

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 381 of 2003

- Smt. Amrit Bai, Wd/o Late Dwarika Chandrakar, aged about 65 years, R/o Village Senchhua, Tehsil Dhamtari, District Dhamtari (C.G.)

---- Petitioner

Versus

1. Brijesh Kumar S/o Ishwari Chandrakar, aged about 36 years, Occupation Veterinary Doctor, R/o Village Senchhua, Tehsil and District Dhamtari (C.G.)
2. Lakhan Lal Chandrakar, S/o Komuram Chandrakar, aged about 48 years, R/o Village Senchhua, Tehsil and District Dhamtari (C.G.)
3. Smt. Rukhmani W/o Lakhan Lal Chandrakar, R/o Village Senchhua, Tehsil and District Dhamtari (C.G.)
4. The State of Chhattisgarh, through the Collector, Dhamtari (C.G.)

---- Respondents

For Applicant
For Respondent-State

Ms. Renu Kochar, Advocate
Shri Rajendra Tripathi, PL

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

13/07/2018

1. Both the courts below have allowed the suit preferred by the plaintiff Brijesh Kumar for declaration of title over the suit land admeasuring 6.17 Acres situated at Village Senchhua, Tehsil and District Dhamtari as also for recovery of possession of 1.86 Acres of land, out of the total suit land. The trial Court has also injuncted the present appellant from alienating the suit property.

2. The present appellant/defendant No.1 is the widow of deceased Dwarika Prasad Chandrakar, who owned the suit land as his exclusive property, however, before his death on 09.01.1991, he bequeathed the suit land to the plaintiff by WILL dated 15.09.1990, therefore, plaintiff claimed that, after his death, he is the sole owner of the suit property. The defendants pleaded that the WILL is not genuine as on the date of execution, deceased Dwarika Prasad Chandrakar was not maintaining good health and was thus incapacitated to execute the WILL. It was also stated that the present appellant Smt. Amrit Bai, being widow of the deceased, had right of maintenance over the suit property, therefore, it could not have been bequeathed.
3. The trial Court as well as the appellate Court have concurrently found that PW-2 Mohammad Azaz is the attesting witness and has supported the plaintiff that the WILL was signed by the deceased in his presence. It is also found that the appellant was allowed to cultivate the land and maintain herself even after death of Dwarika Chandrakar, however, the other defendants started persuading Amrit Bai to sell the land, therefore, the present suit has been filed. During the pendency of the suit, Amrit Bai sold some part of the lands in favour of the defendant No.4 Rukmani Bai, which have been declared inoperative and ineffective under the principle of *lis pendense* as provided under Section 52 of the Transfer of Property Act, 1882.
4. It was not the case of the defendants that the suit land was the joint family property at the hands of Dwarika Prasad Chandrakar or was the *Stridhan* property of the appellant Amrit Bai, which

would disqualify the deceased to execute the WILL. Therefore, in the absence of such plea, the deceased Dwarika Prasad Chandrakar being the exclusive owner of the suit land, he was competent in law to bequeath the property and the WILL having been found to have been validly executed in terms of the requirement under Section 68 of the Evidence Act, 1872, both the courts below have not committed any illegality or perversity in allowing the suit.

5. The present appeal fails to raise any substantial question of law for determination, therefore, it deserves to be and is hereby dismissed.

Sd/-
Judge
Prashant Kumar Mishra

Nirala