

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 284 of 2008**

1. Bhagwandin S/o Late Heeralal, Aged about 7 years.
2. Sanjay S/o Late Heeralal, Aged about 5 years.
3. Varsha D/o Late Heeralal, Aged about 2 years.

Appellants being minor through Guardian and next friend (grandfather) Patiraj, S/o Late Somaru Singh, Aged about 65 years, Appellants R/o Village Lalpur, P.S. and Tahsil Manendragarh, Distt. Koriya, Chhattisgarh.

---Appellants/LR's of Defendant

Versus

1. Gulab Singh S/o Somar Sai, Aged about 30 years, R/o Village Lalpur, P.S. and Tahsil Manendragarh, Distt. Koriya, Chhattisgarh. **--- Plaintiff**
2. Dilbasiya, Wd/o Late Heeralal, Aged 25 years, W/o Jagdish, R/o Village Sukri, District Anuppur, Madhya Pradesh.
3. State of Chhattisgarh, Through Collector, Koriya, Baikunthpur, Chhattisgarh.

--- Respondents

For Appellants	:-	Mr. Prafull Bharat and Mr. Akash Pandey, Advocates
For Respondent 1	:-	Mr. Ashwin Panicker, Advocate
For State	:-	Mr. Sanjeev Kumar Agrawal, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

30/01/2020

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellants/LR's of defendant under Section

100 of the CPC against the impugned judgment and decree passed by the first appellate Court affirming the judgment and decree by which the trial Court decreed the suit of the plaintiff.

2.Mr. Prafull Bharat and Mr. Akash Pandey, learned counsel for the appellants/LR's of defendant would submit that both the Courts below have concurrently erred in holding that the Will (Ex. D/2) dated 06/03/1997 executed by Bhuili Bai in favour of the original defendant – Heeralal is not established in accordance with Section 63(c) of the Hindu Succession Act, 1925 read with Section 68 of the Indian Evidence Act, 1872 by recording a finding which is perverse and contrary to record, as such, the second appeal deserves to be admitted by formulating substantial question of law in this regard.

3.Late Shri Rama had three sons namely Charku, Somaru and Somar Sai. The suit property was partitioned amongst them mutually and thereafter, in the year 1993, Charku died issueless and after his death, his wife Buili Bai's name came to be recorded in the revenue records. Plaintiff Gulab Singh is the son of Somar Sai whereas original defendant Heeralal is the grandson of Somaru.

4. The dispute relates to the suit property left by Charku bearing Khasra No. 132/17 and 131/18 total area 5.844 hectares. After the death of Bhuili Bai, plaintiff, who is the son of Somar Sai, filed a suit that he is entitled for $\frac{1}{2}$ share in the suit property left by Charku being his nephew wherein the original defendant – Heeralal, grandson of Somaru, set up a plea that Bhuili Bai had executed Will dated 06/03/1997 (Ex. D/1) in his favour and therefore, he is entitled for the suit property left by Bhuili Bai upon which plaintiff has no right and title.

5. Learned trial Court negatived the plea of the defendant holding that the Will (Ex. D/1) has not been established in accordance with the provisions contained under Section 63(c) of the Hindu Succession Act, 1925 read with Section 68 of the Indian Evidence Act, 1872 and ultimately, decreed the suit of the plaintiff to which the first appellate Court also affirmed in the appeal preferred by the defendant under Section 96 of the CPC.

6. Ex. D/1 is the Will in question dated 06/03/1997 executed by Bhuili Bai in favour of the defendant Heeralal. The attesting witness of the Will namely Singal Singh in his statement before the

trial Court (D.W. 4) has simply stated that Bhuili Bai had executed the Will in the year 1997 in favour of Heeralal, but he has failed to mention who has written the Will and has simply stated that the Will was written in his presence. He has even failed to state if the Will was ever read over to Buili Bai and further failed to state that she signed the Will in his presence and other attesting witness and he signed the Will in the presence of the testatrix Buili Bai. Even in paragraph 4 of his cross-examination, he has stated that he has not signed the Will at all, moreover, the other attesting witness has not been examined before the trial Court by the defendant, as such, there is absolutely no evidence at all with regard to the due execution and attestation of the Will (Ex. D/1). In that view of the matter, both the Courts below have concurrently and rightly held that execution and attestation of the Will has not been proved in accordance with Section 63(c) of the Indian Succession Act, 1925 read with Section 68 of the Indian Evidence Act, 1872 which is neither perverse nor contrary to the record and does not give rise to any substantial question of law for determination.

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