

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**S. A. No. 592 OF 2015**

Sukhdev Prasad S/o Late Narbada Prasad, Aged About 37 Years, Now 76 Years, Occupation Agriculturist R/o Village Chhindiya, Tahsil Baikunthpur, District Surguja M. P. Now Chhattisgarh

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Versus

1. Ramkhelawan S/o Late Kashi Prasad, Aged About 30 Years R/o Village Chhindiya Tahsil Baikunthpur, District Korea (Chhattisgarh)
- 2.(a) Geeta Devi W/o Late Ambikeshwar Prasad, Aged About 45 Years Occupation Agriculturist, R/o Village Chhindiya (Thakurpara) Tahsil Baikunthpur, District Korea (Chhattisgarh)
- 2 .(b) Ramnarayan Aged about 22 Years S/o Late Ambikeshwar Prasad, R/o Village Chhindiya (Thakurpara) Tahsil Baikunthpur, District Korea (Chhattisgarh)
- 2 .(c) Shivnarayan Aged about 20 Years S/o Late Ambikeshwar Prasad, R/o Village Chhindiya (Nakatapara) Tahsil Baikunthpur, District Korea (Chhattisgarh)
- 2 .(d) Radha Aged about 25 Years W/o Arun Kumar, D/o Late Ambikeshwar Prasad, R/o Village Parwatipur, Tahsil Surajpur, District Surajpur (Chhattisgarh)
3. Ramgulam S/o Late Kashi Prasad, Aged About 23 Years R/o Village Chhindiya, Post Patna Tahsil Baikunthpur, District Korea (Chhattisgarh)
4. Ramesh Kumar S/o Kashi Prasad, Aged About 21 Years R/o Village Chhindiya, Post Patna Tahsil Baikunthpur, District Korea (Chhattisgarh)
5. Sahodari Bai D/o Late Lakhanlal, Aged About 27 Years Occupation Agriculturist, R/o Village Chhindiya, Tahsil Baikunthpur, District Korea M. P. Now Chhattisgarh
6. Kanchan Kunwar W/o Ramdayal, Aged About 20 Years Occupation Agriculturist, R/o Village Ranai Tahsil Baikunthpur, District Surguja (Chhattisgarh)
- 7.(a) Sudarshan S/o Ganpat Ram, Aged About 25 Years R/o Village Ladpori, Tahsil Kathaghora, District Bilaspur Now Korba (Chhattisgarh)
7. (b) Vishnu Prasad Aged about 24 Years S/o Ganpat Ram, R/o Village Ladpori, Tahsil Kathaghora, District Bilaspur Now Korba (Chhattisgarh)
- 7.(c) Shivhari Prasad Aged about 22 Years S/o Ganpat Ram, R/o Village Ladpori, Tahsil Kathaghora, District Bilaspur Now Korba (Chhattisgarh)
- 7 .(d) Munna Prasad Aged about 20 Years S/o Ganpat Ram, R/o Village Ladpori, Tahsil Kathaghora, District Bilaspur Now Korba (Chhattisgarh)

7. (e) Mahesh Prasad Aged about 19 Years S/o Ganpat Ram, R/o Village Ladpori, Tahsil Kathaghora, District Bilaspur Now Korba (Chhattisgarh)
8. Sumitra Bai W/o Ramkumar Aged About 22 Years Occupation Agriculturist, R/o Village Sitla Ward, Ambikapur, District Surguja (Chhattisgarh)
9. Saraswati Bai W/o Luxman, Aged About 20 Years Teacher Girls School Rajpuri, R/o Village Rajpuri, Tahsil Ambikapur, District Surguja (Chhattisgarh)
10. Raghubar Prasad S/o Netlal Koier, Aged About 40 Years Agriculturist, R/o Village Chhindiya, Tahsil Baikunthpur, District Korea (Chhattisgarh)
11. Arjun S/o Kouleshwar Sahu, Aged About 40 Years Agriculturist, R/o Village Tenduwa, Post Dumariya, Tahsil Baikunthpur, District Korea (Chhattisgarh)
- 12.(a) Pramila W/o Late Puranlal Thakur, Aged About 60 Years Occupation House Wife, R/o Village Chhindiya, Tahsil Baikunthpur, District Korea (Chhattisgarh)
- 12 .(b) Praveen Kumar Aged about 30 Years S/o Puranlal Thakur, Kastkar, R/o Village Chhindiya, Tahsil Baikunthpur, District Korea (Chhattisgarh)
13. Dharam Das S/o Late Gaibi Sahu, Aged About 40 Years Agriculturist, R/o Village Tendua, Tahsil Baikunthpur, District Surguja M. P. Now District Korea (Chhattisgarh)
14. Dharampal S/o Gaibi Sahu, Aged About 38 Years Agriculturist, R/o Village Tendua Post Dumariya, Tahsil Baikunthpur, District Surguja (M. P.) Now District Korea (Chhattisgarh)
15. State Of Chhattisgarh Through Collector Korea, Baikunthpur District Korea (Chhattisgarh)

---- Respondents

For Appellant	:	Mr. A.N. Pandey, Advocate
For Respondents No. 1, 2a, 2d, 3, & 4	:	Mr. Ravindra Sharma, Advocate
For Respondents No. 13 & 14	:	Mr. Amit Singh, Advocate
For State/Respondent No. 15	:	Mr. R. K. Jaiswal, P.L.

