

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CR No. 157 of 2016**

1. Smt Sumitri Bai D/o Late Ramnath Sahu, Aged About 48 Years W/o Ram Bilas Sahu, R/o Village Kalyanpur, Police Station & Tahsil Ramanujnagar, District Surajpur, Chhattisgarh
2. Smt. Shiv Pati D/o Late Ramnath Sahu, Aged About 44 Years W/o Radheshyam Sahu, R/o Village Patna, Police Station & Tahsil Ramanujnagar, District Surajpur, Chhattisgarh
3. Smt. Gulab Bai D/o Late Ramnath Sahu, Aged About 43 Years W/o Narbeshanker, Caste Teli, R/o Village Sumerpur, Police Station & Tahsil Ramanujnagar, District Surajpur, Chhattisgarh(Non Applicants 5, 6 & 7)

---- Petitioners**Versus**

1. Deepak Kumar S/o Shri Tejilal, Aged About 17 Years Caste Teli, Minor Through Legal Guardian Father Tejilal, Aged About 40 Years, R/o Village Kalyanpur, Police Station & Tahsil Ramanujnagar, District Surajpur, Chhattisgarh
2. Vishnu Kumar S/o Tejilal, Aged About 15 Years Caste Teli, Minor Through Legal Guardian Father Tejilal, Aged About 40 Years, R/o Village Kalyanpur, Police Station & Tahsil Ramanujnagar, District Surajpur, Chhattisgarh(Applicants)
3. Hanslal S/o Late Pannalal, Aged About 35 Years Caste Teli, R/o Village Kalyanpur, Police Station & Tahsil Ramanujnagar, District Surajpur, Chhattisgarh(Non Applicant No.1)
4. Branch Manager, Sarguja Kshetriya Gramin Bank Branch: Deonagar, District Surajpur, Chhattisgarh(Non Applicant No.2)
5. Brach Manager, Sarguja Kshetriya Gramin Bank Branch: Krishnapur, District Surajpur, Chhattisgarh(Non Applicant No.3)
6. Aam Janta (Public People)(Applicant No.4)

---- Respondents**and****CR No. 175 of 2016**

1. Hans Lal S/o Late Pannalal, aged about 35 years, Caste Teli, R/o Village Kalyanpur, P.S., Tahsil & District Surajpur C.G. (Respondent No.1)

---- Petitioner

Versus

1. Deepak Kumar S/o Shri Tejilal, Aged About 17 Years Caste Teli, Minor Through Natural Guardian Father Tejilal, Aged About 40 Years, R/o Village Kalyanpur, Police Station & Tahsil Ramanujnagar, District Surajpur, Chhattisgarh
2. Vishnu Kumar S/o Tejilal, Aged About 15 Years Caste Teli, Minor Through Natural Guardian Father Tejilal, Aged About 40 Years, R/o Village Kalyanpur, Police Station & Tahsil Ramanujnagar, District Surajpur, Chhattisgarh(Respondent No.1 & 2 were appellants in the Court below)
3. The Branch Manager, Kshetriya Gramin Bank Branch: Devnagar, District Surajpur, Chhattisgarh(respondent No.2 in the court below)
4. The Brach Manager, Sarguja Kshetriya Gramin Bank Branch: Krishnapur, District Surajpur, Chhattisgarh(respondent No.3 in the court below)
5. The General Public (Respondent no.4 in the Court below)
6. Smt Sumitri Bai D/o Late Ramnath Sahu, Aged About 48 Years W/o Ram Bilas Sahu, R/o Village Kalyanpur, Police Station & Tahsil Ramanujnagar, District Surajpur, Chhattisgarh
7. Smt. Shiv Pati D/o Late Ramnath Sahu, Aged About 44 Years W/o Radheshyam Sahu, R/o Village Patna, Police Station & Tahsil Ramanujnagar, District Surajpur, Chhattisgarh
8. Smt. Gulab Bai D/o Late Ramnath Sahu, Aged About 43 Years W/o Narbeshanker, Caste Teli, R/o Village Sumerpur, Police Station & Tahsil Ramanujnagar, District Surajpur, Chhattisgarh(Respondents No. 5, 6 & 7 in the Court below)

... **Non-applicants**

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For Petitioners	:	Shri Pushendra Kumar Patel,
Advocate.		
For Respondents No.1 & 2	:	Shri S.A.Ansari, Advocate
For Respondent No.3	:	Shri Abhishek Pandey, Advocate.
For others Respondents	:	None appears.

