

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 97 of 2012

- Ramnandan S/o Ramkishun, aged about 51 years, R/o Village Salwahi, P.S. Basantpur, Tah Wadrafnagar, Dist. Surguja C.G.

---- Appellant

Versus

1. Bharat, S/o Shivnandan, aged about 46 years;
2. Mahavir, S/o Gulab, aged about 38 years;
3. Parasnath, S/o Gulab, aged about 26 years;
4. Atoriay, W/o Gulab, aged about 60 years;
5. Moti, S/o Shivnandan, aged about 45 year;

All are R/o Village Golra, Caste – Khairwar,
P.S. Basantpur, Tahsil – Wadrafnagar,
District – Surguja, C.G.

6. State of Chhattisgarh, through Collector, Surguja, Ambikapur, C.G.

---- Respondents

For Appellant :- Mr. H.B. Agrawal, Senior Adv.
With Ms. Richa Dwivedi, Adv.
For Respondents No.1 to 5 :- Mr. A.K. Prasad,
Adv.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

22/06/2021

1. Proceedings of this matter have been taken up through video conferencing.
2. Heard on admission and formulation of substantial question of law in second appeal preferred by the appellant / defendant.
3. By the impugned judgment, the first appellate Court has dismissed the appeal preferred by the defendant-Ramnandan affirming the judgment and decree of the trial Court decreeing the suit of the plaintiffs.
4. Learned Sr. counsel for the appellant / defendant would submit that both the Courts below have totally unjustified in decreeing the suit of the plaintiffs holding that the defendant has failed to prove the Will dated 12.04.1997 (Ex. D-8) executed by Chamaru in favour of defendant No.1-Ramnandan by recording a finding which is perverse to the record and further unjustified in holding that the plaintiffs have inherited the suit

property being legal heirs of Chamru.

5. The suit property was settled in favour of Shivchand, he had one son Chamru and one daughter Itwariya. Itwariya had three sons namely Bharat, Gulab & Moti. Plaintiffs No. 1 & 3, are sons of Itwariya, whereas plaintiffs No.2(A) to 2(C) are sons of Gulab and wife of Gulab, filed a suit for declaration of title and delivery of possession over the suit land stating inter-alia that they are title holders of the suit land as it was originally held by Chamru, who died issueless and the suit property has been inherited by Itwariya and after death of Itwariya, the plaintiffs have succeeded the suit property and Will dated 12.04.1997 (Ex. D-8) allegedly executed by Chamru in favour of defendant No.1 is suspicious Will and it has not been executed in favour of defendant No.1-Ramnandan.

6. The trial Court upon appreciation of oral documentary evidence available on record, by its judgment and decree dated 11.03.2004, decreed the suit holding that the plaintiffs have succeeded the suit property after death

of Chamru as he was original holder and after death of Chamru, Itwariya has succeeded the suit property and the plaintiffs being sons and grandsons of Itwariya have inherited the suit property and further held that Will (Ex.D-8) is suspicious document and it has not been proved in accordance with law though one attesting witness namely Jagdishwar has been examined before the trial Court. On appeal being preferred by the appellant / defendant, the first appellate Court has affirmed the judgment and decree of the trial Court.

7. Two Courts below have concurrently recorded a finding that after death of Shivchand, his son Chamru and daughter Itwariya have succeeded the suit property. Since Chamru has died issueless, Itwariya would succeed the suit property and after her death, the plaintiffs have succeeded the suit property and unregistered Will dated 12.04.1997 (Ex.D-8) has not been proved in accordance with law as it is suspicious document. Adequate reasons have been assigned by two Courts below holding the Will (Ex. D-8) has not been proved under Section 63(c) of the Indian Succession Act,

1925 read with Section 68 of the Indian Evidence Act, 1872 and also sufficient reason has been assigned in holding that Will (Ex. D-8) is suspicious document.

8. The findings recorded by two Courts below holding the plaintiffs to be title holders and Will dated 12.04.1997 (Ex. D-8) is suspicious document and it has not been proved in accordance with law are findings of fact based on evidence available on record, which are neither perverse nor contrary to record, as such, I do not find merit in this second appeal and even I do not find any substantial question of law for determination of this second appeal.

9. Accordingly, the second appeal being devoid of merit is liable to be and is hereby dismissed in *limine* without notice to other side. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Ankit