

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 07 of 2011**

- Hardayal S/o. Jagarnath Yadav, aged about 45 years, Occupation Agriculturist, R/o. Village Aamgaon Tahsil Lundar Distt. Surguja (CG)

---- Appellant**Versus**

1. Malti D/o. Jagarnath Yadav, W/o. Somaru aged about 35 years, Occupation House wife, R/o. Village Padhi PS Balrampur Tahsil Pal, Balrampur, Distt. Surguja (CG)
2. Saraswatiya D/o. Jagarnath, R/o. Village Pasena, aged about 30 years, Tahsil Lundra Distt. Surguja (CG)
3. State of MP/Chhattisgarh Through Collector Surguja Ambikapur (CG)

---Respondents

For Appellant	: Shri Harish Khuntiya, Advocate
For Respondents 1 & 2	: Not noticed
For Respondent No.3/State	: Shri Sanjay Pathak, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****17.02.2021.**

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellant herein/defendant No.1 against the impugned judgment and decree dated 02.12.2010 passed by District Judge Surguja Ambikapur in Civil Appeal No.12A/2005 affirming the judgment and decree dated 30.11.2005 passed by First Civil Judge Class-II, Ambikapur Surguja in Civil Suit No.5A/2005 by which the trial Court decreed the suit granting 2/3rd share of the suit property in favour of the plaintiffs.

2. Learned counsel for the appellant herein/defendant No.1 submits

that both the courts below have concurrently erred in disbelieving Will dated 02.4.1996 (Ex-D/1) executed by Jagarnath Yadav in favour of appellant Hardayal on the ground that Ex-D/1 has not been proved in accordance with Section 63(c) of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, by recording a finding which is perverse to the record, therefore, the appeal involves substantial question of law for determination and the appeal may be admitted for hearing by formulating substantial question of law.

3. I have heard learned counsel for the appellant and went through the record with utmost circumspection.

4. Late Jagarnath Yadav had two daughters namely Malti and Sarswatiya and one son namely Hardayal. After the death of Jagarnath Yadav on 15.5.1996, his daughters/plaintiffs 1 & 2 filed a suit on 29.4.1998 claiming 1/3-1/3rd share in the suit property in which defendant No.1 set up plea of Will executed in favour of Hardayal by their father on 02.4.1996 (Ex-D/1).

5. The trial Court after appreciating oral and documentary evidence, decreed the suit holding that each plaintiffs is entitled for 1/3rd share in the suit property and further held that plea of the Will set up by defendant No.1 is not established as none of the attesting witnesses were examined to prove the alleged Will and accordingly decreed the suit. The said finding of the trial Court has been affirmed by the first appellate Court against which defendant No.1 has preferred the second appeal.

6. Though the appellant/defendant No.1 claimed the exclusive ownership over the suit property by way of Will dated 02.4.1996

allegedly executed by Jagarnath Yadav in his favour, but none of the attesting witnesses were examined to prove the Will, therefore, the trial Court has rightly held that in absence of examination of attesting witnesses, Will (Ex-D/1) allegedly executed in favour of the appellant is not proved in accordance with Section 63(c) of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, which has rightly been affirmed by the first appellate Court, which is neither perverse nor contrary to the record and the appeal does not involve any substantial question of law .

7. The second appeal deserves to be and is accordingly dismissed in limine without notice to the other side. No cost(s).

Sd/-

(Sanjay K. Agrawal)
JUDGE