

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.105 of 2004

Punuram (Dead) Through LRs

(Defendant No.1)

1. Thakur Ram, aged about 19 years, S/o Shri Dhruv Prasad Sahu.
2. Dileshwar, aged about 14 years, S/o Shri Dhruv Prasad, Minor, through natural guardian father Dhruv Prasad Sahu

Both R/o Village and Post Singhola, Tah. and Distt. Rajnandgaon (C.G.)

3. Pramod Kumar, S/o Shri Ram Chand Sahu, aged about 8 years, Minor
4. Neel Kamal, aged about 3 years, S/o Shri Ram Chand Sahu, Minor

Both minors through natural guardian father Shri Ram Chand Sahu,

Both are R/o Village Bankal, Tah. Dongargaon, Distt. Rajnandgaon (C.G.)

---- Appellants

Versus

1. Uderam, aged about 61 (42) years, S/o Shri Suklu Sahu, Occupation Agriculturist, R/o Village Usariboad, P.H.No.33, R.I.C. and Distt. Rajnandgaon (C.G.)

(Plaintiff)

2. Madan, aged about 64 (45) years, S/o Shri Kaaru Nagdeve, R/o Station Para, Ward No.9, Rajnandgaon (C.G.)

(Defendant No.2)

---- Respondents

For Appellants: Mr. P.K.C. Tiwary, Senior Advocate with Mr. Ashutosh Trivedi, Advocate.

For Respondent No.1: -
None present, though served.

For Respondent No.2: -
Mrs. Meena Shastri, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board20/08/2019

1. This second appeal was admitted for hearing by formulating the

following substantial question of law: -

“Whether the findings regarding execution of will-deed dated 25.07.1983 (Ex. P/2) is perverse in view of statement para 15 of Nakul (PW/3)?”

(For the sake of convenience, parties would be referred hereinafter as per their status shown in the suit before the trial Court.)

2. Original plaintiff Uderam filed a suit for declaration of half share in the property shown in Schedule 'A' of the plaint. The suit property was originally held by Bisahin Bai. Plaintiff Uderam and defendant No.1 both are brothers and they are sons of Bisahin Bai. The suit land was purchased by Bisahin Bai on 23-1-1950 from one Umthi Bai from her own earning. It is the case of the plaintiff that his mother has already given half of the property shown in Schedule A to defendant No.1 and half of the property she has bequeathed by way of Will dated 25-7-1983 in his favour and defendant No.1 has sold some part of his property by sale deed dated 6-5-1989 for a consideration of ₹ 17,000/-, therefore, the plaintiff is entitled for decree of half share in the suit property shown in Schedule 'A' and the sale deed dated 6-5-1989 be declared null and void. Defendant No.1 opposed the suit by filing his written statement denying the plaint allegations and questioned the due execution of Will Ex.P-2 in favour of the plaintiff by his mother Bisahin Bai.
3. The trial Court after appreciating oral and documentary evidence accepted the theory of Will projected by the plaintiff and granted decree of half share in the suit property mentioned in Schedule 'A' of the plaint and dismissed the suit with regard to Schedule 'B' and further declared the sale deed dated 6-5-1989 null and void.
4. Questioning the judgment & decree of the trial Court, defendants No.1 & 2 both have preferred first appeals before the first appellate Court,

though by separate orders both the first appeals have been partly allowed by the first appellate Court and the first appellate Court partly interfered with the judgment & decree of the trial Court and set aside the part of decree declaring the alienation made by defendant No.1 in favour of defendant No.2, however, further held that the plaintiff and defendant No.1 both are entitled for the property shown in Schedule 'A' and the property sold by defendant No.1 will be taken in the share of defendant No.1.

5. Now, only defendant No.1 has preferred this second appeal in which substantial question of law has been framed with regard to the Will which has been set-out in the opening paragraph of the judgment.
6. Mr. P.K.C. Tiwary, learned Senior Counsel appearing on behalf of the appellants herein / LRs of defendant No.1, would vehemently submit that the finding regarding attestation of Will is clearly perverse in light of the statement of Nakul Ram (PW-3) who has scribed it. It goes to clearly establish that no such Will was executed and it is a false and fabrication document. Therefore, both the Courts below are absolutely unjustified in granting decree in part in favour of the plaintiff, as such, judgments & decrees of both the Courts below deserve to be set aside.
7. Mrs. Meena Shastri, learned counsel appearing for defendant No.2 / respondent No.2 herein, would support the judgment & decree passed by the first appellate Court and would submit that the first appellate Court is absolutely justified in setting aside the alienation made by defendant No.1, as such, the second appeal deserves to be dismissed.
8. I have heard learned counsel for the parties and considered their rival

submissions made herein-above and went through the records of both the Courts below with utmost circumspection.

9. It is not in dispute that the plaintiff and defendant No.1 both are brothers. Will is said to be executed by their mother Bisahin Bai, who was holder of the property, in favour of the plaintiff which was exhibited as Ex.P-2 and proved by Nakul Ram (PW-3). In order to prove the Will, Nakul Ram (PW-3) – scribe as well as attesting witness Janak Lal Sahu (PW-4) have been examined.
10. Janak Lal Sahu (PW-4) has clearly stated that the Will was written by the scribe as wished and directed by Bisahin Bai and it was signed by him (attesting witness i.e. Janak Lal Sahu – PW-4). He has been subjected to detailed cross-examination by the counsel for defendants No.1 & 2, but his statement remain un-controverted and he has clearly stated that the testator signed the Will in his presence and thereafter, he has signed and other two witness signed the will. That was accepted by the first appellate Court in the first appeal preferred by defendant No.1, though defendant No.1 has taken ground in appeal that the Will was not proved in accordance with law, but at the time of hearing of appeal it appears, it was not seriously pressed. The scribe has been examined as PW-3.
11. The only question of law that has been framed is with regard to the Will Ex.P-2 executed by Bisahin Bai in favour of the plaintiff which is a suspicious document in light of the statement of scribe Nakul Ram (PW-3) because, at the time of executing the Will, said Bisahin Bai was aged about 75 years and she was near to death which the scribe has also supported. It is true that Bisahin Bai was aged about 75 years at the time of execution of Will and was a little bit unwell, but

that cannot be a ground to disbelieve the Will if it is duly proved in accordance with Section 63 of the Indian Succession Act read with Section 68 of the Evidence Act. Testator Bisahin Bai was not required to disclose any reason to scribe Nakul Ram (PW-3) for bequeathing her property in favour of the plaintiff. As per her wish, she executed Will in favour of the person none other else than her son who is the plaintiff herein. No evidence of clinching nature has been brought on record to hold that she was incapable of executing Will on account of ill-health and it was not executed in accordance with law.

12. For the aforesaid reasons, it cannot be held that the Will was a suspicious and fabricated document. The first appellate Court has also relied upon Ex.P-3 which is a document executed by defendant No.1 himself clearly stating that he and his brother, the plaintiff herein, both have share in the suit property after death of their mother Bisahin Bai.

13. In view of the aforesaid submission, I do not find any perversity or illegality in the finding regarding Will as such, the first appellate Court is absolutely justified in partly granting decree in favour of the plaintiff by partly interfering with the judgment & decree of the trial Court in which I do not find any perversity or illegality. The judgment & decree of the first appellate Court is hereby affirmed. The substantial question of law is answered accordingly.

14. Consequently, the appeal is dismissed leaving the parties to bear their own cost(s).

15. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge