

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 53 of 2017**

Juvel S/o Biro, Aged About 60 Years Caste- Uraon, R/o Village Kurkunga, Tahsil Kunkuri, District Jashpur, Chhattisgarh(Plaintiff)

---- Appellant**Versus**

1. Marcel D/o Biro, Aged About 65 Years Caste Uraon, R/o Village Kurkunga, Tahsil Kunkuri, District Jashpur, Chhattisgarh
2. Fulmani D/o Biro, Aged About 62 Years Caste Uraon, R/o Village Kurkunga, Tahsil Kunkuri, District Jashpur, Chhattisgarh
3. State Of Chhattisgarh, Through The Collector, Jashpur, Chhattisgarh
(Defendants)

---- Respondents

For Appellant	:	Mr. Harish Khuntiya, Advocate
For Respondent No. 3/State	:	Mr. R. K. Jaiswal, P. L.

Hon'ble Shri Sanjay Agrawal, J.**Judgment On Board****16/11/2017**

1. Heard on admission.
2. This is plaintiff's second appeal preferred under Section 100 of the Code of Civil Procedure, 1908 (hereinafter called as 'CPC') against the judgment and decree dated 17/11/2016 passed by the Additional District Judge, Jashpur (C.G.) in Civil Appeal No. 06-A/2015, by which, the lower appellate Court while affirming the judgment and decree dated 09/02/2015 passed by the Civil Judge Class-I, Kunkuri, District Jashpur (C.G.), has dismissed the appeal.
3. The undisputed facts of the case, are that, the plaintiff Juvel instituted a suit claiming declaration of title with regard to the property described in plaint

Schedule -A admeasuring 6.97 hectares, situated at Village Kurkunga Tahsil Kunkuri, District Jashpur (C.G.) by submitting *inter alia* that the suit property was held by his father Biro, who has executed a will deed dated 15/05/1961 by bequeathing all the suit property in his favour. It is pleaded further that after execution of the alleged will deed, the revenue papers were also mutated in his name. However, defendants No. 1 & 2 have recorded their names also in the revenue papers in his absence and based upon the said entires, applied for partition before the revenue authority and obtained the partition order on 30/09/2013. It is pleaded further that even by their customary law, the daughters are not entitled to inherit the property left by his father, Biro, but on the basis of said partition, defendants No.1 & 2 are interfering in his peaceful possession, therefore, the plaintiff has been constrained to file the suit in the instant nature, instituted on 07/11/2013.

4. Defendants No.1 & 2 have contested the aforesaid claim of the plaintiff and denying very specifically with regard to the due execution, attestation and validity of the alleged will dated 15/05/1961. It is contested further on the ground that their interest are also involved in the suit property left by their father, therefore, the revenue authority has rightly passed the partition order in their favour on 30/09/2013 and pleaded further that the suit has been filed just to deprive their right, title and interest. The suit is, therefore, liable to be rejected.

5. The trial Court after considering the evidence led by the parties and that by considering the attesting witness of the alleged will dated 15/05/1961, has come to the conclusion that the plaintiff has failed to prove its validity in accordance with law. As a consequence, the trial Court has dismissed the suit.

6. Being aggrieved, the plaintiff has preferred an appeal under Section 96 of the CPC. The lower appellate Court, in turn, has examined the attesting witness of the said will and observed that the said witness has even failed to say that

who and where it was executed. After considering all the materials in this regard, the lower appellate Court has held that the due execution of the alleged will could not be established by the plaintiff in accordance with law. The lower appellate Court has also examined the evidence with regard to ascertaining the fact that whether daughters are entitled to inherit the property in their customary law and after its examination, has come to the conclusion that the daughters are also entitled to inherit the property left by their father, Biro. As a consequence, the lower appellate Court while affirming the judgment and decree of the trial Court has dismissed the appeal.

7. Being aggrieved, the plaintiff has preferred this appeal. Mr. Harish Khuntiya, learned counsel for the appellant submits that the judgment and decree as passed by the Courts below by disbelieving the due execution, attestation and validity of the will dated 15/05/1961 (Ex. P-3) are apparently contrary to law. He submits further that the attesting witness of the said will namely, Bucha Ram (PW-2) has very specifically proved the same. However, the Courts below without examining his statement in its proper manner, wrongly come to the conclusion that same was not validly executed. He submits further that the plaintiff has produced the evidence with regard to their customary law, which shows that the daughters are not entitled to inherit the property left by their father, Biro, as per their customary law. The judgment and decree as passed by the Courts below are therefore liable to be set aside.

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

9. The plaintiff's suit is essentially based upon the will deed dated 15/05/1961 (Ex. P-3), purported to have been executed by his father, Biro in his favour. In order to establish the said fact, the burden was heavily upon the plaintiff, being a propounder of the will, to establish its validity in accordance with

the provisions prescribed under Section 63(c) of the Indian Succession Act, 1925 (hereinafter referred to as 'the Act of 1925'). However, from perusal of his (Bucha Ram) statement, particularly, paragraph– 8 would show that that he was even unable to say that who and where it was written. The evidence, as such, of said attesting witness can not be taken into consideration in order to proof of the due execution of the said will. The Courts below have therefore, rightly come to the conclusion that the plaintiff has failed to prove the due execution, attestation and validity of the alleged will dated 15/05/1961 (Ex. P-3) in accordance with the provision prescribed under Section 63(c) of the Act of 1925. Accordingly, the finding so recorded by the Courts below deserves to be and is hereby affirmed.

10. As far as the further contention of Mr. Khuntiya that by virtue of their customary law, the daughters are not entitled to inherit the property left by his father, Biro is noted to be rejected. Perusal of the entire evidence would, however, show that no any cogent and reliable evidence was produced in this regard so as to come to the conclusion that by virtue of their customary law, the daughters are not entitled to inherit the property of their father, as claimed by the plaintiff. As such, it is difficult to hold that the daughters are not entitled to claim their interest over the suit property. Accordingly, the finding so recorded by the Courts below deserves to be and is hereby affirmed.

11. In view of the foregoing discussions, 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