendant No. 1 has proved. Against the above stated judgment, this second appeal has been filed.

4. Mr. H.B. Agrawal, Sr. Advocate with Ms. Nand Kumari Kashyap, Advocate appearing for the appellants would submit that finding recorded by two Courts below holding that the will is not duly proved in favour of the plaintiffs is a perverse finding and that gives rise to a substantial question of law.

5. I have heard learned counsel appearing for the appellants and perused the record with utmost circumspection.

6. Two Courts below have concurrently held that plaintiffs have failed to prove execution and attestation of will in their favour. The Finding recorded by two Courts below are neither perverse nor contrary to the record.

7. Recently, the Supreme Court in case of **Vishwanath Agrawal, Son of Sitaram Agrawal Vs. Sarla Vishwanath Agrawal, (2012) 7 SCC 288**, has held that the High Court should not disturb the concurrent finding of fact, unless finding recorded are perverse being based on no evidence. Paras-36 and 37 of report as under:-

“36. In **Major Singh v. Rattan Singh, (1997) 3 SCC 546**, it has been observed that when the courts below had rejected and disbelieved the evidence on unacceptable grounds, it is the duty of the High Court to consider whether the reasons given by the courts below are sustainable in law while hearing an appeal under Section 100 of the Code of Civil Procedure.

37. In **Vidhyadhan v. Manikrao, (1999) 3 SCC 573**, it has been ruled that the High Court in a second appeal should not disturb the concurrent findings of fact unless it is shown that the findings recorded by the Courts below are perverse being based on no evidence or that on the evidence on record no reasonable person could have come to that conclusion. We may note here that solely because another view is possible on the basis of the evidence, the High Court would not be entitled to exercise the jurisdiction under Section 100 of the Code of Civil Procedure. This view of ours has been fortified by the decision of this Court in **Abdul Raheem V. Karnaraka Electricity Board, (2007) 14 SCC 138.**”

8. Keeping in view, the ratio of law laid down by the Supreme Court in the aforesaid case, the concurrent finding of fact recorded by two Courts below is based on evidence available on record, there is no perversity and no substantial question of law is involved in this second appeal.

9. In view of above, I do not find any fault with the judgment and decree of two Courts below. The second appeal lacks merit and is accordingly dismissed at the admission stage itself. No order as to cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge