

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 505 of 2003**

Heera Singh, aged about 48 years, S/o Paharu Gond, R/o Village Biloudi, P.O. Kundel, Tahsil and District Dhamtari (C.G.)

----Appellant/Plaintiff

Versus

1. Smt. Kachara Bai, aged about 40 years, wife of Dukal Gond, R/o village Aamapani, PO Bhouthidih, Tahsil & Distt. Dhamtari
2. Aghani Bai, aged about 35 years, wife of Sirikosh Gond, R/o village Pasoud, PO. Pokhara, Tahsil Rajim, Distt. Raipur (C.G.)
3. State of Chhattisgarh through the Collector Dhamtari, Distt. Dhamtari (C.G.)

----Respondents/defendants.

For Appellant	: Mr. Shobhit Koshta, Advocate.
For Respondents No. 1 & 2	: None appeared.
For Respondent No. 3	: Mr. Arun Sao, Deputy Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

22/11/2018

1. The substantial question of law involved, formulated and to be answered in this plaintiff's second appeal states as under:

“Whether the 1st appellate court was justified in holding that the Will is not proved as per Section 63 of the Indian Succession Act in spite of the evidence of the attesting witnesses before the panchas having been recorded ?

[For the sake of convenience, parties would be referred hereinafter as per their status shown in the suit before the trial Court.]

2. The imperative facts required to be noticed for adjudication of this appeal are as under:

2.1 Plaintiff / appellant herein filed a suit for declaration of title and permanent injunction stating *inter alia* that the suit land was originally owned by Daulal, S/o Gori Singh and he has executed a Will in his favour on 25.4.1980 vide Ex.P-1 in presence of the witnesses and after the death of Daulal, he has become title and possession holder of the suit land. It was further pleaded that the plaintiff's application for mutation of the suit land on the basis of Will has been rejected by the Nayab Tahsildar, in which defendants No. 1 & 2 raised the question of title leading to filing of suit for declaration of title and permanent injunction.

2.2 Defendants No. 1 & 2, who are daughters of original title holder Daulal denied the plaintiff allegation and stated that no such Will was ever executed by their father in favour of plaintiff and, as such, the Will is forged and fabricated and the suit is liable to be dismissed.

3. The trial Court by its judgment and decree dated 9.3.1999 decreed the suit holding that deceased Daulal had executed a Will in favour of the plaintiff and the said Will has been executed strictly in accordance with law by testator i.e. late Daulal.

4. Defendants No. 1 & 2 preferred first appeal thereagainst. The First appellate Court by its impugned judgment & decree dated 10th July, 2003 held that since the will has been executed altering the course of succession and further the Will suffers from suspicious circumstances and in that view of the matter, the first Appellate Court set aside the judgment & decree of the trial Court and dismissed the suit.

5. Questioning the judgment and decree passed by the first appellate court, this second appeal has been preferred by the appellant/plaintiff in which the substantial question

of law has been formulated for consideration, which has been set out in the opening paragraph of the judgment.

6. Learned counsel appearing for the plaintiff would submit that the first appellate Court was unjustified in reversing the well reasoned judgment & decree passed by the trial Court, as such, the impugned judgment and decree passed by the first appellate Court deserves to be set aside and the decree of the trial Court deserves to be restored, and thereby the suit be decreed.

7. I have heard learned counsel appearing for the appellant/plaintiff and perused the judgment & decree impugned including record of both the courts below with utmost circumspection.

8. Indisputably the suit property was originally owned by late Daulal, son of Gour Singh; he had two daughters namely Kachra Bai & Adhni Bai and he is said to have executed a Will in favour of plaintiff on 25.04.1980 vide Ex.P-1.

9. The trial Court, having found the Will established in favour of the plaintiff and repelled the plea raised on behalf of defendants No. 1 & 2 that natural heir cannot be excluded by way of Will, decreed the suit. First appeal preferred thereagainst was allowed by the First appellate Court and the suit was dismissed holding that natural heirs / daughters cannot be excluded by way of Will.

10. This question is no longer *res integra* and stood decided by the Supreme Court in the matter of **Ramabai Padmakar Patil (Dead) through L.Rs. and others V. Rukminibai Vishnu Vekhande and others**¹, in which their Lordships have held that Will executed by testator depriving natural heirs from their share cannot be held to be suspicious

¹ (2003) 8 SCC 537

circumstances. Relevant paragraph of the report states as under:-

“8. A Will is executed to alter the mode of succession and by the very nature of things it is bound to result in either reducing or depriving the share of a natural heir. If a person intends his property to pass to his natural heirs, there is no necessary at all of executing a Will. It is true that a propounder of the Will has to remove all suspicious circumstances. Suspicion means doubt, conjecture or mistrust. But the fact natural heirs have either been excluded or a lesser share has been given to them, by itself without anything more, cannot be held to be a suspicious circumstances, especially in a case where the bequest has been made in favour of an offspring.....”

11. The aforesaid principle of law has been again followed and reiterated by the Supreme Court in the matter of **Savithri & others V. Karthyayani Amma & others**².

12. The next finding which the first appellate Court has recorded for disbelieving the Will is that a Note has been added before signature of testator and attesting witnesses, which makes the Will suspicious.

13. On a careful perusal of the Will (Ex.P-1), it appears that a note has been added in continuation of the Will during execution and attestation of the same. The plaintiff was cross-examined by the defendants but nothing has been brought out that such a note has been added after signature of the testator and attesting witnesses, whereas there is sufficient evidence on record that no such note has been added in the Will and it has been written in one go at the instance of testator. As such, the finding recorded by the first appellate Court that the Will suffers from suspicious circumstances cannot be accepted and the same is liable to be set aside and no other point has been considered by the first appellate Court while dismissing the suit.

14. As a fallout and consequence of the aforesaid discussion, the judgment and decree passed by the first appellate Court is set aside and the judgment and decree passed by the trial Court is restored. The second appeal is consequently allowed and the plaintiff's suit stands decreed. No order as to cost(s).

15. A decree be drawn-up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

