

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 30-8-2019

Delivered on 18-9-2019

FA No. 25 of 2018

1. Shri Chand S/o Parmeshwar Verma, Aged About 28 Years R/o Kandara Para, Singhori Road, Bemetara, Tehsil And Police Station Bemetara, District Bemetara Earlier District Durg Chhattisgarh.
2. Ledgi Bai Wd/o Parmeshwar Verma, Aged About 70 Years R/o Kandara Para, Singhori Road, Bemetara, Tehsil And Police Station Bemetara, District Bemetara Earlier District Durg Chhattisgarh.

---- Appellants/defendants

Versus

1. Ishwar S/o Parmeshwar Verma, Aged About 60 Years R/o Village Karchuva, Police Station And Tahsil Bemetara, District Bemetara, Earlier District Durg Chhattisgarh.

--Respondent No.1/plaintiff

2. The State of Chhattisgarh through Collector, Durg, District Bemetara Earlier District Durg Chhattisgarh .

---- Respondent

For appellants : Mr. Raj Kumar Pali, Advocate.

For respondent No.1 : Mr. R.S. Patel, Advocate.

For respondent No.2/ : Mr. Aman Kesharwani, PL.
State.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decreed dated 31-10-2017 passed by the Additional District Judge, Bemetara, District Bemetara (CG) in Civil Suit No.18-A/2013 wherein the said court decreed the suit filed by the respondent No.1/plaintiff for half share of the property mentioned in Schedule-A and Schedule-B of the plaint and granted injunction in favour of respondent No.1 for the said property.

2. Respondent No.1 /plaintiff filed a suit for declaration of title, partition and separate possession of the suit property mentioning that his father namely Parmeshwar Verma is the owner of the property in question. It is pleaded on behalf of the respondent No.1 that Parmeshwar Verma was married to Bhago Bai who is legally wedded wife and he is the son out of legal marriage. It is also pleaded that property in question is ancestral property. On the other hand, appellant denied all the pleading and submitted that respondent No.1 is not son of Parmeshwar Verma and Bhago Bai but he is son of Bhago Bai and Shobharam. As per the appellants, Parmeshwar Verma executed a registered will in favour of the appellant No.1/defendant, therefore, appellant No.1 is sole owner of the property of Parmeshwar Verma.

3. Learned counsel for the appellants submits as under.

- i) Prakash Singh Thakur (PW/4) deposed before the trial court that name of father of Ishwar is Shobha as per record, therefore, respondent No.1 is not son of Parmeshwar Verma.
- ii) It is not proved that property is ancestral property and legality of the will in favour of appellant No.1 is not challenged, therefore, finding of the trial court is not liable to be sustained.

4. On the other hand, learned counsel appearing for the respondent would submit that the Bhago Bai was married wife of Parmeshwar Verma and respondent No.1 is son of Bhago Bai and Parmeshwar Verma and property in question is ancestral property., therefore, Ishwar is entitled for half share in the property. Though it has come in evidence that Parmeshwar Verma later on married to Kaushalya Bai and Ledgi Bai according to custom by wearing of bangles, therefore, both are not legally married wives of Parmeshwar Verma. As per school record and other documents, it is established that Ishwar is son of Parmeshwar Verma, therefore, finding of the trial court is based on proper marshalling of the evidence. So-called will in favour of appellant No.1 is not proved because no attesting witness was examined to prove the execution

of the will. No title is passed to appellant by the alleged will. Finding of the trial court is not liable to be interfered with while invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record of court below including the judgment and decree.

6. The first question for consideration of this court is whether Ishwar is son of Parmeshwar Verma. Ex.P/5 is the statement given by the real brother of Parmeshwar Verma namely Ajawan Singh before the Tahsildar in which he clearly stated that Ishwar is son of Parmeshwar and his married wife is Bhago Bai. Paradesi Verma (DW/3) also admitted the marriage of Bhago Bai and Parmeshwar Verma.

7. It is contended on behalf of the appellant that as per statement of Prakash Singh Thakur, name of Ishwar is mentioned as son of Shobharam in the birth register (Ex.D/2). In the said register place of birth was earlier mentioned as village Khandsara but it is corrected by some other ink and there is mention of village Karchuwa.

8. The trial court has elaborately discussed the evidence of this witness and recorded a finding that there is manipulation in the place of birth and therefore, document is not liable to be acted upon. There is no one in the record to say as to on whose instance

the entry was made and who actually made the entry and who manipulated thereafter regarding name of village. The trial court recorded a finding that the document is not related to present respondent No.1. From the evidence of Ajawan Singh, Pardeshi, school certificate (Ex.P/3) and other documents produced before the trial court, it is clearly established that respondent No.1 is son of Parmeshwar. In view of the above, finding on this count by the trial court is hereby affirmed.

9. The second question for consideration of this court is whether Parmeshwar Verma executed will in favour of appellant No.1 Shri Chand. Ex.P/1 is the will. Dwaraka Verma and Jharan Sinbgh are two attesting witnesses of the will, but no one was examined before the trial court. The will is required to be attested by at least two witnesses as per Section 63 of the Indian Succession Act, 1925. As per Section 68 of the Indian Evidence Act, 1872 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 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.

10. As per Section 63(c) of the Indian Succession Act, 1925, one witness who is examined has to prove that will has been signed by the executor after having ascertained its legal consequence and

signed before him or mark his impression and other attesting witness has also signed in the will. As per Section 69 of the Indian Evidence Act, 1872, if no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.

11. In the present case, no attesting witness was examined and therefore, the will is not proved as the mandatory requirement of Section 63 of the Indian Succession Act, 1925 and Sections 68 & 69 of the Indian Evidence Act, 1872 have not been complied with, therefore, argument advanced on behalf of the appellant regarding acquiring of the title by will is not sustainable. From the entire evidence, it is clear that Kaushalya Bai to whom Parmeshwar Verma married by wearing of bangles has died and she had no successor. Marriage of Ledgi Bai was not legal because that took place during life time of his legally married wife of Parmeshwar Verma namely Bhago Bai. In this aspect of the matter, Ledgi Bai will not get any share in the property of Parmeshwar Verma. From the record, it is proved that Parmeshwar Verma had two sons namely Shri Chand who is appellant No.1 and Ishwar who is respondent No.1 and said Parmeshwar Verma had no other successor.

Accordingly, property of late Parmeshwar Verma shall devolve to both sons and each will get half share in the property.

12. On overall assessment, argument advanced on behalf of the appellants is not sustainable. The appeal is liable to be dismissed.

13. Accordingly, decree is passed in favour of respondent No.1 and against the appellants as under:

- i) The appeal is dismissed with cost.
- ii) Parties to bear their own costs.
- iii) Pleader's fee, if certified, be calculated as per schedule or as per certificate, whichever is less.
- iv) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju