

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.308 of 2006

Mahraj Singh (Dead) Through LRs

(Appellant/Plaintiff)

(i) Bihari Singh, S/o Late Mahraj Singh, Aged about 51 years.

(ii) Gamman Singh, S/o Late Mahraj Singh, Aged about 39 years,

Both residents of Village Khajri, Police Office Biroda, Tahsil Dhamdha, District Durg (C.G.)

(iii) Smt. Gauri Bai, D/o Late Mahraj Singh, W/o Chain Singh, Aged about 43 years, R/o Police Station Police Line, Durg, District Durg (C.G.)

---- Appellants

Versus

1. Raghuvir Singh, 25 years, S/o Ramlal Singh, R/o Nayapara, Durg, Tahsil & District Durg.

2. Ram Lal Singh (Dead) Through Legal Heirs-

(1) Samdarshi Singh, S/o Ram Lal Singh, aged 42 years.

(2) Shanti Bai, W/o Mohar Singh, aged 32 years

(3) Gourav (Minor), S/o Mohar Singh, aged 10 years, through his mother Shanti Bai.

All are R/o Village Khajri, Tahsil Dhamda, District Durg (C.G.)

(4) Sukri Bai, D/o Ram Lal Singh, aged 48 years, R/o Village Dundiya, Tahsil Arjunda, District Durg (C.G.)

3. Kodaiya Bai (Died and deleted)

4. (A) Ram Kumar, 30 years, S/o Sita Ram, R/o Nayapara, Durg, Tahsil & District Durg.

(B) Derhin Bai, 45 years, D/o Sitra Ram, W/o Shyam Singh, R/o Gaya Nagar, Durg, Tahsil & District Durg.

(C) Ferhin Bai, 35 years, D/o Sita Ram, W/o Kaushik, R/o Nadi Road, Nayapara, Durg, Tahsil & District Durg.

5. Uma Bai (Dead) Through Legal Heirs-

(i) Smt. Koushilya Bai, W/o Mannu Singh, D/o Late Bhagwan Singh, aged 62 years, R/o Village Marra, Tahsil Patan, District Durg (C.G.)

(ii) Smt. Sumitra Bai, W/o Som Singh, D/o Late Bhagwan Singh, aged

58 years, R/o Village Budwara, Tahsil Saja, District Bemetara (C.G.)

(iii) Smt. Neera Bai, W/o Late Rajendra Singh, D/o Late Bhagwan Singh, aged 56 years, R/o Village Gopal Behana, Tahsil Nawagarh, District Bemetara (C.G.)

(iv) Smt. Tejori, W/o Late Ram Singh, aged 48 years, R/o Village Parpoda, Tahsil Berla, District Bemetara (C.G.)

(v) Roshan Singh, S/o Late Ram Singh, aged 30 years, R/o Village Parpoda, Tahsil Berla, District Bemetara (C.G.)

(vi) Naveen Singh, S/o Late Ram Singh, aged 28 years, R/o Village Parpoda, Tahsil Berla, District Bemetara (C.G.)

(vii) Rahul Singh, S/o Late Ram Singh, aged 26 years, R/o Village Parpoda, Tahsil Berla, District Bemetara (C.G.)

(viii) Jawahar Singh, S/o Late Bhagwan Singh, aged about 48 years, R/o Village Parpoda, Tahsil Berla, District Bemetara (C.G.)

(ix) Smt. Munni Bai, W/o Ashwini Singh, D/o Late Bhagwan Singh, aged 46 years, R/o Village Sonpanda, Tahsil Saja, District Bemetara (C.G.)

(x) Bihari Singh, S/o Late Bhagwan Singh, aged 44 years, R/o Village Parpoda, Tahsil Berla, District Bemetara (C.G.)

(xi) Bharat Singh, S/o Late Bhagwan Singh, aged 42 years, R/o Village Parpoda, Tahsil Saja, District Bemetara (C.G.)

(xii) Suknandan Singh, S/o Late Bhagwan Singh, aged about 40 years, R/o Village Parpoda, Tahsil Berla, District Bemetara (C.G.)

(xiii) Raghunandan Singh, S/o Late Bhagwan Singh, aged 38 years, R/o Village Parpoda, Tahsil Berla, District Bemetara (C.G.)

(xiv) Smt. Radhamani, W/o Neelu Singh, D/o Late Bhagwan Singh, aged 36 years, R/o Near Pusai Dabri, Gaya Nagar, Durg (C.G.)

6. Nankusa Bai, 60 years, Wd/o Jagatram Singh.

7. Pokhan Singh, 25 years, S/o Jagatram Singh.

8. Bal Singh, 20 yers, S/o Jagatram Singh.

9. Kevra Bai, 22 years, D/o Jagatram Singh.

No. 6 to 9 are R/o Village Khajri, Patwari Halka No. 8, Tahsil and District Durg.

10. Laxmi Bai, 22 years, W/o Not known, R/o Village Hundera, District Durg.

11. Jhadu Singh, 35 years, S/o Jagatram Singh, Constable, Police Station Nandghat, Tahsil Bemetara, District Durg.

12. Janki Bai, 40 years, W/o Dharam Singh, R/o Thakurpara, Khairagarh, Tahsil Khairagarh, Distt. Rajnandgaon.

13. State of Madhya Pradesh (Now State of Chhattisgarh), Through Collector, Durg.

(Respondents / Defendants)
---- Respondents

For Appellants:	Mr. Rajeev Shrivastava and Mr. Malay Shrivastava, Advocates.
For Respondent No.1:	Mr. Nilkanth Malaviya, Advocate.
For Respondent No.13 / State:-	Mr. Aakash Pandey, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

06/01/2020

1. This second appeal preferred by the plaintiff was admitted for hearing by formulating the following substantial questions of law: -

“1. Whether the finding of the two Courts below that the Will has been proved conclusively, is proper, legal and justified?

2. Whether the two Courts below have committed an error of law in not considering the aspect whether Rahi Bai had a right over the suit property in the light of the fact that Ranchhod Singh had died prior to the coming into force of the Hindu Succession Act, 1956?”

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

2. The suit land was admittedly held by Ranchor Singh. Originally, the suit property was partitioned between sons & daughters of Ranchor Singh and one portion of land was retained by him for his maintenance and for the maintenance of his second wife Rahi Bai. The plaintiff is grand-son of Ranchor Singh from his first wife Phulwa, whereas defendant No.1 is grand-son of Ranchor Singh from his second wife Rahi Bai. Rahi Bai had executed an unregistered Will Ex.D-1 on 17-3-1978 in favour of defendant No.1. It is the case of the plaintiff that on the basis of the said Will, defendants No.1 & 2 got the

suit land recorded in their own names and took over the possession and hence the suit was filed for declaration and possession in which defendants No.1 & 2 filed written statement and stated that Rahi Bai had got the property on partition and she being the owner of the property had right to execute Will and rightly executed the Will.

3. The trial Court on appreciation of oral and documentary evidence on record held that by virtue of Section 14(1) of the Hindu Succession Act, 1956, Rahi Bai has become the absolute owner of the suit property which she received for maintenance; the suit property is not the ancestral property; and Rahi Bai had validly executed Will in favour of defendant No.1, as she has the right to execute Will, which the first appellate Court has affirmed in the first appeal preferred by the plaintiff against which this second appeal has been preferred in which substantial questions of law have been formulated and which have been set-out in the opening paragraph of this judgment.
4. Mr. Malay Shrivastava, learned counsel appearing for the appellants herein / LRs of the plaintiff, would submit that the two Courts below have legally erred in holding that defendant No.1 has established the legality and validity of the Will in accordance with law, as such, the finding on the execution and attestation of Will is perverse and liable to be set aside.
5. Mr. Nilkanth Malaviya, learned counsel appearing for defendant No.1 / respondent No.1 herein, would support the impugned judgment & decree.
6. I have heard learned counsel for the parties and considered their submissions made herein-above and gone through the record with utmost circumspection.

