

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.129 of 2009****Judgment Reserved on :3.9.2020****Judgment Delivered on:17.9.2020**

Jhulla Son of Sunwa, aged about 50 years, Resident of Village Badhavandand, Tahsil Pendraroad, District Bilaspur (CG)

----- Appellant/Defendant No.1**Versus**

1. Satyanarayan Son of Mitthu, aged about 45 years;
 2. Basant Lal Son of Mitthu, aged about 40 years;
 3. Kanhaiya Lal Son of Mitthu, aged about 38 years;
 4. Mathuliya Bai Widow of Late Mitthu, aged about 70 years;
 5. Phulmati D/o Mitthu, aged about 43 years;
- The respondent NO.1 to 5 are agriculturist and resident of Village Bacharwa, Tahsil Pendraroad, District Bilaspur (CG)
6. Parvati Bai D/o Mitthu, aged about 37 years, Resident of Village Lalpur, Tahsil Pendraroad, District Bilaspur.
 7. Bundi Bai D/o Mitthu, aged about 32 years, Resident of Village Navapara, Tahsil Pendraroad, District Bilaspur (CG)

-----Plaintiffs

8. Feku Son of Bihanu, aged about 37 years;
9. Bhallu Son of Bihanu, aged about 35 years;
10. Mohit Son of Bihanu, aged about 33 years;
11. Santosh Son of Bihanu, aged about 26 years;
12. Melan Bai D/o Bihanu, aged about 30 years;

The respondent No.8 is resident of Village Badhavandand, respondent No.9 to 11 are resident of Village Bacharwar, respondent No.10 is resident of Village Kanchandeeh Sakola and respondent No.12 is resident of village Nevsa Navapara, Tahsil Pendraroad, District Bilaspur (CG)

13. The Tahsildar, Pendraroad, District Bilaspur (CG)
14. The collector, Bilaspur (CG)

----- Respondents

For Appellant/Defendant No.1:

Mr.Ashok Soni, Advocate

For Respondents No.1 to 7/Plaintiffs:

Mr.B.P.Singh, Advocate

For Respondents No.13 and 14/State

Mr.Ravi Bhagat, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Judgment

1.The substantial question of law involved, formulated and to be answered in this second appeal preferred by the appellant/defendant No.1 are as under:-

"1. Whether the first appellate Court was justified in holding that Arjun i.e. grandfather of plaintiffs and defendants was fully empowered to execute the Will dated 17/01/1977 (Ex.P/5) in favour of Mitthu i.e. his son and father of the plaintiffs with regard to the suit property allegedly fell in his share during partition ?

2. Whether the first appellate Court was justified in holding that the Will dated 17/01/1977 (Ex.P/5) executed by Arjun in favour of Mitthu has been proved in accordance with Section 63(c) of Hindu Succession Act read with Section 68 of the Indian Evidence Act ?"

[For the sake of convenience, the parties would be referred hereinafter as per their status shown in the suit before the trial Court].

2.The suit property situated at village Bacharwar and Pendra was originally held by Arjun. He had two sons

namely, Sonwa and Mitthu. The Plaintiffs are sons and daughters of Mitthu, whereas defendant No.1 is son of Sonwa. The plaintiffs filed a suit for declaration of title and permanent injunction against defendant No.1 stating inter-alia that in partition held between Arjun, Sonwa and Mithhu, the suit property fell in share of Arjun situated at village Bacharwar & Pendra. It was further pleaded that on 17.1.1977 vide Ex.P-5 Arjun has executed the Will in favour of Mitthu and thereby he become owner of the suit property, but defendant No.1 unauthorizedly interfering in the suit property which necessitated the filing of the suit for declaration of title and permanent injunction.

3. Resisting the suit, defendant No.1 filed his written statement and denied the averments made in the plaint stating inter-alia that no such partition has ever been taken place with respect to the property situated in village Bacharwar & Pendra. Even otherwise, the Will by Arjun in favour of Mitthu is suspicious Will and it has not been executed in accordance with law, as such, the suit be dismissed.

4. The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment and decree dated 8.4.2008, dismissed the

suit holding that the plaintiffs have failed to establish the Will in accordance with law. On appeal being preferred, the first appellate Court reversed the judgment and decree of the trial Court and decreed the suit holding that the Will (Ex.P-5) has been proved in accordance with law. Questioning the judgment and decree of the first appellate Court, this second appeal under Section 100 of the CPC has been filed by the appellant/defendant No.1, in which substantial questions of law have been framed by this Court, which have been set-out in opening paragraph of this judgment for sake of completeness.

5. Mr. Ashok Soni, learned counsel for the appellant/defendant No.1, would submit that the first appellate Court is absolutely unjustified in holding that Arjun was empowered to execute the Will in favour of Mitthu on 17.1.1977 (Ex.P-5) as it was joint family property and never subjected to partition. He would alternatively submit that even the Will dated 17.1.1977 (Ex.P-5) 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, therefore, the judgment and decree of the first appellate Court be set aside and that of the trial Court be restored.

6. On the other hand, Mr. B. P. Singh, learned counsel for respondents No. 1 to 7/plaintiffs, would submit that the first appellate Court is absolutely justified in holding that the Will dated 17.1.1977 (Ex. P-5) has validly been executed by Arjun in favour of Mitthu and thereafter he died in the year 1985 and the Will was never challenged. The suit property held by Arjun in partition and being self-acquired property, he was competent to execute the Will of his property in favour of Mitthu, as such, the Will having been proved in accordance with law by examining two attesting witnesses Milap Singh (PW-3) and Mahipat (PW-4) and scribe Mohan Singh (PW-5) has also been examined, as such, the appeal deserves to be dismissed with cost(s).

7. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

8. The short question for consideration would be, whether execution and attestation of the Will dated 17.1.1977 (Ex. P-5) has been proved and established by the plaintiffs in view of the provisions contained in Section 63 of the Indian Succession Act, 1925 read with Section 68 of the Indian Evidence Act, 1872?

9. It is trite law that a will as an instrument of testamentary disposition of property being a legally acknowledged mode of bequeathing a testator's acquisitions during his lifetime, to be acted upon only on his/her demise, it is no longer *res integra*, that it carries with it an overwhelming element of sanctity. [See Jagdish Chand Sharma v. Narain Singh Saini (Dead) through Legal Representatives and others¹.]

10. In order to consider the plea raised at the bar, it would be appropriate to notice Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872.

11. Section 63 of the Act of 1925 provides as under:-

"63. Execution of unprivileged Wills.—Every testator, not being a soldier employed in an expedition or engaged in actual warfare, or an airman so employed or engaged, or a mariner at sea, shall execute his will according to the following rules:-

(a) The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

(c) The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary."

12. As per the provisions of Section 63 of the Succession Act, 1925 for due execution of a will (1) the testator should sign or affix his mark to the will; (2) the signature or the mark of the testator should be so placed that it should appear that it was intended thereby to give effect to the writing as a will; (3) the will should be attested by two or more witnesses; and (4) each of the said witnesses must have seen the testator signing or affixing his mark to the will and each of them should sign the will in the presence of the testator.

13. The above-stated provision of attestation of will under Section 63(c) of the Succession Act, 1925 by two or more witnesses has been held to be mandatory by Their Lordships of the Supreme Court in the matter of Janki Narayan Bhoir v. Narayan Namdeo Kadam².

² AIR 2003 SC 761

14. Section 68 of the Indian Evidence Act, 1872 provides as under:-

"68. Proof of execution of document required by law to be attested.—If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

Provided that it shall be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied."

15. By the aforesaid provision, a document required by law to be attested to have its execution proved by at least one of the attesting witnesses if alive and it is subject to process of the court conducting the proceedings involved and is capable of giving evidence. However, proviso to Section 68 of the Evidence Act, 1872 is not available in case of will.

