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ASHOK SAHU

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HIGH COURT OF CHHATTISGARH AT BILASPUR

S.A. No. 263 of 2014

{Arising out of judgment and decree dated 19.06.2014 passed in Civil Appeal No.1-A/2014 by the Second Additional District Judge, Janjgir, District Janjgir-Champa}

Judgment reserved on: 30-9-2026

Judgment delivered on: 28-10-2026

Judgment (Full) uploaded on: 28-10-2026

Sanjeev Kumar, S/o. Love Kumar, Aged About 38 Years, R/o. Village Sankar, Tahsil & P.S. Akaltara, Distt. Janjgir-Champa (C.G.), At Present R/o. Akaltara, Tahsil & P.S. Akaltara, Distt. Janjgir-Champa (C.G.).

... Appellant
Plaintiff

versus

1. Kush Kumar Singh, S/o. Achal Dhruve, Aged About 62 Years, R/o. Village Sankar, Tahsil & P.S. Akaltara, Distt. Janjgir-Champa (C.G.), At Present R/o. Akaltara, Tahsil & P.S. Akaltara, Distt. Janjgir-Champa (C.G.)

2. Love Kumar, S/o. Achal Dhruve, Aged About 65 Years, R/o. Village Sankar, Tahsil & P.S. Akaltara, Distt. Janjgir-Champa (C.G.), At Present R/o. Akaltara, Tahsil & P.S. Akaltara, Distt. Janjgir-Champa (C.G.)

3. State Of Chhattisgarh, Through the Collector, Janjgir-Champa, Tahsil & P.S. Janjgir, Distt. Janjgir-Champa (C.G.)

... Respondents
Defendants

For Appellant	:	Mr. Ratnesh Kumar Agrawal with Mr. Sourabh Agrawal, Advocates.
For Respondent No.1	:	Mr. Prakash Mishra with Mr. Vijay Shankar Mishra, Advocates
For Respondent No.2	:	None appeared though served
For Respondent No.3	:	Ms. K. Radhika, Panel Lawyer

Single Bench: -

Hon'ble Smt. Sushma Sawant, J.

C.A.V. Judgment

1. Invoking the appellate jurisdiction of this Court under Section 100 of the Code of Civil Procedure, 1908, the appellant herein/plaintiff has preferred this appeal challenging the judgment & decree **dated 19-06-2014** passed by the **First Appellate Court** Second Additional District Judge, Janjgir, District Janjgir-Champa in **Civil Appeal No.1-A/2014,** arising out of judgment & decree dated 18.10.2011 passed by the Civil Judge Class-I, Akaltara, District Janjgir-Champa in **Civil Suit No.88-A/2011,** by which the learned Civil Judge Class-I has decreed the suit for declaration of title, permanent injunction and possession.

-:Admitted Facts:-

2. It is not in dispute that **Achhaldhruw Singh** and **Radhabai** were the grandfather and grandmother, respectively, of the **appellant/ plaintiff Sanjeev Kumar**, and both have since died. **Respondent/ defendant No. 1 Kush Kumar Singh** is the **uncle** of the appellant/plaintiff, whereas **respondent/defendant No. 2 Love Kumar Singh** is his **father**. It is also an admitted fact that a partition took place between respondent/defendant Nos. 1 and 2 in the **year 1981.**

3. It is also an admitted fact that the lands described in **Schedules A** and **B** are recorded in the names of respondent/defendant Nos. 1 and 2, respectively, as detailed below:

Schedule A

Lands recorded in the name of respondent/defendant No. 1 Kush Kumar Singh

Khasra No.	4. Area(hectare)
304/39	0.008
304/43	0.024
309	0.004
428/2	1.424
428/4	0.502
446/11	0.628
92/6	0.251
386/3	0.182
394/2	1.275
Total-9	**Total-4.298**

Schedule B

Lands recorded in the name of respondent/defendant No. 2 Love Kumar Singh

Khasra No.	Area(hectare)
252	0.049
428/3	2.961
445/1	1.267
446/8	0.630
92/2	0.251
386/1	0.182
394/1	1.274
Total-7	**Total-6.614**

5. It is further an admitted fact that the appellant/plaintiff Sanjeev Kumar filed an application before the Revenue Court seeking mutation of his name in respect of **Khasra No. 446/8** ad measuring **3.11 acre** on the basis of a Will stated to have been executed by his grandmother, Radhabai, in his favour. However, the said application was rejected by the Revenue Court.

-:Factual Matrix:-

-:Case of the Appellant/Plaintiff herein before the Trial Court:-

(For the sake of convenience, parties hereinafter will be referred as per their status shown and ranking given in the civil suit before the Trial Court.)

6. The appellant/plaintiff's case, in brief, is that all the lands in question originally belonged to his grandfather, **Achal Dhruw Singh**, and constituted his ancestral property. In the partition effected in the year 1981 between the appellant/plaintiff's father respondent/defendant No.2 **Love Kumar Singh** , his uncle respondent/defendant No.1 **Kush Kumar Singh** and his

grandmother, **Radhabai,** the land bearing **Khasra No. 446/8, admeasuring 3.11 acres**, situated at **Village -Sankar**, fell to the share of Radhabai (hereinafter referred to as the "suit property"). The appellant/plaintiff pleaded that **Radhabai** executed a registered Will dated 23.05.2000, bequeathing the suit property in his favour. As the application for mutation of the suit property on the basis of the said Will was rejected by the Tehsildar, the appellant/plaintiff instituted the suit seeking declaration of title over the suit property, permanent injunction and possession. In the alternative, the appellant/plaintiff sought a declaration of his entitlement to Radhabai's share in the lands jointly recorded in the names of respondent/defendant Nos. 1 and 2, in the event the partition was not accepted.

-: Written Statement of the Respondents/Defendants before the Trial Court :-

7. Respondent/Defendant No. 1 (uncle of plaintiff), while admitting the facts not specifically disputed, denied the remaining averments of the plaint, particularly the appellant/plaintiff's claim that the suit property had fallen to the share of Radhabai in the partition of 1981. He pleaded that, with the consent of Radhabai, the lands had been divided equally between the two brothers(respondent/defendant No.1-2) and that Radhabai had never challenged the said partition. He further denied the appellant/plaintiff's claim under the registered Will dated 23.05.2000 and contended that Radhabai had no ownership over the suit property, as the same had been kept only for

her maintenance during her lifetime. Accordingly, he disputed the appellant/plaintiff's entitlement to the reliefs claimed and sought dismissal of the suit.

8. Respondent/Defendant No. 2 (father of plaintiff), filed his written statement admitting the allegations made by the appellant/plaintiff and prayed that the plaintiff be declared entitled to Radhabai's share in the property. Defendant No. 2 was proceeded ex parte on 14.10.2009 and did not lead any evidence.

9. Respondent/Defendant No. 3, the State Government, was also proceeded ex parte on 08.08.2008 and did not file any written statement.

-: Proceedings before the Trial Court :-

10. The Trial Court after appreciating oral and documentary evidence available on record, framed following issue and answered the issue as under:-

S.No.	Question for Consideration	Finding
1.	क्या प्रतिवादी कं0 1 एवं 2 आपसी बंटवारा वर्ष 1981 के अनुसार उनकी मॉ राधाबाई को वाद भूमि में से ग्राम सांकर स्थित ख0नं0 446/8 रकबा 3.11 एकड़ भूमि बंटवारे में मिली थी?	हाँ
2.	यदि हाँ तो क्या राधाबाई ने अपने हिस्से की भूमि के संबंध में वादी के पक्ष में पंजीकृत वसीयतनामा निष्पादित किया है?	हाँ

3.	क्या राधाबाई द्वारा वादी के पक्ष में निष्पादित वसीयतनामा फर्जी एवं कूटरचित है?	नहीं
4.	क्या ग्राम अकलतरा स्थित वाद भूमि के संबंध में मणीसिंह आवश्यक पक्षकार है?	नहीं
5.	क्या वादी वाद भूमि में से ग्राम सांकर स्थित ख०नं० 446/8 रकबा 3.11 एकड का स्वत्वाधिकारी है? ***विकल्प में*** क्या वादी परिशिष्ट अ एवं व की वाद भूमि में से 1/3 भाग का अधिकारी होकर विभाजन करा पाने का अधिकारी है?	हाँ
6.	क्या वादी का दावा परिसीमा अवधि से बाधित है?	नहीं
7.	क्या वादी. प्रतिवादीगण के विरूद्ध स्थायी व्यादेश प्राप्त करने का अधिकारी है?	हाँ
8.	क्या वादी ग्राम सांकर स्थित वाद भूमि का कब्जा प्रतिवादीगण से प्राप्त करने के अधिकारी है?	हाँ
9.	सहायता एवं व्यय?	वादी का दावा प्रभावित कण्डिका 18 के अनुसार

