

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 460 of 2013**

- Ratan Singh S/o Sumer Singh Aged About 26 Years R/o Sevra, P.S. Pendra, Tah. Pendra Road, Distt. Bilaspur C.G.

---- Appellant**Versus**

1. Sarodhan Singh, S/o Dheerpal Singh Aged About 50 Years R/o Sevra, P.S. Pendra, Tah. Pendra Road, Distt. Bilaspur C.G.
2. Sumer Singh S/o Dheerpal Singh Aged About 48 Years R/o Sevra, P.S. Pendra Road, Tah. Pendra Road, Distt. Bilaspur C.G.

---- Respondents

For Appellant	:	Shri Dharendra Prasad Mishra, Advocate.
For Respondent No.1	:	Shri Yogeshwar Sharma, Advocate.

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****19/04/2017**

1. Heard on admission.
2. This is the second appeal filed by defendant No.2 – Ratan Singh while invoking the powers enumerated under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code of 1908 in short) against the judgment and decree dated 04.09.2013 passed by the Additional District Judge, Pendra Road, Dist. Bilaspur in Civil Appeal No.68-A/2011, by which the appellate Court, while reversing the judgment and decree dated 17.09.2010 passed by the Civil Judge, Class-01, Pendra Road, in Civil Suit No.217-A/2005, has allowed the plaintiff's appeal
3. The undisputed facts of the case are that the suit property bearing Kh.Nos.52, 138, 255, 295/1 and 305/2 total admeasuring 2.86 acres situated at

village Sehra, Tahsil Pendra Road, District Bilaspur, was originally owned by one Nansai. After the death of Nansai, the property in question was inherited by his sole daughter, namely, Bihania Bai, who is the mother of the plaintiff and defendant No.1, namely, Sumer Singh. It is pleaded further that defendant No.2 Ratan Singh, the present appellant, had applied for the revenue papers mutated in his name, before the Naib Tahsildar, Pendra Road, on the basis of the will deed dated 15.07.1998, purported to have been executed by said Bihania Bai in his favour. While registering the case as Revenue case No.8/A-6/98-99, the Naib Tahsildar, Pendra Road, vide its order dated 30.10.1999, has directed for the mutation of Ratan Singh, and therefore, the plaintiff has been constrained in filing the suit in the instant nature for declaration of title and separate possession with regard to the half of the property left by his mother Bihania Bai.

4. The defendants have contested the aforesaid claim and stated that Bihania Bai, who inherited the property after the death of her father Nansai, had executed the will deed dated 15.07.1998 in favour of defendant No.2 Ratan Singh, and therefore, he alone is entitled to inherit the entire property left by Bihania Bai on the basis of the said will. The plaintiff's suit, therefore, deserves to be dismissed.

5. The trial Court, after considering the entire evidence led by the parties, has come to the conclusion that the alleged will deed dated 15.07.1998 has been executed by Bihania Bai in favour of defendant No.2 Ratan Singh by relying upon the statement of Harishankar Soni, who is the scribe of the said document. As a consequence, the plaintiff's suit has been dismissed.

6. Being aggrieved with the aforesaid judgment and decree of the trial Court, the plaintiff Sarodhan Singh has preferred an appeal, as per the provisions prescribed under Section 96 of the Code of 1908.

7. The appellate Court, in turn, has reversed the said finding of the trial Court

by observing that none of the attesting witnesses of the alleged will was examined, and therefore, its validity cannot be upheld. In consequence, the appellate Court has reversed the finding of the trial Court and decreed the plaintiff's claim.

8. Being aggrieved, the appellant/defendant No.2 Ratan Singh has preferred this appeal.

9. Shri Dharendra Prasad Mishra, learned counsel for the appellant submitted that the appellate Court has erred in reversing the finding of the trial Court by holding that the will has not been properly executed. He submitted further that one of the attesting witnesses of the said document, namely, Diwal Singh was examined before the Revenue Authority and without examining his statement, the appellate Court ought not to have reversed the finding of the trial Court. He also submitted that the will was duly established by the present appellant, and therefore, the finding of the appellate Court deserves to be set aside.

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

11. Undisputedly, the property in question was originally held by one Nansai and after his death the said property was inherited by his sole daughter Bihania Bai, the mother of the plaintiff and defendant No.1. The defendant No.2/Ratan Singh, the son of defendant No.1 Sumer Singh, is claiming his exclusive ownership with regard to the property in question left by said Bihania Bai on the strength of the will deed dated 15.07.1998 (Ex.D.1), purported to have been executed by his grandmother, i.e., Bihania Bai in his favour. It is the settled principles of law that the propounder of the will has to establish its due execution, attestation and validity, as per the provisions prescribed under Section 68 of the Indian Evidence Act, 1872 and also as required under Section 63(c) of the Indian Succession Act, 1925. However, none of the attesting witnesses of the said

document (will deed) was examined by the appellant, the propounder of the said will in order to due execution of it, and therefore, it cannot be held that the alleged will deed (Ex.D.1) has duly been established. In such circumstances, the appellant Ratan Singh cannot claim any interest over the property in question on the basis of the said will.

12. Consequently, I do not find any infirmity in the judgment and decree passed by the appellate Court in this regard. The finding as recorded by the lower appellate Court cannot be held to be a perverse one, therefore, the same deserves to be and is hereby affirmed.

13. In view of foregoing discussions, no question of law, much less, the substantial questions of law involved in this appeal. Accordingly, this appeal, being devoid of merit, is liable to be and is hereby dismissed at the admission stage itself. No order as to costs.

Sd/-

(Sanjay Agrawal)
Judge