

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No.101 of 2005****Judgment reserved on : 15.07.2021****Judgment delivered on : 20.10.2021**

1. Sanjay Kumar, aged about 36 years
2. Manish Kumar, aged about 32 years
3. Dhananjay Kumar, aged about 29 years
4. Harish Kumar, aged about 25 Years
5. Sushri Rekha, aged about 30 Years

All are Sons and Daughter of Shri Balkrishna Tiwari, R/o Bamblai Para, Dhamtari, Tehsil and District Dhamtari, Chhattisgarh

----- Appellants

Versus

1. Preetam Prasad Pandey (Dead) Through Lrs. As Per Honble Court Order Dated 25-01-2019.

1(A) Smt. Veena Pandey (died) deleted as per Hon'ble Court order dated 23.06.2021

1(B) Srikant Pandey, S/o Late Shri Preetam Prasad Pandey

1(C) Smt. Kiran Gauri Shanker Tiwari, D/o Late Shri Preetam Prasad Pandey

All R/o Village Jhara, Tehsil and District Mahasamund, Chhattisgarh

2. Radheshyam Pandey, aged about 59 years, S/o Shri Mohanlal Pandey, R/o Village Jhara, Tehsil and District Mahasamund, Chhattisgarh

3.State of Chhattisgarh, Through the Collector,
Mahasamund, District Mahasamund, Chhattisgarh

----- Respondents

For Appellants	Mr. R. K. Pali, Advocate
For Respondent Nos.1 & 2	Mr. Y. C. Sharma, Senior Advocate with Mr. Sachin Nidhi, Advocate
For Respondent No.3/State	Mr. Sunil Otwani, Addl. AG

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Judgment

1. This second appeal preferred by the appellants/plaintiffs was admitted for hearing on 28.02.2019 by formulating following substantial question of law:

“Whether both the courts below are justified in holding that the plaintiffs have not proved the execution and attestation of Will (Ex-P/2) in accordance with Section 63 (c) of the Indian Succession Act, 1925 read with Section 68 of the Indian Evidence Act, 1872?”

[For the sake of convenience, the parties would be referred hereinafter as per their status shown and nomenclature given in the suit before

the trial Court].

2. The suit property was originally held by Chintamani. His first wife was Sumitra Bai and the second wife was Naina Bai. The plaintiff Nos.1 to 4 are the sons of Balkrishna Tiwari, whereas the plaintiff No.5 is the daughter of Balkrishna Tiwari. Balkrishna Tiwari is the grand son of Jiya Bai, who is the sister of Sumitra Bai. The defendant Nos.1 & 2 are the grand sons of Naina Bai and the sons of Bisahin Bai. It is the case of the plaintiffs that the suit property shown in Schedule-A of the plaint was held by Sumitra Bai in her exclusive right and title. Sumitra Bai had executed a Will (Ex-P/2) in favour of the plaintiffs on 15.04.1996 in presence of two attesting witnesses and thereafter on 14.05.1996 got it registered in Bathena Hospital at Dhamtari and thereafter she died on 02.08.1996. After the death of Sumitra Bai, the defendant Nos.1 & 2 started interfering in the suit land and cultivated the suit land leading to filing of the suit for declaration of title, possession, permanent injunction and mesne profit. The defendant

Nos.1 & 2 filed the written statement inter-alia stating that Sumitra Bai is not the exclusive title holder of the suit land and she is the co-owner/co-bhoomi-swami of the suit land and the defendant Nos.1 & 2 and Sumitra Bai have 1/3rd-1/3rd share each in the suit property. It was further stated that Sumitra Bai has neither executed any Will deed in favour of plaintiffs on 15.04.1996 nor got it registered in their favour on 14.05.1996 and even if any Will has been executed, the same is forged and ineffective and prayed for dismissal of the suit.