-: Evidence adduced before the Trial Court:-

Evidence led by the Appellants/Plaintiffs:-

11. Before the learned Trial Court, the appellant/plaintiff **Sanjeev Kumar** examined himself as **PW-1, Madan Mohan Singh (PW-2) & Radha Vallabh Pandey (PW-3)** in support of his case. In support of his oral testimony, he produced and exhibited fifteen documents, which were marked as **Exhibits P-1 to P-15.**

Evidence led by the Resondnet/Defendant No.1:-

12. The respondent/defendant No.1 **Kush Kumar Singh** examined himself as **DW-1** in support of his case. However, he has not exhibited any documents. The defendants No.2 & 3 have proceeded *ex parte*.

Judgment of the Trial Court:-

13. Parties were given opportunity to adduce evidence and after completion of trial, the learned Trial Court vide judgment & decree **dated 18.10.2011** decreed the suit for declaration of title, permanent injunction and possession in favour of the appellant/plaintiff.

-: Finding of the First Appellate Court/Impugned Judgment :-

14. Being aggrieved by the judgment & decree **dated 18.10.2011** passed by the Trial Court in Civil Suit No.88-A/2011 (Sanjeev Kumar v. Kush Kumar Singh & Others), the defendant No.1 Kush Kumar Singh has filed appeal (Civil Appeal No.1-A/2014 (Kush Kumar Singh v. Sanjeev Kumar Singh & Others) before the First Appellate Court.

15. The learned First Appellate Court, upon re-appreciation of the evidence, held that the suit property was not exclusively owned or possessed by Radhabai and that the respective half shares were in the possession of Love Kumar Singh, the plaintiff's father, and Kush Kumar Singh. It further held that the Will appeared to have been executed under undue influence and could not confer any right upon

the plaintiff, as Radhabai's ownership of the bequeathed property on the date of its execution was not established. Accordingly, the appeal was allowed, and the judgment and decree dated 18.10.2011 passed by the Trial Court were set aside.

-: Substantial Questions of Law :-

16. This second appeal preferred by the appellant/plaintiff herein was admitted on the following substantial questions of law:

1. *"Whether, the lower appellate Court has committed an illegality in holding that Radhabai, the predecessor-in-interest of the parties, was not competent to execute the registered deed of Will dated 23.05.2000 (Ex.P.1) with regard to the property in question bearing Khasra No.446/8 admeasuring 3.11 acres in favour of her grandson Sanjeev Kumar ?*

2. *Whether, the finding of the lower appellate Court disbelieving the due execution, attestation and validity of the registered deed of Will dated 23.05.2000 (Ex.P.1), said to have been executed by one Radhabai in favour of her grandson, the Plaintiff, while reversing the finding of the trial Court, is perverse ?"*

-: Analysis and findings of the Second Appellate Court:-

17. Having heard learned counsel for the parties and upon perusal of the record, this Court proceeds to examine the substantial questions of law involved in the present appeal.

-: Submissions of the Appellant/Plaintiff herein :-

18. Learned counsel appearing for the appellant/plaintiff submits that the First Appellate Court has erred in law as well as on facts in reversing the well-reasoned judgment and decree passed by the Trial Court. It is contended that the First Appellate Court has misread and misconstrued the oral as well as documentary evidence available on record, particularly the evidence relating to the possession and title over the suit property. He further submits that the Will executed in favour of the plaintiff was duly proved and the Trial Court had rightly acted upon the same. The finding of the First Appellate Court that the testatrix had no right or title over the property covered by the Will is contrary to the evidence on record and has been recorded without properly appreciating the nature of the parties' possession and the earlier partition.

19. Learned counsel for the appellant/plaintiff further submits that the First Appellate Court committed a serious error in holding that the suit property had already been divided between the concerned parties and, on that basis, denying the plaintiff's claim under the Will. It is, therefore, submitted that the impugned judgment and decree passed by the First Appellate Court deserves to be set aside and the judgment and decree of the Trial Court be restored.

-: Submissions of the Respondent/defendant No.1:-

20. Per contra, learned counsel appearing for the respondent/defendant No.1 submits that the judgment and decree passed by the First

Appellate Court is based upon proper appreciation of the oral and documentary evidence on record and calls for no interference in the present second appeal. It is contended that the suit property had already been divided between father of appellant/plaintiff Love Kumar Singh and uncle Kush Kumar Singh and both were in possession of their respective half shares. Radha Bai, therefore, had no exclusive right, title or interest over the entire suit property so as to bequeath the same in favour of the plaintiff.

21. Learned counsel further submits that the alleged Will was neither duly proved nor could it confer any better title upon the plaintiff than what was possessed by the testatrix. The plaintiff also failed to establish that the property covered by the Will was owned by Radha Bai on the date of execution of the Will. Thus, the First Appellate Court has rightly reversed the erroneous findings of the Trial Court. It is, therefore, submitted that no substantial question of law arises in the present appeal and the same deserves to be dismissed.

-:Consideration of Substantial Question of Law No.1 & 2 :-

22. Both the substantial questions of law being interconnected, they are taken up together for consideration.

23. Having heard learned counsel for the parties and upon consideration of the pleadings, evidence available on record, the judgments and decrees passed by the Courts below, and the submissions advanced on behalf of the respective parties, this Court proceeds to examine

the substantial question of law formulated in the present second appeal, namely,

> "1.*Whether, the lower appellate Court has committed an illegality in holding that Radhabai, the predecessor-in-interest of the parties, was not competent to execute the registered deed of Will dated 23.05.2000 (Ex.P.1) with regard to the property in question bearing Khasra No.446/8 admeasuring 3.11 acres in favour of her grandson Sanjeev Kumar ?*
>
> *2.Whether, the finding of the lower appellate Court disbelieving the due execution, attestation and validity of the registered deed of Will dated 23.05.2000 (Ex.P.1), said to have been executed by one Radhabai in favour of her grandson, the Plaintiff, while reversing the finding of the trial Court, is perverse ?*"

24. The learned Trial Court granted relief to the plaintiff/appellant Sanjeev Kumar on the basis of the Will **Ex.P.-1** allegedly executed by the grandmother Radhabai in favour of her grandson plaintiff/appellant Sanjeev Kumar . The learned Trial Court found that the suit property had fallen to the share of the grandmother Radhbai in partition and accepted the testimony of the attesting witness as sufficient to prove the execution of the Will.

25. The learned First Appellate Court, however, reversed the said finding, taking into consideration that the partition effected in the year 1981 between the plaintiff's father respondent/defendant No.2

and the uncle respondent/defendant No.1 was admitted by both parties . The learned First Appellate Court further observed that the name of the grandmother was not recorded in the revenue records. It also relied upon the admission made by the **appellant/plaintiff Sanjeev Kumar (P.W.-1)** in 6th line of para 22 his cross-examination that he had been seeing his uncle respondent/defendant No.1 and father respondent/defendant No.2 in possession of and cultivating the respective halves of the suit property.

26. According to the learned First Appellate Court, this admission corroborated the respondent/defendant No. 1's stand that the suit property had fallen to the shares of both brothers, namely, respondent/defendant No. 1 and respondent/defendant No. 2, the grandmother's sons, in the partition of 1981, which explained why their names, and not that of the grandmother, were recorded in the revenue records.

27. The learned First Appellate Court further disbelieved the Will **Ex.P.-1** in view of the circumstances surrounding its execution and the material contradiction between the testimony of the beneficiary **Sanjeev Kumar (P.W.-1)** and that of the attesting witness **Radha Vallabh Pandey (P.W.-3)**.

28. The first aspect requiring consideration is whether the absence of the grandmother Radhbai's name in the revenue records was sufficient to hold that she was not competent to execute the Will. It is settled that revenue entries are primarily maintained for fiscal purposes and do not, by themselves, confer or extinguish title to immovable property.

Therefore, the mere absence of the grandmother's name in the revenue records could not, by itself, establish that she had no right or interest in the suit property or that she was legally incapable of executing a Will. Nevertheless, the person propounding a Will must establish that the testatrix had a right or interest in the property which she purported to bequeath.

29. In the present case, the partition between the two sons {respondent/defendant No.-1 Kush Kumar Singh and respondent/defendant No.-2 Love Kumar Singh (father of appellant/plaintiff)} of the grandmother Radhabai during her lifetime is admitted, and, as per the revenue records, the suit property stood recorded in equal shares in the names of both sons.

30. In these circumstances, the finding of the learned Trial Court that the suit property had fallen to the share of the grandmother required support from the evidence relating to the alleged partition in her favour. However, the evidence available on record does not clearly establish that the suit property had fallen to the share of the grandmother, particularly when the partition was not challenged by her during her lifetime.

31. The next aspect concerns the proof of the Will **EX.P.-1** and the circumstances surrounding its execution. Under **Section 63** of the **Indian Succession Act, 1925**, read with **Section 68** of the **Indian Evidence Act, 1872**, the execution and attestation of a Will must be proved in accordance with the statutory requirements. The

testimony of an attesting witness is material for this purpose; however, the Court must examine whether the evidence establishes the necessary requirements of due execution and attestation. Where suspicious circumstances surround the execution of a Will, the propounder is required to dispel the legitimate doubts arising from such circumstances.

32. In the present case, a material contradiction emerges from the testimony of the beneficiary **Sanjeev Kumar (P.W.-1)** under the Will and that of the attesting witness **Radha Vallabh Pandey (P.W.-3)**. The beneficiary **Sanjeev Kumar (P.W.-1)** stated that he was not present at the time of execution of the Will and that he did not know who had purchased the stamp paper. On the other hand, the attesting witness **Radha Vallabh Pandey (P.W.-3)** stated that the beneficiary was present at the time of execution. Further, the evidence on record indicates that the stamp paper had been purchased by the beneficiary himself. If these circumstances stand established from the evidence, the beneficiary's denial of his presence and his professed lack of knowledge regarding the purchase of the stamp paper assume significance in assessing the credibility of his testimony and the circumstances in which the Will came to be executed.

33. These circumstances cannot be examined in isolation. They must be considered cumulatively along with the admitted partition between the two sons, the entries in the revenue records, the evidence regarding the grandmother's rights in the suit property, and the

testimony of the attesting witness. The fact that the learned Trial Court accepted the attesting witness's testimony does not, by itself, preclude the learned First Appellate Court from taking a contrary view, provided that such view is founded upon a proper appreciation of the evidence and cogent reasons recorded in support thereof.

34. The principles governing the proof of a Will and the obligation to dispel suspicious circumstances have been explained by the Supreme Court in ***Shivakumar v. Sharanabasappa*, (2021) 11 SCC 277**. The Court is required to examine whether the Will has been duly proved and whether the suspicious circumstances, if any, surrounding its execution have been satisfactorily explained. The existence of suspicious circumstances does not automatically invalidate a Will; however, where legitimate doubts arise from the evidence, the propounder must satisfy the Court regarding the genuineness of the testamentary disposition.

35. At this stage, it is necessary to bear in mind the limited scope of jurisdiction under Section 100 of the Code of Civil Procedure, 1908. This Court does not exercise the jurisdiction of a first appellate court and cannot interfere with findings of fact merely because another view of the evidence is possible. Interference is warranted only where the findings are vitiated by a substantial error of law, perversity, reliance upon inadmissible evidence, disregard of material evidence, or another infirmity giving rise to a substantial question of law. The principles governing such limited jurisdiction have been reiterated by

the Supreme Court in ***Nazir Mohamed v. J. Kamala*, (2020) 19 SCC 57**.

36. In the present case, the learned First Appellate Court, upon proper examination and appreciation of the evidence on record, has recorded its findings regarding the admitted partition, the absence of evidence establishing the grandmother's rights in the suit property, and the material contradiction in the testimony of the beneficiary and the attesting witness concerning the execution of the Will. On the basis of the aforesaid circumstances and the evidence available on record, the learned First Appellate Court has rightly concluded that the grandmother had no right or interest in the suit property and, accordingly, disbelieved the Will set up by the beneficiary.

37. The learned First Appellate Court has considered the cumulative effect of the relevant evidence and assigned cogent reasons for its conclusion. The findings so recorded are supported by the evidence on record and do not suffer from any perversity or substantial error of law warranting interference by this Court under Section 100 of the CPC. Accordingly, both substantial questions of law relating to the Will are answered against the appellant.

-:Final Conclusion:-

38. In view of the foregoing discussion and the answers to both substantial questions of law, this Court finds no merit in the present appeal. The impugned judgment and decree passed by the learned

First Appellate Court do not warrant any interference under Section 100 of the Code of Civil Procedure.

39. Accordingly, the second appeal is **dismissed**. The judgment and decree passed by the learned First Appellate Court are hereby affirmed. In the facts and circumstances of the case, the parties shall bear their own costs. A decree be drawn up accordingly.

Sd/-
(Sushma Sawant)
JUDGE

Ashok