

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on : 05.12.2019****Judgment delivered on: 20.12.2019****Second Appeal No.474 of 2005**

Rajendra Prasad, Aged about 32 years, S/o Ishlal Satnami, R/o Village : Udka, Nawagaon, Tehsil: Mungeli, District: Bilaspur, Chhattisgarh

----- Appellant/Defendant No.1**Versus**

1. Jhadwain Bai, Aged about 74 years, Widow of Gambhir Das Satnami, R/o Village Udka, Nawagaon, Tehsil Mungeli, District: Bilaspur, Chhattisgarh
2. Chandrika Bai, Aged about 46 years, W/o Ram Ratan, R/o Village: Baiga Kapu Tehsil: Lormi, District: Bilaspur, Chhattisgarh
3. Shanti Bai, Aged about 44 years, W/o Neim Singh Satnami, R/o Village: Khitakniha, Tehsil: Mungeli, District: Bilaspur, Chhattisgarh
4. Heman Bai, Aged about 42 years, W/o Kavilal Satnami, R/o Village : Kapu (Temri), Tehsil: Mungeli, District : Bilaspur, Chhattisgarh
5. Meena Bai, Aged about 40 years, W/o Phooldas Satnami, R/o Village: Manpur (Bhaisa Muda), Tehsil: Mungeli, District: Bilaspur, Chhattisgarh

----- Plaintiffs

6. State of Chhattisgarh, through the Collector, Bilaspur, District Bilaspur, Chhattisgarh

----- Respondents

For Appellant/Def.No.1 : Mr.Rajeev Shrivastava and Mr.
Malay Shrivastava, Advocates

For Res.No.1 to 5/Plaintiffs:

Mr.Pallav Mishra, Advocate

For Respondent No.6: Mr.Ravi Bhagat, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal**C.A.V. Judgment**

1. The substantial questions of law involved, formulated and to be answered in this second appeal preferred by defendant No.1 are as under:-

"1. Whether, both the Courts below erred in holding that the Will, Ex.D-8, has not been correctly proved ?

2. Whether, both the Courts below are justified in holding that respondents No.1 to 5 are legal heirs of late Gambhir Das ?"

[For the sake of convenience, parties would be referred hereinafter as per their status shown and nomenclature in the suit before the trial Court].

2. The suit property was originally held by late Shri Gambhir Das. The plaintiffs filed a suit stating inter-alia that plaintiff No.1-Jhadwain is widow of late Gambhir Das and plaintiffs NO.2 to 5 are daughters of plaintiff No.1 out of wedlock with Gambhir Das and the Will dated 16.6.1988 (Ex.P-8) allegedly executed by Gambhir Das in favour of defendant No.1 is surrounded with suspicious circumstance. Gambhir Das never executed a Will in favour of defendant No.1 and it is invalid in law, it was not attested in accordance with law and therefore, it is void document, as such, they are entitled for declaration of title and possession.

3. Defendant No.1 filed his written statement and denied the averments made in the plaint stating inter-alia that plaintiff No.1-Jhadwain Bai is not legally wedded wife of Gambhir Das as she got married with someone else from where she came without divorce to her earlier husband, she was having illicit relationship with Gambhir Das and out of said illicit relationship, plaintiffs No.2 to 5 were born and execution & attestation of Will dated 16.6.1988 (Ex.P-8) in his favour is strictly in accordance with law. The plaintiffs are not legal heirs of Gambhir Das, therefore, question of succeeding the property of Gambhir Das by them does not arise for consideration and the suit deserves to be dismissed.

4. The trial Court upon evaluation of oral and documentary evidence available on record, by its judgment and decree dated 5.9.2003, held that the suit property was originally held by Gambhir Das and plaintiff No.1-Jhadwain Bai is legally wedded wife of Gambhir Das and plaintiffs NO.2 to 5 are legal heirs of Gambhir Das and further held that execution and attestation of the Will (Ex.D-8) in favour of defendant No.1-Rajendra Prasad is not established in accordance with law and accordingly, granted decree

for declaration of title and delivery of possession, which was assailed by defendant No.1 by filing first appeal under Section 96 of the CPC before the first appellate Court, but he remained unsuccessful, against which, this second appeal under Section 100 of the CPC has been filed by the appellant/defendant No.1, in which substantial questions of law have been formulated by this Court, which have been set-out in the opening paragraph of this Judgment.

5. Mr.Rajeev Shrivastava, learned counsel for the appellant/defendant No.1, would submit that the plaintiffs have failed to establish that they are legal heirs of Gambhir Das as there is no evidence on record to hold that they are legal heirs of Gambhir Das and plaintiffs No.2 to 5 were born out of wedlock of plaintiff NO.1 with Gambhir Das. Therefore, finding recorded by two Courts below that plaintiff No.1-Jhadwain Bai is legally wedded wife of Gambhir Das and plaintiffs NO.2 to 5 are legal heirs of Gambhir Das is perverse and contrary to record. He would further submit that execution and attestation of Will (Ex.D-8) has been proved in accordance with law and merely because the witnesses are related to defendant No.1 or the plaintiffs have been excluded from succession of the suit property,

the Will cannot be held to be suspicious in light of decision rendered by the Supreme Court in the matter of Uma Devi Nambiar and others v. T.C. Sidhan (Dead)¹. He has invited my attention to para-16 of the said judgment and as such, both the Courts below concurrently erred in law in granting the decree in favour of the plaintiffs, which deserves to be set aside.

6. Mr. Pallav Mishra, learned counsel for respondents No.1 to 5/plaintiff while supporting the impugned judgment and decree would submit that two Courts below concurrently recorded a finding that the plaintiffs are legal heirs of deceased Gambhir Das, which is finding of fact based on evidence available on record. It is neither perverse nor contrary to record. He would further submit that Gambhir Das was not having sound and disposing state of mind at the time of execution of Will, which defendant No.1 did not challenge and therefore, it is fully established that Gambhir Das was not having sound and disposing state of mind at the time of execution of Will, he has never executed the Will in favour of defendant No.1 and no attesting witnesses have seen the Will allegedly executed by Gambhir Das, which is also apparent from the fact that Ramsevak (DW-4) did not

¹ (2004) 2 SCC 321

even prove the signature of other attesting witnesses except saying that the Will was executed by Gambhir Das in presence of two witnesses. He would also submit that testator-Gambhir Das had four daughters i.e. plaintiffs No.2 to 5, but defendant No.1 has denied that the testator had daughters, whereas the Will itself provides that testator had daughter. He would also submit that all the witnesses i.e. attester and scribe are related to defendant No.1, as such, the plaintiffs have been deprived of their share in the suit property. He relied upon the judgments of the Supreme Court in the matter of Surendra Pal v. Saraswati Arora² and Rabindra Nath Mukherjee v. Panchanan Banerjee³ which has been followed in Jagdish Chand Sharma v. Narain Singh Saini (Dead) through legal representatives and others⁴, in which it has been held by Their Lordships of the Supreme Court that Will cannot be said to be valid particularly when the said unregistered sale deed got registered after death of testator in suspicious circumstances. Therefore, both the Courts below have rightly held that the Will (Ex.D-8) is suspicious and it is not executed in accordance with law, as such, the appeal deserves

2 (1974) 2 SCC 600

3 (1995) 4 SCC 459

4 (2015) 8 SCC 615

to be dismissed.

7. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

Answer to substantial question of law No.2:-

8. Defendant No.1 has disputed the fact that plaintiff No.1-Jhadwain Bai is wife of Gambhir Das and plaintiffs No.2 to 5 are daughters of Jhadwain Bai out of her wedlock with Gambhir Das by holding that they are not successor-in-interest of Gambhir Das and as such, they would not succeed the property of Gambhir Das. The trial Court as well as the first appellate Court after appreciating oral and documentary evidence available on record has categorically concluded that plaintiff NO.1 is wife of Gambhir Das and plaintiffs No.2 to 5 are daughters of Jhadwain Bai out of his wedlock with Gambhir Das. The said finding recorded by two Courts below is finding of fact based on evidence available on record and the said finding could not be demonstrated to be perverse or contrary to record by learned counsel for the appellant. I hereby re-affirm the said finding recorded by two Courts below holding that the plaintiffs are legal heirs of

Gambhir Das.

