

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.520 of 2016**

Vishwanath S/o Munua, Aged About 40 Years Caste- Bargah, R/o Village- Chirga, P.S. And Tahsil- Lundra, District- Surguja, Chhattisgarh
(Defendant No.1)

----Appellant**Versus**

1. Heerasay S/o Late Metal, Aged About 45 Years Caste- Bargah, R/o Village- Chirga, P.S. And Tahsil- Lundra, District- Surguja, Chhattisgarh, At Present Village- Okra, P.S. And Tahsil- Rajpur, District- Balrampur, Chhattisgarh(Plaintiff)

2. State Of Chhattisgarh, Through Collector, Surguja, Ambikapur, District Surguja, Chhattisgarh(Defendant No.2)

-----Respondents

For Appellant:	Shri Sunil Tripathi, Advocate.
For Respondents/State:	Shri RK. Jaiswal, Panel Lawyer.

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

22.2.2017

1. This is Defendant's Appeal under Section 100 of the Code of Civil Procedure, 1908 against the judgment and decree dated 23.9.2016 passed by the 1st Additional District Judge, Ambikapur in Civil Appeal No.351-A/2013 by which the Appellate Court, while affirming the judgment and decree dated 08.01.2013 passed by the 1st Civil Judge, Clas-II, Ambikapur in Civil Suit No.31-A/2010, has dismissed the Appeal.

2. The undisputed facts are that the Plaintiff Heerasay has instituted a suit on 08.07.2009 by saying that he is the son of Bitna, the original owner of the property in question described in paragraph-1 of the Plaint. It is pleaded in the Plaint that the Will deed dated 18.9.2005 executed by his father Bitna in favour of Defendant Vishwanath is a suspicious document which does not confer any

right or interest upon him. It is pleaded further in the Plaint that on the basis of the alleged Will deed, the Defendant Vishwanath is interfering in his peaceful possession and also trying to get the revenue papers mutated, therefore, he has been constrained in filing the suit in the instant nature for declaration of title and injunction.

3. The Defendant has contested the aforesaid claim by submitting inter alia that Heerasay is not the son of Bitna and he has acquired his interest by virtue of the alleged Will deed dated 18.9.2005 executed by said Bitna in his favour. It was contested further on the ground that without seeking the relief of possession, a mere suit for declaration of title and injunction is not maintainable.

4. Upon hearing the parties, the Trial Court, by considering the statement of both the parties, has come to the conclusion that Heerasay is the son of Bitna and held further by considering the attesting witnesses of the alleged Will deed namely Balak, (DW-3) and Dhan Kumar, (DW-4) that the said document (Ex.D-4) even cannot be held to be a Will deed. It observed further upon perusal of the said deed that the word “यह वसीयत” has been interpolated therein. Consequently, the Trial Court, while disbelieving the said document has decreed the Plaintiff's claim for declaration of title and injunction.

5. The aforesaid findings of the Trial Court has been affirmed by the lower Appellate Court in an Appeal preferred by the Defendant under Section 96 of CPC. The Appellate Court has examined the evidence of both the parties and came to the conclusion that Heerasay is the son of Bitna and not the son of one Fatal as stated by the Defendant. The lower Appellate Court has also disbelieved the validity of the alleged Will deed dated 18.9.2005, (Ex.D-4) by affirming the finding of the Trial Court in this aspect as well.

6. Shri Tripathi, learned Counsel for the Appellant has submitted that the finding recorded by the Courts below is perverse. While inviting the attention of document (Ex.D-3) - the voter list, he submitted that Heerasay is not the son of Bitna, but in fact, he is the son of another person namely Fatal. He also submitted that the Will deed dated 18.9.2005 had duly been executed by Bitna in his favour.

7. On the other hand, Shri Jaiswal, learned Counsel for the State submits that the State is a formal party and therefore, he has nothing to say in this matter.

8. I have considered the submissions of learned Counsel for the Appellants and have perused the entire record carefully.

9. From perusal of the record, the Trial Court as well as the lower Appellate Court have concurrently come to the conclusion that the Plaintiff Heerasay is the son of Bitna and since this finding is a pure finding of fact, therefore, the same cannot be interfered at this stage by re-appreciating the evidence of the parties. I therefore, affirmed the said finding of the Courts below and held that Heerasay is the son of Bitna. As far as the execution of the Will deed dated 18.9.2005, (Ex.D-4) is concerned, it was also held by both the Courts below that the said document is a suspicious one and could not be established in accordance with law as the attesting witnesses of it have failed to prove its due execution.

11. A mere perusal of the said document would show that the two words “यह वसीयत” have been incorporated therein in order to make it a “Will deed”. Even otherwise, the attesting witnesses of the said document, namely Balak and Dhan Kumar examined as DW-3 and DW-4 respectively have not stated anywhere that the executor Bitna has signed the said document in their

presence. Therefore, from any angle, its execution cannot be upheld.

12. Consequently, the findings as recorded by both the Courts are based upon proper appreciation of both oral and documentary evidence. No substantial questions of law arise for determination. Resultantly, the Appeal being devoid of merit, is hereby dismissed at admission stage itself. No order as to costs.

Sd/-
(Sanjay Agrawal)
JUDGE

Priya