

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 212 OF 2011**

Amar Sai S/o Rajrup Panika, aged about 45 years, R/o Rajouli, Tahsil Sonhat, Distt. Korea (C.G.)

---- Appellant**Versus**

1. Sushila Bai W/o late Santram Panika aged about 45 years,
2. Krishna Kumari D/o Santram Panika aged about 15 years,
3. Ravi Kumari D/o Santram Panika aged about 12 years (No. 2 to 3 ae minors) through their next friend mother Sushila Bai W/o late Santram Panika aged about 45 years,

All are the R/o Rajouli, Tahsil Sonhat, Distt. Korea (C.G.)

4. State of Chhattisgarh Through Collector, Korea, Baikunthpur (C.G.)

---- Respondents

For Appellant	:	Mr. Sanjay Patel, Advocate
For Respondents No. 1 to 3	:	Mr. Prakash Tiwari, Advocate
For Respondent No. 4/State	:	Mr. Vijay Bahadur Singh, P.L.

Hon'ble Shri Sanjay Agrawal, J.**Judgment On Board****22/02/2017**

1. This is a defendant's appeal filed under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') against the judgment and decree dated 10/03/2011 passed by the First Additional District Judge, Manendragarh at Baikunthpur, District Koriya in Civil Appeal No. 01-A/2011 by which, the appellate Court while reversing the findings of the trial Court dated

26/04/2007 passed by the Civil Judge Class-I, Baikunthpur, District Koriya in Civil Suit No. 40-A/1999, has decreed the plaintiffs' claim.

2. Undisputed facts of the case are that the property in question was originally held by one Pudgu Panika, who died in the year 1981 leaving behind him the only son namely Santram Panika. It is pleaded further that after the death of Santram Panika, the plaintiffs being the legal representatives of said Santram Panika have acquired the property in question by way of inheritance. It is pleaded further that defendant Amar Sai by virtue of the will dated 14/05/1977 and 14/06/1986, purported to have been executed, respectively by Pudgu Panika and Santram Panika has obtained the revenue papers mutated in his name. Based upon which, he tried to interfere in their right over the property in question, and, therefore, the plaintiffs have been constrained in filing the suit in the instant nature for declaration of title and possession, instituted on 11/05/1999.

3. The aforesaid claim of the plaintiffs have been contested by the defendant Amar Sai by submitting, *inter alia*, that Santram Panika alone is not the son of said Pudgu Panika, in fact, his mother Radha Bai was also a daughter of said Pudgu Panika. He has contested the suit further on the ground that he acquired right, title and interest over the property in question by virtue of the will deeds dated 14/05/1977 & 14/06/1986, said to have been executed respectively by Pudgu Panika and Santram Panika in his favour. He submitted further that on the basis of the alleged will deeds, he obtained the revenue papers recorded in his name as evidenced by the order dated 11/09/1998 passed by the Tahsildar, affirmed further by Sub-Divisional Officer vide its order dated 15/03/1999.

4. Upon hearing the parties, the trial Court by its judgment and decree dated 26/04/2007 has come to the conclusion that none of the attesting witnesses were examined by the defendant Amar Sai in order to establish the due execution,

attestation and validity of the alleged will deeds. It held further that Radha Bai is a daughter of Pudgu Panika and held further that since the mutation orders have been passed in favour of the defendant Amar Sai, therefore, the plaintiffs are not entitled for any relief as claimed by them and in consequence, the suit as framed and instituted has been dismissed.

5. Being aggrieved with the aforesaid judgment and decree of the trial Court, the plaintiffs have preferred an appeal as per the provision prescribed under Section 96 of the CPC, registered as Civil Appeal No. 01-A/2011.

6. The appellate Court after considering the evidence led by both the parties, has come to the conclusion that Radha Bai, the defendant's mother, is not a daughter of said Pudgu Panika. It held further that the will deeds, dated 14/05/1977 (Ex. D-5) and 14/06/1986 (Ex. D-6) were not executed in favour of defendant Amar Sai, as the none of its attesting witnesses were examined by its propounder, i.e. defendant Amar Sai and therefore, the revenue papers which were mutated on the basis of these will deeds was not proper and in consequence, the appellate Court while reversing the findings of the trial Court has decreed the plaintiffs' suit in its entirety and directed the defendant to hand over the vacant possession of the suit property.

7. Being aggrieved, the defendant has preferred this appeal, Mr. Sanjay Patel, learned counsel appearing for the appellant submits that the findings of the lower appellate Court while reversing the finding of the trial Court is not at all sustainable in the eye of law. He further submits that the appellate Court has wrongly reversed the finding of the trial Court by holding that Radha Bai is not a daughter of Pudgu Panika, the erstwhile owner of the property in question. He further submits that the alleged will deeds dated 14/05/1977 (Ex. D-5) & 14/06/1986 (Ex. D-6) have duly been executed, therefore, the appellate Court ought to have dismissed the plaintiffs' claim.

8. I have heard learned counsel for the appellant and have perused the entire record carefully.

9. True, it is that the trial Court has come to the conclusion that Radha Bai, the defendant's mother, is a daughter of said Pudgu Panika but the appellate Court while examining the evidence of both the parties in this regard, has come to the conclusion that Radha Bai is not a daughter of Pudgu Panika. This is the pure findings of fact and appellant has failed to prove that this finding of the appellate Court has been arrived at by misreading of any of the witnesses. I, therefore, affirm the said finding of the appellate Court and held that Radha Bai is not a daughter of said Pudgu Panika. As far as the execution of will deeds executed on 14/05/1977 (Ex. D-5) & 14/06/1986 (Ex. D-6) are concerned, the same cannot be held to be genuine as none of the attesting witnesses were examined in order to establish its genuineness by its propounder i.e. defendant Amar Sai herein as required to be established by virtue of Section 63 of the Indian Succession Act, 1925. Since both the will deeds are not genuine therefore, the mutation orders based on which was rightly held to be unsustainable by the appellate Court.

10. In view of the foregoing discussions, the findings as recorded by the lower appellate Court cannot be held to be a perverse one and, therefore, no question of law, much less the substantial question of law arise for determination in this appeal. The appeal being devoid of merits, is hereby dismissed at admission stage itself. There shall be no order as to costs.

Sd/-
(Sanjay Agrawal)
Judge