

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 96 of 2008**

Dayaram, Aged about 40 years, S/o Trilochan Sahu,
R/o Village Bijli, Tahsil Rajim, District Raipur,
Chhattisgarh.

---Appellant/Defendant No. 1

Versus

1. Dayalu Ram, Aged about 42 years, S/o Trilochan Sahu, R/o Village Bijli, Tahsil Rajim, District Raipur, Chhattisgarh. **---Plaintiff**

2. Gunjari D/o Dayaram, Aged about 10 years, Minor through Guardian Father Dayaram S/o Trilochan Sahu, R/o Village Bijli, Tahsil Rajim, District Raipur, Chhattisgarh.

3. Rukmani Bai, Aged about 12 years, Minor through Guardian Mother Janbai.

4. Khileshwari D/o Narayan, Aged about 8 years, Minor through Guardian Mother Janbai.

--Defendant No. 4

5. Janbai, Wd/o Narayan, Aged about 35 years.

Respondents No. 2 to 5 are R/o Village Bijli, Tahsil Rajim, District Raipur, Chhattisgarh.

6. State of Chhattisgarh, through Collector, Raipur.

7. Daulat S/o Parasram.

8. Kaushal S/o Parasram.

9. Parasram S/o Rohit.

Respondents No. 7 to 9 are R/o Village Bijli, Tahsil Rajim, District Raipur, Chhattisgarh.

---Defendants No. 2 to 9

--- Respondents

For Appellant	:-	Mr. Goutam Khetrapal, Advocate
For State	:-	Mrs. Astha Shukla, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

12/02/2020

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellant/defendant No. 1 under Section 100 of the CPC against the impugned judgment and decree by which the first appellate Court set aside the judgment and decree passed by the trial Court dismissing the suit of the plaintiff.
2. Mr. Goutam Khetrapal, learned counsel for the appellant/defendant No. 1 would submit that the first appellate Court is absolutely unjustified in reversing the judgment and decree of the trial Court holding that plaintiff will also be entitled for share in the suit property bearing total Khasra No. 6 total area 0.799 hectare which is subject matter of the Will dated 30/03/1992 executed by Trilochan (Ex. D/7) in favour of defendant No. 2 as the said Will was not challenged by the plaintiff while filing the suit, as such, the second appeal deserves to be admitted by formulating substantial question of law for determination.

3. The suit property was originally held by Trilochan who had three sons namely Dayalu i.e. plaintiff, Dayaram i.e. defendant No. 2 and one Narayan who died leaving behind his widow Janbai i.e. defendant No. 5 and two daughters namely Rukmani Bai i.e. defendant No. 3 and Khileshwari i.e. defendant No. 4. Defendant No. 2 i.e. Gujri Bai is the daughter of Dayaram.

4. Sole plaintiff – Dayalu filed a suit that the property was held by his father Trilochan, who in his lifetime partitioned the property. It is the case of the plaintiff that after the death of Trilochan, his share of the property should equally be inherited by plaintiff and defendant No. 1, but defendant No. 1 in order to grab the land, got the Will (Ex. D/7) executed in favour of defendant No. 2 Gujri Bai and defendant No. 5 Janbai, as such, decree be granted in his favour as plaintiff is entitled for share in the suit property and the said Will executed by Trilochan is not binding on plaintiff.

5. Learned trial Court dismissed the suit against which plaintiff preferred an appeal under Section 96 of the CPC wherein learned first appellate Court allowed the appeal by relying upon the

compromise decree dated 22/02/2000 and decreed the suit against which only defendant No. 1 Dayaram has preferred this second appeal.

6. The Will dated 30/03/1992 (Ex. D/7) was admittedly executed by Trilochan in favour of defendant No. 2 Gujri Bai and defendant No. 5 Janbai. They have not challenged the judgment and decree of the first appellate Court by which the suit property, being the subject matter of the Will has also been directed to be partitioned amongst the parties. Defendant No. 1 has not filed second appeal in the capacity of the father of defendant No. 2 as she has already attained the age of majority during the pendency of this appeal, as such, the appellant/defendant No. 1 has no locus to file the appeal with regard to the right, title and interest of defendant No. 2 Gujri Bai, though she is his daughter. Likewise, the first appellate Court has allowed the appeal and decreed the suit on the basis of the compromise decree dated 22/02/2000, as such, I do not find any merit in this appeal, much less any substantial question of law for determination herein.

7. The second appeal deserves to be and is accordingly dismissed *in limine* without notice to the other side. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet