

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A. No. 7 of 2021****Reserved on 15.09.2021****Pronounced on 21.09.2021**

- Rajendra Lodhi S/o Late Raghunath Prasad Lodhi Aged About 39 Years R/o Near Deshmukh Kirana Store, (Near Vivekanand School), Gayanagar, Durg, Tahsil And District- Durg, C.G. ---- **Appellant**

Versus

1. Smt. Parvati Janghel D/o Late Raghunath Prasad Lodhi Aged About 50 Years R/o Beside Janghel Kirana Store, Nagr Avanti Bai Lodhi, Lodhipara, Kanpa, Raipur, Tahsil And District- Raipur, Chhattisgarh.
2. Smt. Tulsi Bai @ Tripti Verma D/o Late Raghunath Prasad Lodhi Aged About 47 Years R/o Lane No. 5, Ward No. 11, Shantinagar, Rajnandgaon, Tahsil And District- Rajnandgaon, Chhattisgarh.
3. Smt. Sukanti Verma D/o Late Raghunath Prasad Lodhi Aged About 43 Years Near Deshmukh Kirana Store, (Near Vivekanand School), Gayanagar, Durg, Tahsil And District- Durg, Chhattisgarh.
4. Smt. Sunita Janghel D/o Raghunath Prasad Lodhi Aged About 41 Years R/o M.I.G. 1/737, Hudko, Bhilai, Tahsil And District- Durg, Chhattisgarh.
5. Smt. Rajkumar W/o Late Raghunath Prasad Lodhi Aged About 74 Years R/o Near Deshmukh Kirana Store, (Near Vivekanand School), Gayanagar, Durg, Tahsil And District- Durg, Chhattisgarh.
6. State Of Chhattisgarh Through The Collector, District- Durg, Chhattisgarh. ---- **Respondents**

For Appellant:	Shri Rajnish Singh Baghel, Advocate.
For Respondents No.1 to 4:	Shri Devershi Thakur, Advocate.
For Respondent No.5:	None, though served.
For Respondent No.6:	Shri Sameer Sharma, Dy. G.A.

Single Bench: Hon'ble Shri Sanjay S. Agrawal, J**CAV Judgment / Order**

1. This appeal has been preferred by Defendant No.1-Rajendra Lodhi under Order 43 Rule 1(r) of Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC') questioning the legality and propriety of the order dated 30.01.2021 passed by Fourth Additional District Judge, Durg (C.G.) in Civil Suit No.19-A/2020, whereby the learned trial Court has allowed the

application filed under Order 39 Rule 1 and 2 of CPC restraining the mutation proceedings pending before the revenue authority. The parties to this appeal shall be referred hereinafter as per their description before the Court below.

2. Briefly stated the facts of the case are that the Plaintiffs instituted a suit claiming declaration to the effect that the registered deed of Will dated 02.03.2019 purported to have been executed by their father, namely, Raghunath Prasad Lodhi in favour of their brother Rajendra Lodhi be declared as null and void. According to them, the property in question is the ancestral property and they are the coparcener of it, and therefore, the father had no right to execute the Will in favour of Defendant No.1- Rajendra Lodhi affecting their interest.

3. Along with the aforesaid claim, an application under Order 39 Rule 1 & 2 of CPC has been made seeking the stay of mutation proceedings pending before the revenue authority as initiated by Defendant No.1 based upon the alleged deed of Will.

4. While contesting the suit, it is pleaded by Defendants No.1 & 2 that the property in question is the self acquired property of their predecessor-in-interest, namely, Raghunath Prasad and was, therefore, competent to execute the alleged deed of Will and based upon it, he (Rajendra Lodhi) acquired his valid interest over the property in question, and therefore, the application seeking stay of the mutation proceedings is liable to be rejected.

5. The trial Court, after considering the said application, arrived at a prima facie conclusion based upon the revenue papers like B-1, *Kishtbandi Khatauni* and *Khasra Panchshala* revealing the name of one

Binjhbar, the father of said Raghunath along with him that the property in question is not the self acquired property of said Raghunath Prasad Lodhi and if the revenue records are mutated in the name of Defendant No.1 based upon the alleged Will, it would then cause an irreparable injury to them. As a consequence of it, the trial Court has stayed the mutation proceedings which has been impugned by way of this appeal.

6. Learned counsel appearing for the Appellant-Defendant No.1 submits that the observation of the Court below holding that the property in question is not the self acquired property of said Raghunath Prasad Lodhi and thereby arrived at a conclusion that if the mutation is done based upon the alleged Will, it would then cause an irreparable loss to the Plaintiffs, is apparently contrary to law. It is contended further that as Defendant No.1 has acquired his interest by virtue of alleged registered deed of Will, therefore, it ought not to have been observed that the prima facie case lies in favour of the Plaintiffs. The Court below has, therefore, ought not to have stayed the mutation proceedings pending before the revenue authority.

7. On the other hand, learned counsel appearing for Respondents No.1 to 4 has supported the order impugned as passed by the Court below.

8. I have heard learned Counsel for the parties and perused the entire papers annexed with this appeal carefully.

9. From perusal of the record, it appears that the Plaintiffs are claiming declaration to the effect that the alleged registered deed of Will dated 02.03.2019 said to have been executed by their predecessor-in-interest, namely, Raghunath Prasad Lodhi in favour of their brother Rajendra Lodhi

be declared null and void as the property in question is not the self-acquired property of him and was, therefore, not entitled to execute the alleged Will. In order to substantiate the fact that the property in question is the ancestral property and not the self acquired property of said Raghunath Prasad, reliance was placed upon the revenue papers. However, a bare perusal of the revenue papers would show that the entire property was not recorded in the name of said Binjhbar, the father of said Raghunath Prasad Lodhi as some of the properties are shown to be recorded in the name of his son Raghunath as well. That apart, nature of property is in dispute and in absence of any cogent and reliable evidence, it cannot be said that the property in question is the ancestral property and/or not the self acquired property of said Raghunath Prasad Lodhi as alleged by the Plaintiffs.

10. Be that as it may, even if it is presumed that the property in question is the ancestral property, the predecessor-in-interest of the parties, namely, Raghunath Prasad was still entitled to bequeath the property to the extend of his interest as per the provision prescribed under Section 30 of the Hindu Succession Act, 1956. In view thereof, the mutation proceedings as initiated by Defendant No.1 based upon the alleged registered deed of Will cannot be said to be of his futile exercise, particularly when it was admittedly to be executed in his favour. The Court below has, therefore, erred in staying the mutation proceedings pending before the revenue authority.

11. Accordingly, the appeal is allowed and the order impugned is hereby set aside. No order as to costs.

Sd/-

(Sanjay S. Agrawal)
JUDGE