

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 489 of 2016**

- Pujari Das S/o Rakhi Das Panika, Aged About 37 Years R/o Village And Post Pondi Uroda, Tahsil Katghora, District Korba, ChhattisgarhDefendant

---- Appellant

Versus

1. Smt. Hatharin Bai D/o Kanhai Das Panik, Aged About 77 Years R/o Village Arda, Post Office Chuuri, Tahsil Katghora, District Korba, Chhattisgarh, Chhattisgarh
2. Manbodh Das S/o Pramod Das Panika, Aged About 52 Years R/o Syahimudi, Post Gopalpur, Tahsil Katghora, District Korba, Chhattisgarh, District : Korba, Chhattisgarh
3. Moti Das Son Of Pramod Das (Since Died) Through Lrs.
 - 3.(a) -Tara Bai D/o Moti Das Aged About 34 Years, Village Bastipara, Tahsil Katghora, District Korba (C.G.)
 - 3.(b) -Basanti Bai D/o Moti Das, Aged About 32 Years, Village Mudapara, Tahsil Katghora, District Korba (C.G.)
 - 3.(c) -Kripalu Das S/o Moti Das Aged About 30 Years, R/o Syahimudi, Post Gopalpur, Tahsil Katghora, District Korba (C.G.)
 - 3.(d) -Sakunti Bai, D/o Moti Das, Aged About 22 Years, R/o Syahimudi, Post Gopalpur, Tahsil Katghora, Dist. Korba (C.G.)
4. Aghahan Das S/o Pramod Das Panika, Aged About 42 Years R/o Syahimudi, Post Gopalpur, Tahsil Katghora, District Korba, Chhattisgarh.
5. Seva Das S/o Birjhun Das Panika, Aged About 72 Years R/o Ghunchapur, Post Darrabhata, Tahsil Katghora, District Korba, Chhattisgarh.
6. Smt. Gayatri Bai D/o Kanhai Bai Panika Since Dead
 - 6.(a) - Uma Shankar S/o Nirmal Das, Aged About 42 Years, R/o Village Arda, Post Office Chhuri, Tahsil Katghora, District Korba (C.G.)
7. Tulsi Das S/o Chamra Das Panika, Aged About 47 Years R/o Village Ponsara, Post Bankimongara, Tahsil Katghora, District Korba, Chhattisgarh,
8. Dharam Das S/o Chamra Das Panika, Aged About 42 Years R/o Village Ponsara, Post Bankimongara, Tahsil Katghora, District Korba, ChhattisgarhPlaintiffs,
9. Ravindrapal Singh Bhariya S/o Rashiram, Aged About 54 Years R/o Village Ghunchapur, Tahsil Pondi Uroda, District Korba, Chhattisgarh,
10. Manindrapal Singh Bhariya S/o Rashiram, Aged About 37 Years R/o Village Ghunchapur, Tahsil Pondi Uroda, District Korba, Chhattisgarh,

11. State Of Chhattisgarh, Through The Collector, Korba, District Korba,
ChhattisgarhDefendants,

---- Respondents

For Appellant	:Shri B.M.Rao with Shri Basant Kaiwartya, Adv.
For Respondents 1,2,4,7 & 8	:Shri Ravindra Sharma, Advocate
For Respondents 9 & 10	:Shri G.R.Miri, Advocate.
For Respondent No. 11/State	:Shri V.B.Singh, P.L.

Hon'ble Shri Justice Sanjay Agrawal

Order On Board

11.07.2018

1. This appeal has been preferred by defendant No.1 Pujari Das 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 17.06.2016 passed by the Additional District Judge, Katghora (C.G.) in Civil Appeal No. 4-A/2014, by which, the lower appellate Court, while affirming the judgment and decree dated 28.02.2014 passed by the Civil Judge Class-1, Katghora, in Civil Suit No. 63-A/2009, has dismissed the appeal.