16. In the matter of Girja Datt Singh v. Gangotri Datt Singh³, Their Lordships of the Supreme Court have held that in order to prove the due attestation of will, the propounder of will has to prove that 'A' and 'B', the two witnesses saw the testator sign the

will and they themselves signed the same in the presence of the testator. Their Lordships while considering Section 68 of the Evidence Act, 1872 further held that from the mere signature of two persons appearing at the foot of the endorsement of registration of will it cannot be presumed that they had appended their signature to the document as an attesting witness or can be construed to have done so in their capacity as attesting witness. It was pertinently observed as under:-

"In order to prove the due attestation of the will Ex. A-36 Gangotri would have to prove that Uma Dutt Singh and Badri Singh saw the deceased sign the will and they themselves signed the same in the presence of the deceased. The evidence of Uma Dutt Singh and Badri Singh is not such as to carry conviction in the mind of the Court that they saw the deceased sign the will and each of them appended his signature to the will in the presence of the deceased. They have been demonstrated to be witnesses who had no regard for truth and were ready and willing to oblige Gur Charan Lal in transferring the venue of the execution and attestation of the documents Ex. A-23 and Ex. A-36 from Gonda to Tarabganj for reasons best known to themselves."

"One could not presume from the mere signature of Mahadeo Pershad and Nageshur appearing at the foot of the endorsement of registration that they had appended their signatures to the document as attesting witnesses or can be construed to have done so in their capacity as attesting witnesses. Section 68, Indian Evidence Act requires an attesting witness to be called as a witness

to prove the due execution and attestation of the will. This provision should have been complied with in order that Mahadeo Pershad and Nageshur be treated as attesting witnesses. This line of argument therefore cannot help Gangotri."

17. In the matter of H. Venkatchala Iyengar v. B. N.

Thimmajamma and others⁴ the Supreme Court speaking through Gajendragadkar, J., elaborately laid down the principles relating to the nature and standard of evidence required to prove a will. It was held as under:-

"(1) Stated generally, a will has to be proved like any other document, the test to be applied being the usual test of the satisfaction of the prudent mind in such matters. As in the case of proof of other documents, so in the case of proof of wills, one cannot insist on proof with mathematical certainty.

(2) Since [Section 63](#) of the Succession Act requires a will to be attested, it cannot be used as evidence until, as required by [Section 63](#) of the Evidence Act, one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the court and capable of giving evidence.

(3) Unlike other documents, the will speaks from the death of the testator and therefore the maker of the will is never available for deposing as to the circumstances in which the will came to be executed. This aspect introduces an element of solemnity in the decision of the question whether the document propounded is proved to be the last will and testament of the testator. Normally, the onus which lies on the propounder can be taken to be discharged on proof of the

essential facts which go into the making of the will.

(4) Cases in which the execution of the will is surrounded by suspicious circumstances stand on a different footing. A shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the will under which he receives a substantial benefit and such other circumstances raise suspicion about the execution of the will. That suspicion cannot be removed by the mere assertion of the propounder that the will bears the signature of the testator or that the testator was in a sound and disposing state of mind and memory at the time when the will was made, or that those like the wife and children of the testator who would normally receive their due share in his estate were disinherited because the testator might have had his own reasons for excluding them. The presence of suspicious circumstances makes the initial onus heavier and therefore, in cases where the circumstances attendant upon the execution of the will excite the suspicion of the court, the propounder must remove all legitimate suspicions before the document can be accepted as the last will of the testator.

(5) It is in connection with wills, the execution of which is surrounded by suspicious circumstances that the test of satisfaction of the judicial conscience has been evolved. That test emphasises that in determining the question as to whether an instrument produced before the court is the last will of the testator, the court is called upon to decide a solemn question and by reason of suspicious circumstances the court has to be satisfied fully that the will has been validly executed by the testator.

(6) If a caveator alleges fraud, undue influence, coercion, etc. in regard to the execution of the will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the will may raise a doubt as to whether the testator was

acting of his own free will. And then it is a part of the initial onus of the propounder to remove all reasonable doubts in the matter."