3. The Trial Court upon appreciation of oral and documentary evidence available on record held that the suit property shown in Schedule-A of the plaint is in the exclusive title of Sumitra Bai overruling the plea of the defendants that Sumitra Bai had 1/3rd share in the suit property and also held that the defendant Nos.1 & 2 are not the co-owner/co bhoomi-swami of the suit land but dismissed the suit holding that due execution and attestation of Will (Ex-P/2) in favour of the plaintiffs by Sumitra Bai on

14.05.1996 has not been established in accordance with law. The plaintiffs/appellants being aggrieved by the judgment and decree of the Trial Court dismissing the suit to the extent that the execution and attestation of Will has not been proved in accordance with law preferred the first appeal under Section 96 of CPC. The First Appellate Court by its judgment and decree dismissed the appeal preferred by the appellants/plaintiffs affirming the judgment and decree of the Trial Court. The First Appellate Court concurred with the finding of the Trial Court and held that the plaintiffs have failed to prove the due execution and attestation of the Will in accordance with law. Feeling aggrieved by the judgment and decree of the First Appellate Court, the present second appeal has been preferred, in which one substantial question of law has been formulated and set out in the opening paragraph of this judgment on 28.02.2019.

4. Mr. R. K. Pali, learned counsel for the appellants/plaintiffs, would submit that both

the Courts below have concurrently erred in holding that the Will (Ex-P/2) has not been established and proved in accordance with Section 63 (c) of the Indian Succession Act, 1925 read with Section 68 of the Indian Evidence Act, 1872. The findings recorded by both the Courts below are perverse, as the Will (Ex-P/2) has been proved by examining one of the attesting witnesses namely Horilal (PW-2) and the said Horilal has clearly stated in the examination-in-chief and cross examination that Late Sumitra Bai was in the fit state of mind and out of her free will, she has executed a Will (Ex-P/2) on 15.04.1996 in favour of the plaintiffs in presence of two attesting witnesses and thereafter got it registered on 14.05.1996. Learned counsel would further submit that there is no evidence on record to hold that the Will is forged and fabricated and it has been proved in accordance with law and as such, the finding recorded by the two Courts below holding that the due execution and attestation of the Will has not been proved in accordance with Section 63 (c) of the Indian Succession Act, 1925 read with Section 68 of

the Indian Evidence Act, 1872 is a perverse finding and the same is liable to be set aside and the suit deserves to be decreed, as the suit property is admittedly held by Sumitra Bai and the finding recorded by the Trial Court has also not been interfered with by the First Appellate Court, therefore, decree for declaration of title, possession and permanent injunction be granted in favour of the plaintiffs.

5. Mr. Y. C. Sharma, learned Senior counsel appearing for the respondent/defendant Nos.1 & 2, would support the judgment and decree of the two Courts below and submit that the sole attesting witness namely Horilal (PW-2) has given contradictory statements, which goes to show that the Will has not been proved in accordance with Section 63 (c) of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872, therefore, the appeal deserves to be dismissed. He relied upon the decision of the Supreme Court in the matter of Gurdial Kaur vs Kartar Kaur¹ and decision of

1 (1998) 4 SCC 384

the Privy Council in the matter of Harmes vs Hinkson².

6. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the records with utmost circumspection.
7. The Trial Court has clearly recorded a finding that the suit property shown in Schedule-A appended with the plaint is owned by Sumitra Bai and the defendants have no right and title over the suit land but dismissed the suit holding that the plaintiffs though claimed the suit property by way of Will dated 15.04.1996 (Ex-P/2) but they have failed to prove the due execution and attestation of the Will in accordance with Section 63 (c) of the Indian Succession Act, 1925 read with Section 68 of the Indian Evidence Act, 1872 and the said finding has not been interfered with by the First Appellate Court, as such the finding that the suit property shown in Schedule-A of the plaint was owned by Sumitra Bai stands established.

² AIR 1946 PC 156

8. The only question for consideration is that whether the Will (Ex-P/2) has been proved and established by the plaintiffs in accordance with the provisions contained in Section 63 (c) of the Succession Act, 1925 read with Section 68 of the Evidence Act, 1872?

9. It is trite law that a will as an instrument of testamentary disposition of property being a legally acknowledged mode of bequeathing a testator's acquisitions during his lifetime, to be acted upon only on his/her demise, it is no longer *res integra*, that it carries with it an overwhelming element of sanctity. [See Jagdish Chand Sharma v. Narain Singh Saini (Dead) through Legal Representatives and others³]

10. In order to consider the plea raised at the bar, it would be appropriate to notice Section 63 of the Indian Succession Act, 1925 and Section 68 of the Evidence Act, 1872.

11. Section 63 of the Act of 1925 provides as under:-

"63. Execution of unprivileged Wills.—

³ (2015) 8 SCC 615

Every testator, not being a soldier employed in an expedition or engaged in actual warfare, or an airman so employed or engaged, or a mariner at sea, shall execute his will according to the following rules:-

(a) The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

(c) The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary."

12. As per the provisions of Section 63 of the Succession Act, 1925 for due execution of a will (1) the testator should sign or affix his mark to the will; (2) the signature or the mark of the testator should be so placed that it should appear that it was intended thereby to

give effect to the writing as a will; (3) the will should be attested by two or more witnesses; and (4) each of the said witnesses must have seen the testator signing or affixing his mark to the will and each of them should sign the will in the presence of the testator.

13. The above-stated provision of attestation of will under Section 63(c) of the Succession Act, 1925 by two or more witnesses has been held to be mandatory by Their Lordships of the Supreme Court in the matter of Janki Narayan Bhoir v. Narayan Namdeo Kadam⁴.

14. Section 68 of the Evidence Act, 1872 provides as under:-

"68. Proof of execution of document required by law to be attested.—If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

Provided that it shall be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration

4 (2003) 2 SCC 91

Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied."

15. By the aforesaid provision, a document required by law to be attested to have its execution proved by at least one of the attesting witnesses if alive and it is subject to process of the court conducting the proceedings involved and is capable of giving evidence. However, proviso to Section 68 of the Evidence Act, 1872 is not available in case of will.

16. In the matter of Girja Datt Singh v. Gangotri Datt Singh⁵, Their Lordships of the Supreme Court have held that in order to prove the due attestation of will, the propounder of will has to prove that 'A' and 'B', the two witnesses saw the testator sign the will and they themselves signed the same in the presence of the testator. Their Lordships while considering Section 68 of the Evidence Act, 1872 further held that from the mere signature of two persons appearing at the foot of the endorsement of registration of will it cannot be presumed that they had appended their

5 AIR 1955 SC 346

signature to the document as an attesting witness or can be construed to have done so in their capacity as attesting witness. It was pertinently observed as under:-

"In order to prove the due attestation of the will Ex. A-36 Gangotri would have to prove that Uma Dutt Singh and Badri Singh saw the deceased sign the will and they themselves signed the same in the presence of the deceased. The evidence of Uma Dutt Singh and Badri Singh is not such as to carry conviction in the mind of the Court that they saw the deceased sign the will and each of them appended his signature to the will in the presence of the deceased. They have been demonstrated to be witnesses who had no regard for truth and were ready and willing to oblige Gur Charan Lal in transferring the venue of the execution and attestation of the documents Ex. A-23 and Ex. A-36 from Gonda to Tarabganj for reasons best known to themselves."

"One could not presume from the mere signature of Mahadeo Pershad and Nageshur appearing at the foot of the endorsement of registration that they had appended their signatures to the document as attesting witnesses or can be construed to have done so in their capacity as attesting witnesses. Section 68, Indian Evidence Act requires an attesting witness to be called as a witness to prove the due execution and attestation of the will. This provision should have been complied with in order that Mahadeo Pershad and Nageshur be treated as attesting witnesses. This line of argument therefore cannot help Gangotri."

17. In the matter of H. Venkatchala Iyengar v. B. N. Thimmajamma and others⁶ the Supreme Court speaking through Gajendragadkar, J., elaborately laid down the principles relating to the nature and standard of evidence required to prove a will. It was held as under:-

“(1) Stated generally, a will has to be proved like any other document, the test to be applied being the usual test of the satisfaction of the prudent mind in such matters. As in the case of proof of other documents, so in the case of proof of wills, one cannot insist on proof with mathematical certainty.

(2) Since [Section 63](#) of the Succession Act requires a will to be attested, it cannot be used as evidence until, as required by [Section 63](#) of the Evidence Act, one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the court and capable of giving evidence.

(3) Unlike other documents, the will speaks from the death of the testator and therefore the maker of the will is never available for deposing as to the circumstances in which the will came to be executed. This aspect introduces an element of solemnity in the decision of the question whether the document propounded is proved to be the last will and testament of the testator. Normally, the onus which lies on the propounder can be taken to be discharged on proof of the essential

6 AIR 1959 SC 443

facts which go into the making of the will.

(4) Cases in which the execution of the will is surrounded by suspicious circumstances stand on a different footing. A shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the will under which he receives a substantial benefit and such other circumstances raise suspicion about the execution of the will. That suspicion cannot be removed by the mere assertion of the propounder that the will bears the signature of the testator or that the testator was in a sound and disposing state of mind and memory at the time when the will was made, or that those like the wife and children of the testator who would normally receive their due share in his estate were disinherited because the testator might have had his own reasons for excluding them. The presence of suspicious circumstances makes the initial onus heavier and therefore, in cases where the circumstances attendant upon the execution of the will excite the suspicion of the court, the propounder must remove all legitimate suspicions before the document can be accepted as the last will of the testator.

(5) It is in connection with wills, the execution of which is surrounded by suspicious circumstances that the test of satisfaction of the judicial conscience has been evolved. That test emphasises that in determining the question as to whether an instrument produced before the court is the last will of the testator, the court is called upon to decide a solemn question and by reason of suspicious circumstances the court has to be satisfied fully that the will has been

validly executed by the testator.

(6) If a caveator alleges fraud, undue influence, coercion, etc. in regard to the execution of the will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the will may raise a doubt as to whether the testator was acting of his own free will. And then it is a part of the initial onus of the propounder to remove all reasonable doubts in the matter."

18. The principle laid down in the above-stated judgment has been followed with approval in Smt. Jaswant Kaur v. Smt Amrit Kaur and others⁷, Surendra Pal and others v. Dr. (Mrs.) Saraswati Arora and another⁸, Yumnam Ongbi Tampha Ibema Devi v. Yumnam Joykumar Singh and others⁹ and Jagdish Chandra Sharma.
19. In the matter of Ramesh Verma (dead) Through Legal Representatives v. Lajesh Saxena (dead) by Legal Representatives and another¹⁰, the Supreme Court has again reiterated the need of proving the attestation of will in accordance with Section 63(c) of the Succession Act, 1925 read with Section 68 of the Evidence Act, 1872.

7 (1977) 1 SCC 369

8 (1974) 2 SCC 600

9 (2009) 4 SCC 780

10 (2017) 1 SCC 257

20. In **Surendra Pal** (supra), the Supreme Court while re-stating the guidelines regarding the nature and extent of burden of proof on the propounder of a will held that propounder has to show that the will was signed by the testator; that he was at the relevant time in a sound disposing state of mind; that he understood the nature and effect of the dispositions; that he put his signature to the testament of his own free will; and that he has signed it in the presence of the two witnesses who attested it in his presence and in the presence of each other. Once these elements are established, the onus which rests on the propounder is discharged. It was further held that in cases where the propounder has himself taken a prominent part in execution of a will which confers on him substantial benefit that is itself one of the suspicious circumstances which he must remove by clear and satisfactory evidence.

21. The Supreme Court in **Yumnam Ongbi Tampha Ibema Devi** (supra) has clearly held that the attestation of will is not an empty formality.

Highlighting the importance of attestation it was held it means signing a document for the purpose of testifying of the signatures of the executant. The attesting witness should put his signature on the will *animo attestandi* and it was held as under:-

"13. Therefore, having regard to the provisions of Section 68 of the Evidence Act and Section 63 of the Succession Act, a will to be valid should be attested by two or more witnesses in the manner provided therein and the propounder thereof should examine one attesting witness to prove the will. The attesting witness should speak not only about the testator's signature or affixing his mark to the will but also that each of the witnesses had signed the will in the presence of the testator."

