

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.149 of 2009**

Indrajeet Chandrakar S/o Shri Late Shri Damodar Prasad Chandrakar, aged about 65 years, Agriculturist, Village Janglesar, Rajnandgaon, at present resident of Udyia Nagar Quarter No.B-19/6 Sector 03, D Tatiband Raipur, Tahsil & Dist.Raipur (CG)

---Appellant**Versus**

1. Smt. Janki Bai W/o Shri Dayalu Ram Chandrakar, aged about 55 years
2. Dayalu Ram S/o Late Shri Damodar Prasad Chandrakar, aged about 60 years,
Both Resident of Village Janglesar, Tahsil & Dist. Rajnandgaon (CG)
3. State of Chhattisgarh Through Collector Rajnandgaon, Dist. Rajnandgaon (CG)

---Respondents

For Appellant	:	Mr. R.S.Patel, Advocate
For Res.No.1 & 2	:	Mr.Rakesh Thakur, Advocate
For Res.No.3	:	Mrs.Ashtha Shukla, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****24/08/2016**

1. Plaintiff-Janki Bai filed a suit for declaration of title and permanent injunction stating inter-alia that her father-in-law and father of defendant No.1 namely Shri Damodar Prasad Chandrakar executed the will in her favour with regard to the suit property.
2. The Second Civil Judge Class-1, Rajnandgaon in Civil Suit No.167A/2005 decreed the suit in favour of the plaintiff and held that the will was executed by father of defendant No.1 in her favour, which was also affirmed by the First Additional District Judge, Rajnandgaon in

Civil Appeal No.7-A/2006 vide judgment and decree dated 5.1.2008.

3. In the second appeal filed by defendant No.1, Mr.R.S.Patel, learned counsel appearing for the appellant relying upon the judgment of the Supreme Court in the matter of **Lalit Popli Vs. Canara Bank and others**¹ would submit that concurrent finding recorded by the Courts below holding the will to be duly executed and attested in accordance with the Indian Succession Act, 1925 is perverse and contrary to the record and therefore, it gives rise to substantial question of law for admission of this second appeal.

4. I have heard learned counsel for the appellant and perused the records of the Courts below.

5. Concurrent finding recorded by the trial Court holding that the will executed by father of defendant No.1 in favour of her daughter-in-law/wife of defendant No.2 has been duly established and its execution and attestation have also been proved is a finding of fact, based on record.

6. Recently, the Supreme Court in the case of **Vishwanath Agrawal, S/o Sitaram Agrawal Vs. Sarla Vishwanath Agrawal**², has held that High Court should not disturb the concurrent finding of fact, unless finding recorded is perverse being based on no evidence. Para-36 & 37 of report states as under:-

“36. In **Major Singh Vs. Rattan Singh**³ it has been observed that when the Courts below had rejected

1 AIR 2003 SC 1796

2(2012) 7 SCC 288

3(1997) 3 SCC 546: AIR 1997 SC 1906

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 Vs. Manikrao**⁴ 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 jurisdictions under Section 100 of the Code of Civil Procedure. This view of ours has been fortified by the decisions of this Court in **Abdul Raheem V. Karnataka Electricity Board**⁵.

7. Keeping in view, the ratio of law laid down by the Supreme Court in the aforesaid cases, concurrent finding of fact recorded by both the Courts below is based on evidence available on record. It is neither perverse nor contrary to the record. No substantial question of law is involved in this second appeal.

8. Thus, the appeal deserves to be and is accordingly dismissed leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

B/-

4(1999) 3 SCC 573
5(2007) 14 SCC 138: AIR 2008 SC 956