

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No.5 of 2002**

Shobhnath S/o Awadh Ram, Aged About 41 Years, R/o Village Masira,
Tehsil Surajpur, Distt. Surguja, Chhattisgarh --- **Appellant/Plaintiff**

Versus

1. Manmati, W/o Sohar Say, Aged About 40 Years, R/o Village Maheshpur, P.S. Jainagar, Tehsil Surajpur, District Surguja, Chhattisgarh
2. Soniya Dead Through Lrs.

2(i) Jai Sai (dead)
3. Nanki, D/o Late Chandan, Aged About 51 Years W/o Awadh Ram, R/o Village Tamor, P.S. Jainagar, Tehsil Surajpur, District Surajpur, Chhattisgarh
4. The State Of Chhattisgarh, Through Collector Surguja, Ambikapur, District Surguja, Chhattisgarh**Respondents**

For Petitioner	:	Mr. A.K. Prasad, Advocate
For Respondent No.4/State	:	Ms. S. Harshita, Panel Lawyer
For Respondent No.3	:	Mr. Bishnu Muni, Advocate appears on behalf of Mr. D.N. Prajapati, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board**04.09.2019**

Heard.

1. This appeal is directed against impugned judgment and decree dated 03.12.2001 passed by the Additional District Judge, Surajpur, District Surguja (CG) in Civil Appeal No.58-A/2000 whereby and whereunder the judgment and decree passed by the Trial Court has been affirmed and plaintiff's suit dismissed.

2. This appeal was admitted on following substantial question of law :

“Whether the finding arrived at in para 9 of the impugned judgment that testator (chandan) died sometime in the year 1970-71 and as such the will dated 12.04.1978 executed by him is forged and fabricated is a result of misreading of the evidence of PW-2 and PW-3 and cannot be sustained in law ?”

3. The plaintiff-Shobhnath filed a suit for declaration and permanent injunction on the pleadings, inter alia, that the plaintiff is son of Nanki, Nanki is daughter of Chandan and defendant Sukhmen and Sonia are also daughters of late Chandan. According to the plaintiff, Chandan had no male descendant, therefore, Chandan had kept the plaintiff, son of younger daughter with him for taking care. It was further pleaded that later on, Chandan executed a will deed in favour of plaintiff Shobhnath on 12.04.1978, out of his affection towards the grandson. It was further pleaded that after death of Chandan, the plaintiff was engaged in cultivating the suit property left behind by Chandan but later on, he came to know that defendants No.1 & 2 in a clandestine manner got their names along with the name of respondent-Nanki mutated in the land records, pertaining to the property in dispute, which gave the plaintiff cause of action for filing suit.

4. The defendant No.3/Nanki, mother of plaintiff, did not file any written statement and therefore, proceeded ex parte. Defendants Sukhmen and Sonia, however, resisted plaintiff's case by pleading in the written statement that after death of Chandan, the property of Chandan devolved upon surviving daughters Sukhmen, Sonia and Nanki defendants No.1,2 & 3 respectively. Their names were duly mutated in the revenue records. It was within the knowledge of the plaintiff and the plaintiff has never raised any objection. No Will was executed by Chandan in favour of the plaintiff and the document of so called Will, relied upon by the plaintiff, is fictitious and forged document.

5. Learned trial Court recorded a finding that the Will was suspicious and dismissed the suit of the plaintiff. Learned Lower Appellate Court also dismissed the appeal concurring with the finding of learned trial Court, holding that the execution of Will in favour of the plaintiff is doubtful.

6. Learned counsel appearing for the appellant would argue that even though, the plaintiff succeeded in proving execution of Will strictly in accordance with the legal requirement of Section 63(C) of the Indian Succession Act, 1925 read with Section 68 of the Indian Evidence Act, 1872, learned Trial Court doubted the Will on irrelevant considerations based on its own observation with regard to the condition of the paper, on which, the Will was ascribed and the age of the ink used for affixation of thumb impression. Learned Lower Appellate Court completely misread the evidence of Kripal Ram (PW2) & Gokul Ram (PW3) that according to their evidence, Chandan died sometimes in the year 1971 and therefore, it was wholly improbable that there would be a will deed in favour of the plaintiff, executed in the year 1978 when Chandan died many years after that. He would argue that the evidence of two witnesses Kripal Ram (PW2) & Gokul Ram (PW3), read as it is, only leads to inference that Chandan died sometime in the year 1980 and not in the year 1971.

7. Learned counsel appearing for respondent No.3/Nanki supports the case of the plaintiff. Learned State counsel would submit that the dispute is between the private parties and States is not involved.

8. The plaintiff filed suit for declaration of title in respect of the suit property on the basis of Will deed dated 12.04.1978 (Ex.P/1). The plaintiff examined Biharilal (PW4) as the ascriber as well as attesting witness of the Will. Biharilal (PW4) has deposed in his evidence that will deed was got prepared by late Chandan. He deposes that Chandan requested him to write the Will deed that he is keeping his grandson, Shobhnath, son of his daughter Nanki with him and that after his death, Shobhnath will get the property recorded in his name. As long as he is alive, he would be the owner and holder of the possession of the property. This witness further deposes that Chandan also expressed that he has two other daughters and if they raise any objection, it would not be acceptable. This witness has emphatically stated that after Will having been ascribed by him, first Chandan affixed his thumb impression and thereafter, Chhatarsai and then he, himself, had signed the document. In his cross-examination, he has deposed that the will deed was prepared in the house of Chandan and an

ink pad was used for thumb impression. This witness has denied suggestion that the Will deed was fictitiously prepared after Sukhmen had applied for partition before the Revenue Court. He has also denied suggestion that after death of Chandan, some other person, impersonating Chandan, has affixed his thumb impression. He admits that Harpal, Rampal and Jhunnuram, all are alive. Suggestion has been denied that the Will deed was prepared after death of Chandan and was fabricated.

