

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 76 of 2017**

1. Sonkunwar Daughter Of Jodhan Singh W/o Angad, Aged About 60 Years R/o Village Bariomrao, P.S. And Tehsil- Pendra, District Bilaspur, Chhattisgarh.
2. Jai Singh S/o Jodhan Singh, Aged About 55 Years R/o Village Bariomrao, P.S. And Tehsil- Pendra, District Bilaspur, Chhattisgarh.
3. Kusumkali, S/o Jodhan Singh, Aged about 65 years, (Died Through Lrs) 3.a - Armani S/o Maniram Gond, Aged About 30 Years R/o Village- Harri, P.S. Gaurela, Tehsil- Pendra Road, District Bilaspur, Chhattisgarh
4. Mohan Singh S/o Angad Singh, Aged About 40 Years R/o Village Bariomrao, P.S. And Tehsil- Pendra, District Bilaspur, Chhattisgarh Defendants

---- Appellants**Versus**

1. Khelan Singh S/o Pancham Singh Gond, Aged About 50 Years R/o Village- Bariomrao, P.S. And Tehsil- Pendra Road, District- Bilaspur, Chhattisgarh.
2. Rajendra Singh S/o Mansingh @ Pahalwan Singh Gond, R/o Village- Bariomrao, P.S. And Tehsil- Pendra Road, District- Bilaspur, Chhattisgarh.
3. State Of Chhattisgarh, Through Collector Bilaspur, District Bilaspur, ChhattisgarhPlaintiffs.

---- Respondents

For Appellants	:	Shri Yogendra Chaturvedi, Advocate.
For Respondent No. 3/State	:	Shri V.B.Singh, P.L.

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****10.07.2018**

1. This is defendants' second appeal preferred under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code of 1908) questioning the propriety of the judgment and decree dated 08.11.2016 passed by the Additional District Judge, Pendra Road, District Bilaspur in Civil Appeal

No. 23-A/2016, by which, the lower appellate Court, while affirming the judgment and decree dated 02.12.2015 passed by the Civil Judge Class-1, Pendra Road in Civil Suit No. 35-A/2010, has dismissed the appeal.

2. Briefly stated the facts of the case are that the plaintiffs instituted a suit claiming declaration of title and injunction by submitting, inter alia, that the property in question bearing Kh.No.187 admeasuring 4.33 acres situated at village Kanchandih was their ancestral property. It is pleaded in the plaint that the plaintiffs' predecessor-in-interest, namely Khulur Singh was the erstwhile owner of the property in question and his name was recorded in *Misal Bandobast* for the year 1929-30. It is pleaded further that after the death of Khulur Singh, the said property was inherited by his son Pancham Singh and said Pancham Singh given the said property to one Bhav Singh for looking after his minor children till their attainment of majorities. It is put forth further that said Pancham Singh expired in 1960 and after his death said Bhav Singh was looking after the entire family of late Pancham Singh and on 03.08.2003 executed a will in plaintiffs' favour and the plaintiffs are thus the owner of the suit property and their names are recorded in revenue papers. However, the defendants have got their names recorded in revenue papers while deleting the names of plaintiffs from revenue papers, in view of the order dated 26.08.2009 passed by the S.D.O. (Revenue) Pendra Road, which led to filing of the suit in the instant nature.

3. The defendants have contested the aforesaid claim and stated that late Pancham Singh was issue-less, and therefore, he has given the said property to Bhav Singh and, denied specifically the due execution, attestation and validity of the alleged will, said to have been executed by Bhav Singh on 03.08.2003.

4. The trial Court, after considering the evidence led by the parties, has decreed the suit holding that Bhav Singh has validly executed the will on

03.08.2003 in favour of the plaintiffs by relying upon its attesting witnesses, affirmed further by the lower appellate Court in appeal preferred by the defendants.

5. Being aggrieved, the defendants have preferred this appeal. Shri Yogendra Shrivastava, learned counsel for the appellants, submits that the judgment and decree as passed by the Courts below is apparently contrary to law. It is contended by him that due execution, attestation and validity of the will has not been established by the plaintiffs in accordance with law, therefore, no right, title or interest, whatsoever, would confer upon them. While assailing the decree as such, the defendants have filed an application under Order 41 Rule 27 of the Code of 1908 seeking for production of documentary evidence pointing out the fact that though the stamp paper, in which, the alleged will was executed, was manipulated document as upon enquiry being made, it came to their knowledge that it was purchased on 20.10.2003, after the death of said Bhav Singh, who expired on 16.08.2003. He, therefore, submits that the judgment and decree deserves to be quashed.

6. I have heard learned counsel for the appellant the perused the entire record carefully.

7. As far as the application filed under Order 41 Rule 27 of the Code of 1908 is concerned, the same is liable to be rejected as in absence of any plea made in this regard in the written statement, the averment/reasoning as mentioned in the said application cannot be accepted. The application is accordingly rejected. So far as further contention of the Shri Yogendra Chaturvedi that the due execution, attestation and validity of the will has not been proved by the plaintiffs in accordance with law is also noted to be rejected. From perusal of the entire record, it is clear that one Khulur Singh was the owner of the property in question and after his death, it was inherited by his son Pancham Singh and the

plaintiffs are his children. Although an averment was made in the plaint that the property in question was given by Pancham Singh to said Bhav Singh and said Bhav Singh, in turn, has executed a will on 03.08.2003 in their favour, but the fact as to whether the property in question was acquired by said Bhav Singh or not, the defendants have utterly failed to produce any document so as to hold that said Bhav Singh had acquired any interest over the suit property. In any case, the due execution, attestation and validity of the alleged will (Ex.P.1), said to have been executed by said Bhav Singh, cannot be held to be invalid. In order to prove the execution of will, the plaintiffs have examined both the attesting witnesses, i.e., Ganesh Prasad (P.W.2) and Ratiram (P.W.3) and who have duly proved the same. The Courts below, upon examination of their evidence, have rightly come to the conclusion that it was duly executed in his presence. The findings so recorded are based upon due and proper appreciation of their evidence, and therefore, deserve to be and are hereby upheld.

8. In view of the foregoing discussion, I do not find any question of law, much less, substantial questions of law, which arise for determination in this appeal. The appeal, being devoid of merit, is liable to be and is accordingly dismissed at admission stage itself. No order as to costs.

Sd/-
(Sanjay Agrawal)
Judge