Answer to substantial question of law No.1:-

9. Defendant No.1 has set up a plea that Gambhir Das has executed the Will dated 16.6.1988 (Ex.P-8) in his favour and therefore, he is title-holder of the suit land, which has been questioned by the plaintiffs that execution and attestation of the Will is not proved and it is surrounded with suspicious circumstance, therefore, the Will is not proved in accordance with law, which both the Courts below have not accepted holding that defendant No.1 has failed to establish the Will validly executed by Gambhir Das in his favour by proving execution and attestation of the Will in accordance with law.
10. The short question for consideration would be, whether execution and attestation of the Will dated 16.6.1988 (Ex.P-8) has been proved and established by defendant No.1 in view of the provisions contained in Section 63 of the Succession Act, 1925 read with Section 68 of the Evidence Act, 1872 ?
11. It is trite law that a will as an instrument of testamentary disposition of property being a legally acknowledged mode of bequeathing a testator's acquisitions during his lifetime, to be acted upon only on his/her demise, it is no longer *res integra*,

that it carries with it an overwhelming element of sanctity. [See Jagdish Chand Sharma v. Narain Singh Saini (Dead) through Legal Representatives and others⁵.]

12. In order to consider the plea raised at the bar, it would be appropriate to notice Section 63 of the Indian Succession Act, 1925 and Section 68 of the Evidence Act, 1872.

13. Section 63 of the Act of 1925 provides 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:-

(a) The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

(c) 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 of the signature of such other person; and each of the witnesses shall sign the Will in the

presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary."

14. As per the provisions of Section 63 of the Succession Act, 1925 for due execution of a will (1) the testator should sign or affix his mark to the will; (2) the signature or the mark of the testator should be so placed that it should appear that it was intended thereby to give effect to the writing as a will; (3) the will should be attested by two or more witnesses; and (4) each of the said witnesses must have seen the testator signing or affixing his mark to the will and each of them should sign the will in the presence of the testator.

15. The above-stated provision of attestation of will under Section 63(c) of the Succession Act, 1925 by two or more witnesses has been held to be mandatory by Their Lordships of the Supreme Court in the matter of Janki Narayan Bhoir v. Narayan Namdeo Kadam⁶.

16. Section 68 of the Evidence Act, 1872 provides as under:-

"68. Proof of execution of document required by law to be attested.—If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called

6(2003) 2 SCC 91

for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

Provided that it shall be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied."

17. By the aforesaid provision, a document required by law to be attested to have its execution proved by at least one of the attesting witnesses if alive and it is subject to process of the court conducting the proceedings involved and is capable of giving evidence. However, proviso to Section 68 of the Evidence Act, 1872 is not available in case of will.

18. In the matter of Girja Datt Singh v. Gangotri Datt Singh⁷, Their Lordships of the Supreme Court have held that in order to prove the due attestation of will, the propounder of will has to prove that 'A' and 'B', the two witnesses saw the testator sign the will and they themselves signed the same in the presence of the testator. Their Lordships while considering Section 68 of the Evidence Act, 1872 further held that from the mere signature of two persons appearing at the foot of the endorsement of

⁷AIR 1955 SC 346

registration of will it cannot be presumed that they had appended their signature to the document as an attesting witness or can be construed to have done so in their capacity as attesting witness. It was pertinently observed as under:-

"In order to prove the due attestation of the will Ex. A-36 Gangotri would have to prove that Uma Dutt Singh and Badri Singh saw the deceased sign the will and they themselves signed the same in the presence of the deceased. The evidence of Uma Dutt Singh and Badri Singh is not such as to carry conviction in the mind of the Court that they saw the deceased sign the will and each of them appended his signature to the will in the presence of the deceased. They have been demonstrated to be witnesses who had no regard for truth and were ready and willing to oblige Gur Charan Lal in transferring the venue of the execution and attestation of the documents Ex. A-23 and Ex. A-36 from Gonda to Tarabganj for reasons best known to themselves."

"One could not presume from the mere signature of Mahadeo Pershad and Nageshur appearing at the foot of the endorsement of registration that they had appended their signatures to the document as attesting witnesses or can be construed to have done so in their capacity as attesting witnesses. Section 68, Indian Evidence Act requires an attesting witness to be called as a witness to prove the due execution and attestation of the will. This provision should have been complied with in order that Mahadeo Pershad and Nageshur be treated as attesting witnesses. This line of argument therefore cannot help Gangotri."

19. In the matter of H. Venkatchala Iyengar v. B.

N. Thimmajamma and others⁸ the Supreme Court speaking through Gajendragadkar, J., elaborately laid down the principles relating to the nature and standard of evidence required to prove a will. It was held as under:-

“(1) Stated generally, a will has to be proved like any other document, the test to be applied being the usual test of the satisfaction of the prudent mind in such matters. As in the case of proof of other documents, so in the case of proof of wills, one cannot insist on proof with mathematical certainty.

(2) Since [Section 63](#) of the Succession Act requires a will to be attested, it cannot be used as evidence until, as required by [Section 63](#) of the Evidence Act, one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the court and capable of giving evidence.

(3) Unlike other documents, the will speaks from the death of the testator and therefore the maker of the will is never available for deposing as to the circumstances in which the will came to be executed. This aspect introduces an element of solemnity in the decision of the question whether the document propounded is proved to be the last will and testament of the testator. Normally, the onus which lies on the propounder can be taken to be discharged on proof of the essential facts which go into the making of the will.

(4) Cases in which the execution of the will is surrounded by suspicious circumstances stand on a different footing. A shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in

the making of the will under which he receives a substantial benefit and such other circumstances raise suspicion about the execution of the will. That suspicion cannot be removed by the mere assertion of the propounder that the will bears the signature of the testator or that the testator was in a sound and disposing state of mind and memory at the time when the will was made, or that those like the wife and children of the testator who would normally receive their due share in his estate were disinherited because the testator might have had his own reasons for excluding them. The presence of suspicious circumstances makes the initial onus heavier and therefore, in cases where the circumstances attendant upon the execution of the will excite the suspicion of the court, the propounder must remove all legitimate suspicions before the document can be accepted as the last will of the testator.

(5) It is in connection with wills, the execution of which is surrounded by suspicious circumstances that the test of satisfaction of the judicial conscience has been evolved. That test emphasises that in determining the question as to whether an instrument produced before the court is the last will of the testator, the court is called upon to decide a solemn question and by reason of suspicious circumstances the court has to be satisfied fully that the will has been validly executed by the testator.

(6) If a caveator alleges fraud, undue influence, coercion, etc. in regard to the execution of the will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the will may raise a doubt as to whether the testator was acting of his own free will. And then it is a part of the initial onus of the propounder to remove all reasonable doubts in the matter."

20. The principle laid down in the above-stated judgment has been followed with approval in Smt. Jaswant Kaur v. Smt Amrit Kaur and others⁹, Surendra Pal (supra), Yumnam Ongbi Tampha Ibema Devi v. Yumnam Joykumar Singh and others¹⁰ and Jagdish Chandra Sharma (supra).

21. In the matter of Ramesh Verma (dead) Through Legal Representatives v. Lajesh Saxena (dead) by Legal Representatives and another¹¹, the Supreme Court has again reiterated the need of proving the attestation of will in accordance with Section 63(c) of the Succession Act, 1925 read with Section 68 of the Evidence Act, 1872.

22. The Supreme Court in Yumnam Ongbi Tampha Ibema Devi (supra) has clearly held that the attestation of will is not an empty formality. Highlighting the importance of attestation of Will it was held it means signing a document for the purpose of testifying of the signatures of the executant. The attesting witness should put his signature on the will *animo attestandi* and it was held as under:-

"13. Therefore, having regard to the provisions of Section 68 of the Evidence Act and Section 63 of the Succession Act, a will to be valid should be attested by two

9(1977) 1 SCC 369

10(2009) 4 SCC 780

11(2017) 1 SCC 257

or more witnesses in the manner provided therein and the propounder thereof should examine one attesting witness to prove the will. The attesting witness should speak not only about the testator's signature or affixing his mark to the will but also that each of the witnesses had signed the will in the presence of the testator."

23. In Janki Narayan Bhoir (supra), the Supreme Court while considering Section 63(c) of Succession Act, 1925 and Section 68 of the Evidence Act, 1872 held that mere proof of signature of the testator on the will was not sufficient, the attestation thereof is also to be proved as required by Section 63(c) of the Act Succession Act, 1925. It was observed as under: -

"10. Section 68 of the Evidence Act speaks of as to now a document required by law to be attested can be proved. According to the said Section, a document required by law to be attested shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving an evidence. It flows from this Section that if there be an attesting witness alive capable of giving evidence and subject to the process of the Court, has to be necessarily examined before the document required by law to be attested can be used in an evidence. On a combined reading of Section 63 of the Succession Act with Section 68 of the Evidence Act, it appears that a person propounding the will has got to prove that the will was duly and validly executed. That cannot be done by simply proving that the signature on the will was that of the testator but must also prove that attestations were also made

properly as required by Clause (c) of Section 63 of the Succession Act. It is true that Section 68 of Evidence Act not say that both or all the attesting witnesses must be examined. But at least one attesting witness has to be called for proving due execution of the Will as envisaged in Section 63 although Section 63 of the Succession Act requires that a will has to be attested at least by two witnesses, Section 68 of the Evidence Act provides that a document, which is required by law to be attested, shall not be used as evidence until one attesting witness at least has been examined for the purpose of proving its due execution if such witness is alive and capable of giving evidence and subject to the process of the Court. In a way, Section 68 gives a concession to those who want to prove and establish a will in a Court of law by examining at least one attesting witness even though will has to be attested at least by two witnesses mandatorily under Section 63 of the Succession Act. But what is significant and to be noted is that that one attesting witness examined should be in a position to prove the execution of a will. To put in other words, if one attesting witness can prove execution of the will in terms of Clause (c) of Section 63, viz., attestation by two attesting witnesses in the manner contemplated therein, the examination of other attesting witness can be dispensed with. The one attesting witness examined, in his evidence has to satisfy the attention of a will by him and the other attesting witness in order to prove there was due execution of the will. If the attesting witness examined besides his attestation does not, in his evidence, satisfy the requirements of attention of the will by other witness also it falls short of attestation of will at least by two witnesses for the simple reason that the execution of the will does not merely mean the signing of it by the testator but it means fulfilling and proof of all the formalities required under Section 63 of the Succession Act. Where one attesting

witness examined to prove the will under Section 68 of the Evidence Act fails to prove the due execution of the will then the other available attesting witness has to be called to supplement his evidence to make it complete in all respects. Where one attesting witness is examined and he fails to prove the attestation of the will by the other witness there will be deficiency in meeting the mandatory requirements of Section 68 of the Evidence Act."

24. The principle of law laid down in Janki Narayan Bhoir (supra) has been followed with approval in Jagdish Chandra Sharma (supra) by which it was held as under:-

"52. While dwelling on the respective prescripts of Section 63 of the Act and Sections 68 and 71 of Act 1872 vis-à-vis a document required by law to be compulsorily attested, it was held Janki Narayan Bhoir (supra) that if an attesting witness is alive and is capable of giving evidence and is subject to the process of the Court, he/she has to be necessarily examined before such document can be used in evidence. It was expounded that on a combined reading of Section 63 of the Act and Section 68 of the 1872 Act, it was apparent that mere proof of signature of the testator on the Will was not sufficient and that attestation thereof was also to be proved as required by Section 63 (c) of the Act. It was, however, emphasised that though Section 68 of the 1872 Act permits proof of a document compulsorily required to be attested by one attesting witness, he/she should be in a position to prove the execution thereof and if it is a Will, in terms of Section 63 (c) of the Act, viz., attestation by two attesting witnesses in the manner as contemplated therein. It was expounded that if the attesting witness examined besides his attestation does not prove the requirement of the attestation of

the Will by the other witness, his testimony would fall short of attestation of the Will by at least two witnesses for the simple reason that the execution of the Will does not merely mean signing of it by the testator but connotes fulfilling the proof of all formalities required Under Section 63 of the Act. It was held that where the attesting witness examined to prove the Will Under Section 68 of 1872 Act fails to prove the due execution of the Will, then the other available attesting witness has to be called to supplement his evidence to make it complete in all respects."

25. Reverting to the facts of the present case in light of the principle of law rendered by Their Lordships of the Supreme Court in the above-noted judgments (supra) qua execution and attestation of Will by a testator, the following factual position would emerge on the face of record:-

1. Testator Gambhir Das is said to have executed the Will dated 16.6.1988 (Ex.D-8) in favour of defendant No.1 excluding his widow plaintiff No.1 and daughters plaintiffs No.2 to 5.

2. The Will dated 16.6.1988 (Ex.D-8) is said to be attested by two witnesses Bharat Lal and Ram Sevak Kotwar and scribed by Ramji. One of the attesting witness i.e. Ramsevak has been examined as DW-4 and scribe Ramji has also been examined as DW-3.

26. A careful perusal of the Will (Ex.D-8) would

show that it was executed on 16.6.1988 by Gambhir Das in presence of two witnesses Bharat Lal and Ram Sevak Kotwar and the Will also recites that if his (Gambhir Das's) daughters object the Will, it should be held to be improper and it is also scribed by Ramji though Ramji has been examined as DW-3 and attesting witness Ramsevak has been examined as DW-4, but they have also not marked/identified the signature of Gambhir Das except making statement on oath before the trial Court that testator has signed the Will and Ramsevak and Bharatlal have also signed the Will as attesting witnesses.

- 27.** Admittedly, as held that Gambhir Das has four daughters and the Will recites that if his daughters object the Will, it should be held to be improper, whereas the testator had four daughters i.e. plaintiffs No.2 to 5 & wife plaintiff No.1 and Gambhir Das died after executing the Will. It is not brought on record that the testator had no cordial relation with his wife and his four daughters. There is no reason for excluding wife and daughters from succession of the property that too from entire property to the extent of 4.44 acres. The plaintiffs have stated that Gambhir Das was not having sound mental condition at the time of execution of the

Will, which remained unchallenged. It is also apparent from the record that all the attesting witnesses and scribe are related to defendant No.1-propounder of Will.

28. In Uma Devi Nambiar (supra), it was held by the Supreme Court that the fact that natural heirs have either been excluded or a lesser share has been given to them, by itself without anything more, cannot be held to be suspicious circumstance especially in a case where the bequest has been made in favour of an offspring.

29. The Supreme Court in Rabindra Nath Mukherjee (supra) has entertained the view that the witnesses to the will, if interested for the propounder is perceived to be a suspicious circumstance, the same would lose significance if the document is registered and the Sub-Registrar does certify that the same had been read over to the executor who on doing so admits the contents.

30. In this case, the Will was not registered during the lifetime of testator Gambhir Das, but after his death, it was got registered on 22nd September, 1994. I am satisfied that finding recorded by both the Courts below that execution & attestation of the Will has not been proved in

accordance with law and suspicious circumstance attached with the Will has also not been dispelled is a finding of fact based on record, it is neither perverse nor contrary to record and as such, the first appellate Court is justified in affirming a finding of the trial Court that the Will has not been established in accordance with law. In view of above, the substantial questions of law are answered in favour of the plaintiffs and against defendant NO.1.

31. I do not find any substance in this second appeal. The second appeal deserves to be and is hereby dismissed leaving the parties to bear their own cost(s).

32. A decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)

Judge

B/-