

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 248 of 2021**

- Narayan Diwakar S/o Late Puran Diwakar Aged About 58 Years R/o Village- Sonpairi, Tahsil- Abhanpur, District Raipur, Chhattisgarh

---- Petitioner**Versus**

1. Manglu S/o Baniya
2. Tejram S/o Manglu

Both Resident Of Village- Sonpairi, Tahsil- Abhanpur, District- Raipur, Chhattisgarh

---- Respondents

For Petitioner : Shri Sandeep Dubey, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****25.01.2021**

Heard.

1. The present petition is against the order dated 02.01.2021 passed by the Revenue Board, Bilaspur.
2. Learned counsel for the petitioner would submit that a property devolved on the petitioner by a WILL dated 18.06.2015, the particulars of the property is Kh No. 1052 admeasuring 0.440 Hectare and out of that 0.16 hect was bequeathed in favour of the petitioner. He further submits that the respondents herein claimed that they are the adopted son of Tatki Bai and they claim the property. Initially the dispute for mutation arose before the Tahsildar and the Tahsildar recorded the finding in favour of Respondent No. 2 namely Tejram on the ground that the WILL is suspicious. Against that the petitioner preferred an appeal before the SDO and the SDO held in favour of petitioner and thereafter the challenge was made before the

Commissioner and the Commissioner set aside the order of the SDO and held it to be suspicious. Against that revision was filed before the Revenue Board wherein the Revenue Board by Annexure P-1 as held that the order of Commissioner is legal. He further submits that in this case according to Section 63 (c) of Succession Act and Section 68 of the Evidence Act, the WILL has been proved before the Revenue Board, therefore the finding arrived by the Revenue Board is bad in law. He further submits that the Revenue Board do not have the right to declare that the WILL is forged or suspicious and the respondents should have filed a Civil suit.

3. Perused the documents.
4. Perusal of documents would show that the two Revenue Courts held against the petitioner that the WILL is suspicious. The Court have time and again upheld that in order to prove the WILL the Courts has to resort to the arm chair theory to consider the facts and evidence to rationally harmonized the same to construe the WILL. The supreme Court in the case of **Lakshmana Nadar and others Vs. B. Ramier {AIR 1953 SC 304}** further followed by **Navneet Lal alias Rangi Vs. Gokul and others {AIR 1976 SC 794}** has laid down the ratio that the arm chair theory can always be adopted to know the intentions of the testator in view of the surrounding circumstances.
5. Further the Supreme Court in the case of **H. Venkatachala Iyengar v .B.N. Thimmajamma (AIR 1959 SC 443)** has observed that although the mode of proving a will did not ordinarily differ from that of proving any other document, nonetheless it requires an element of solemnity in the decision on the question as to whether the document propounded is proved as the last will and testament of departed testator. Where there are suspicious circumstances, the onus would be on the propounder to explain them to the satisfaction of the court before the will could be accepted as genuine. Where there are suspicious circumstances, the Court would naturally expect that all

legitimate suspicions should be completely removed before the document is accepted as the last will of the testator. These principles have been reiterated in the subsequent decisions of this Court in Rani Purnima Devi. V. Kumar Khagendra Narayan Dev {(1962) 3 SCR 195} and Smt. Indu Bala Bose V. Manindra Chandra Bose {(1982) 1 SCC 20}.

6. In any case, submission of the petitioner that the WILL has been proved by the attesting witness and that is conclusive cannot be accepted by this Court, this is a disputed question of fact. Even otherwise, the entry in the Revenue Record would be relevant for paying the revenue and nothing to do with the ownership as laid down in the case of Municipal Corporation, Gwalior Vs. Puran Singh alias Puran Chand and Ors. reported in AIR 2014 SCC 2665. If the petitioner is claiming ownership on basis of WILL he may avail the remedy as available to him under the law.
7. In view of this, the petition sans merit is liable to be and is hereby dismissed.

Sd/-
(Goutam Bhaduri)
Judge

Jyoti