

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 12 of 2003**

Smt. Saraswati @ Salho, D/o Late Metan Das, aged about 42 years, Caste-Panika, Occupation -Household, r/o village Singitana, Tehsil Ambikapur, Distt. Surguja (C.G.)

----Appellant/Plaintiff

Versus

1. Smt. Chamrin, D/o Late Metan Das, aged about 50 years, Occupation- Agriculture, Caste- Panika, Occupation – Agriculture, Caste- Panika, R/o village Singitana, Tehsil Ambikapur, Distt. Surguja (C.G.)

2. The State of M.P. (Now C.G.) through Collector, Surguja.

----Respondents/defendants.

For Appellant /plaintiff	: Mr. A.K. Prasad, Advocate.
For Respondent No. 2/State	: Mrs. Astha Shukla, PL the State.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board**

04/10/2018

(1) This is plaintiff's Second Appeal filed under Section 100 of CPC against the judgment and decree dated 29.10.2002, passed by Second Additional District Judge, Ambikapur, District Surguja, in Civil Appeal No. 50-A/2002 reversing the judgment and decree dated 10.05.1999 passed by Additional Judge to the Court of Civil Judge, Class I, Ambikapur, District Surguja, in Civil Suit No. 22-A/98.

(2) The plaintiff's suit for partition and possession was decreed by the trial Court negating the plea of will set-up by the defendant No.1. However, the first Appellate Court set aside the judgment and decree of the trial Court holding that the Will in favour of defendant No.1 is established in accordance with law, against which this second appeal under Section 100 of the C.P.C. has been filed by the plaintiff questioning the same.

(3) Learned counsel appearing for the appellant/appellant would submit that the first appellate Court is absolutely unjustified in holding that Will in favour of defendant No.1 is established and thereby dismissed the suit of the plaintiff, which is wholly perverse and contrary to law

(4) I have heard learned counsel appearing for the appellant and perused the records of both the courts below including judgment and decree impugned with utmost circumspection.

(5) The first Appellate Court, by its impugned judgment & decree dated 29.10.2002, has clearly held that execution & attestation of will in favour of defendant is fully established by examining two attesting witnesses namely Kariya Ram (DW-3) & Puran Ram (DW-4). After going through the record and testimony of aforesaid two witnesses, I am satisfied that Will in favour of defendant has rightly been held to be established by the first appellate court and I do not find it either perverse or contrary to record and no question of law much less substantial question of law is involved in this appeal.

(6) Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed in *limine*. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

