

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 207 of 2010

1. Toshanlal, S/o Thukelram, aged about 65 years,
Retd. Physician;

2. Hemant Kumar, S/o Toshanlal, aged about 35
years;

Both are R/o Radhaswamini Nagar, P.O.
Sudernagar, Raipur, C.G.

---- Appellants

Versus

1. Ganesh, aged about 37 years;

2. Nandkumar, aged about 35 years;

3. R/o Vill. Gopalpur, Teh. Bindranawagarh,
Raipur, C.G.

4. State of C.G. by Collector, Raipur, C.G.

---- Respondents

For Appellants :- Mr. Raja Sharma, Advocate.

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

02/09/2020

1. Proceedings of this matter have been taken up
through video conferencing.

2. Heard on admission and formulation of
substantial question of law in the second
appeal preferred by the appellants/defendants.

3. By the impugned order, the first appellate Court has dismissed the appeal and affirmed the judgment and decree of the trial Court by decreeing the suit.

4. Mr. Raja Sharma, learned counsel for the appellants/defendants, submits that both the Courts below are absolutely unjustified in holding that the validity of Will has not been established in accordance with law, as such, the appeal involves substantial question of law for determination.

5. Toshnallal, Mayaram and Shankarlal were three brothers. Shankarlal died issueless. The plaintiffs are successor-in-interest of Mayaram, Hemant Kumar, defendant No.2, is son of Toshnallal, defendant No.1, in whose favour Shankarlal has executed the Will dated 21.06.1992 (Ex. D-1). The plaintiffs who are successor-in-interest of Mayaram have filed a suit claiming half share in the property of Shankarlal who died issueless, in which, the defendants set up a plea that Will (Ex. D-1) was executed by Shankarlal in favour of Hemant Kumar, defendant No.2 and both the

Courts below have held that validity of the Will has not been established and both the attesting witnesses have not been examined as the Will has not been established in accordance with law.

6. It is well settled law that propounder of the Will has to establish the Will in accordance with Section 63(c) of the Indian Succession Act, 1925 read with Section 68 of the Evidence Act, 1872.

7. The finding recorded by two Courts below holding that the Will (Ex. D-1) executed by Shankarlal in favour of Hemant Kumar, defendant No.2, has not been established in accordance with law is the finding of fact based on evidence, which is neither perverse nor contrary to record.

8. I do not find any merit in this second appeal. Accordingly, the instant 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