9. There is no reason to disbelieve the evidence of Biharilal. It is not shown that Biharilal was having any interest to support the plaintiff. Moreover, he is the person, who claims that he had written the will document on the instructions of Chandan. He has also deposed that in his presence, Chandan, after having got the document prepared under his instructions, himself put his thumb impression on the document.

10. True, it is that other attesting witnesses of the Will have not been examined. But the legal requirement of Section 63(C) of the Indian Succession Act read with Section 68 of the Indian Evidence Act is that in order to prove Will, atleast one of the attesting witnesses are required to be examined. If the evidence of one of the attesting witness is reliable and does not suffer from any infirmity, the Will can be said to be proved in accordance with law. In a case, where a doubt is cast on the execution of Will on account of any other relevant consideration, the Court may hold the Will suspicious. However, if in a case, where the evidence of the attesting witness is reliable, to dislodge execution of Will, strong and weighty evidence or circumstances creating doubt or suspicion of will are required to be proved by the party, who has denied the execution of Will. In the present case, the defendants except stating that no Will was executed by Chandan in favour of plaintiff Shobhnath, has not proved any other suspicious circumstances.

11. Learned Trial Court, however, held the Will suspicious on the count that even though, Will was executed in favour of plaintiff and Chandan died in the year 1981, the plaintiff did not get his name mutated and the name of three daughters Soniya, Sukhmen and Nanki alone was mutated. This

preparation of revenue records cannot be made a basis to cast doubt on the execution of Will. It is not a case where it is proved that the plaintiff had full notice and knowledge of the mutation proceedings or he, himself, was party to those proceedings, or that in the mutation proceeding, he had stated in evidence before the Revenue Authority admitting that after death of Chandan, his daughters alone were entitled to succeed the property and then later on, he came out with a Will document. In the present case, there is no evidence on record led by the defendants to prove that the mutation proceedings were within the notice and knowledge of the plaintiff. According to the plaintiff, as soon as he came to know about the mutation done in favour of Sukhmen, Soniya and Nanki, he filed suit.

12. The other two suspicious circumstances, are more figment of imagination. Learned Trial Court has observed that the front page of the document looks yellow, whereas, the back part of the same is white. The other one is that the ink used for affixing thumb impression appears to be relatively of recent thumb impression. If the Court had any such doubt, it was proper to send the document for forensic examination rather than dislodging entire case of the plaintiff and disbelieving the testimony of otherwise reliable evidence of Biharilal (PW4). Biharilal (PW4) has very emphatically stated that he is not only the ascriber of the Will but he attested the Will also. Unless the evidence of this witness is doubted for some reason, the proof of execution of Will, by evidence of this witness stands on much higher pedestal as compelled to certain visual impressions like age of the ink or the paper, on which, the Will was ascribed.

13. Curiously enough, the only reason assigned by learned Lower Appellate Court to create suspicion over the Will is that as per the evidence of Kripal Ram (PW2) & Gokul Ram (PW3), Chandan died in the year 1971. This is based on complete misreading of the evidence. Kripal Ram (PW2) in his cross-examination has stated that Chandan died when he was 80 years old. He has denied suggestion that Chandan died 25 years before. This witness was examined on 10.04.2000. Therefore, according to the evidence of this witness, Chandan died sometimes in the year 1982-83 and not the year 1970-71.

14. Similarly, the evidence of Gokulram (PW3) is also to the effect that Chandan died 18-19 years before. He was examined on 10.04.2010 that means according to this, Chandan died sometimes in the year 1981-82. Even according to the evidence of this witness, there is nothing to show that he admits that Chandan died in the year 1970-71. This appears to be the sole operative reason for the learned Lower Appellate Court to entertain doubt and suspicion on the Will. The finding is completely perverse and based on complete misreading of the evidence.

15. In the result, the question of law has to be answered in affirmative that the finding arrived at by the learned Lower Court that the Will executed on 12.04.1978 is forged and fabricated is a result of complete misreading of the evidence of Kripal Ram (PW2) & Gokul Ram (PW3) and therefore, cannot be sustained in law.

16. In the result, the appeal is allowed. Impugned judgment and decree is set aside. Plaintiff's suit is decreed. It is held that by virtue of Will deed dated 12.04.1978 vide Ex.P/2, the plaintiff succeeded to the property left behind by deceased Chandan and therefore, he is also entitled to decree of permanent injunction that the defendant shall not interfere with the peaceful enjoyment and possession of the property in dispute as described in Schedule-A. The parties shall bear their respective costs.

17. Let appellate decree be accordingly drawn.

Sd/-
(Manindra Mohan Shrivastava)
Judge