2. Brief facts leading to filing of this appeal are that the plaintiffs, being the daughters of one Kanhayi Das, instituted a suit seeking declaration of title, injunction and possession by submitting, inter alia, that their father Kanhayi Das was the erstwhile owner of the property in question. According to the plaintiffs, the suit property was inherited by them after the death of Kanhayi Das. It is alleged in the plaint that defendant No.1 (appellant herein) has obtained revenue papers and got his name mutated on the basis of will dated 27.04.2001 executed by their brother Ganpat Das in favour of defendant Pujari Das. It is pleaded that said Ganpat Das was not mentally fit at the time of execution of the will, and therefore, the will was not duly executed. However, based upon the said document (will), the legatee Pujari Das, defendant No.1 sold the suit property by executing a registered deed of sale dated 05.05.2008 and

06.02.2009 to defendants No. 3 & 4 and based upon the alleged deed of sales, the purchasers have obtained the revenue papers and started interfering in their peaceful possession giving rise to institute the suit in the instant nature.

3. The defendants have contested the claim and stated that after the death of Kanhayi Das, the name of Ganpat Das alone was recorded in revenue papers with the consent of his sisters. It is contested further on the ground that said Ganpat Das has executed a will dated 27.04.2001 in favour of defendant No.1 Pujari Das, who in turn, sold the said property by executing a registered deed of sale in favour of defendants No. 3 & 4 and based upon the alleged sales, they have acquired their valid right, title and interest over the suit property.

4. The trial Court, after considering the evidence led by the parties, has come to the conclusion while entertaining issue No.1 that the alleged unregistered deed of will dated 27.04.2001 (Ex.D.4) was not duly executed as the executor of the said document, namely, Ganpat Das was not mentally fit. As a consequent of it, it held further that the registered deed of sale, which was executed by the said legatee, i.e., defendant No.1 Pujari Das in favour of defendant No.3 Ravindra Pal Singh and defendant No.4 Manindra Pal Singh would also not confer any right, title or interest over the suit property. In consequence, the trial Court has decreed the suit holding that the plaintiffs, being the daughters of said Kanhayi, are entitled to claim 1/5th share each over the suit property.

5. The aforesaid finding of the trial Court has been affirmed further by the lower appellate Court in an appeal preferred by the defendants.

6. Being aggrieved, defendant No.1 Pujari Das alone has preferred this appeal. Shri B.M.Rao, learned counsel for the appellant submits that the judgment and decree as passed by the Courts below holding that the due execution, attestation and validity of the alleged will was not duly executed, is

perverse as the same has been recorded without due and proper appreciation of evidence of its attesting witnesses, and therefore, the judgment and decree, as passed by the Courts below are liable to be set aside.

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

8. The plaintiffs are claiming their right, title and interest over the suit property by way of inheritance as the property in question was admittedly held by their predecessor-in-interest, namely, Kanhayi and defendant No.1 Pujari Das is claiming his interest by virtue of the deed of will dated 27.04.2001 (Ex.D.4), purported to have been executed by plaintiffs' brother, namely Ganpat Das. In such circumstances, defendant No.1 being legatee was required to establish the due execution, attestation and validity of the said will in accordance with the provisions prescribed under Section 63 of the Indian Succession Act, 1925 and as required under Section 68 of the Indian Evidence Act. In order to prove the same, defendant No.1 Pujari Das has produced two of its attesting witnesses, namely Vijay Singh and Milan Singh, who were examined respectively as D.W.2 & D.W.4. Upon perusal of their evidence, the trial Court has come to the conclusion that Ganpat Das, the executor of the will, was not mentally fit when the alleged deed of will was executed by him in favour of defendant No.1 Pujari Das. The finding so recorded by the trial Court holding that it was not duly executed was affirmed further by the lower appellate Court in an appeal upon due and proper examination of evidence of attesting witnesses. The trial Court as well as the lower appellate Court, after a minute examination of the evidence of attesting witnesses of the alleged will, have rightly come to the conclusion that the executor Ganpat Das was not mentally fit, and therefore, the will so executed by him was not upheld by the Courts below. The findings so recorded by the Courts below are purely a finding of fact and do not require to be interfered at this stage.

9. 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