22. In **Janki Narayan Bhoir** (supra), the Supreme Court while considering Section 63(c) of Succession Act, 1925 and Section 68 of the Evidence Act, 1872 held that mere proof of signature of the testator on the will was not sufficient, the attestation thereof is also to be proved as required by Section 63(c) of the Act Succession Act, 1925. It was observed as under: -

"10. Section 68 of the Evidence Act speaks of as to how a document required

by law to be attested can be proved. According to the said Section, a document required by law to be attested shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving an evidence. It flows from this Section that if there be an attesting witness alive capable of giving evidence and subject to the process of the Court, has to be necessarily examined before the document required by law to be attested can be used in an evidence. On a combined reading of Section 63 of the Succession Act with Section 68 of the Evidence Act, it appears that a person propounding the will has got to prove that the will was duly and validly executed. That cannot be done by simply proving that the signature on the will was that of the testator but must also prove that attestations were also made properly as required by Clause (c) of Section 63 of the Succession Act. It is true that Section 68 of Evidence Act not say that both or all the attesting witnesses must be examined. But at least one attesting witness has to be called for proving due execution of the Will as envisaged in Section 63 although Section 63 of the Succession Act requires that a will has to be attested at least by two witnesses, Section 68 of the Evidence Act provides that a document, which is required by law to be attested, shall not be used as evidence until one attesting witness at least has been examined for the purpose of proving its due execution if such witness is alive and capable of giving evidence and subject to the process of the Court. In a way, Section 68 gives a concession to those who want to prove and establish a will in a Court of law by examining at least one attesting

witness even though will has to be attested at least by two witnesses mandatorily under Section 63 of the Succession Act. But what is significant and to be noted is that that one attesting witness examined should be in a position to prove the execution of a will. To put in other words, if one attesting witness can prove execution of the will in terms of Clause (c) of Section 63, viz., attestation by two attesting witnesses in the manner contemplated therein, the examination of other attesting witness can be dispensed with. The one attesting witness examined, in his evidence has to satisfy the attention of a will by him and the other attesting witness in order to prove there was due execution of the will. If the attesting witness examined besides his attestation does not, in his evidence, satisfy the requirements of attention of the will by other witness also it falls short of attestation of will at least by two witnesses for the simple reason that the execution of the will does not merely mean the signing of it by the testator but it means fulfilling and proof of all the formalities required under Section 63 of the Succession Act. Where one attesting witness examined to prove the will under Section 68 of the Evidence Act fails to prove the due execution of the will then the other available attesting witness has to be called to supplement his evidence to make it complete in all respects. Where one attesting witness is examined and he fails to prove the attestation of the will by the other witness there will be deficiency in meeting the mandatory requirements of Section 68 of the Evidence Act."

23. The principle of law laid down in Janki Narayan

Bhoir (supra) has been followed with approval

in Jagdish Chandra Sharma (supra) by which it was held as under:-

"52. While dwelling on the respective prescripts of Section 63 of the Act and Sections 68 and 71 of Act 1872 vis-à-vis a document required by law to be compulsorily attested, it was held Janki Narayan Bhoir (supra) that if an attesting witness is alive and is capable of giving evidence and is subject to the process of the Court, he/she has to be necessarily examined before such document can be used in evidence. It was expounded that on a combined reading of Section 63 of the Act and Section 68 of the 1872 Act, it was apparent that mere proof of signature of the testator on the Will was not sufficient and that attestation thereof was also to be proved as required by Section 63 (c) of the Act. It was, however, emphasised that though Section 68 of the 1872 Act permits proof of a document compulsorily required to be attested by one attesting witness, he/she should be in a position to prove the execution thereof and if it is a Will, in terms of Section 63 (c) of the Act, viz., attestation by two attesting witnesses in the manner as contemplated therein. It was expounded that if the attesting witness examined besides his attestation does not prove the requirement of the attestation of the Will by the other witness, his testimony would fall short of attestation of the Will by at least two witnesses for the simple reason that the execution of the Will does not merely mean signing of it by the testator but connotes fulfilling the proof of all formalities required Under Section 63 of the Act. It was held that where the attesting witness examined to prove the Will Under

Section 68 of 1872 Act fails to prove the due execution of the Will, then the other available attesting witness has to be called to supplement his evidence to make it complete in all respects."

24. Reverting to the facts of the case after noticing the legal position qua the execution and attestation of Will, the followings facts stand established:-

(i) The testatrix Sumitra Bai had executed a Will (Ex-P/2) at the house of Balkrishna Tiwari in favour of the plaintiffs on 14.5.1996. The said Will is said to have been attested by the two attesting witnesses namely Falgo Gupta and Horilal Matsyapal (PW-2) and scribed by Advocate Ku. Y. Durga. The said Will (Ex-P/2) was signed by the testatrix and the two attesting witnesses in front of Sub Registrar in the Bathena Hospital, Dhamtari for the purpose of registration of Will on 14.5.1996 where the testatrix was admitted for treatment, as she was suffering from paralysis.

(ii) The testatrix Sumitra Bai died on 02.08.1996.

(iii) One of the attesting witnesses namely

Horilal Matsyapal was examined by the plaintiffs as PW-2.

25. Now the question to be considered is whether the testatrix Sumitra Bai was in a sound and disposing mind on the date of execution of the Will i.e. on 15.4.1996 to execute a Will in favour of the plaintiffs and secondly whether due execution and attestation of the Will has been proved in accordance with law. The aforesaid two questions have been answered in negative by both the Courts below.

26. Admittedly, on the date of execution of Will dated 15.4.1996 (Ex.P/2), the testatrix was aged about 90 years and she is said to have executed a Will in the house of Balkrishna Tiwari, father of the plaintiffs / appellants herein on the said date. It is apparent from the evidence available on record that she was unwell and unable to walk at the time when the Will was executed. Plaintiff No.3-Dhananjay Tiwari (PW-1) has also stated in para-9 of his statement in the month April, 1996, the testatrix Sumitra Bai had developed symptoms of paralysis and he has also stated that she used

to sign the document, but on account of the fact that she was suffering from paralysis, she was unable to sign and therefore, she had made thumb impression on Will (Ex.P/2). Horilal (PW-2), who is attesting witness, has also stated and supported the aforesaid fact stating that at the time of execution of Will, she was very weak. In para-9 of his statement, he has admitted that in the hospital her hands and feet were not working properly. In view of the aforesaid findings, two Courts below have reached to the conclusion that at the time of executing the Will, the testatrix was not in sound disposing mind and therefore, the Will cannot be relied upon is a finding of fact based on evidence available on record.

27. Similarly, two Courts below have held that Will (Ex.P/2) has not been proved in accordance with Section 63(c) of the Indian Succession Act, 1925 read with Section 68 of the Indian Evidence Act, 1872 finding that there is serious contradictions and omissions in the testimony of attesting witness Horilal (PW-2). It is admitted fact on record that Will was

executed by testatrix Sumitra Bai in the house of Balkrishna Tiwari on 15.4.96, whereas Horilal (PW-2) in para-2 of his statement before the Court has stated that Will was executed at Bathena Hospital, Dhamtari and after half an hour, again it was signed by him for the purpose of registration and contrary suggestion has been refuted.

28. Not only this, earlier Horilal (PW-2) has also been examined before the Naib-Tahsildar and his statement has been filed before this Court as Ex.D/2, in which he has clearly admitted that Will was executed in the house of Balkrishna Tiwari. Said part of statement of Horilal (PW-2) in Ex.D/2 has also been marked as "B" to "B", as such, on account of serious contradictions and omissions in statement of attesting witness Horilal (PW-2), both the Courts have rightly reached to the conclusion that execution and attestation of Will has not been proved in accordance with Section 63(c) of the Indian Succession Act, 1925 read with Section 68 of the Indian Evidence Act, 1872. The finding recorded by two Courts below is

finding of fact based on evidence available on record, which is not liable to be interfered by this Court in appeal under Section 100 of the CPC. The substantial question of law is answered in favour of the defendants and against the plaintiffs.

29. As a fallout and consequence of above-stated discussion, the second appeal deserves to be and is accordingly dismissed leaving the parties to bear their own cost (s).

30. Appellate decree be drawn-up accordingly.

Sd/-
Sanjay K. Agrawal
Judge

Nirala