

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.69 of 2007

Uttam Bai W/o late Son Kumar Koshale Aged about 50 years, R/o Dewari, Tahsil-Mungeli, District-Bilaspur (CG)

---- Appellant/Defendant No.1-B

Versus

1. 1A- Naindas S/o Gayaram Aged about 67 yrs
1B-Ram Ratan S/o Naindas Aged about 47 yrs.
1C-Purushottam S/o Naindas, aged about 41 yrs.
1D-Lalit S/o Naindas, aged about 34 yrs.
1E-Santosh S/o Naindas, aged about 31 yrs.
1F-Taaran S/o Naindas, aged about 27 yrs.
All are by caste-Satnami, R/o Village-Dewari, Tahsil-Mungeli, District-Bilaspur (CG)
2. Bhagtoo Das S/o Adharaji Aged about 34 years, Caste-Satnami, R/o Raj Kishor Nagar, Chandan Awas 4/37, Bilaspur (CG)
3. Ahilya Bai W/o late Basdewa Aged about 77 years, R/o Dewari, P.H.No.5, Tahsil-Mungeli, District-Bilaspur (CG)
4. State of Chhattisgarh Through Collector, Bilaspur (CG)

---- Respondents

For Appellant	:	Mr.Sanjay Patel, Advocate
For Respondent No.1-C	:	Mr.Malay Jain, Advocate appears on behalf of Mr.R.S.Patel, Advocate
For Respondent No.4	:	Ms Shivali Dubey, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

06/08/2019

1. Heard the second appeal on question of admission and formulation of substantial question of law preferred by appellant/defendant No.1-B.
2. Mr.Sanjay Patel, learned counsel for the appellant/defendant No.1-B, would submit that the both the Courts below were unjustified in holding that the plaintiff is title-holder of the suit land and the Will dated 24.9.1997 (Ex.D/1) executed by Dukhan Bai in favour of defendant No.1-A and 1-B is not proved in accordance with law, as

such, the second appeal gives rise to substantial question of law for determination.

3. I have heard learned counsel for the appellant/defendant No.1-B and perused the records of the Courts below.
4. The suit property was originally held by Basdeva. He had three wives namely Anupa Bai, Ahilya Bai and Dukhan Bai. Anupa Bai was first wife of Basdeva and original plaintiff-Hatarin Bai is her daughter. She filed a suit claiming that she is title-holder of the suit property as second and third marriage allegedly performed by her grandfather with Ahilya Bai and Dukhan Bai was illegal and void, as such, no marriage was performed at all, therefore, Ahilya Bai and Dukhan Bai had no right over the suit property. During pendency of the suit, Dukhan Bai died and defendants No.1-A and 1-B were substituted as their legal representatives. They set-up a plea that they are title-holder of the suit property on the basis of Will allegedly executed by Dukhan Bai in their favour. The trial Court has recorded a finding that the suit property fell in share of plaintiff's mother-Anupa Bai on partition and Will executed in favour of defendants No.1-A and 1-B by Dukhan Bai is not proved as they have failed to prove execution and attestation of the Will in accordance with law. The said finding has been affirmed by the first appellate Court. Attesting witnesses of the Will i.e. Paklu (DW-2) and Subhash Chandra Mathur (DW-3) have been examined before the trial Court. The trial Court after appreciating oral and documentary evidence available on record reached to the conclusion that execution and attestation of the Will

has not been proved and thereby decreed the suit in favour of the plaintiff. The first appellate Court also affirmed finding holding that execution of Will by Dukhan Bai in favour of defendants No.1-A and 1-B has not been proved, as such, concurrent finding recorded by two Courts below on the question of Will holding it be not proved against defendants No.1-A and 1-B is a finding of fact based on evidence available on record, which is neither perverse nor contrary to record. Even I do not find any substantial question of law for determination of this appeal.

5. Accordingly, the second appeal being devoid of merit is liable to be and is hereby dismissed in *limine*.

Sd/-
(Sanjay K. Agrawal)
Judge

B/-