

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 426 of 2009**

Sudam Behra, S/o Shatrughan Behra, aged about 55 years, R/o Village Shankar Boga, Tahsil & District Raigarh (C.G.)

-----Appellant/plaintiff

Versus

1. Suwarna Behra, Wd/o Subal Behra, aged about 45 years.

2. Amulya Bai, D/o Subal Behra, aged about 25 years,

Both are R/o Village Chhirwani, Tahsil Gharghoda, District Raigarh (C.G.)

3. State of Chhattisgarh through : Collector, Raigarh (C.G.)

-----Respondents/defendants.

For Appellant	: Smt. Hamida Siddiqui & Mr. Sumit Singh Rathore, Advocate.
For Respondent No. 1/Caveator	: Shri Pushpendra Kumar Patel, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

14/8/2020

(1) Proceedings of the matter have been taken up through video conferencing.

(2) Heard on the question of admission and formulation of substantial question of law in a second appeal preferred by the appellant/plaintiff.

(3) By the impugned judgment, first appellate Court dismissed the appeal preferred by the appellant/plaintiff affirming the judgment and decree of the trial Court dismissing the suit.

(4) Learned counsel appearing for the appellant/plaintiff would submit that both the courts below have concurrently erred in holding that Tara Bai, who is mother of the plaintiff, had no right and interest over the suit property and she was not empowered to execute the Will dated 08.01.2002 (Ex.P-4) in favour of the plaintiff and further erred in holding that suit property fell in partition between plaintiff and his brother – Subal Behra to the defendant No.1, who had already died and respondent No. 1 is his wife whereas respondent No. 2 is his daughter, as such, the appeal deserves to be admitted for hearing by formulating substantial question of law for determination.

(5) Suit property originally belonged to Shatrughan Behra. He has two sons namely Sudam Behra (plaintiff) and Subal Behra, who had already died and defendant No. 1 is his wife whereas defendant No. 2 is his daughter. During his life time, he (Shatrughan Behra) partitioned the suit property between his two sons but in both the shares of the property, name of Tara Bai, wife of

Shatruhan Behra remained recorded alongwith their sons. The said property fell in share of his son Subal Behra. On 8.1.2002 Tara Bai (mother of the plaintiff) executed a Will (Ex.P-4) of the suit property shown in Schedule 'A' & 'B' of the plaint in favour of her son – Sudam Behra (plaintiff), which is the subject matter of dispute in the civil suit.

(6) The plaintiff filed a suit holding that by strength of Will dated 8.1.2002 (Ex.P-4), he is entitled for half share in the suit property *whereas* it is the case of the defendants No. 1 & 2 that suit property fell in share of Subal Behra also, in which they are successor-in-interest being his wife and daughter, respectively and, therefore, they are entitled to continue in the suit property.

(7) The trial Court, after appreciating the order and documentary evidence available on record by its judgment dated 30.06.2007, clearly came to the conclusion that Shatrughan Behra, during his life time, partitioned the suit property in favour of plaintiff and his another son – Subal Behra and after his death and suit property fell in share of Subal Behra, as such, defendant No. 1 and 2 (wife & daughter, respectively) are entitled to continue in possession in the suit property and with regard to the property shown in Schedule "B" of the

plaint, patta has already been granted by the State Government. The trial Court further held that merely because the name of Tara Bai came to be recorded in the revenue records jointly with his both the sons i.e. plaintiff and his brother – Subal Behra, Tara Bai had no right, title or interest to execute the Will dated 8.1.2002 (Ex.P-4) in favour of the plaintiff of the suit property and dismissed the suit.

(8) The plaintiff preferred first appeal there-against. The first appellate Court after re-appreciating the oral and documentary evidence available on record, affirmed the judgment & decree of the trial Court dismissing the suit. Against which, the plaintiff preferred instant second appeal under Section 100 of the CPC.

(9) Both the courts below have concurrently recorded a finding that the suit property shown in Schedule "A" & "B" of the plaint also fell in share of Subal Behra; and defendant No.1 & Defendant No. 2, being his his wife & daughter, respectively, are entitled to continue in possession over the suit property and even with regard to the property shown in Schedule "B" of the plaint, patta has already been granted by the State Government in favour of defendants No. 1 & 2; and merely because the name of the Tara Bai (mother of the plaintiff) came to be jointly recorded in the revenue records along with

her sons i.e. plaintiff – Sudam Behra & Subal Behra, that would not confer would not confer any right, title or interest to Tara Bai to execute a Will dated 8.1.2002 (Ex.P-4) in favour of the plaintiff, which is the property of Subal Behra and now the defendants No. 1 & 2. The said finding is a finding of fact based on material available on record and I do not find it either perverse or contrary to 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 the other side. No costs.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-