

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 366 of 2018**

- Sushila W/o Jivan Lal @ Bhojeswar Prasad Dwivedi, Aged About 50 Years Through Special Power Of Attorney Holder Yogeshwari Dwivedi , D/o Jivan Lal @ Bhijeshwar Prasad Dwivedi, Aged About 22 Years R/o Tiwaripara Kharoud Tahsil Pamgarh District Janjgir Champa Chhattisgarh

---- Petitioner**Versus**

1. Sharda Charan Tiwari S/o Late Ramgopal Tiwari Aged About 48 Years
2. Devhuti Tiwari S/o Late Ramgopal Tiwari Aged About 71 Years

Respondents No.1 & 2 R/o Ward No. 22, Dindyal Upadhyay Mohalla, Janjgir District Janjgir Champa Chhattisgarh

3. Pradeep Kumar S/o Dhirajram Satnami
4. Dhirajram Bhardwaj S/o Bhajoram Bhardwaj Aged About 46 Years

Respondents No.3 & 4 R/o Ward No. 3, Kankalin Mohalla, Tiwaripara , Kharoud, Tahsil Pamgarh District Janjgir Chmpa Chhattisgarh

5. Satat of Chhattisgarh, Through Collector - Janjgir, District Janjgir Champa Chhattisgarh (Address Of Respondent No. 05 Wrongly Typed In Order Of The Appellate Court)

---- Respondents

For Petitioner	:	Shri Ravindra Sharma, Advocate
For Respondents-State	:	Ms. Astha Shukla, PL for the State

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****25/04/2018**

1. Heard.
2. The instant petition is against the order dated 13.02.2018 passed in Civil Miscellaneous Appeal preferred by the petitioner/plaintiff against the order of the Civil Judge Class-II, Pamgarh dated 25.04.2017, whereby an application

under Order 39 Rule 1 & 2 CPC was dismissed.

3. Learned counsel for the petitioner submits that the petitioner/plaintiff was the beneficiary under a WILL dated 14.02.2003, which was executed by Gayatri Bai, the mother of the petitioner/plaintiff and Defendants No.1 & 2 namely Sharda Charan Tiwari and Devhuti Tiwari, respectively, whose name though was mutated and subsequently deleted they sold the property to Pradeep Kumar and Dhirajram Bhardwaj and were trying to disturb the possession of the plaintiff, who is in the possession of the suit property.
4. Perusal of the order of the trial Court would show that the WILL whereby the title is claimed by the plaintiff was not placed before the Court below. Consequently, the trial Court has held that since the WILL has not been produced, therefore, it cannot be said that the property has been bequeathed in favour of the petitioner/plaintiff. Before this Court a copy of the WILL has been placed along with the copy of the order of SDO. Apparently it appears that it was not placed before the Court below while the injunction application was adjudicated, therefore, the Court held that the plaintiff was unable to prove the fact that he has prima facie case in his favour. As has been stated before this Court that the evidence has not taken and the defendants are trying to disturb the possession of the plaintiff, the plaintiff in the facts of this case shall be at liberty to place the WILL and the necessary document, whereby the ownership of the land is being devolved on the plaintiff as claimed and may revive his application under Order 39 Rule 1 & 2 CPC afresh before the Court below. The trial Court on such application being filed shall adjudicate the same, on its own merits, by taking into the nature of document so placed before the Court. It is further ordered that if such application under Order 39 Rule 1 & 2 CPC is filed subsequently, the trial Court shall decide the same afresh without being

influenced by the earlier rejection.

5. With such observation, the petition stands disposed of.

Sd/-

Goutam Bhaduri
Judge

Ashu