

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 423 of 2016

- Madanlal Khaparde S/o Late Motilal Khaparde, Aged About 52 Years Caste Boudhist (Mahar), Occupation Service (Assistant Line Main Chhattisgarh Electricity Board), R/o Stationpara, Ward No. 10, Post Rajnandgaon, Tahsil And District Rajnandgaon (Chhattisgarh)

---- Petitioner

Versus

1. Manish Khaparde S/o Late Dr. Bhajanlal Khaparde, Aged About 28 Years Caste Boudhist (Mahar),
2. Smt. Malti Khaparde Wd/o Late Dr. Bhajanlal Khaparde, Aged About 48 Years Caste Boudhist (Mahar)
3. Mithlesh Khaparde S/o Late Dr. Bhajanlal Khaparde, Aged About 22 Years Caste Boudhist (Mahar)
4. Ku. Megha Khaparde D/o Late Dr. Bhajanlal Khaparde, Aged About 25 Years Caste Boudhist (Mahar)
5. Ku. Mayuri Khaparde D/o Late Dr. Bhajanlal Khaparde, Aged About 19 Years Caste Boudhist (Mahar)

All are R/o Village Mudiya Mohara, Tahsil Dongargarh, District Rajnandgaon (Chhattisgarh)

6. Smt. Devki Bai W/o Shri Sonuram Rangari, Aged About 45 Years Caste Boudhist (Mahar), R/o Station Para, Post Rajnandgaon, Tahsil And District Rajnandgaon (Chhattisgarh)
7. State Of Chhattisgarh, Through Collector, Rajnandgaon, District Office Premises, Rajnandgaon, District Rajnandgaon (Chhattisgarh)
8. Smt. Kiran W/o Pradeep Ghatode, Caste Teli, R/o Station Para, Ward No. 9, Rajnandgaon, Tahsil And District Rajnandgaon (Chhattisgarh)

---- Respondent

For Petitioner Mr. Abhishek Sharma, Advocate
For Respondent /State Mr. Shashank Thakur, Government Advocate

Hon'ble Shri Justice Prashant Kumar Mishra
Order On Board

13/7/2016

1. Heard.

2. The trial Court has rejected the petitioner/plaintiff's application under Section 65 of the Evidence Act for permission to lead secondary evidence to prove the "WILL" dated 11.01.2005 executed by one Shyambati in favour of the plaintiff.
3. The ground raised for seeking such permission was that the original "WILL" was handed over to the lawyer, who was initially engaged, however, it was not returned back or was lost. The trial Court has rejected the application on the reasoning that there being no proof of existence of the original, in view of the law laid down by the Madhya Pradesh High Court in the matter of *Haji Mohd. Islam and another Vs. Asgar Ali and another*, AIR 2007 MP 157, permission to lead secondary evidence cannot be granted.
4. Admittedly, the petitioner has neither filed affidavit of the lawyer nor there is any *prima facie* proof of the fact that such "WILL" was ever in existence. The petitioner could have produced such proof if he has relied on the subject "WILL" before any other authority at any prior point of time.
5. In the considered opinion of this Court, the trial Court has not committed any error in rejecting the petitioner's application. Therefore, the writ petition is dismissed.

Sd/-
Judge

(Prashant Kumar Mishra)