

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.535 of 2017**

Narottam Satnami S/o Shri Dasaru Satnami, aged about 45 years,
R/o Village & Post : Rasni, Tahsil Arang, District Raipur (CG)

---- Appellant/Plaintiff

Versus

State of Chhattisgarh Through District Collector, Raipur, District Raipur
(CG)

---- Respondent/Defendant

For Appellant/Plaintiff	: Mr.A.D.Kuldeep, Advocate
For Respondent/Defendant	: Mr.Ravi Kumar Bhagat, Dy.Govt.Advocate, on advance copy

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

20.08.2019

1. Heard on the question of admission and formulation of substantial question of law in second appeal preferred by the appellant/plaintiff.
2. Mr.A.D.Kuldeep, learned counsel for the appellant/plaintiff, would submit that both the Courts below have concurrently erred in holding that the plaintiff has failed to prove the execution of Will by Asin Bai in favour of original plaintiff-Ramdayal and dismissed the suit by recording a finding, which is not only perverse but also contrary to record, as such, the second appeal gives rise to substantial question of law for determination.
3. I have heard learned counsel for the appellant on the question of admission and formulation of substantial question of law and perused the records with utmost circumspection.
4. Original plaintiff-Ramdayal preferred Civil Suit No.34A/16 for

declaration of title and permanent injunction seeking declaration that Will has been executed by Asin Bai in his favour on 6.11.2008 as the suit property was originally belonged to Asin Bai. During pendency of civil suit, original plaintiff-Ramdayal died on 11.8.2016 and his younger brother Narrotam Satnami was impleaded as plaintiff. Suit was dismissed by the trial Court and upheld by the first appellate Court, against which, this second appeal under Section 100 of the CPC has been filed.

5. The question for consideration is whether the Will Ex.P-4 has been proved and established by the plaintiff in view of the provisions contained in Section 63 of the Succession Act, 1925 read with Section 68 of the Evidence Act, 1872.
6. 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 others¹.]
7. 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.
8. 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

¹ (2015) 8 SCC 615

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.”

9. 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.

10. 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 Kadam².

11. Will has been marked as Ex.P-4. Both the Courts below have held that affidavit under Order 18 Rule 4 of the CPC has been filed by

² (2003) 2 SCC 91

one of the attesting witness Makram Das, but Will has not been proved in accordance with Section 63(c) of the Succession Act, 1925 read with Section 68 of the Evidence Act, 1872. A careful perusal of affidavit of Makram Das filed under Order 18 Rule 4 of the CPC would show that Makram Das has simply stated that Ramdayal was adopted son of Asin Bai and Asin Bai has executed a Will in favour of Ramdayal, he has signed the Will as attesting witness, but thereafter nothing has been stated *qua* the necessary requirement as contained in Section 63(c) of the Succession Act, even he has not stated that Will was prepared at the instance of testator – Asin Bai and testator – Asin Bai put her thumb impression on the Will in his presence and in presence of other attesting witness, they signed the Will in presence of testator and they had seen the testator putting her thumb impression on the Will.

12. The concurrent finding recorded by two Courts below that the plaintiff has failed to prove due execution of Will in favour of original plaintiff-Ramdayal by Asin Bai is a 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.
13. Accordingly, the second appeal deserves to be and is hereby dismissed in *limine*. No cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge