

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.422 of 2003

Inderman, S/o Shobhram Sahu, aged about 40 years, R/o Village Kodapar, Tahsil Kurud, District Dhamtari (C.G.)

(Defendant No.1)

---- Appellant

Versus

1. Derhin Bai, wife of Patiram Sahu, aged about 55 years,
2. Chandrika Sahu, S/o Patiram Sahu, aged about 40 years,
3. Chandrahas Sahu, S/o Patiram Sahu, aged about 35 years,

Respondent No.1 to 3 R/o Village Hasda, Tahsil Abhanpur, District Raipur (C.G.)

(Plaintiffs)

4. Khemraj, S/o Late Chhabiram Sahu, aged about 30 years,
5. Puranik, S/o Late Chhabiram Sahu, aged about 27 years,
6. Victoria Bai, wife of Hemant Satnami,

Respondent No.4 to 6 R/o Village Kodapar, Tahsil Kurud, District Dhamtari (C.G.)

7. Parasram, S/o Shobharam Sahu, aged about 37 years, R/o Village Kodapar, Tahsil Kurud, District Dhamtari (C.G.)
8. State of Chhattisgarh, Through Collector, Dhamtari, District Dhamtari (C.G.)

(Defendants No.2 to 6)

---- Respondents

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| For Appellant:                 | Mr. H.B. Agrawal, Senior Advocate with Mr. Pankaj Agrawal, Advocate. |
| For Respondents No.1 to 7: -   | None present.                                                        |
| For Respondent No.8 / State: - | Mr. Vimlesh Bajpai, Govt. Advocate.                                  |

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Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

09/01/2019

1. The substantial question of law involved, formulated and to be answered in this defendant No.1's second appeal is as under: -

“Whether the two Courts below were justified in not accepting the will deed dated 15.8.1987 as a properly executed will deed by which the earlier will deed executed on 30.8.1986 automatically got invoked?”

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

2. Respondents No.1 to 3 herein / plaintiffs filed suit only for permanent injunction claiming the suit land to be bequeathed to them by Smt. Jayantri Bai by Will dated 30-8-1986 by which the lands have been mutated and they are in possession. The said suit was resisted by defendant No.1 claiming the Will dated 15-8-1987 executed by Smt. Jayantri Bai in his favour. The trial Court held that the Will has been executed in favour of the plaintiffs and they are prima facie title holders, whereas not found the Will to be executed by Smt. Jayantri Bai in favour of defendant No.1 and decreed the suit which has been upheld by the first appellate Court against which this second appeal under Section 100 of the CPC has been preferred by defendant No.1 in which the substantial question of law has been framed which has been set-out in the opening paragraph of this judgment.
3. Mr. H.B. Agrawal, learned Senior Counsel appearing for the appellant / defendant No.1, would submit that both the Courts below are concurrently unjustified in granting decree on the basis of Will and suit for permanent injunction, as, in that case, the question of title is not involved, therefore, the judgments & decrees of both the Courts below deserve to be set aside.
4. None present for the plaintiffs, though served.
5. I have heard learned counsel for the appellant / defendant No.1 and perused the judgments & decrees and records of both the Courts below with utmost circumspection.

6. The plaintiffs based their suit for permanent injunction on the basis of Will executed by Smt. Jayantri Bai dated 30-8-1996 which the trial Court has found that the Will was executed by Smt. Jayantri Bai in their favour vide Ex.P-1, whereas did not found favour that Smt. Jayantri Bai executed Will in favour of defendant No.1. Once the Will dated 15-8-1987 in favour of defendant No.1 is not found proved by the two Courts below, it cannot be held that the Will executed in favour of the plaintiffs, dated 30-8-1986, being the prior Will, stands superseded by subsequent Will dated 15-8-1987 and cannot be said to be revoked, unless the Will dated 15-8-1987 is proved in favour of defendant No.1.
7. In view of the above, the substantial question of law is answered against the defendants and in favour of the plaintiffs. The second appeal deserves to be and is accordingly dismissed leaving the parties to bear their own cost(s).
8. Decree be drawn-up accordingly.

Sd/-  
(Sanjay K. Agrawal)  
Judge