

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 39 of 2008**

Thakur Prasad S/o Rohit Das, Aged about 25 years,
Caste Kewat, R/o Village Salka Pataratoli, Tahsil
Ambikapur, District Surguja, Chhattisgarh.

---Appellant/Defendant

Versus

1. Phuleshwari D/o Bariram, Aged about 55 years, Caste
Kewat, R/o Village Madanpur, Tahsil Ambikapur,
chhattisgarh. **--- Plaintiff**

2. State of Chhattisgarh, through the Collector,
Surguja, Chhattisgarh.

--- Respondents

For Appellant	:-	Mr. Rakesh Pandey, Advocate
For State	:-	Mr. Anshuman Rabra, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

29/01/2020

1. Heard on admission and formulation of substantial
question of law in this second appeal preferred
by the appellant/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. Rakesh Pandey, learned counsel for the appellant/defendant would submit that both the Courts below have concurrently erred in holding that defendant has failed to establish the due execution and attestation of the Will dated 1/11/1995 (Ex. D/1) executed by Gundul *alias* Tiraso in favour of defendant and that too, by recording a finding which is absolutely perverse and contrary to the record, as such, the second appeal deserves to be admitted by formulating substantial question of law in this regard.

3. The suit property was originally held by Bariram and Gundul. Phuleshwari i.e. plaintiff herein is the daughter of Bariram and sister of Gundul who filed a suit for declaration of title and permanent injunction stating that she is the title-holder of the suit property as she inherited the property from her father Bariran wherein defendant set up a plea of Will dated 1/11/1995 (Ex. D/1) executed by Gundul in his favour.

4. Learned trial Court, upon appreciation of oral and documentary evidence on record, decreed the suit of the plaintiff holding that defendant has failed to establish due execution and attestation of the Will (Ex. D/1) dated 1/11/1995 allegedly

executed by Gundul in his favour, which was also affirmed by the first appellate Court in the appeal preferred by the defendant.

5. After hearing learned counsel for the parties and after going through the Will (Ex. D/1) and the statement of attesting witness Thakur Prasad (D.W. 1) and considering the fact that defendant himself did not enter into the witness box before the trial Court, I am satisfied with the concurrent finding recorded by both the Courts below that the Will (Ex. D/1) allegedly executed by Gundul in favour of the defendant has not been proved in accordance with Section 63(c) of the Hindu Succession Act, 1925 read with Section 68 of the Indian Evidence Act, 1872. The said finding recorded by both the Courts below is a finding of fact based on material available on record which is neither perverse nor contrary to law and does not involve any substantial question of law for consideration.

6. 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