

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No.133 of 2010**

- Mohd. Hamid, S/o Mohd. Shakir, Aged About 45 Years, R/o Ambagarh Chowki, Tahsil Ambagarh Chowki, Distt.-Rajnandgaon, Chhattisgarh

----- Applicant**Versus**

1. Mohd. Shabbir (Died) Through His Legal Hrs. Nill
 - 1(a) Mohd Sharif Quraishi, S/o Mohd. Shabbir, Aged About 50 Years
 - 1(b) Mohd. Rafiq Quraishi, S/o Mohd. Shabbir, Aged About 48 Years
 - No.1 (a) and (b) both R/o Ward No.15, Ambagarh Chowki, District Rajnandgaon, Chhattisgarh
 - 1(c) Smt. Begum Be, W/o Hafiz Khan, Aged About 56 Years, R/o Village Ratan Ghat, Tahsil Dongargaon, District Rajnandgaon, Chhattisgarh
2. Lahur Bir, D/o Lal Mohammad, R/o Village Kode, Tahsil Mohla, District Rajnandgaon, Chhattisgarh
3. Arifa Bai, D/o Mohd. Shakir, R/o Village Raja Khujji, Tahsil Dongargaon, District Rajnandgaon, Chhattisgarh
4. State Of Chhattisgarh Through the Collector, Rajnandgaon
5. Mohd. Hakim, S/o Mohd. Shakir, Aged About 41 Years, R/o Ambagarh Chowki, Tahsil Ambagarh Chowki, District Rajnandgaon, Chhattisgarh

----- Respondents

For Appellant Mr. Abhijeet Mishra, Adv.
For Respondent-State Mr. Animesh Tiwari, Dy. AG
For Respondent No.3 Ms. Parvati Suryavanshi,
 Adv.

Hon'ble Justice Shri Sanjay K. Agrawal

Order On Board

03/03/2021

1. Heard on admission and formulation of substantial question of law in the second appeal preferred by the appellant /plaintiff No.1.
2. By the impugned judgment and decree, the First Appellate Court has dismissed the appeal preferred by the plaintiffs vide judgment and decree dated 12.04.2007 passed by the learned 1st Additional District Judge, Rajnandgaon (C.G.) in Civil Appeal No.02A/2006 affirming the judgment and decree of the Trial Court dated 01.02.2003 passed by the learned Civil Judge Class-I,

Ambagarh Chowki, District Rajnandgaon (C.G.) in Civil Suit No.12A/1996 dismissing the suit filed by the plaintiffs.

3. Mr. Mishra, learned counsel for the appellant/plaintiff No.1, would submit that both the Courts below have erred in concurrently holding that the oral Will executed by Lal Mohammad, the plaintiffs' grandfather, in favour of the plaintiffs has not been established by recording a finding perverse to the record. Even otherwise, the plaintiff No.1 is entitled for the discretionary relief under Order 7 Rule 11 of CPC. As such, the appeal deserves to be admitted for hearing by formulating substantial question of law.
4. I have heard learned counsel for the appellant, considered his submissions made herein-above and also went through the records with utmost circumspection.
5. The suit property was admittedly held by

Lal Mohammad. It is the case of the plaintiffs that Lal Mohammad has executed a Will in favour of them to the extent of 3.14 Acres of land and they have become title holder of the suit land, by strength of Will, the suit was filed by them seeking relief of declaration of title and possession against the defendant No.1, who is the son of Lal Mohammad and is admittedly in possession of 3.14 Acres of the suit land shown as Schedule-A appended with the plaint.

6. The Trial Court after appreciating the oral and documentary evidence available on record held that the plaintiffs have failed to prove the execution of oral Will. It was also held that the document (Ex-P-2) filed by the plaintiffs themselves would show that Lal Mohammad has cancelled the Will on 26.08.1977 allegedly executed in favour of the plaintiffs citing reason that it was fraudulently got executed in favour of the

plaintiffs, therefore, the plaintiffs have failed to prove title on the basis of oral Will, which has been affirmed by the learned First Appellate Court.

7. It is correct to say that by the Mahomedan Law, no writing is required to make a valid Will and no particular form, even of verbal declaration, is necessary so long as intention of testator is sufficiently ascertained.
8. In the matter of **Venkat Rao and another vs Namdeo and others**¹, it has been held by the Privy Council that onus of establishing an oral Will is always a very heavy one and must be proved with utmost precision and with every circumstances of time and place.
9. Following the principles laid down by the Privy Council in the matter of **Venkat Rao** (supra) in the present case and considering the concurrent findings recorded by the two Courts below, it cannot be held that

¹ AIR 1931 Privy Council 285

plaintiffs have proved the execution of oral Will by Lal Mohammad in their faovur with utmost precision and heavy burden has been discharged to prove the oral Will.

10. As such, I do not find any illegality or perversity in the concurrent findings recorded by the two Courts below holding that oral Will executed by Lal Mohammad in favour of the plaintiffs has not been proved.

11. The second appeal deserves to be and is hereby dismissed in *limine* without notice to the other side. No order as to cost (s).

Sd/-
Sanjay K. Agrawal
Judge

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