

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 242 of 2009**

Antram, S/o Suklal, aged about 50 years, R/o Village
 – Harnadadar, P.H. No. 118/65, Revenue Circle
 Khallari, Tahsil and District – Mahasamund (C.G.)

----- **Appellant/Plaintiff**

Versus

1. Smt. Kewra Bai, W/o late Khilawan Prasad,
2. Lokeshwar Prasad, S/o late Khilawan Prasad,
3. Ku. Madhuri, D/o late Khilawan Prasad,
4. Ku. Gayatri, D/o late Khilawan Prasad.

Respondents No. 3 & 4 are Minor, through their
 natural Guardian Mother Smt. Kewra Bai.
 All are R/o Village –Baronda Bazar, Police
 Station & District – Mahasamund (C.G.)

5. Roman Lal, S/o Ram Pyare Ganda, R/o Village –
 Harnadadar, P.H. No. 118/65, Revenue Circle
 Khallari, Tahsil & District – Mahasamund (C.G.)
6. State of Chhattisgarh, through Collector,
 Mahasamund, District – Mahasamund, (C.G.)
7. Tahsildar, Bagbahra, District Mahasamund,
 (C.G.)

----- **Respondents/defendants.**

For Appellant : Mr. Vivek Kumar Tripathi, Advocate.

For Respondents No. 1 to 5

: Mr. Punit Ruparel, Advocate.
 For Respondents No. 6 & 7

: Mr. Ravi Bhagat, Dy. Govt. Adv.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

18/02/2020

(1) The substantial question of law involved, formulated and to be answered in this second appeal preferred by plaintiff states as under:

“Whether the appellate Court, while reversing the finding of the trial Court, was justified in holding that the registered deed of Will dated 18.02.1997 (Ex.P-1) executed by Kuleshwari Bai in favour of the Plaintiff would not confer any right, title or interest upon him with regard to the suit property ?

(For the sake of convenience, parties would be referred hereinafter as per their status shown and ranking given in the suit before the trial Court).

(2) The suit property was originally held by late Smt. Kuleshwari Bai, widow of Budhari Ganda. The plaintiff filed suit for declaration of title, recovery of possession and permanent injunction stating *inter alia* that the suit property bearing Khasra No. 42, 205 & 206, area 1.89, 1.10 & 1.04 hectare, respectively, total 4.03 hectare was the property held by her (Kuleshwari Bai), which she executed a Will (Ex.P-1) in his favour on 18.02.1997, as such, he is title holder and entitled for declaration of title and recovery of possession of the said property but in the Will (Ex.P-1) dated 18.02.1997, the description of the property shown was Khasra No. 48, 123 and 130/1, area 1.800, 1.183 & 1.063 hectare, respectively, total area 4.046 hectare.

(3) The defendants, by filing written statement, claimed that the suit property bearing Khasra No. 48, 123 and 130/1 was held by Kuleshwari Bai, which she executed a Will (Ex.D-1) in their favour on 10.10.1996 and, therefore, the suit deserves to be dismissed.

(4) The trial Court, by its judgment and decree dated 10.01.2003, after appreciating the oral and documentary evidence available on record, decreed the suit holding that the Will (Ex.P-1) executed by Kuleshwari Bai in favour of plaintiff on 18.2.1997 is in accordance with law.

(5) The defendants preferred first appeal there-against. The First Appellate Court, by its impugned judgment & decree dated 14.07.2008, allowed the appeal on altogether new ground holding that the land bearing Khasra No. 42, 205 & 206, total area 4.03 hectare was not held by the plaintiff and, therefore, by Will (Ex.P-1), title is not conferred with the plaintiff and even no title is conferred with the defendants as Kuleshwari Bai owned the suit property bearing Khasra No. 48, 123 & 130/1 and dismissed the appeal of the defendants and set aside the decree granted by the trial Court in favour of the plaintiff, against which instant second appeal has been preferred by the appellant/plaintiff, in which substantial question of law has been framed, which has been set out in the opening paragraph of the judgment.

(6) Mr. Vivek Kumar Tripathi, learned counsel appearing for

the appellant/plaintiff would submit that there is no dispute that the land bearing Khasra No. 48, 123 & 130/1 was renumbered and new number given was Khasra No. 42, 205 and 206, area 4.03 hectare and, as such, the first appellate Court allowed the appeal on altogether different grounds, which was not in dispute.

(7) Mr. Punit Ruparel, learned counsel appearing for respondents No. 1 to 5/defendants would submit that the suit property being Khasra No. 48, 123 & 130/1 was held by Kuleshwari Bai and, as such all the three khasra Numbers have been renumbered as 42, 205 and 206, therefore, first appellate Court is absolutely unjustified in holding that the suit property mentioned in the plaint, Ex.P-1 and Ex.D-1 are different properties and thereby allowed the appeal, as such, the judgment and decree is based on incorrect facts.

(8) I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and went through the record with utmost circumspection.

(9) The plaintiff claimed by way of Will (Ex.P-1) and defendants by way of (Ex.D-1), the property held by Kuleshwari Bai being Khasra No. 48, 123 and 130/1, area 1.800, 1.183 & 1.063 hectare, respectively but in the plaint it has been mentioned as Khasra No. 42, 205 & 206. Even otherwise, the parties went into the trial on the ground that suit property mentioned in the plaint, Will (Ex.P-1) and the document marked

as (Ex.D-1) are one and all held by Kuleshwari Bai and on that basis the trial Court held that Will executed by Kuleshwari Bai in favour of plaintiff is in accordance with law, but on appeal being preferred, the first appellate Court took altogether different ground and set aside the judgment and decree of the trial Court holding that the property mentioned in the plaint and two Wills i.e. Ex.P-1 & Ex.D-1 are different properties whereas there is no dispute that the property mentioned in the plaint, Will (Ex.P-1) & another Will (Ex.D-1) are one and same property held by Kuleshwari Bai and, therefore, the first appellate Court could not have set aside the judgment & decree of the trial Court on this technical ground as there is no dispute even before this Court between the parties with regard to aforesaid fact.

(10) Accordingly, judgment and decree passed by the trial Court and first appellate Court are set aside. The appeal preferred by the defendants is restored for hearing and disposal in accordance with law expeditiously preferably within a period of three months from the date of receipt of certified copy of this order.

(11) Record of both the courts below be sent back forthwith.

(12) The second appeal is partly allowed. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

