

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.263 of 2007**

Lalsai S/o Bodhwa Caste Gond, aged about 48 Yrs. R/o Village Darhora,
Post Chandoura, Tahsil Pratappur Distt. Sarguja (CG)

---- Appellant**Versus**

1. Sitaram S/o Battu Caste Gond, aged 51 years, Occupation-Agricultural
2. Paduram S/o Devlal Caste Gond, aged 46 years, Occupation-Agricultural

Both R/o Village Darhora, Post Chandoura, Tahsil Pratappur Distt. Sarguja
(CG)

3. State of Chhattisgarh through Collector Sarguja (CG)

---- Respondents

For Appellant/Plaintiff	:	Mr.D.N.Prajapati, Advocate
For Respondents	:	None as appeal yet not admitted

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****20/3/2019**

1. Heard on the question of admission and formulation of substantial question of law of second appeal preferred by the appellant/plaintiff under Section 100 of the Code of Civil Procedure, 1908.
2. The plaintiff filed a suit for declaration of title and permanent injunction on the basis of Will allegedly executed by Budhwa on 5.3.83 (Ex.P/18) in his favour, which was dismissed by the trial Court. On appeal being preferred by the plaintiff, the first appellate Court upheld the judgment and decree of the trial Court, against which this second appeal has been preferred.
3. Mr.D.N.Prajapati, learned counsel for the appellant/plaintiff, would

submit that the Courts below are absolutely unjustified in recording a finding that the plaintiff has failed to prove the execution and attestation of Will by Budhwa in his favour on 5.3.83 (Ex.P/18) and it gives substantial question of law for determination.

4. Admittedly, the suit property belonged to one Budhwa, who died issueless in the year 1986. The plaintiff claimed on the basis of Will dated 5.3.83. Harilal, one of the attesting witness was examined as PW-3. He has only stated that Budhwa had executed a Will in favour of plaintiff-Lalsai and he has also signed the Will as witness, but omitted to state whether testator Budhwa signed the Will in his presence and in presence of another witness and he & other witness signed the Will in presence of testator. Both the Courts below have concurrently held that the plaintiff has failed to prove the execution and attestation of Will in accordance with Section 63(c) of the Indian Succession Act, 1925 read with Section 68 of the Indian Evidence Act, 1872. Concurrent finding recorded by the Courts below is the finding of fact based on evidence available on record, which is neither perverse nor contrary to record. I do not find any illegality or perversity in the said finding. Even I do not find any substantial question of law for determination of this second appeal.

5. Their Lordships of the Supreme Court have held that it is not permissible for the High Court to interfere with the concurrent finding of fact recorded by two courts below unless findings are perverse.

{See : Aftaruddin (Dead) represented through legal representatives v. Ramkrishna Datta alias Babul Datta and

others¹ and Rajkumari and another v. Ravinder Kumar (deceased) through legal representatives and others².

6. Accordingly, the second appeal being devoid of merit is liable to be and is hereby dismissed in *limine*, without notice to other side. No cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-

1 (2018) 11 SCC 77
2 (2018) 12 SCC 681