

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**REVP No. 138 of 2017**

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

---- Applicant**Versus**

1. Smt. Kanti Devi W/o Akalsai, Aged About 45 Years D/o Late Nirmal, R/o Village- Jaganathpur, Tahsil- Pratappur, Distt. Surajpur, ChhattisgarhRespondent No. 1/Plaintiff , Chhattisgarh
2. Mohar Sai, S/o Bhakta, Aged About 50 Years Cast- Uraon, R/o Village- Jaganathpur, Tahsil- Pratappur Distt. Surajpur, Chhattisgarh.....Respondent No. 2/Defendant No. 1.
3. Mangal Sai S/o Bhakta, Aged About 45 Years Cast- Uraon, R/o Village- Jaganathpur, Tahsil- Pratappur Distt. Surajpur, Chhattisgarh.....Respondent No. 3/Defendant No. 3.
4. Kanwal Sai, S/o Dhansai, Aged About 50 Years Cast- Uraon, R/o Village- Jaganathpur, Tahsil- Pratappur Distt. Surajpur, Chhattisgarh.....Respondent No. 4/Defendant No. 4.
5. State Of Chhattisgarh Through Collector, Surajpur, District Surajpur Chhattisgarh.

----Non-applicants

For Applicant:

Dr. N. K. Shukla, Learned senior counsel along with Shri Sunil Lakra and Shri Ajay Lakra.

For Non-applicant No. 5/ State:

Shri V. B. Singh, PL.

Single Bench:Hon'ble Shri Sanjay Agrawal, J**Order On Board****18.09.2018**

1. Heard on admission.
2. This review petition has been preferred by the Applicant-Rajnath against the order dated 04.09.2017 passed in Second Appeal No. 277 of 2016 (Rajnath Vs. Smt. Kanti Devi and another), by which the appeal preferred by the Applicant (Defendant-Rajnath) has been dismissed.

3. Dr. N. K. Shukla, learned senior counsel appearing along with Shri Sunil Lakra and Ajay Lakra for the Applicant submits that the order impugned as passed by this Court while negating the validity of the Will dated 29.06.2009 (Ex.D-20) has committed an illegality in dismissing the said appeal. According to him, the Will was duly executed as per the provision prescribed under Section 68 of the Indian Evidence Act and also as per the provision prescribed under Section 63 of the Indian Succession Act as it was executed in presence of two witnesses, namely, Ramrup and Nansai and, both have categorically stated in paragraph 5 that one Nirmal, erstwhile owner of the property in question, the executor, has put his signature after going through the document and the evidence so adduced in this Court has not been rebutted by the Plaintiff. However, without considering the said fact in its proper manner, this Court has erred in dismissing the appeal. He, therefore, submits that the order impugned be reviewed for rehearing of the said appeal in its proper perspective.

4. I have heard learned Counsel for the Applicant and perused the entire record carefully.

5. A suit was instituted by Plaintiff-Smt. Kanti Devi for declaration of title and injunction by submitting *inter-alia* that the property in question described in Plaint Schedule 'A' was originally held by her father Nirmal and being a daughter, she inherited the same and, pleaded further that when her possession was disturbed by the Applicant/Defendant-Rajnath after obtaining the revenue papers mutated in his name on the basis of alleged Will, therefore, the Plaintiff has filed the said suit. The suit was contested by the Defendant by submitting his counter claim that Smt. Kanti Devi was not the daughter of said Nirmal and pleaded further that on the

basis of the alleged Will, he acquired valid right, title and interest over the property in question.

6. After considering the evidence led by the parties with regard to the aforesaid pleadings, the trial Court dismissed the suit as well as the counter claim by holding that neither the Plaintiff- Smt. Kanti Devi is the daughter of said Nirmal nor the alleged Will was duly executed by said Nirmal in favour of present Applicant/Defendant-Rajanth.

7. Being aggrieved with the aforesaid judgment and decree of the trial Court, the Plaintiff and Defendant both have preferred appeals. The appeal preferred by Applicant/Defendant-Rajanth was registered as Civil Appeal No.9-A/2016 and that by considering the evidence including the evidence of the attesting witnesses of the alleged Will, has come to the conclusion that the alleged Will was not duly executed by said Nirmal and, the appeal preferred by the Plaintiff, registered as Civil Appeal No.7-A/2016, in which, it has been held that Plaintiff-Smt. Kanti Devi is the daughter of the said Nirmal. In consequence, while decreeing the Plaintiff's claim and that by disbelieving the counter claim of the Applicant-Rajanth, has dismissed the applicant's appeal.

8. The aforesaid finding of the lower appellate Court has been upheld by this Court after considering the evidence of both the parties, particularly, the statement of the attesting witnesses of the alleged Will dated 29.06.2009 (Ex.D-2). Since the alleged Will was considered while hearing the appeal at length and also by considering the statement of the attesting witnesses, therefore, it cannot be said that the Will was duly established by the Applicant-Rajanth as per the provision prescribed under Section 68 of the Indian Evidence Act and under Section 63 of the Indian Succession

Act, as contended by Dr. N. K. Shukla, learned senior counsel for the Applicant.

9. Even otherwise, I do not find any error or mistake apparent on the face of the record, so as to warrant interference in the order impugned in exercise of review jurisdiction. Consequently, this review petition being devoid of merits is dismissed at the admission stage itself. No order as to costs.

Sd/-
(Sanjay Agrawal)
JUDGE