

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 21 of 2004**

1. Guruwari Bai @ Noni Bai, D/o. Dani Ram, (W/o. Bhimprasad),
Caste Barai, Aged 70 years,
2. Fool Bai, D/o Daniram, Wd/o. Bihari, Caste Barai, Aged 63 years,
3. Foolmat, D/o. Daniram, W/o. Banshi, Caste Barai, Aged 61 years,
4. Bitawan Bai, D/o. Daniram, Aged 56 years

All R/o. Village Odekera, Tahsil Jaijaipur, District Janjgir-Champa
(C.G.)

---- Appellants/Plaintiffs

Versus

1. Anand Kunwar, D/o. Daniram, W/o. Satrughan Lal, aged 40 years,
2. Anil Kumar, S/o. Satrughan Lal, Aged 23 years
3. Ashwini Kumar, S/o. Satrughan Lal, Aged 21 years

All R/o. village Choriya, P.S. Baradwar, Tahsil Champa, Distt.
Janjgir-Champa (C.G.)

4. The State of Chhattisgarh Through the Collector, Janjgir-Champa
(C.G.)

----Respondents

For Appellants : Mr. Abhijeet Mishra, Advocate.
For Respondent No. 4/State : Mr. Rahul Tamaskar, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

05/12/2018

1. This is plaintiffs' Second Appeal filed under Section 100 of CPC against the judgment and decree dated 30.09.2003, passed by Additional District Judge, Sakti,

District Bilaspur, in Civil Appeal No. 2-A/2003 affirming the judgment and decree dated 18.1.2003 passed by Civil Judge, Class-I, Shakti, in Civil Suit No. 266-A/2002, dismissing the suit of the plaintiff and granting counter claim in favour of defendants No.1 to 3.

2. Learned counsel appearing for the appellants/plaintiffs would submit that judgment and decree granted by the appellate Court affirming the judgment & decree of the trial Court is bad and unsustainable in law. He would further submit that Will dated 03.07.1989 (Ex.P-2) executed by Daniram in favour of defendants No. 2 & 3, who are grandsons of Daniram out of his second marriage is not proved in accordance with law. He would further submit that as the suit property was the ancestral property of late Daniram, he was not competent to transfer the same by way of Will. He would also submit that the suit property was originally held by Dani Ram; plaintiffs are the daughters of Dani Ram through his legally wedded wife *whereas* defendants No. 1 to 3 are daughter and grand sons, respectively of late Daniram through his second wife and Late Daniram has executed will (Ex.D-2) & (Ex.D-1) in favour of defendants No. 2 & 3, respectively leading to filing of suit for declaration of title and possession by the plaintiffs, who are the daughters of late Dani Ram through his legally wedded wife. He, however, would submit that defendants (family of Daniram through his second wife) filed a counter claim claiming title and possession by way of Will executed by Daniram.

3. Trial Court, by its judgment & decree dated 18.1.2003, dismissed the plaintiff's suit and decreed the counter claim filed by defendants holding that so far as 6.42 acres of agricultural land is concerned, Daniram had executed two wills in favour of defendants No. 2 & 3, which has duly been proved by examining attesting witnesses. In case of Will dated 25.05.1992 vide Ex. D-1, attesting witness is Vijay Kumar (DW-2)

whereas for Will dated 03.07.1989 vide Ex.D-2 , attesting witness is Shyam Lal (DW-3). However, the trial Court held that 2.40 acres of land has not been bequeathed in favour of defendants No. 1 to 3 and, therefore, the plaintiffs & defendants both are joint owner and possession holder of the said land.

4. Plaintiff preferred first appeal there-against. First Appellate Court, by its impugned judgment & decree dated 30.9.2003, partly allowed the appeal holding that 6.42 acres of agricultural land has rightly been bequeathed in favour of defendants No. 2 & 3 vide Ex.D-2 & Ex.D-1; and further held that as the remaining 2.40 acres of land has not been willed in favour of defendants No. 2 & 3, the plaintiffs and defendants both are joint owner and possession holder of the said land.

5. In this second appeal, contention raised by learned counsel appearing for the appellants/plaintiffs is that Will (Exs. D-1 & D-2) dated 25.05.1992 & 03.07.1989 have not been proved in accordance with Section 63 (C) of the Indian Succession Act and, therefore, judgment and decree passed by the trial Court as affirmed by the first appellate Court is liable to be set aside.

6. I have heard learned counsel appearing for the appellants/plaintiffs and perused the record of both the courts below with utmost circumspection.

7. After having gone through the record of both the courts below, I am satisfied that execution and attestation of Will (Ex.D-1) by Daniram in favour of defendants No. 2 & 3 has duly been established by propounder of the Will and attesting witness Vijay Kumar (DW-2) has also proved the same and it has rightly been held to be upheld by the first appellate Court. I do not find any illegality or perversity in the same. So far as Will (Ex.D-2) is concerned, attesting witness Shyamlal (DW-3) has been examined and he

has specifically admitted the attestation of Will (Ex.D-2) by Daniram in favour of defendants No. 2 & 3 and, therefore, the appellate Court has not committed any illegality or perversity in holding that Will (Ex.D-2) has duly been proved and I do not find any non-compliance of Section 63(c) of the Indian Succession Act.

8. So far as the question raised by the appellants that since the suit property is ancestral property of late Daniram, therefore, he was not competent to transfer the suit land by way of Will in favour of defendants No. 2 & 3 is concerned, issue has not been framed in this regard and this issue has also not been tried by the trial Court as well as by the appellate Court while deciding the civil suit or first appeal.

9. Thus, the findings recorded by both the courts below are the finding of fact based on material available on record in which I do not find any illegality or perversity in the judgment and decree impugned warranting interference in the instant second appeal.

10. For the reasons mentioned hereinabove, the second appeal is liable to be and is hereby dismissed in limine.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

