

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****WP227 No. 500 of 2019**

- Gurupreet Singh Babra S/o Late Tejpal Singh Babra Aged About 50 Years R/o Namnakala, Ambikapur, P.S. And P.O. Ambikapur, District- Surguja, Chhattisgarh.

---- Petitioner**Versus**

1. Jasraj Singh Babra S/o Jograj Singh Babra Aged About 54 Years R/o Pratappur Naka, Ambikapur, P.S. And P.O. Ambikapur, District- Surguja, Chhattisgarh.....(Plaintiff)
2. Geeta Kalha Wd/o Late Sarwaraj Singh Kalha Aged About 65 Years(Defendant No.1(1))
3. Karan Singh Kalha S/o Late Sarwaraj Singh Kalha Aged About 40 Years(Defendant No. 1(2)).
4. Kamna Kaur D/o Late Sarwaraj Singh Kalha Aged About 35 Years.....(Defendant No.1 (3))

Res. No. 2 to 4 are R/o Fundurdihari, Ambikapur, P.S. And P.O. Ambikapur, District- Surguja, Chhattisgarh

5. State Of Chhattisgarh Through Collector Surguja, Ambikapur, District- Surguja, Chhattisgarh.

---- Respondents

For Petitioner	: - Ms. Priyanka Mehta, Advocate
For Respondent-State	: - Mr. Aakash Pandey, PL

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

26/06/2019

1. Heard.
2. While trying a suit preferred by the plaintiff for declaration of title on the basis of WILL dated 19.04.2004, the trial Court has allowed plaintiff's application under Order 16 Rule 2 C.P.C for summoning the notary who had notarized the WILL.
3. The trial Court which is in control of the trial of Civil Suit is in a better position to appreciate as to whether the examination of the notary would assist the Court in adjudication of the suit. If the trial Court, after hearing both the parties, has reached to the conclusion that examination of the notary is required, this Court while exercising power under Article 227 of Constitution of India may not sit in appeal against satisfaction of the trial Court. More so, when there appears no error of jurisdiction or patent illegality in the order passed by the trial Court.
4. Learned counsel for the petitioner would refer to the judgment rendered by the Supreme Court in **AIR 2008**

Supreme Court 2485 in the matter of Babu Singh & Ors. vs Ram Sahai @ Ram Singh and AIR 2011 Supreme Court 1353 in the matter of Kokkanda B. Poondacha & Ors. vs K.D. Ganapathi & Anr.

5. The first judgment in the matter of Babu Singh (Supra) is about manner of execution of WILL whereas the second judgment is about exercise of power under Article 226 or 227 of Constitution of India. While there is no quarrel as to the manner of proof of a WILL as required under Section 63 of the Succession Act and Section 68 of the Evidence Act, the nature of jurisdiction available to the trial Court under Article 227 is also fairly well settled. This Court, once having found that there is no error of jurisdiction in the impugned order, no case for interference is made out, therefore, reliance placed on the above referred judgment would not assist the petitioner.
6. Accordingly, there is no substance in this petition, therefore, it fails and is hereby dismissed.

Sd/-

(Prashant Kumar Mishra)
Judge

Ayushi