

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A No.271 of 2016**

Rajnath S/o Moharsai, Aged About 32 Years Cast- Uraon, R/o Village- Jaganathpur, P.S. Tahsil- Pratappur, Distt. Surajpur, Chhattisgarh(Defendant No.2)

---- Appellant**Versus**

1. Smt. Kanti Devi W/o Akalsai, Aged About 45 Years D/o Late Nirmal, R/o Village- Jaganathpur, Tahsil- Pratappur, Distt. Surajpur, Chhattisgarh(Plaintiff)
2. Mohar Sai S/o Bhakta, Aged About 50 Years Cast- Uraon, R/o Village- Jaganathpur, Tahsil- Pratappur Distt. Surajpur, Chhattisgarh
3. Mangal Sai S/o Bhakta, Aged About 45 Years Cast- Uraon, R/o Village- Jaganathpur, Tahsil- Pratappur Distt. Surajpur, Chhattisgarh
4. Kanwal Sai S/o Dhansai, Aged About 40 Years Cast- Uraon, R/o Village- Jaganathpur, Tahsil- Pratappur Distt. Surajpur, Chhattisgarh
5. State Of Chhattisgarh, Through The Collector Surajpur Distt.- Surajpur, Chhattisgarh(Defendants)

---- Respondents**And****S.A No. 277 Of 2016**

Rajnath S/o Moharsai, Aged About 32 Years Caste- Uraon, R/o Village Jaganathpur, P.S. Tahsil Jaganthpur, District Surajpur, Chhattisgarh(Defendant No.2)

---- Petitioner**Vs**

1. Smt. Kanti Devi W/o Akalsai, Aged About 45 Years D/o Late Nirmal, Caste Uraon, R/o Village Jaganathpur, P.S.- Tahsil Pratappur, District Surajpur, Chhattisgarh
2. Mohar Sai S/o Bhakta, Aged About 50 Years Caste Uraon, R/o Village Jaganathpur, P.S.- Tahsil Pratappur, District Surajpur, Chhattisgarh
3. Mangal Sai S/o Bhakta, Aged About 45 Years Caste Uraon, R/o Village Jaganathpur, P.S.- Tahsil Pratappur, District Surajpur, Chhattisgarh
4. Kanwal Sai S/o Dhansai, Aged About 40 Years Caste Uraon, R/o Village Jaganathpur, P.S.- Tahsil Pratappur, District Surajpur, Chhattisgarh
5. State Of Chhattisgarh, Through The Collector, Surajpur, District Surajpur, Chhattisgarh(Plaintiffs)

-----Respondents

For Appellant:	Shri Sunil Lakra and Shri AN. Pandey, Advocates.
For Respondent No.1:	Shri Ajit Kumar Yadav, Advocate.
For Respondent No.5/State:	Shri Vijay Bahadur Singh, Panel Lawyer.

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

04.09.2017

1. Heard on admission of both these Appeals.
2. These two Appeals are being decided by way of a Common order as they arise out of same judgment and decree dated 11.5.2016 passed by the Additional District Judge, Pratappur in Civil Appeals No.7-A/2016 & 9-A/2016 filed by Plaintiff Kanti Devi and Defendant No.2-Rajnath respectively, whereby the lower appellate Court, while allowing the said Appeal filed by Plaintiff-Kanti Devi and that by dismissing the Appeal filed by Defendant No.2-Rajnath, has reversed the judgment and decree of the trial Court dated 25.01.2016 in Civil Suit No.132-A/2011 and consequently decreed the Plaintiff's claim for declaration of title and injunction.
3. Briefly stated, the undisputed facts of the case are that the Plaintiff-Kanti Devi instituted a suit for declaration of title and injunction by submitting *inter alia* that the property in question described in Plaint Schedule, 'A' was originally held by one Nirmal and being a daughter, she inherited the property after his death. It is pleaded further that when her possession was disturbed by Defendant-Rajnath after obtaining the revenue papers mutated on the basis of forged Will deed, therefore, the Plaintiff has filed this suit for declaration of title and injunction.
4. The aforesaid claim has been contested by the Defendants. It is pleaded by Defendant No.2-Rajnath in his written statement by claiming

counter claim that Kanti Devi is not the daughter of said Nirmal and pleaded further that since the said Nirmal has executed a Will on 29.6.2009 in his favour, therefore, by virtue of the alleged Will, he has acquired valid title upon the suit property left by said Nirmal and therefore, prayed for declaration of his title and injunction.

