

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 547 of 2016**

1. Bihari Lal S/o Kheduram Kaushik, Aged About 50 Years R/o Village-Khamhariya, Police Station & Tahsil- Takhatpur, Civil & Revenue District- Bilaspur, Chhattisgarh
2. Kamta Prasad S/o Ishwardeen Kaushik, Aged About 50 Years R/o Village-Khamhariya, Police Station & Tahsil- Takhatpur, Civil & Revenue District- Bilaspur, Chhattisgarh(Plaintiffs)

---- Appellants**Versus**

1. Goverdhan Prasad S/o Late Fekulal Kaushik, Aged About 22 Years Caste- Kurmi, R/o Village- Kureli, Post- Sagar, Police Station- Hirri, Tahsil- Takhatpur, Civil & Revenue District- Bilaspur, Chhattisgarh
2. Nirmala Bai D/o Late Fekulal Kaushik, Aged About 28 Years Caste- Kurmi, R/o Village- Kureli, Post- Sagar, Police Station- Hirri, Tahsil- Takhatpur, Civil & Revenue District- Bilaspur, Chhattisgarh
3. Smt. Lachhan Bai W/o Late Fekulal Kaushik, Aged About 48 Years Caste- Kurmi, R/o Village- Kureli, Post- Sagar, Police Station- Hirri, Tahsil- Takhatpur, Civil & Revenue District- Bilaspur, Chhattisgarh
4. Smt. Sumitra Bai D/o Late Fekulal Kaushik, Aged About 60 Years R/o Village Pand, Police Station & Tahsil- Takhatpur, Civil & Revenue District- Bilaspur, Chhattisgarh
5. Smt. Amrika Bai D/o Late Fekulal Kaushik, Aged About 48 Years W/o Mudan Kaushik, R/o Village Khamhariya, Police Station & Tahsil Takhatpur, Civil & Revenue District Bilaspur, Chhattisgarh
6. State Of Chhattisgarh, Through: Collector Bilaspur, Police Station- Civil Lines, Tahsil, Civil & Revenue District Bilaspur, Chhattisgarh (Defendants)

---- Respondents

For Appellants	:	Shri Ratnesh Kumar Agrawal, Advocate.
For Respondent No.6/State:		Shri V.B.Singh, Panel Lawyer

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****01/03/2017**

1. This is plaintiffs' appeal filed under Section 100 of the Code of Civil Procedure, 1908 (for short, 'the C.P.C.') against the judgment and decree dated 30.07.2016 passed by the 1st Additional District Judge, Bilaspur, in Civil Appeal No. 112-A/2015, by which, the appellate Court while affirming the judgment and decree of the trial Court dated 17.08.2015, has dismissed the plaintiffs' appeal.

2. The undisputed facts of the case are that the plaintiffs have instituted a suit for declaration of title and injunction on the strength of the will deed dated 12.04.1958, purported to have been executed by Fekulal, Kheduram and Ishwardeen, the predecessors-in-interest of the plaintiffs. Based upon the said will deed, the revenue papers were mutated accordingly in their name by the Tahsildar, Sakri, in Revenue Case No.12A-6/96-97 and 13A-6/96-97, vide its order dated 13.05.1998. It is submitted further that on the basis of the will deed and on the basis of revenue records mutated, they have become the owner of the property in question. It is pleaded further that the defendants are trying to alienate the property in question to someone else in order to defeat their interest, therefore, the plaintiffs have been constrained in filing the suit in the instant nature, instituted on 28.01.2011.

3. The defendants No. 1 to 3 have filed their written statement, in which, they have stated that the defendants No. 4 & 5 are trying to alienate the property in question to someone else while the defendants No. 4 & 5 have contested the plaintiffs' claim by denying very specifically with regard to the execution and attestation of the will deed dated 12.04.1958 made in favour of the plaintiffs. It is contested further on the ground that the revenue papers, which were mutated in their name, vide order dated 13.05.1998 were reversed by the Sub-Divisional

Officer in an appeal preferred by them, vide order dated 29.07.1999 and thus, the plaintiffs have not acquired any right or interest as claimed.

4. In support of their claim, the plaintiffs have examined as many as three witnesses, namely, Biharilal (P.W.1), Kamta Prasad Koushik (P.W.2) and Mangalram (P.W.3), whereas in defence the defendants examined one Goverdhan Prasad (D.W.1) and Lachhan Bai (D.W.2), but they did not appear for their cross-examination.

5. The trial Court, vide its judgment and decree dated 17.08.2015, has come to the conclusion that the propounders/plaintiffs have failed to establish the due execution and attestation of the will deed dated 12.04.1958 (Ex.P.1) on the ground that since the suit property belongs to the joint family property, and therefore, no will as such could be executed by its executors, namely, Fekuram, Kheduram and Ishwardeen. As a consequence, the trial Court has dismissed the plaintiffs' claim.

6. The aforesaid finding of the trial Court has been affirmed further by the lower appellate Court in an appeal preferred by the plaintiffs under Section 96 of the C.P.C. The appellate Court has also come to the conclusion that the will deed dated 12.04.1958, based upon which, the entire claim of the plaintiffs was made, was not found to be established. Consequently, the appellate Court has dismissed the plaintiffs' entire claim.

7. Being aggrieved by the aforesaid findings of the lower appellate Court, the plaintiffs have preferred this appeal.

8. Shri Ratnesh Kumar Agrawal, learned counsel for the appellants has submitted that the Courts below have erred in disbelieving the will deed dated 12.04.1958 (Ex.P.1), said to have been executed by Fekulal, Kheduram and Ishwardeen in favour of the plaintiffs. He has submitted further that although the attesting witnesses were not examined but from perusal of the cross-examination of Biharilal (P.W.1), it is evident that both these attesting witnesses were not alive,

and therefore, the Courts below ought to have upheld the validity of the will deed. He also put forth that even if it is found that the will deed was not executed in its proper manner, then in that condition, the said document could be taken into consideration for its collateral purposes in order to establish the fact that the plaintiffs are in possession, and therefore, the plaintiffs were entitled to get the relief of injunction.

9. I have heard the contentions of the learned counsel for the appellants and perused the entire record carefully.

10. The plaintiffs' claim was made mainly on the basis of the will deed dated 12.04.1958 (Ex.P.1), which was executed by their predecessors-in-interest, namely, Fekulal, Kheduram and Ishwardeen. It is true that the revenue papers were mutated in their favour on the basis of the alleged will deed, on 13.05.1998, as per the order passed by the Tahsildar, Sakri, but the said order was reversed by the Sub-Divisional Officer in an appeal preferred by the defendants, vide its order dated 29.07.1999. Be that as it may, the burden is heavily upon the plaintiffs, the propounders of the will to establish the due execution, attestation and validity of the said document, in accordance with the provisions prescribed under Section 63(c) of the Indian Succession Act, 1925. Though the attesting witnesses of the said document appears to be not alive, as per the statement of Biharilal (P.W.1), but, the plaintiffs were still required to establish the said document by producing some other cogent, clinching and other reliable evidence, as per the provisions prescribed under the Indian Succession Act, 1925. However, no effort as such was made for due execution, attestation and validity of the will deed dated 12.04.1958. Therefore, under such circumstances, the will deed (Ex.P.1) cannot be held to be genuinely executed so as to entitling the plaintiffs any right, title or interest over the property in question. These findings are pure findings of facts which even do not involve any question of law, much less, the substantial question of law. As far as the submission of Shri Agrawal with regard to the consideration of

the alleged document (Ex.P.1) for the use of collateral purpose for proving their possession, is noted to be rejected, because their possession based upon the said document cannot be held to be their exclusive possession.

11. The appeal, being devoid of merit, is therefore dismissed at the admission stage itself. There shall be no order as to costs.

Sd/-
(Sanjay Agrawal)
Judge