Hon'ble Shri Justice Sanjay Agrawal

Judgment On Board

19/07/2017

1. This is plaintiffs' second appeal under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') by questioning the judgment and decree dated 1.9.2015 passed by the Additional District Judge (F.T.C.),

Baikunthpur, District Koriya (C.G.) in Civil Appeal No.12-A of 2013, by which the lower appellate Court while reversing the judgment and decree dated 16.1.1989 passed by the Civil Judge, Class-I, Baikunthpur in Civil Suit No.14-A of 1976, has allowed the appeal.

2. The undisputed facts of the case are that the plaintiffs' namely, Sukhdev Prasad, Smt. Ranguliya, widow of Narbada Prasad and Suhadri Bai, daughter of Lakhan Lal instituted a suit for declaration of title and partition. It is pleaded in the plaint that one Shyamlal, the predecessor-in-interest was the owner of the property in question described in plaint Schedule A & B, total ad-measuring 17.30 acres, situated at village Chhindiya and Kochila, Tahsil Baikunthpur, District Koriya. It is pleaded further that after the death of Shyamlal, plaintiffs have 2/3rd share over the property in question while Kashi Prasad defendant No.1, son of Shyamlal was entitled for 1/3rd share. It is pleaded further by way of amendment in the plaint that the said Shyamlal was not entitled to execute the will dated 12.3.1969 in favour of his son Kashi Prasad and when they demanded the partition from defendant No.1 Kashi Prasad, it was refused, therefore, the instant suit has been filed by claiming 2/3rd share with regard to the suit property as mentioned above.

3. Defendant No.1 Kashi Prasad has contested the suit and stated that Shyamlal had already given certain properties in partition to Narbada Prasad, the predecessor-in-interest of plaintiffs No.1 and 2 and had executed a will dated 12.3.1969 in his favour, therefore, the plaintiffs are not entitled to claim any share with regard to the suit property.

4. In support, the plaintiffs have examined as many as four witnesses while, defendant No.1 Kashi Prasad the main contesting party has examined as many as six witnesses.

5. The trial Court after considering the evidence led by the parties has come to the conclusion that the property described in plaint Schedule A & B are the self acquired property of Shyamlal the predecessor-in-interest of the parties and held further that the alleged will dated 12.3.1969 was not properly found to be proved in favour of defendant No.1 Kashi Prasad. As a consequence, the trial Court decreed the plaintiffs' claim.

6. The aforesaid finding of the trial Court has been reversed by the lower appellate Court in an appeal preferred by defendant No.1 Kashi Prasad (since deceased, therefore, represented by his legal heirs). The appellate Court, in turn, has held that property in question was the self acquired property of Shyamlal and by examining the attesting witnesses, namely, Narayan Giri (PW4) and Vindhya Prasad (DW3) has come to the conclusion that the will was duly executed by said Shyamlal in favour of the original defendant No.1 Kashi Prasad. In consequence, the appellate Court while reversing the finding of the trial Court in this regard has dismissed the plaintiffs' claim.

7. Being aggrieved, the plaintiffs have preferred this appeal. Mr. A.N. Pandey, learned counsel for the appellant submits that the judgment and decree of the lower appellate Court by reversing the finding of the trial Court with regard to the validity of the alleged will dated 12.3.1969 is apparently contrary to law. He further submits that the said will could not have been found to be duly executed as Narayan Giri (PW3), the one of its attesting witnesses has not supported the same. He further submits that the attesting witnesses of the alleged will were of different villages and therefore, they cannot be taken into consideration as held rightly by the trial Court. He lastly submits that the judgment and decree passed by the lower appellate Court under such circumstances, deserves to be set aside.

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

9. The plaintiff's entire case is based upon the fact that the suit property described in plaint Schedule A & B was originally held by one Shyamlal and the said Shyamlal had never executed the will in favour of defendant No.1 Kashi Prasad, therefore, after the death of Shyamlal, each of his sons are entitled to get 1/3rd equal share with regard to the suit properties. The will deed dated 12.3.1969 which was submitted by defendant No.1 was required to be established by him strictly in accordance with law as provided under Section 63(c) of the Indian Succession Act, 1925.

10. In order to ascertain the validity of the said will executed by said Shyamlal in favour of defendant No. 1 Kashi Prasad, on 12.03.1969 (Ex. D-1), it is necessary to examine the statements of its attesting witnesses carefully. Narayan Giri, the attesting witness, who was examined as PW3, has stated in his evidence, particularly in examination-in-chief, that the said Shyamlal had neither signed the said document in his presence nor any other attesting witnesses have signed in his presence. However, in his cross-examination, he has stated that after reading the said document, he signed the same. The testimony of this witness, therefore, cannot be relied upon in order to ascertain the due execution of the said will (Ex. D-1).

11. The another attesting witness was Vindhya Prasad, who was examined as DW3, has very specifically stated not only in his examination-in-chief but also in his cross-examination, that the executor of the said document, i.e., Shyamlal had signed the said document in his presence, which was read over to him. This witness also stated further that in his presence, the other attesting witnesses have also signed the said document. The evidence of this witness could not have been rebutted in his cross-examination.

12. In view of this fact, defendant No.1 Kashi Prasad has duly proved the execution and attestation of the will dated 12.3.1969 (Ex. D-1) purported to have

been executed by his father Shyamlal in his favour. Therefore, the finding as recorded by the lower appellate Court by reversing the finding of the trial Court, upholding the validity of the said will dated 12.3.1969, cannot be held to be a perverse finding as the same was recorded by due and proper consideration of said attesting witnesses. The said finding therefore, deserves to be and is hereby upheld.

13. In view of the aforesaid reasonings, I do not find any question of law, much less the substantial question of law which arise for determination in this appeal. Consequently, the appeal being devoid of merit is hereby dismissed at admission stage itself. There shall be no order as to costs.

Sd/-

(Sanjay Agrawal)
Judge