5. The trial Court, after considering the evidence led by both the parties, has come to the conclusion that Plaintiff Kanti Devi is not the daughter of Nirmal and held further that Will dated 29.6.2009 was not found to be proved. As a consequence, the suit as well as the counter claim was dismissed by the trial Court by its judgment and decree dated 25.1.2016.

6. Being aggrieved with the aforesaid judgment and decree of the trial Court, the Plaintiff as well as Defendant No.2 both have preferred Appeals. The Appeal filed by the Plaintiff was registered as Civil Appeal No.7-A/2016 whereas the Appeal preferred by Defendant No.2-Rajnath was registered as 9-A/2016 and by considering the evidence of both the parties, the lower appellate Court by its impugned common judgment and decree dated 11.5.2016, has allowed the Plaintiff's claim by disbelieving the counter claim submitted by Defendant No.2-Rajnath and consequently, the suit was decreed by the lower Appellate Court by holding that the Plaintiff is the daughter of said Nirmal and is entitled to inherit his entire suit property.

7. Being aggrieved, Defendant No.2-Rajnath has preferred two Appeals, one is against the judgment passed in Civil Appeal No.7-A/2016, whereby Plaintiff's claim was decreed and the Appeal is registered in this regard as S.A No.271/2016 and the other is against the judgment passed

in Civil Appeal No.9-A/2016 whereby his counter claim was refused and the Appeal filed against it is registered as Second Appeal No.277/2016. Shri Sunil Lakra, Advocate appearing on behalf of the Appellant submits that the judgment and decree as passed by the lower appellate Court by holding that the Plaintiff-Kanti Devi is the daughter of said Nirmal and that by disbelieving the Will executed by the said Nirmal in favour of Appellant/Defendant No.2-Rajnath is apparently contrary to law. He submits further that the lower appellate Court without properly considering the evidence of the attesting witnesses of the alleged Will, has erred in holding that the Will was not properly proved by Defendant No.2-Rajnath. He therefore submits that the judgment and decree as passed by the lower appellate court deserves to be set aside.

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

9. The first contention as raised by the Appellant herein is that since Plaintiff-Kanti Devi has failed to prove that she is the daughter of the erstwhile owner Nirmal and therefore, in the said circumstances, the lower appellate Court ought to have dismissed the Appeal filed by the Plaintiff-Kanti Devi. In order to ascertain this fact regarding the paternity of the Plaintiff, I have examined the evidence led by the parties. After considering the same, it is clear that Kanti Devi is the daughter of Nirmal and therefore, I do not find any infirmity in the order passed by the lower appellate Court whereby the lower appellate Court, while reversing the finding of the trial Court, has come to the conclusion that Kanti Bai is the daughter of said Nirmal. The said finding, therefore deserves to be and is hereby affirmed.

10. As regards the second contention of the Appellant that the Will was wrongly disbelieved by the Courts below, it is also noted to be rejected. For ascertaining the due execution of the alleged Will, I have examined the contents made in the alleged Will vis-a-vis the statements of both the attesting witnesses of the said Will. However, a bare perusal of the statements of both the attesting witnesses and the contents made therein would unequivocally show that there is material contradiction in the statement adduced by the attesting witnesses and the contents made therein. Therefore, under such circumstances, it is difficult to hold that the Will was duly proved by Defendant No.2-Rajnath. In such circumstances, I do not find any infirmity in the judgment and decree passed by both the Courts below disbelieving the due execution, attestation and validity of the alleged Will dated 29.06.2009. Therefore, the same 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 questions of law which arise for determination in these Appeals. Accordingly, both these Appeals being devoid of merits are hereby dismissed at the admission stage itself. There shall be no order as to costs.

12. A copy of this order be placed in S.A No.277 of 2016 also.

Sd/-

(Sanjay Agrawal)
JUDGE