

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A No.370 of 2015**

1. Smt. Gayatri Jaiswal And Anr. S/o Wd/o Atul Jaiswal Aged About 33 Years R/o Village Purgaon, Thana & Tahsil Bilaigarh, Distt. Baloda Bazar Bhatapara Chhattisgarh
2. Minor Ku. Disha Jaiswal D/o Atul Jaiswal Aged About 9 Years Minor Through Legal Guardian Gayatri Wd/o Atul Jaiswal R/o Village Purgaon, Thana & Tahsil Bilaigarh, Distt. Baloda Bazar Bhatapara Chhattisgarh

---- Appellants**Versus**

1. Kamla Bai And Ors. Wd/o Sitaram Jaiswal Aged About 64 Years R/o Village Purgaon, Thana & Tahsil Bilaigarh, Distt. Baloda Bazar Bhatapara Chhattisgarh
2. Alok S/o Sitaram Jaiswal Aged About 36 Years R/o Village Purgaon, Thana & Tahsil Bilaigarh, Distt. Baloda Bazar Bhatapara Chhattisgarh
3. Alka D/o Sitaram Jaiswal Aged About 30 Years R/o Village Purgaon, Thana & Tahsil Bilaigarh, Distt. Baloda Bazar Bhatapara Chhattisgarh
4. State Of Chhattisgarh Through The Collector Balodabazar Distt. Balodabazar Bhatapara Chhattisgarh

-----Respondents

For Appellant:	Shri Vivek Tripathi, Advocate.
For Respondents No.1 to 3:	Shri AP. Sharma, Advocate.
Fore Respondent No.4/State:	Smt Shobha Kashyap, Dy. G.A.

Single Bench:Hon'ble Shri Sanjay Agrawal, J
Order On Board

02.08.2017

1. This is the Plaintiffs' Second Appeal preferred under Section 100 of the Code of Civil Procedure, 1908 (for short 'the CPC') against the judgment and decree dated 28.02.2015 passed by the 3rd Additional District Judge, Baloda Bazar in Civil Appeal No.38-A/2014 by which, the lower appellate Court, while affirming the judgment and decree dated 11.04.2014 passed by the Civil Judge, Class-II, Bilaigarh, Distt. Balodabazar-Bhatapara in Civil Suit No.3A-/2011, has dismissed the

Appeal.

2. The undisputed facts of the case are that Plaintiffs instituted a suit for declaration of title, injunction and partition by submitting *inter alia* that the registered deed of Will dated 23.1.2010 executed by her father-in-law namely Sitaram in favour of his son Alok, Defendant No.2 was a forged document as he was physically and mentally weak and that by taking undue advantage of it, the alleged Will deed has been obtained. It is pleaded further that the suit property was not the self acquired property of said Sitaram, therefore, he was not competent to execute the same. It is pleaded further that when she demanded the partition, it was refused by him, giving rise to an instant action.

3. The Defendants have contested the aforesaid claim and stated that that registered Will deed was duly executed and it was a genuine document. It is contested further on the ground that by virtue of the said document, they acquired the valid right, title and interest with regard to the property in question.

4. The trial Court, after considering the evidence led by the parties, has come to the conclusion that the Plaintiff No.1 has failed to establish that the alleged document i.e. the registered deed of Will dated 23.1.2010 is a forged document. Accordingly, the trial Court has dismissed the claim. The aforesaid finding of the trial Court has been affirmed further by the lower appellate Court in an Appeal preferred by the Plaintiffs.

5. Being aggrieved, the Plaintiffs have preferred this Appeal. Shri Tripathi, learned Counsel for the Appellants submits that the judgment and decree as passed by the Courts below by holding that the alleged Will is not a forged document is apparently contrary to law. He submits further

that the attesting witnesses of this Will have not established its due execution, therefore, the judgment and decree as passed by the Courts below deserves to be aside.

6. I have heard learned Counsel for the Appellants and perused the entire record carefully.

7. Plaintiffs have instituted a suit mainly on the ground that the alleged registered deed of Will dated 23.1.2010 (Ex.P-4/Ex.D-1) which was executed by Sitaram in favour of Defendant No.2-Alok was a forged document as the executor i.e. Sitaram was paralyzed and was not in a fit mental condition to execute the same. In order to ascertain its genuineness, I have examined the same as well as the statements of its attesting witnesses adduced in this regard. The Will was executed on 23.1.2010 and the executor of the said document Sitaram has expired on 28.11.2010. He therefore was alive for more than 10 months after the execution of the said Will. Even otherwise, the photograph of the executor Sitaram was also affixed in the alleged Will. The burden was heavily upon Plaintiff No.1 to prove that the alleged document has been obtained by playing fraud upon him. However, the said fact could not have been established by Plaintiff No.1 by producing any reliable and cogent evidence in this regard. The trial Court as well as the lower appellate Court have therefore rightly come to the conclusion that the registered deed of Will was not a forged document by considering the entire evidence including the attesting witnesses of it. The said finding is a pure finding of fact based on due and proper appreciation of the evidence therefore, the same deserves to be and is hereby affirmed.

8. Consequently, I do not find any question of law, much less the

substantial questions of law which arise for determination in this Appeal. Accordingly, the Appeal being devoid of merits is hereby dismissed at the admission stage itself. There shall be no order as to costs.

Sd/-
(Sanjay Agrawal)
JUDGE

Priya