

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 299 of 2014**

- Devi Prasad S/o Shri Tilak Ram Pandey Aged About 70 Years R/o Village Khod, Tahsil Janjgir, District Janjgir-Champa, Chhattisgarh (Plaintiff),

---- Appellant**Versus**

1. Yugal Kishore S/o Jagdish Prasad Aged About 66 Years R/o Village Sajapali, Tahsil Janjgir, Civil And Revenue District Janjgir-Champa, Chhattisgarh,
2. Nand Kishore (Dead) Through Lrs.
 - 2.(a) Satendra S/o Late Nand Kishore Aged About 35 Years
 - 2.(b) Yogendra @ Rajamunna S/o Late Nand Kishore Aged About 30 Years
3. Ram Kishore S/o Jagdish Prasad Aged About 47 Years R/o Village Sajapali, Tahsil Janjgir, Civil And Revenue District Janjgir-Champa, Chhattisgarh,
4. Phool Bai (Dead) Through Lrs Aged About 65 Years
 - 4.(a) Ashish S/o Ramawtar Aged About 35 Years
5. Nirmala W/o Ashok Aged About 59 Years R/o Village Sarkho, Tahsil Janjgir, Civil And Revenue District Janjgir-Champa, Chhattisgarh,
6. Kumari Bai W/o Shiv Prasad Dubey Aged About 55 Years R/o Village Shukli, Tahsil Janjgir, Civil And Revenue District Janjgir-Champa, Chhattisgarh,
7. State Of Chhattisgarh Through Collector Janjgir, District Janjgir-Champa, Chhattisgarh,

---- Respondents

For Appellant	:	Shri H.V.Sharma, learned Advocate
For Respondent 7/State	:	Shri Vimlesh Bajpai, Government Advocate

Hon'ble Shri Justice Sanjay Agrawal**Order on Board**

21.06.2019

1. This appeal has been preferred by the Plaintiff under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as the CPC) questioning the propriety of the judgment and decree dated 23.07.2014 passed in Civil Appeal No.15-A/2014 by the Third Additional District Judge, Janjgir, Dist. Janjgir-Champa, by which, the lower appellate Court, while affirming the judgment and decree dated 30.03.2011 passed by the Second Civil Judge, Class-2, Janjgir in Civil Suit No. 80-A/2008, has dismissed the appeal.

2. Shri H.V.Sharma, learned counsel for the appellant submits that the judgment and decree as passed by the Courts below by disbelieving due execution, attestation and validity of the Will dated 21.03.1993 executed by Kalindri Bai in Plaintiff's favour while disbelieving the statement of Scriber Mahaveer Prasad are apparently contrary to law.

3. I have heard learned counsel for the appellant and perused the entire record carefully.

4. A suit for declaration of title and in alternative for possession was instituted on 03.12.2008 by Plaintiff Devi Prasad based upon a Will dated 21.03.1993 (Ex.P.1), purported to have been executed by Kalindri Bai, the predecessor-in-interest of the Defendants in his favour. According to the Plaintiff, despite execution of the said Will in his favour, the Defendants, who are heirs of said Kalindri Bai, have approached the Revenue Authorities for obtaining the revenue papers mutated in their name. The said proceeding was registered as Revenue Case No. 74-A/6/2003-04 and after considering the said application, it was allowed vide order dated 17.06.2006. The said order was, however, reversed in appeal by the Sub-Divisional Officer vide its order dated 06.11.2006 in Revenue Appeal No. 56-A/6/2005-06. It is pleaded further that the

said order was questioned by Defendants before the Collector, who in turn, vide its order dated 20.02.2007 (Ex.D.1), has allowed the appeal and which was affirmed further in Revision by the Board of Revenue vide its order dated 26.08.2008 (Ex.D.2). It is submitted further that since the alleged Will was not accepted by the Revenue Authorities, therefore, the suit in the instant nature has been filed.

5. While disputing the due execution, attestation and validity of the alleged Will, it was pleaded by the Defendants that prior to the institution of the suit, Plaintiff Devi Prasad had earlier filed a suit against their mother Kalindri Bai, which was registered as Civil Suit No.144-A/1991. According to the Defendants, the said suit was based on a Will, which was executed on 10.05.1986 by his grandmother, namely, Sunaina Bai. The said suit was dismissed by the trial Court vide its judgment and decree dated 29.08.1992 and it was affirmed further by the appellate Court on 31.08.1996 in Civil Appeal No.14-A/1992. The Defendants have, therefore, submitted that the alleged Will, which was executed on 21.03.1993 (Ex.P.1) is a suspicious one and has been prepared in order to deprive their right, title and interest over the property in question as described in plaint paragraph 1.

6. From perusal of the record, it appears that the Plaintiff Devi Prasad had earlier filed a Suit based on a Will dated 10.05.1986, which was executed by Sunaina Bai, grandmother of said Kalindri Bai. The said suit was contested by Kalindri Bai, executor of the present Will and after considering the evidence led by the parties, the earlier suit, which was registered as Civil Suit No. 144-A/1991, was dismissed by the said Court vide its judgment and decree dated 29.08.1992. It reveals further that the said judgment and decree was questioned by Plaintiff Devi Prasad in an appeal and it was dismissed by the appellate Court vide its judgment and decree dated 31.08.1996. Pendency of

earlier suit would, therefore, reveal very specifically that there was no cordial relation in existence between Kalindri Bai, the executor and Plaintiff Devi Prasad, the legatee. If the relations between them would have been cordial, then the Plaintiff would have immediately withdrawn his earlier appeal after the execution of the Will, which was executed in 1993. However, no such effort was ever made by him. Contrarily, while instituting the claim as such based upon the Will dated 21.03.1993 (Ex.P.1), executed by said Kalindri Bai, the Plaintiff has rather suppressed these material facts in his claim. The said fact, though was not disclosed but it was categorically pointed out by the Defendants and pendency of the earlier suit would, therefore, show that the Will was not executed beyond suspicious circumstances. The Courts below have, therefore, not committed any illegality in disbelieving the due execution, attestation and validity of the Will dated 21.03.1993 (Ex.P.1). The said finding was based upon due and proper appreciation of the evidence led by the parties and I do not find any infirmity in the same. The findings so recorded by the Courts below, therefore, deserve to be and are hereby affirmed.

7. In view of the foregoing discussions, I do not find any question of law, much less, the substantial questions of law which arise for determination in this appeal. The appeal, being devoid of merit, is liable to be and is accordingly dismissed at admission stage itself. No order as to costs.

Sd/-
(Sanjay Agrawal)
Judge