

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 226 of 2019**

Manthir Sahu, aged about 63 years, son of late Alakhram Sahu,
resident of village- Mohdi, Via – Abhanpur, District – Raipur (C.G.)

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

1. Mahendra Kumar Sahu, aged about 27 years, son of Ramkumar Sahu, resident of Village – Mohdi, Via – Abhanpur, District – Raipur (C.G.) Plaintiff
2. Bachchu Sahu, aged about 58 years, son of late Alakhram Sahu,
3. Ramkumar Sahu, son of late Alakhram Sahu, aged about 53 years,
No. 2 & 3 are resident of Village – Mohdi, Via- Abhanpur, District – Raipur (C.G.)
4. State of Chhattisgarh, through the Collector, District – Raipur (C.G.)

---- Respondents/defendants

For Appellant/defendant No. 1 : Mr. D.N. Prajapati, Advocate
For Respondent No. 4/State : Mr. Arun Shukla, Deputy Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****22/07/2019**

(1) Heard on the question of admission and formulation of substantial question of law on this second appeal preferred by defendant No. 1 under Section 100 of the Code of Civil Procedure, 1908.

(2) The suit property was originally held by Alakh Ram, grandfather of the plaintiff and father of defendants No. 1 to 3. Late Alakh Ram executed a registered Will (Ex.P-2) dated 31.01.2005 in favour of his grand son/plaintiff. On the strength of said Will, the

plaintiff filed a suit for declaration of title and for vacant possession, which was dismissed by the trial Court holding that plaintiff has failed to prove execution and attestation of the Will in his favour.

(3) The plaintiff preferred First Appeal there-against. The First appellate court, on re-appreciation of entire evidence and material placed on record, allowed the plaintiff's appeal and decree the suit in his favour, against which this second appeal has been filed by the defendant No. 1 questioning the same.

(4) Shri D.N. Prajapati, learned counsel appearing for the appellant/defendant No. 1 would submit that the first appellate Court is absolutely unjustified in reversing the well reasoned and well merited findings recorded by the trial Court. He would further submit that the subject land was purchased by defendants No. 1 to 3 by registered sale deed dated 11.03.1982 (Ex.D-1), as such, father of defendant No. 1 to 3 namely Alakh Ram had no right to execute the Will deed in favour of the plaintiff and, therefore, the appeal involves substantial question of law for determination.

(5) I have heard learned counsel appearing for the appellant/defendant No. 1 and considered his submissions and went through the record with utmost circumspection.

(6) Admittedly, the suit property was purchased in the name of defendants No. 1 to 3 by their father - Alakhram vide registered sale deed dated 11.03.1982 (Ex. D-1) but thereafter partition took place and suit property fell in share of Alakh Ram and he has executed a Will in favour of plaintiff (grandson) vide Ex.P-2, which is said to have been duly attested and executed in accordance with law by the first Appellate Court. Defendant No. 1/appellant herein was examined before the trial Court as DW-1 and in paragraph 14 he has admitted the fact of partition between the defendants No. 1 to 3

and grandfather of plaintiff namely Alakh Ram and he (Alakh Ram) had been also given share in the said partition. He has clearly admitted in his statement, paragraph 14, that three acres of the land, which was given to his father- Alakh Ram in partition, is the suit land which is subject matter of the Will in favour of plaintiff. Thus, fact of suit property given on partition to the Alakah Ram is admitted fact, which the Alakh Ram has executed a Will in favour of plaintiff, his grandson, as such, the first appellate Court has rightly held that plaintiff is entitled for decree as Alakh Ram, being owner of the suit property, has executed a Will in favour of plaintiff, which is proved in accordance with law.

(7) In view of above, the first appellate court after re-appreciating the entire evidence available on record in its proper perspective has reversed the finding and decreed the suit in favour of the plaintiff, in which I do not find any perversity or illegality in the judgment & decree impugned and no question of law much less substantial question of law is involved in this appeal.

(8) Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed without notice to the other side.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