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For Petitioner	:	Shri Abhishek Pandey, Advocate.
For Respondents No. 1 & 2	:	Shri S.A.Ansari, Advocate.
For Respondents No.6 to 8	:	Shri Pushendra Kumar Patel,
		Advocate.
For other Respondents	:	None appears.

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****17/02/2017**

Both these revisions arise out of the common order dated 17.10.2016 passed by the 2nd Additional District Judge, Surajpur, Dist. Surajput (C.G.) in Civil Appeal No. 10-A/2015, therefore, they are being decided by this common order.

2. The undisputed facts of the case are that the applicants Deepak Kumar and Vishnu Kumar, the sons of Tejlal have filed an application as per the provisions prescribed under Section 372 of the Indian Succession Act, 1925, claiming succession certificate by the submitting, inter alia, that their grandfather, namely, Ramnath Sahu, who expired on 07.05.2010, had executed a registered will deed on 06.05.2010 in favour of his grandsons, namely, Deepak Kumar, Vishnu Kumar and Hanslal (non-applicant No.1). Based upon the said will deed, an application for grant of succession certificate was filed with regard to obtaining the amount of Rs.33,45,638/- deposited in the name of late Ramnath Sahu in two Banks, namely, Surguja Kshetriya Gramin Bank, Devnagar and Krishnapur Branches, however, both the Banks had refused to provide the said amount, giving rise to initiate an action in the instant nature.

3. The non-applicant No.1 Hanslal has contested the aforesaid claim by submitting that late Ramnath Sahu, during his life time, had already partitioned his moveable and immoveable properties in two equal shares in presence of respective members of the village in which one half share was provided to applicants' father Tejlal while another one half share to him and, since then they are cultivating the land accordingly. The claim was contested further on the ground that the alleged will deed dated 06.05.2010 is a suspicious document which does not confer any right, title or interest upon the applicants.

4. The non-applicants No.5, 6 & 7, namely Smt. Sumitri Bai, Smt. Shivpati and Smt. Gulab Bai have also contested the claim by denying the due execution, attestation and validity of the alleged will deed dated 06.05.2010. It is pleaded that Ramnath Sahu was not well and has expired on 07.05.2010, i.e., next day of the execution of alleged will, therefore, the alleged will has been executed in a suspicious circumstances, which does not create any right or interest upon the applicants. While contesting the claim as such, the non-applicants No. 5 to 7 have submitted their counter claim praying for equal share, i.e., 1/5th share each with regard to the properties left by late Ramnath Sahu.

5. The applicants, in support of their claim, have examined as many as 4 witnesses including attesting witnesses to the alleged will deed, namely, Jagdish Prasad and Shiv Kumar. Non-applicant Hanslal has examined himself and has not examined any of his witnesses in support of his defence, while non-applicants No. 5 to 7 have examined as many as 3 witnesses.

6. Upon examination of the evidence led by the parties and that by examining the registered will deed dated 06.05.2010, the trial Court, by its order dated 25.04.2015, has come to the conclusion that the alleged will is executed in a suspicious circumstances as the evidence of its attesting witnesses and the evidence of its document writer, namely, Phoolchand Sahu are contradictory with each other. In consequence, the trial Court arrived at a conclusion that the alleged will has not been executed in accordance with the provisions prescribed under Section 63 of the Indian Succession Act, 1925. It held further that since the property in question is the ancestral property, therefore, the will deed in such a nature cannot be executed validly by late Ramnath Sahu and with these observations, the trial Court has dismissed the applicants' claim.

7. Being aggrieved by the aforesaid order of the trial Court, the applicants –

Deepak Kumar and Vishnu Kumar have filed a Miscellaneous Civil Appeal as per the provisions prescribed under Section 384 of the Indian Succession Act, 1925, before the 2nd Additional District Judge, Surajpur, where the appeal was registered as Civil Appeal No. 10-A/2015.