18. The principle laid down in the above-stated judgment has been followed with approval in Smt. Jaswant Kaur v. Smt Amrit Kaur and others⁵, Surendra Pal and others v. Dr. (Mrs.) Saraswati Arora and another⁶, Yumnam Ongbi Tampha Ibema Devi v. Yumnam Joykumar Singh and others⁷ and Jagdish Chandra Sharma (supra).

19. In the matter of Ramesh Verma (dead) Through Legal Representatives v. Lajesh Saxena (dead) by Legal Representatives and another⁸, the Supreme Court has again reiterated the need of proving the attestation of will in accordance with Section 63(c) of the Succession Act, 1925 read with Section 68 of the Evidence Act, 1872.

20. In Surendra Pal (supra), the Supreme Court while re-stating the guidelines regarding the nature and extent of burden of proof on the propounder of a will held that propounder has to show that the will was signed by the testator; that he was at the relevant time in a sound disposing state of mind; that he understood the nature and effect of the dispositions;

5(1977) 1 SCC 369

6(1974) 2 SCC 600

7(2009) 4 SCC 780

8(2017) 1 SCC 257

that he put his signature to the testament of his own free will; and that he has signed it in the presence of the two witnesses who attested it in his presence and in the presence of each other. Once these elements are established, the onus which rests on the propounder is discharged. It was further held that in cases where the propounder has himself taken a prominent part in execution of a will which confers on him substantial benefit that is itself one of the suspicious circumstances which he must remove by clear and satisfactory evidence.

21. The Supreme Court in Yumnam Ongbi Tampha Ibema Devi (supra) has clearly held that the attestation of will is not an empty formality. Highlighting the importance of attestation of Will it was held it means signing a document for the purpose of testifying of the signatures of the executant. The attesting witness should put his signature on the will *animo attestandi* and it was held as under:-

"13. Therefore, having regard to the provisions of Section 68 of the Evidence Act and Section 63 of the Succession Act, a will to be valid should be attested by two or more witnesses in the manner provided therein and the propounder thereof should examine one attesting witness to prove the will. The attesting witness should speak not only about the testator's signature or affixing his mark to the will but also that each of the witnesses had signed the will in the presence of the testator."

22. In Janki Narayan Bhoir (supra), the Supreme Court while considering Section 63(c) of Succession Act, 1925 and Section 68 of the Evidence Act, 1872 held that mere proof of signature of the testator on the will was not sufficient, the attestation thereof is also to be proved as required by Section 63(c) of the Act Succession Act, 1925. It was observed as under: -

"10. Section 68 of the Evidence Act speaks of as to how a document required by law to be attested can be proved. According to the said Section, a document required by law to be attested shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving an evidence. It flows from this Section that if there be an attesting witness alive capable of giving evidence and subject to the process of the Court, has to be necessarily examined before the document required by law to be attested can be used in an evidence. On a combined reading of Section 63 of the Succession Act with Section 68 of the Evidence Act, it appears that a person propounding the will has got to prove that the will was duly and validly executed. That cannot be done by simply proving that the signature on the will was that of the testator but must also prove that attestations were also made properly as required by Clause (c) of Section 63 of the Succession Act. It is true that Section 68 of Evidence Act not say that both or all the attesting witnesses must be examined. But at least one attesting witness has to be called for proving due execution of the Will as envisaged in Section 63 although Section 63 of the Succession Act requires that a will has to be attested at least by two witnesses, Section 68 of the Evidence Act provides that

a document, which is required by law to be attested, shall not be used as evidence until one attesting witness at least has been examined for the purpose of proving its due execution if such witness is alive and capable of giving evidence and subject to the process of the Court. In a way, Section 68 gives a concession to those who want to prove and establish a will in a Court of law by examining at least one attesting witness even though will has to be attested at least by two witnesses mandatorily under Section 63 of the Succession Act. But what is significant and to be noted is that that one attesting witness examined should be in a position to prove the execution of a will. To put in other words, if one attesting witness can prove execution of the will in terms of Clause (c) of Section 63, viz., attestation by two attesting witnesses in the manner contemplated therein, the examination of other attesting witness can be dispensed with. The one attesting witness examined, in his evidence has to satisfy the attention of a will by him and the other attesting witness in order to prove there was due execution of the will. If the attesting witness examined besides his attestation does not, in his evidence, satisfy the requirements of attention of the will by other witness also it falls short of attestation of will at least by two witnesses for the simple reason that the execution of the will does not merely mean the signing of it by the testator but it means fulfilling and proof of all the formalities required under Section 63 of the Succession Act. Where one attesting witness examined to prove the will under Section 68 of the Evidence Act fails to prove the due execution of the will then the other available attesting witness has to be called to supplement his evidence to make it complete in all respects. Where one attesting witness is examined and he fails to prove the attestation of the will by the other witness there will be deficiency in meeting the mandatory requirements of Section 68 of the Evidence Act."

23. The principle of law laid down in Janki Narayan

Bhoir (supra) has been followed with approval in **Jagdish Chandra Sharma** (supra) by which it was held as under:-

"52. While dwelling on the respective prescripts of Section 63 of the Act and Sections 68 and 71 of Act 1872 vis-à-vis a document required by law to be compulsorily attested, it was held Janki Narayan Bhoir (supra) that if an attesting witness is alive and is capable of giving evidence and is subject to the process of the Court, he/she has to be necessarily examined before such document can be used in evidence. It was expounded that on a combined reading of Section 63 of the Act and Section 68 of the 1872 Act, it was apparent that mere proof of signature of the testator on the Will was not sufficient and that attestation thereof was also to be proved as required by Section 63 (c) of the Act. It was, however, emphasised that though Section 68 of the 1872 Act permits proof of a document compulsorily required to be attested by one attesting witness, he/she should be in a position to prove the execution thereof and if it is a Will, in terms of Section 63 (c) of the Act, viz., attestation by two attesting witnesses in the manner as contemplated therein. It was expounded that if the attesting witness examined besides his attestation does not prove the requirement of the attestation of the Will by the other witness, his testimony would fall short of attestation of the Will by at least two witnesses for the simple reason that the execution of the Will does not merely mean signing of it by the testator but connotes fulfilling the proof of all formalities required Under Section 63 of the Act. It was held that where the attesting witness examined to prove the Will Under Section 68 of 1872 Act fails to prove the due execution of the Will, then the other available attesting witness has to be called to supplement his evidence to make it complete in all respects."

24. In **Gopal Swaroop v. Krishna Murari Mangal**⁹, it

has been held by the Supreme Court as under: -

"21. That brings us to the third requirement, namely, that the will must be attested by two or more witnesses each of whom has seen the testator signing and affixing his mark to the will or has seen some other person signing in the presence and by the direction of the testator. ..."

25. Reverting to the facts of the present case in light of the principle of law rendered by Their Lordships of the Supreme Court in the above-noted judgments (supra) qua execution and attestation of the Will by a testator, the following factual position would emerge on the face of record:-

1. Testator-Arjun, father of Mitthu and Sonwa, is said to have executed unregistered Will in respect of suit property in favour of Mitthu, father of the plaintiffs excluding his son Sonwa on 17.01.1977 (Ex.P-5).

2. The will dated 17.01.1977 (Ex.P-5) is said to have been attested by two witnesses namely, Milap Singh (PW-3) and Mahipat (PW-4).

3. Testator of the Will died in the year 1982 and thereafter the instant suit was filed on 23.10.96.

26. In the light of aforesaid narration of the facts and further in view of the principle of law laid down in the above-stated judgments (supra), it would be appropriate to notice the statements of two attesting

witnesses namely, Milap Singh (PW-3) and Mahipat (PW-4). Both are attesting witnesses of the Will. Milap Singh (PW-3) in para-3 of his statement before the Court states as under:

“3. यह कि, अर्जुन की सेवा परवरिश ग्राम बचरवार में रह कर स्व० मिटठू के द्वारा की जाती रही है, जिसे अर्जुन के द्वारा प्रसन्न होकर अपने हिस्से में प्राप्त ग्राम बचरवार एवं पेण्ड्रा की भूमि जो लगभग-9.25 ए० है को वर्ष-1977 के (सत्रह) 17 जनवरी को स्व० मिटठू के पक्ष में पंजीकृत वसीयतनामा लिखा दिया था जिसमें गवाह नम्बर-1 पर मेरे हस्ताक्षर हैं । और गवाह नम्बर-2 में महिपत राठौर का हस्ताक्षर है।”

