

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 359 of 2008**

Bhuvan (since deceased) through LRs:-

1(A) Ghanshyam, son of Bhuvan Lal Sahu, aged about 51 years, R/o village – Sohpur, Tahsil Gurur, District Balod (C.G.)

1(B) Shrimati Saraswati Bai, Daughter of Bhuvan Lal Sahu, wife of Basant Sahu, aged about 48 years, R/o Pandey Para, Balod, District Balod (C.G.)

----Appellants/Plaintiffs

Versus

1. Bhuvneshwar (since deceased) through LRs;

1A.Girijabai, Widow of Bhuvneshwar, aged about 64 years,

1B.Bhojram, S/o Late Bhuvneshwar, aged about 46 years,

1C.Nem Singh, S/o Late Bhuvneshwar, aged about 44 years,

Respondents No. 1A to 1C, R/o Village- Sohpur, Tehsil – Gurur, District Balod (C.G.)

2. Dariyav, Son of Jailal Sahu, R/o Village Sohpur, P.H. No. 9, Tahsil Gurur, District Durg (C.G.)

3. Bhishma Ram, Son of Bhuvneshwar Sahu, R/o Village Sohpur, P.H. No. 9, Tahsil Gurur, District Durg (C.G.)

4. Kachari Bai, D/o. Jai Lal (W/o. Mayaram), R/o. Village Bagdai, Tahsil Gurur, District Durg (C.G.)

5. State of Chhattisgarh, Through: The Collector, District Durg (C.G.)

----Respondents/defendants

For Appellants : Mr. Vishnu Koshta & Mr. Shobhit
Koshta, Advocates.
For Respondents : Mr. R.K. Pali, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

06/03/2020

(1) Heard on question of admission and formulation of substantial question of law in a second appeal preferred by plaintiffs.

(2) By the impugned judgment and decree, the first appellate Court has dismissed the appeal affirming the judgment & decree of the trial Court and dismissed the suit finding no merit.

(1) Learned counsel appearing for the appellants/plaintiffs would submit that both the courts below have committed legal error in holding that the registered Will dated 4.12.1993 (Ex.D-1), which was executed by Jailal Sahu in favour of his grandson Bhima (defendant No. 3), is a valid document as according to him, the said Will (Ex.D-1) has not been proved in accordance with Section 63 (c) of Succession Act, 1925 and Section 68 of the Evidence Act, 1872, by recording a finding which is perverse to the record and, therefore, appeal deserves to be admitted for hearing by formulating substantial

question of law for determination.

(3) Jailal Sahu had three sons namely Bhuvan, Bhuneshwar and Dairav. Bhuvan is the plaintiff whereas the Bhuneshwar & Dairav are the defendants No. 1 & 2, respectively and defendant No. 3 – Bhima is the son of Bhuneshwar (defendant No. 2). He (Jailal) effected partition of his property held by him during his life time reserving the suit property in his favour and of which he executed a Will dated 4.12.1993 (Ex.D-1) in favour of his grandson Bhima (defendant No. 3), which the plaintiff claimed by way of filing suit for declaration of title stating *inter alia* that Jailal Sahu had executed family arrangement (Ex.P-1) in his favour and, therefore, he has become the owner of the suit land and continuing in possession thereof and, therefore, decree of declaration of title be granted in his favour *whereas* defendant No. 3 set up a Will dated 4.12.1993 (Ex.D-1) in his favour executed by his grandfather Jailal Sahu, in which the defendants No. 1, 3 and 5 also made a counter claim seeking declaration of title on the basis of Will dated 4.12.1993 (Ex.D-1).

(4) The trial Court by its judgment & decree dated 30.11.2000 passed in Civil Suit No. 133-A/98 dismissed the suit and decreed the counter claim filed by

defendants No. 1, 3 and 5 on the basis of Will dated 4.12.1993 (Ex.D-1) and held the family arrangement dated 14.6.1978 (Ex.P-1) to be void document, which the first appellate Court has also agreed vide its impugned judgment & decree dated 04.08.2008 passed in Civil Appeal No. 30-A/2007, against which instant second appeal has been preferred.

(5) So far as Submission made on behalf of the appellants/plaintiffs that the Will dated 4.12.1993 (Ex.D-1) has not been proved in accordance with Section 63 (c) of the Succession Act, 1925 and Section 68 of the Evidence Act, 1872, has not been accepted by both the Courts below. Attesting witness namely Chhotu Ram (DW-4) has been examined, he has clearly stated that the Will dated 4.12.1993 (Ex.D-1) was executed by Jailal Sahu in his presence, after Will was read over to him by Scribe Arji Nimesh Bharat (PW-5); and further stated that Jailal Sahu has also signed the Will (Ex.D-1) in his presence; he also stated in his cross-examination that the Will (Ex.D-1) was also signed by another attesting witness Makhan, who has not been examined. Thus, the provisions contained in Section 63 (c) of the Succession Act, 1925 and Section 68 of the Evidence Act, 1872 has substantially been complied with as the attesting witness Chhotu Ram

(DW-4) has even not been effectively cross-examined on the question of attestation of Will (Ex.D-1) on behalf of the plaintiff, as such, the finding recorded by both the courts below that Will dated 4.12.1993 (Ex.D-1) has been proved in accordance with Section 63 (c) of the Succession Act, 1925 and Section 68 of the Evidence Act, 1872 is a finding of fact based on material available on record and I do not find it either perverse and contrary to the record and no question of law much less substantial question of law is involved in this appeal.

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

Sd/-
(Sanjay K. Agrawal)
Judge

D/-