

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MA No. 123 of 2014**

1. Ravindra Nath Ray And Ors. S/o Late Dev Prasad Ray Aged About 69 Years R/o New Sarkanda, Nagar, Tah. And Distt. Bilaspur C.G.
2. Premakur Ray S/o Late Dev Prasad Ray Aged About 67 Years R/o New Sarkanda, Nagar, Tah. And Distt. Bilaspur C.G.
3. Deepankur Ray S/o Late Dev Prasad Ray Aged About 64 Years R/o New Sarkanda, Nagar, Tah. And Distt. Bilaspur C.G.

---- Appellants**Versus**

1. The State Bank Of India, Thru- The Branch Jodhpur Park 394-A Gadiyahat Road South, Kolkata (West Bengal), Through- The Branch Manager.
4. Public At Large.

---- Respondents

For Appellants	:	Shri Prakash Tiwari, Advocate
For Respondent No.1	:	Shri P.R.Patankar with Shri Utsav Mahiswar, Advocate.

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****11/09/2017**

1. Heard on admission.
2. This is the Miscellaneous Appeal preferred under Section 299 of the Indian Succession Act, 1925 (hereinafter referred to as the Act of 1925 in short) against the order dated 30.08.2014 passed by the Additional District Judge, Bilaspur in M.J.C. No.30/2013, by which, the application filed by the appellants under Section 278 of the Act of 1925 has been rejected.
3. The undisputed facts of the case are that the appellants have submitted

an application on 11.06.2013 under Section 278 of the Act of 1925 claiming issuance of letters of administration for the withdrawal of amount of Rs.16,35,718, as described in detail in para – 5 of the application. It is pleaded in the application that one Anil Ratan Das was the Government employee and has expired issueless on 20.08.2007. It is pleaded further that on 11.09.2006, a will deed was executed in their favour and based on that they are entitled to withdraw the said amount deposited in the shape of F.D.R. in the State Bank of India, Jodhpur Park, 394-A, Gariahat Road (South), Kolkata.

4. The aforesaid claim was not objected by any of the non-applicants. After considering the aforesaid application, the same was rejected by the trial Court vide its order impugned dated 30.08.2014 by observing that the alleged will deed dated 11.09.2006 as submitted by the appellants could not have been established by them. As a consequence, the said application was rejected.

5. Being aggrieved, the appellants have preferred this Miscellaneous Appeal under Section 299 of the Act of 1925. Shri Prakash Tiwari, learned counsel for the appellants submits that the trial Court, while rejecting the application filed under Section 278 of the Act of 1925, has committed an illegality in refusing the same, particularly, when its execution was not objected by the non-applicants. He submits further that though the attesting witnesses could not have been examined, but, in the interest of justice, matter may be remanded back to the trial Court for examination of at least one of its attesting witnesses in order to prove the same.

6. I have heard learned counsel for the appellants and perused the entire record carefully.

7. The entire claim of the appellants as made in the application filed under Section 278 of the Act of 1925 for withdrawal of the said amount of Rs.16,35,718/- deposited in the shape of F.D.R. before respondent No.1, was on

the basis of will deed dated 11.09.2006. Therefore, burden is heavily upon the appellants to prove the same as per the provisions prescribed under Section 63 (c) of the Act of 1925. However, perusal of the record would show that none of the attesting witness of the alleged will was examined in order to prove due execution, attestation and validity of the same. Section 68 of the Indian Evidence Act provides very specifically that for establishing the validity of the will, at least one of its attesting witnesses is required to be examined. Admittedly, none of the attesting witnesses were examined in the matter. Therefore, the validity of the alleged will cannot be upheld. Consequently, I do not find any infirmity in the order impugned rejecting the application filed under Section 278 of the Act of 1925 for issuance of letters of administration based upon the alleged will, dated 11.09.2006. The finding recorded by the trial Court deserves to be and is hereby upheld.

8. In view of the foregoing discussion, I do not find any substance in this appeal. Accordingly, appeal being devoid of any merit, is hereby dismissed at admission stage itself. No order as to costs.

Sd/-
(**Sanjay Agrawal**)
Judge