

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A No.160 of 2016**

Kartun Patel S/o Piriyaam Patel, Aged About 50 Years R/o Patel Chowk, Arang, Tahsil Arang, District Raipur, Chhattisgarh(Plaintiff)

---- Appellant**Versus**

1. Smt. Sitabai Patel Wd/o Late Bisouharam, R/o Patel Chowk, Arang, Tahsil Arang, District Raipur, Chhattisgarh
2. State Of Chhattisgarh, Through The Collector, Raipur, District Raipur, Chhattisgarh

---- Respondents

For Appellant:	Shri HB Agrawal, Senior Advocate along with Smt Prabha Sharma, Advocate.
For Respondent No:	Shri Vishnu Koshta, Advocate.
For Respondent No.2/State:	Shri RK Jaiswal, Panel Lawyer.

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

30.08.2017

1. This is the Plaintiff's Second Appeal preferred under Section 100 of the Code of Civil Procedure, 1908 (hereinafter refer to as 'the CPC') against the judgment and decree dated 01.02.2016 passed by the 8th Additional District Judge, Raipur in Civil Appeal No. 23-A/2013 by which, the lower appellate Court, while affirming the judgment and decree dated 31.10.2013 passed by 9th Civil Judge, Class-II, Raipur in Civil Suit No.31-A/2012, has dismissed the Appeal.

2. Briefly stated, the undisputed facts of the case are that the Plaintiff- Smt Sitabai Patel instituted a suit for declaration of title, injunction and also for possession by submitting *inter alia*, that the suit property was originally

held by her father-in-law namely Sukhnuram Patel. It is pleaded that after the death of Sukhnu Ram, it was inherited by his son Bishauram and since he also has expired, therefore, she alone is entitled to inherit the property led by her husband Bishauram. It is pleaded further that on the basis of the Will dated 24.1.2011, Defendant Kartun Patel has obtained the revenue papers mutated in his name and therefore, the Plaintiff has been constrained in filing the suit in the instant nature.

3. The Defendant has contested the aforesaid claim of the Plaintiff and stated that by virtue of the registered Will dated 24.01.2011, he acquired the valid title upon the suit property. He denied very specifically that he has obtained the revenue papers in connivance with the revenue authorities. It is pleaded further that Biram Bai, the widow of Sukhnuram Patel, was competent to execute the registered Will and therefore, by virtue of the said Will, he acquired the valid title upon it. It is pleaded further that since the revenue papers as mutated on the basis of the said Will were not questioned therefore, the Plaintiff has no right over the suit property.

4. The trial Court, after considering the evidence led by the parties, has come to the conclusion that after the death of Sukhnuram, the Plaintiff-Sitabai has acquired the interest by way of inheritance over the property in question. It held further that the statement of the Plaintiff with regard to execution of Will as pleaded is not acceptable. Ultimately, the trial Court has decreed the suit by holding that the Plaintiff is the owner of the suit property.

5. The aforesaid finding of the trial Court has been affirmed further by the lower appellate Court in an Appeal preferred by the Defendant.

6. Being aggrieved with the aforesaid judgment and decree of the trial Court, the Defendant has preferred this Appeal. Shri HB Agrawal, learned Senior Advocate submits that the judgment and decree as passed by the Courts below by holding that the Will is null and void is contrary to law. He submits further that the said finding was even otherwise not acceptable as the same was arrived at by placing the burden of proof upon him. However, the Plaintiff was required to establish her own case and in absence of any material, the alleged Will cannot be declared to be null and void.

7. I have heard learned Counsel for the Appellant and perused the entire record carefully.

8. The Plaintiff has filed a suit on the ground that the property in question was originally held by her father-in-law namely Sukhnuram Patel and after his death, it was inherited by his son Bishauram. Since Bishauram has also expired, therefore she being his widow, inherited the suit property. The Plaintiff has pleaded very specifically in her Plaint that her right was impeached by the Defendant by obtaining revenue papers mutated in his name on the basis of the Will dated 24.01.2011. In such circumstances, it was the duty of the Defendant to produce at least the alleged document by which he is claiming his ownership and based upon which has obtained the revenue papers mutated in his name. Since no document is there on record, therefore, it cannot be held that the Defendant was entitled to get the revenue papers mutated in his name on the basis of the said Will.

9. In view of the facts and circumstances of the case, the Courts below, in absence of production of alleged Will deed, have rightly come to

the conclusion that the Plaintiff Smt Sitabai Patel has inherited the suit property after the death of her predecessor in interest. Therefore, the said finding deserves to be and is hereby affirmed.

10. In view of the foregoing discussions, I do not find any question of law, much less, the substantial questions of law involved in this Appeal. Consequently, the Appeal being devoid of any substance is hereby dismissed. No order as to costs.

Sd/-

(Sanjay Agrawal)
JUDGE

Priya