Similarly, Mahipat (PW-4) in para-3 of his statement before the Court states as under:-

“3. यह कि, स्व० अर्जुन के द्वारा स्व० मिटठू के पक्ष में लिखी गई वसीयतनामा में मेरे गवाह के रूप पर हस्ताक्षर हैं तथा मिलापसिंह का भी गवाही में दस्तकत है । और उस वसीयत को मोहनसिंह के द्वारा लिखी गई थी।”

27. From careful perusal of the aforesaid statements, it appears that both the attesting witnesses of the Will have only proved their signatures on Will (Ex.P-5). Milap Singh (PW-3) simply stated that he has signed the Will and his signature is 'A' to 'A'. He did not state that the Will was signed by testator in his presence and that the Will was read over and explained to the testator and thereafter he signed the Will and he has seen the testator signing the Will and the testator has seen him signing the Will. He also did not state that he has seen other attesting witness Mahipat (PW-4)

signing the Will. Mere proving the signature would not amount to property of attestation. Similarly, Mahipat (PW-4) in para-3 of his statement has simply stated that he has signed the Will (Ex.P-5) and he has identified his signature as well as signature of other attesting witnesses. He also did not state clearly that he has seen the testator signing the Will and the testator has signed the Will in his presence & testator has seen him signing the Will. He he also did not state that he has seen other attesting witnesses Mahipat signing the Will, as such, it is quite vivid that compliance of Section 63(c) of the Succession Act, 1925 is absolutely missing in the present case through strict compliance of the said provision is imperative. The plaintiffs' father and thereafter the plaintiffs being propounders of the Will must have proved that testator has signed the Will in presence of these two attesting witnesses Milap Singh (PW-3) and Mahipat (PW-4) and in their presence, he has signed the Will. Section 63(c) of the Succession Act, 1925 clearly lays down the requirement of valid and enforceable Will that it shall be attested by two or more witnesses, each of them has seen the testator signing or affixing his mark to the will

and each of the witnesses has signed the will in presence of the testator as held by the Supreme Court in the matter of H. Venkatachala Iyengar (supra) that a Will has to be proved like any other document except that evidence tendered in proof of Will should additionally satisfy the requirement of Section 63 of the Succession Act, 1925 apart from under Section 68 of the Evidence Act, 1872.

28. It is also well settled that mere signing of a will as a witness would not per se amount to compliance of Section 63(c) of the Succession Act, 1925 as *animo attestandi* is absolutely lacking. In the matter of Bhagat Ram v. Suresh¹⁰, it has been held that to be an attesting witness it is essential that the witness should have put his signature *animo attestandi* for the purpose of attesting that he has seen the executant sign or has received from him a personal acknowledgement of his signature, as such, it is quite vivid from testimonies of two attesting witnesses that the plaintiffs have failed to prove the execution of Will by Arjun in favour of Mitthu in accordance with Section 63(c) of the Succession Act, 1925 read with Section 68 of the Indian Evidence Act as they failed to prove the due execution and

10(2003) 12 SCC 35

attestation of Will in accordance with Section 63(c) of the Succession Act read with Section 68 of the Indian Evidence Act.

29. Concludingly, this Court is fully satisfied that execution and attestation of the Will has not been found established in accordance with law and the plaintiffs have failed to discharge their burden placed upon them by law to prove attestation of the Will.

30. In view of the aforesaid analysis, the first appellate Court is absolutely unjustified in holding that the Will has been proved in accordance with law. Consequently, the substantial questions of law are answered in favour of defendant No.1 and against the plaintiffs.

31. In view of aforesaid finding, the judgment and decree of the first appellate Court is hereby set aside and that of the trial Court is hereby restored.

32. The second appeal is allowed to the extent indicated hereinabove.

33. A appellate decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-