8. Upon hearing the parties, the appellate Court, while considering the evidence led by the parties and that by examining the registered will deed dated 06.05.2010 (Ex.A/3) has come to the conclusion that the alleged will deed has duly been proved by its attesting witnesses, namely, Jagdish Prasad (A.W.2) and Shiv Kumar (A.W.4). In consequence, held that the alleged will deed has been executed in accordance with the provisions prescribed under Section 63 of the Indian Succession Act and also as per the provisions prescribed under Section 68 of the Indian Evidence Act and with these observations, the lower appellate Court has reversed the finding of the trial Court by holding that the will deed has duly been executed as such. It held further that the immoveable properties mentioned in the alleged will deed, which is not the subject matter of this case, has wrongly been held to be the ancestral property by the trial Court as neither the plea was made by any of the parties with regard to the character of the said immoveable properties nor any issues were framed in this regard. Therefore, findings of the trial Court holding that the said immoveable properties are the ancestral properties have been reversed and it was held that the same are undisputedly owned and possessed by late Ramnath Sahu. As a consequence, the appellate Court has directed for issuance of succession certificate in favour of the appellants Deepak Kumar and Vishnu Kumar and also in favour of Hanslal (non-applicant No.1) entitling them to obtain the deposited amount of late Ramnath Sahu from the said Banks in equal share.

9. Shri Pushpendra Kumar Patel, learned counsel for the applicants in Civil Revision No. 157/2016 has submitted that due execution, attestation and validity of the alleged registered will deed could not be established by its propounder in

accordance with the provisions prescribed mandatorily under Section 63 of the Indian Succession Act, 1925 and under Section 68 of the Evidence Act, yet the appellate Court without proper appreciating the evidence in its right perspective has upheld its validity and, thereby erred in passing the order impugned.

10. Shri Abhishek Pandey, learned counsel for the applicant Hanslal in Civil Revision No.175/2016 has submitted that the immoveable properties mentioned in the will deed are the self-acquired properties of late Ramnath Sahu. He submits further that the applicant Hanslal and non-applicant Deepak Kumar are nominees, and therefore, they are entitled to get $\frac{1}{2}$ share with regard to the amount deposited in the Banks.

11. On the other hand, Shri S.A.Ansari, learned counsel for the non-applicants No. 1 & 2 in both the above referred revisions has supported the order impugned and stated that it was validly passed upon due appreciation of the attesting witnesses of the alleged will deed, therefore, order impugned does not require to be interfered.

12. I have considered the rival submissions of the parties and perused the entire record carefully.

13. From perusal of the record, it is evident that the entire claim as made by the original applicants Deepak Kumar and Vishnu Kumar, is based upon the said registered will deed and prima facie, the due execution, attestation and validity of the same has duly been established by its attesting witnesses, and therefore, the appellate Court by its impugned order has rightly held so by reversing the findings of the trial Court in this regard. I accordingly upheld the findings of the appellate Court and held that the alleged will deed has duly been established by its propounders, i.e., original applicants Deepak Kumar and Vishnu Kumar. It is, however, pertinently to be mentioned here that although its execution is prima facie found to be established, but the same will be taken into consideration only for the

purposes of grant of succession certificate under Section 372 of the Indian Succession Act, 1925. Since the examination of the validity of the will deed is beyond the scope of the Court while exercising the powers enumerated under Section 372 of the Indian Succession Act, 1925, therefore, the parties are not bound by the prima facie conclusion of this Court with regard to the validity of the alleged will deed and may institute a suit before a competent civil Court having its jurisdiction in order to get the authenticity of the said will deed dated 06.05.2010 decided, and therefore, the said question with regard to its authenticity or validity is still open for them.

14. In view of foregoing discussions, there is no infirmity in the judgment of the lower appellate Court. Both the revisions are, therefore, disposed of with the aforesaid directions. A copy of this order be placed on record of Civil Revision No. 175/2016. There shall be no order as to costs.

Sd/-
(Sanjay Agrawal)
Judge