7. The short question for consideration would be, whether execution and attestation of the Will Ex.D-1 has been proved and established by defendant No.1 in view of the provisions contained in Section 63 of the Succession Act, 1925 read with Section 68 of the Evidence Act, 1872?
8. 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]
9. 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 Evidence Act, 1872.
10. 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

¹ (2015) 8 SCC 615

more than one witness be present at the same time, and no particular form of attestation shall be necessary.”

11. 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.

12. 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.

13. Section 68 of the 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.”

14. 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

² (2003) 2 SCC 91

case of will.

15. 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.”

3 AIR 1955 SC 346

16. 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.

4 AIR 1959 SC 443

(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.”

17. 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).

18. 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.

19. 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

5 (1977) 1 SCC 369

6 (1974) 2 SCC 600

7 (2009) 4 SCC 780

8 (2017) 1 SCC 257

disposing state of mind; that he understood the nature and effect of the dispositions; 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.

20. 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.”

21. 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 now 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.”

22. 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.”

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

1. Testator Rahi Bai is said to have executed unregistered Will in

respect of her property in favour of defendant No.1 namely, Raghuvir Singh who is her grand-son.

2. The said Will dated 17-3-1978 is said to have been attested by two witnesses namely, Gopal Singh (DW-3) and one Harlal, and scribed by Pradeep Agrawal, Advocate (DW-2).
3. Attesting witness Gopal Singh has been examined as DW-3 while scribe Pradeep Agrawal, Advocate has been examined as DW-2.
4. Attesting witness who has been examined as DW-3 has clearly stated in his statement that on 17-3-1978, the Will was executed by Rahi Bai in favour of defendant No.1 and one day in advance he was informed about the execution of Will and on that day, he himself, Rahi Bai, Harlal and Ramlal had gone to the office of Pradeep Agrawal, Advocate. Stamp paper for the Will was already requisitioned by Rahi Bai and it was typed at the residence of the Advocate. The Will (Ex.D-1) was read over and thereafter finding it in accordance with what she wished to write, Rahi Bai signed the Will and thereafter, attesting witness Gopal Singh (DW-3) signed the will from 'B' to 'B' portion and another attesting witness Harlal signed the will from 'C' to 'C' portion and thereafter, scribe Pradeep Agrawal put his signature on the will.
5. Though attesting witness Gopal Singh (DW-3) was subjected to lengthy cross-examination, but nothing has been brought out to hold that the Will was not executed or it was not in accordance with law. The attesting witness has clearly stated that Rahi Bai signed the will in his presence and another attesting witness Harlal and he himself (Gopal Singh DW-3) signed the will as attesting witnesses in presence of Rahi Bai and thereafter,

scribe Pradeep Agrawal (DW-2), Advocate, also signed the Will in presence of Rahi Bai, as all were gathered by appointment.

24. Reverting to the facts of the present case in light of the aforesaid narration of facts, it is quite vivid that the requirement of Section 63(c) of the Succession Act, 1925 has been fully complied with which the trial Court as well as the first appellate Court concurrently recorded by holding that execution and attestation of the Will Ex.D-1 has been established in accordance with law. The statement of attesting witness Gopal Singh (DW-3) is also supported by Pradeep Agrawal (DW-2) which is neither perverse nor contrary to record. I do not find any perversity or illegality in the said finding.
25. Likewise, the finding of fact recorded by the two Courts below that after death of Ranchor Singh and after coming into force of the Hindu Succession Act, 1956, Rahi Bai became the absolute owner of the suit land by virtue of the provision contained in Section 14(1) of the Hindu Succession Act, 1956. The said finding is also based on the evidence available on record, it is neither perverse nor contrary to record.
26. Concludingly, I do not find any merit in the second appeal and the first appellate Court is absolutely justified in affirming the judgment & decree of the trial Court. As such, the judgment and decree of the first appellate Court are hereby affirmed by answering the substantial questions of law in favour of the defendants and against the LR's of the plaintiff. This second appeal is dismissed accordingly leaving the parties to bear their own cost(s).
27. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge