

HIGH COURT OF CHHATTISGARH, BILASPUR**SA. No. 293 of 2004**

1. Kheero Sao S/o Late Sundarlal sao, Aged about 45 years, Occupation- Cultivation, Caste-Teli, R/o Village- Barliya, Tehsil and District- Raigarh (C.G.)
2. Hari Ram Sao S/o Late Sundarlal Sao Aged about 40 years, Occupation- Cultivation, Caste- Teli, R/o Village- Barliya, Tehsil and District- Raigarh (C.G.)

---- Appellants**Versus**

1. Daulat Ram S/o. Late Anant Ram, Aged 65 years, Occupation- Cultivation, R/o Village- Bagbuda, Tehsil- Gharghoda, Distt. Raigarh (C.G.).
2. A) Smt. Devmati Bai, W/o Late Ganesh Ram Saom Aged about 60 years,
B) Smt. Padma Sao, D/o Late Ganesh Ram Sao, (W/o Negi Alias Duduchand Sao) Aged about 55 years, Occupation- House Wife, R/o Village- Kodatarai, P.S. Pussor, Tehsil & Distt. Raigarh (C.G.)
C) Somnath S/o Late Ganesh Ram Sao, Aged About 48 years, Occupation- Cultivation.
D) Trilochan S/o Late Ganesh Ram Sao, Aged about 40 years, Occupation- Cultivation.
E) Puran S/o Late Ganesh Ram Sao, Aged about 37 years, Occupation- Cultivation.
No. 2-a, 2-c, 2-d and 2-e all Resident of Village Barliya, P.S. & Tehsil & District Raigarh (Chhattisgarh).
3. State of Chhattisgarh Through : Collector, Raigarh (C.G.).
4. Ratiya Bai W/o Ludu, Aged about 62 years, Occupation- Laborer.
5. Punimani W/o Murlidhar, Aged about 60 Years Occupation- Laborer
6. Kanhaimati W/o Kalindar, Aged about 42 Years, Occupation- Laborer
7. Gajendar S/o Murlidhar, Aged About 37 years, Occupation- Laborer
8. Machhindar S/o Murlidhar Aged about 36 years Occupation-Laborer
9. Sudama S/o Murlidhar, Aged about 32 years, Occupation- Laborer
10. Sachhidanand S/o Murlidhar, Aged about 30 Years, Occupation- Laborer
11. Sanchi Bai D/o Kalindar, Aged about 22 years, Occupation- Laborer
12. Urvashi D/o Kalindar, Aged about 20 years, Occupation- Laborer,
All Resident of Village Barliya, P.S. & Tehsil & District Raigarh (Chhattisgarh).

---Respondents

For Appellants	:	Mr. Hanuman Prasad. Agrawal, Advocate.
For State	:	Mr. A.N. Bhakta, Dy, AG.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****17.01.2019**

1. The plaintiffs/appellants herein filed a suit for declaration of title and confirmation of possession stating inter-alia that property is owned by Mohan Sao, who died issue-less and as such Mohan Sao had executed an oral Will in favour of the plaintiffs and they are entitled for declaration of title and confirmation of possession.
2. The learned trial Court dismissed the suit stating that the oral Will has not been proved in accordance with law. The First Appellate Court dismissed the appeal holding that the Will is required to be in writing and execution and attestation of the Will has to be proved in accordance with Section 63(c) of the Indian Succession Act, 1925 (hereinafter called, "the Act of 1925"). Questioning that Judgment and decree this second appeal has been preferred.
3. Learned counsel for the appellants would vehemently submit that both the Courts below have concurrently erred in holding that the oral Will is not permissible under the provisions of the Act of 1925 and, therefore, it is perverse and gives rise to substantial question of law.
4. I have learned counsel for the appellants on the question of admission.
5. The said property was originally held by Mohan Sao, who died in the year 1974-75 after coming into force of Hindu Succession Act, 1956. Section 30 of the Hindu Succession Act 1956, (hereinafter called "the Act of 1956") provides as under :-

"Section 30. Testamentary Succession :- Any Hindu may dispose of by Will or other testamentary disposition any property, which is capable of being so disposed of by him (or by her), in accordance with the provisions of the Indian Succession Act, 1925 (39 of 1925), or any other law for the time being in force and applicable to Hindus".

6. The Will has been defined under the Act of 1925 :-

Section 2(h) reads as under :-

“Will means the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death”

7. Section 63(c) of the Act of 1925 reads as under :-

“63. Execution of unprivileged Wills :- Every testator, not being a soldier employed in an expedition or engaged in actual warfare, [or an airman so employed or engaged,] or a mariner at sea, shall execute his Will according to the following rules :-

Section 63(c) read as under :-

“The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his signature or mark, or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall be not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary”

8. A Will is required to be attested by two or more witnesses each of whom has seen the testator signing or affixing his mark on the Will or has seen some other person signing the Will in the presence and by direction of the testator or has received from the Testator a personal acknowledgement of the signature or mark of his signature or the signature of such other person and that each of the witnesses has signed the Will in the presence of the Testator; **Gopal Swaroop v. Krishna Murari Mangal** reported in **(2010) 12 SCALE 470**.
9. Thus, the Will is required to be in writing in view of the mandatory provisions contained under Section 30 of the Hindu Succession Act 1956 read with Section 63(c) of the Act of 1925.

10. In view of the above-stated legal provision, there cannot be oral Will under Section 30 of the Act of 1956 read with Section 63(c) of the Act of 1925 and as such the First Appellate Court has rightly concluded that the oral Will is not permissible and rightly affirmed the judgment and decree of the trial Court, in which I do not find any perversity or illegality giving rise to substantial question of law for determination. Both the Courts below have rightly held that plaintiffs are not in possession of suit land and rightly dismissed the suit. Therefore, this appeal is liable to be and is hereby dismissed in *limine*. No order as to cost(s).

Sd /-

(Sanjay K. Agrawal)
Judge