

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.119 of 2010**

Michael David, aged about 62 years, S/o Late Saloman David,
Retd. Driver, Forest Department, Nayapara, Aam Bagicha, Post,
Tahsil and Distt. Narayanpur

(Plaintiff)
---- Appellant

Versus

1. Masih Kalyan (Guddu), S/o Late Saloman David, By Occupation Teacher, Govindpur, Distt. Kanker
2. Premlata, aged about 55 years, D/o Late Saloman David, By Occupation Clerk, Forest Dept., Narayanpur
3. Asha, aged about 48 years, D/o Late Saloman David, By Occupation Clerk, DHO Office Jagdalpur, R/o Village Kangoli, Distt. Bastar
4. Shantial, aged about 45 years, S/o Late Saloman David, By Occupation Motor Mechanic, By Caste Christian, Tahsil and Distt. Narayanpur
5. State of Chhattisgarh, through Collector, Narayanpur
(Defendants)
6. Pramod Kumar, aged about 36 years, S/o Late Saloman David
7. Kumari Hemlata, aged about 36 years, D/o Late Saloman David,
8. Pravin David, aged about 26 years, S/o Late Pavel David

R 6 to 8 R/o Nayapara, Aam Bagicha, Post, Tahsil and Distt.
Narayanpur

(Plaintiffs)
---- Respondents

For Appellant: Mr. Parag Kotecha, Advocate.

For Respondent No.5 / State: -

Mr. Vinod Kumar Tekam, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

11/01/2021

1. Heard on admission and formulation of substantial question of

law in this second appeal preferred by the plaintiff.

2. By the impugned judgment, the first appellate Court has partly modified the judgment & decree of the trial Court and held that the plaintiffs and the defendants are the joint title holders of the suit house earlier held by their father Solomon.
3. Learned counsel appearing for the appellant herein / plaintiff submits that the first appellate Court is unjustified in granting the appeal holding that the plaintiffs and the defendants, both, are the title holders of the suit land, as only one defendant filed appeal and other defendants have chosen not to file appeal against the judgment & decree of the trial Court granting declaration of title and permanent injunction in favour of the plaintiffs, by recording a finding which is perverse to the record.
4. The suit land and the house constructed on such land bearing Khasra No.578/5, area 0.20 acre, was earlier held by one Solomon. The plaintiffs are sons and daughters of Solomon and the defendants are also sons and daughters of Solomon. On 1-5-2003 the said Solomon executed a Will Ex.P-1 in favour of the plaintiffs and his wife Shantimani and thereafter, Solomon died on 23-10-2004 and his wife Shantimani also died on 23-12-2004 and thereafter, the plaintiffs who are sons and daughters of Solomon & Shantimani filed a suit that though defendants No.1 to 4 are sons and daughters of Solomon & Shantimani, but they have no right and title over the suit property, as Will has been executed by Solomon in their favour and therefore exclusive title be granted in their favour and defendants No.1 to 4 be restrained from interfering with their possession, which the trial Court accepted by holding that Will executed by Solomon in

favour of the plaintiffs and Shantimani – their mother, is proved and against that judgment & decree, only one of the defendants namely Shantial, son of Solomon David filed first appeal. The first appellate Court held that since Will was executed by Solomon in favour of not only the plaintiffs but also against Shantimani who is mother of the plaintiffs and defendants No.1 to 4, both, therefore, the plaintiffs and defendants No.1 to 4 all are title holders of the suit property and modified the judgment & decree of the trial Court to that effect which has been called in question in this second appeal.

5. The fact remains that Will was executed by Solomon in favour of his wife Shantimani and the plaintiffs in exclusion of defendants No.1 to 4. Smt. Shantimani died on 23-12-2004, but she has not executed any Will in favour of the plaintiffs, therefore, her share in the suit property would be succeeded by the plaintiffs as well as defendants No.1 to 4 and in that view of the matter, the first appellate Court has rightly held that no decree for declaration of title exclusively can be granted in favour of the plaintiffs and modified the judgment and decree of the trial Court to that effect which cannot be taken exception to by the plaintiff on the ground that only one of the defendants had preferred first appeal before the first appellate Court. I do not find any merit in this second appeal. The appeal deserves to be and is accordingly dismissed *in limine* being no question of law involved. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge