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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

FA No. 74 of 2016

{Arising out of judgment and decree dated 28-1-2016 in Civil Suit No.27-A/2015 of the 3rd Additional District Judge, Bilaspur}

Judgment reserved on: 6-10-2026

Judgment delivered on: 5-11-2026

Judgment (Full) uploaded on: 5-11-2026

1. Ku. Seema Bairagi (**Died & Deleted**)

2. Smt. Madhuri Pramanik, W/o Shri Devdas, D/o late Shri Kenaram Bairagi, aged about 53 years

   Both R/o Sagardeep Enclave, Plot No.57, Ameri, Distt. Bilaspur, Chhattisgarh

(Defendants)
... Appellants

versus

1. Ku. Rupa Bairagi, D/o late Shri Sanjay Bairagi, aged about 15 years.

2. Ku. Ratna Bairagi, D/o late Shri Sanjay Bairagi, aged about 13 years.

3. Ku. Ankita Bairagi, D/o late Shri Sanjay Bairagi, aged about 11 years.

4. Ku. Simran Bairagi, D/o late Shri Sanjay Bairagi, aged about 8 years.

5. Ku. Naina Bairagi, D/o late Shri Sanjay Bairagi, aged about 4 years.

   Resp. No.1 to 5 minor through Mama Shri Vishaldhar, S/o Shri Tapandhar, R/o Dabripara, Bilaspur, Tah. & Distt. Bilaspur, Chhattisgarh

(Plaintiffs)

6. Smt. Laxmi Roy, W/o Shri Dev Ashish Roy, D/o late Shri Kenaram Bairagi, aged about 43 years, R/o Navjiwan Society, Plot No.31, Pachpedi, Raipur, Distt. Raipur, Chhattisgarh

(Defendant No.3)

7. Smt. Mina Ghosh, W/o Shri Subir Ghosh, D/o late Kenaram Bairagi, aged about 50 years, R/o Napear Town, Hyderabad, Andhra Pradesh (now Telangana)

(Defendant No.4)

8. State of Chhattisgarh, Through Collector, Bilaspur, Distt. Bilaspur, Chhattisgarh

(Defendant No.5)

... Respondents

For Appellant	:	Mr. B.P. Gupta, Advocate.
For Respondents No.1 to 5	:	Mr. Ratnesh Kumar Agrawal and Mr. Sourabh Agrawal, Advocates.
For Respondents No.6 & 7	:	None present.
For Respondent No.8/State	:	Mr. Anant Bajpai, Panel Lawyer.

Division Bench: -
Hon'ble Shri Parth Prateem Sahu and
Hon'ble Smt. Sushma Sawant, JJ.

C.A.V. Judgment

Sushma Sawant, J.

1. Invoking the appellate jurisdiction of this Court under Section 96 of the Code of Civil Procedure, 1908, the appellants herein/defendants No.1 & 2 have preferred this appeal questioning the illegality, validity and correctness of the impugned judgment **dated 28-1-2016** passed by the 3rd Additional District Judge, Bilaspur (Presiding Officer Smt. Swarnalata Toppo) in **Civil Suit No.27-A/2015, Ku. Rupa Bairagi & four others v. Ku. Seema Bairagi & four others,** whereby the suit filed by respondents No.1 to 5 herein/plaintiffs, for declaration of title and permanent injunction, has been decreed.

2. The aforesaid challenge has been made on the following factual backdrop: -

(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.)

-:Factual Matrix:-

-:Admitted Facts:-

3. Parties are descendants of **Kenaram Bairagi**, who had one son, namely, late Sanjay Bairagi, and four daughters. The family particulars are set out below:-

Kenaram **(Father)**	
Son-Late Sanjay Bairagi 1.Ku. Rupa Bairagi 2.Ku. Ratna Bairagi 3.Ku. Ankita Bairagi 4.Ku. Simran Bairagi 5.Ku. Naina Bairagi	(Plaintiffs through-maternal uncle Vishaldhar)
Daughter-Ku. Seema Bairagi	Defendant No.1
Daughter-Smt. Madhuri Pramanik	Defendant No.2
Daughter-Smt. Laxmi Roy	Defendant No.3
Daughter-Smt. Meena Ghosh	Defendant No.4

The appellants/plaintiffs are the children of late Sanjay Bairagi. Their mother also passed away and, following the death of their parents, they have been residing at the house of their maternal grandparents. Their maternal uncle, Vishaldhar, is their guardian.

-:Description of suit property: -

4. The agricultural land bearing Khasra No.**1141,** admeasuring **13.40 acres**, situated at **Village** Nawagaon, **Patwari Halka No**.7, **Revenue Inspector Circle** Kota, **Tahsil** Kota, **District** Bilaspur, Chhattisgarh (hereinafter referred to as the "**suit property**").

-: Case of Respondents No.1 to 5 herein/Plaintiffs before the Trial Court :-

5. The **plaintiffs' case**, in brief, is that the suit property originally belonged to **late Kenaram Bairagi**, who had executed a registered **Will dated 25-1-2003** in favour of his son, late Sanjay Bairagi, bequeathing his movable and immovable properties to him. After the death of late Kenaram Bairagi on 26-5-2010, proceedings for mutation of the suit land were initiated before the Tahsildar, Kota. The daughters of late Kenaram Bairagi sought mutation of the land in their favour and in favour of late Sanjay Bairagi. However, late Sanjay Bairagi objected to the proposed mutation, asserting that the suit property was his father's self-acquired property and that, by virtue of the aforesaid registered Will, he alone was entitled to succeed to it. By order dated 27-11-2010, the Tahsildar, Kota, directed mutation of the suit land in the names of late Sanjay Bairagi and the four daughters of late Kenaram Bairagi. Aggrieved thereby, late Sanjay Bairagi preferred an appeal before the Sub-Divisional Officer, Kota, which remained pending at the time of his death on 30-1-2011.

6. **The plaintiffs further pleaded** that, thereafter, the appellants herein/defendants No.1 & 2 **(Ku. Seema Bairagi & Smt. Madhuri Pramanik)** initiated partition proceedings in respect of the suit land under Section 178 of the Chhattisgarh Land Revenue Code, 1959, before the Tahsildar, Kota. In view of the rival claims concerning ownership and succession to the suit property and the effect of the registered Will dated 25-1-2003, a dispute arose regarding its title. The plaintiffs, being the daughters of late Sanjay Bairagi, claimed their rights in the suit property through their father under the aforesaid Will and, accordingly, instituted the present suit seeking declaration of title and permanent injunction. As their mother had predeceased their father, the plaintiffs, who were minors at the relevant time, were residing with their maternal uncle, Vishaldhar, who was looking after their welfare and representing their interests as their guardian.

-:Written Statement of the Appellants herein/Defendants No.1 & 2 before the Trial Court:-

7. The appellants herein/defendants No.1 & 2 **(Ku. Seema Bairagi & Smt. Madhuri Pramanik)** by filing joint written statement have set up the defence that late Kenaram Bairagi and his family members had constituted a joint family and that the disputed suit property was not his separate, self-acquired property. It was contended that the suit property had been purchased from the income derived from the family business, including the hotel business, and that the registered Will dated 25-1-2003 did not

confer any exclusive right upon Sanjay Bairagi. Defendants No.1 & 2 also relied upon the revenue proceedings and the subsequent partition of the revenue accounts to contend that the parties had been recognised as separate holders of their respective shares. It was also contended that after the mutation proceedings and the division of the revenue accounts, the respective recorded holders were in possession of their allotted portions and were entitled to enjoy their properties in accordance with law. Defendants No.1 & 2 have disputed the allegation of unlawful interference or attempted forcible dispossession and opposed the claim for declaration of exclusive ownership and permanent injunction.

8. Defendant No.4 **(Smt. Meena Ghosh)** has filed separate written statement opposing the averments made in the plaint, however, defendant No.3 **(Smt. Laxmi Roy)** & defendant No.5 **(State of Chhattisgarh)** were ex parte before the Trial Court and they have not filed any written statement.

-: Proceedings before the Trial Court :-

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

S.No.	Questions for Consideration	Finding
1.	क्या वादग्रस्त भूमि स्व0 केनाराम बैरागी की स्व–अर्जित भूमि है ?	"हां।"
2.	क्या स्व० केनाराम के द्वारा पुत्र संजय बैरागी के पक्ष में निष्पादित वसीयतनामा दिनांक 25/01/2003 प्रभावी, व्यवहारिक एवं स्वभाविक नहीं है ?	कण्डिका 27 के अनुसार।

3.	क्या प्रतिवादी क्रमाकं–1 से 4 को उत्तराधिकार के आधार पर वादग्रस्त भूमि में हक प्राप्त है ?	"नहीं"
4.	क्या प्रतिवादी क्रमांक 1 से 4 के द्वारा वादग्रस्त भूमि पर जबरन आधिपत्य किये जाने का प्रयास किया जा रहा है ? अगर हाँ, तो प्रभाव ?	कण्डिका 29 के अनुसार ।
5.	सहायता एवं वाद व्यय ?	निर्णय की कंडिका के 31 अनुसार ।
6.	क्या वादिनीगण द्वारा अपने वाद का उचित मूल्यांकन करते हुए, उस पर उचित न्यायशुल्क चस्पा किया गया है ?	"हां ।"

-: Evidence adduced before the Trial Court:-

Evidence led by the Plaintiffs:-

10. Before the learned Trial Court, the plaintiffs have examined **Madhukar Chorwandre (PW-1), Vishaldhar (PW-2), Radheshyam Soni (PW-3), Lalaram @ Shaniram (PW-4), Ashok Giri (PW-5) and Dr. Kumari Sunanda Dhenge (PW-6)** in support of their case. In support of their oral testimony, they have produced and exhibited five documents, which were marked as **Exhibits P-1 to P-5.**

Evidence led by Defendants No.1 & 2:-

11. Defendants No.1 & 2 in support of their case have examined defendant No.2 herself as **Smt. Madhuri Pramanik (DW-1)** and **Meena Ghosh (DW-2)**. In support of their oral testimony, they have produced and exhibited three documents, which were marked as **Exhibits D-1 to D-3**.

-:Judgment of the Trial Court:-

12. After hearing learned counsel for the parties, the learned Trial Court decreed the suit holding that the suit property was the self-acquired

property of late Kenaram Bairagi and he had executed Will deed in favour of Sanjay Bairagi, as such, Sanjay Bairagi is the only owner of the suit property. Aggrieved by the said judgment & decree, the appellants herein/defendants No.1 & 2 filed the present appeal on the following grounds :-

(i) The impugned judgment and decree is bad in law and facts also.

(ii) The Trial Court has totally overlooked the fact that the Will is describing the property at Village Pipartarai, whereas the suit property is situated at Village Navagaon. These two villages are totally separate and are situated at distant places.

(iii) The Will, which is not related to the suit property, cannot be given effect, but the Trial Court has illegally accepted the Will assuming that the Will is for suit property.

(iv) The Trial Court has totally overlooked the settled principle of law that the Will is only for the immovable property and it is not valid for the bank accounts, but the Trial Court has illegally held that it is valid for bank account also.

(v) The Trial Court without jurisdiction accepted the Will as proof ignoring the settled principles of law.

(vi) The Trial Court has totally overlooked the law of succession after amendment in succession law in 2005 giving equal right and share to the daughters along with the brother in the ancestral property.

(vii) The Trial Court has illegally held that the suit property was self-acquired property of late Kenaram.

(viii) The Trial Court has totally overlooked Exhibit D-3, statement of Sanjay Bairagi before the Tahsildar during the mutation proceeding in which he has admitted the fact that at Dhamtari they have an ancestral property and were running hotel business jointly and after selling the property of Dhamtari, ultimately, the suit property was purchased. On the basis of admission of Sanjay Bairagi in Exhibit D-3, the Trial Court should have held that the suit property is the ancestral property and daughters have equal share along with father and brother in the ancestral property.

(ix) The Trial Court has failed to appreciate the law that the whole ancestral property cannot be alienated by father alone.

(x) The impugned judgment and decree are totally illegal, unjust and is passed beyond jurisdiction and is liable to be quashed.

-:Proceedings before the Appellate Court:-

13. Both the parties were heard on this appeal. The evidence and documents available in the record of the trial Court have been perused.

-:Questions to be considered in this Appeal:-

1. Whether the learned Trial Court was justified in holding that the plaintiffs acquired title over the suit property through their father, Late Sanjay Bairagi, on the basis of the registered

Will dated 25-01-2003 executed by Late Kenaram Bairagi, and in decreeing the suit for declaration of title and permanent injunction?

2. Whether the judgment and decree passed by the learned Trial Court warrant interference in the present appeal?

-:Arguments of the Appellant/Defendant No.2:-

14. Mr. B.P. Gupta, learned counsel for the appellant herein/defendant No.2, submits that the suit property is owned and possessed and recorded in all the revenue records in the name of the appellant after due mutation and partition and the appellant is in physical possession of the suit property fallen and recorded in her share. Learned counsel further submits that the suit property is not the self-acquired property of late Kenaram Bairagi. The finding of the learned Trial Court to that extent and to the extent of upholding the due execution of Will is apparently contrary to law and it deserves to be set-aside. In support of his contention, Mr. Gupta, learned counsel, has placed reliance on the decisions of the Supreme Court in the matters of **Ravi Kala and another v. Casablanca Estate and others**[1] and **Sanjay Paliwal and another v. Bharat Heavy Electricals Limited Through its Executive Director**[2] and that of this Court in the matter of **Satyaprakash Saraf v. Smt. Asha Saraf and others**[3].

1 (2026) 6 SCC 208
2 (2026) 7 SCC 614
3 2026:CGHC:11562-DB

-:Arguments of Respondents No.1 to 5 herein/Plaintiffs:-

15. On the other hand, Mr. Ratnesh Kumar Agrawal, learned counsel for respondents No.1 to 5 herein/plaintiffs, submits that the learned Trial Court has rightly decreed the suit of the plaintiffs vide the impugned judgment & decree which call for no interference by this Court. It was, therefore, contended that the learned Trial Court was justified in decreeing the suit and the impugned judgment & decree do not warrant any interference in the present appeal.

-:Analysis of the Appellate Court :-

Points for determination No.(1) to (3)

16. All three questions are interconnected and, therefore, they are taken up together for consideration.

17. The arguments advanced by both parties and the evidence adduced on record indicate that the entire dispute arises out of the Will **(Ex.P-1)** executed by Kenaram in favour of his son, late Sanjay Bairagi. In this regard, his daughters **(defendants)** have raised the following principal objections:

(i) The aforesaid Will is forged.

(ii) The property in respect of which the relief of declaration has been sought does not find mention in the Will.

(iii) Kenaram had no right to execute the Will, as it refers to property purchased out of the income derived from ancestral property.

18. The Will is being examined in the context of the aforesaid objections.

19. At the outset, it is necessary to refer to the legal requirements for proving a Will. **Section 63** of the **Indian Succession Act, 1925**, prescribes the manner in which a Will is required to be executed and attested, whereas **Section 68** of the **Indian Evidence Act, 1872,** provides for the mode of proving a document required by law to be attested. Accordingly, a Will must be proved in accordance with the aforesaid statutory provisions.

20. Section 63 of the Indian Succession Act, 1925, provides as follows:

> **"63. Execution of unprivileged Wills.—**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 acknowledgment of his signature or mark, or 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."

21. Further, Section 68 of the Indian Evidence Act, 1872, provides as follows:

> **"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 not 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 Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied."

22. Thus, a Will is required to be proved in accordance with the aforesaid statutory provisions, including proof of its due execution and attestation as prescribed by law. The judgment of this Court in ***Satyaprakash Saraf*** *(supra),* relied upon by the learned counsel for the appellant, also lays down the same principle.

23. Upon examination of the evidence available on record in the light of the aforesaid statutory provisions, it appears that the Will **(Ex.P.-1)** was duly registered. In this regard, **Madhukar Chorwande (PW-1)**, who appeared from the office of the Sub-Registrar, has confirmed that, as per Register No.3 (Will/Year 2003) maintained in his office, the **Will dated 25-1-2003** was registered on the said date. He has further stated that **R.A. Soni** {The name has been wrongly typed as "R.A. Soni"; the correct name is "R.S. Soni"} and **Jaleshwar** were present at the time of registration. **Radheshyam**

Soni (PW-3), an attesting witness to the Will, has also corroborated this fact.

24. It is true that mere registration of a Will is not sufficient to prove its due execution in accordance with law. However, registration may constitute an additional circumstance lending support to the genuineness of the Will. Therefore, it is necessary to examine the other evidence available on record.

25. **Vishaldhar (PW-2)**, the maternal uncle of the plaintiffs, is not an attesting witness to the execution of the Will; however, he has been appointed as the guardian of the plaintiffs by a competent court, in support of which **Ex.P-4** is relevant.

26. Both parties have produced certain documents relating to the mutation and partition proceedings. On behalf of the plaintiffs, **Sunanda Dhenge (PW-6)**, a handwriting expert, has been examined to establish that the written statement and other documents submitted during the mutation proceedings bear the signatures of defendant No.4, Meena Ghosh. Her report has also been exhibited as **Ex.P-5**. However, an elaborate discussion of this evidence is not warranted, as the question whether **Kenaram** executed the Will **Ex.P-1** in favour of his son late Sanjay Bairagi is required to be determined on the basis of the evidence available on record in the present case.

27. **Ex.P-1** is a registered Will attested by **Radheshyam Soni** and **Jaleshwar**. In compliance with the legal requirement, one of the

attesting witnesses, namely, **Radheshyam Soni**, has been examined as **PW-3**. He has categorically deposed that Kenaram himself got the Will written by document writer **Ramkishore Pandey** and, after reading its contents, signed the same. He has further stated that he signed the document as the first attesting witness. Nothing material has emerged from his cross-examination to discredit his testimony or to warrant any adverse inference against him.

28. **Another significant aspect of the matter is that the daughter of Kenaram i.e. defendant No.4, Meena Ghosh,** was examined as **DW-2** before the learned Trial Court and, **in the last line of paragraph 24 of her cross-examination**, she has admitted that her father, **Kenaram**, had got the Will written.

29. In view of the foregoing evidence, the execution of the Will **Ex.P-1** stands proved through the testimony of an attesting witness, while the admission made by defendant No.4 **Smt. Meena Ghosh (DW2)**, a family member of the testator, lends further support to the case of the propounder. Accordingly, the learned Trial Court committed no error in holding the Will **Ex.P-1** to be proved.

30. In the present case, the Will has been duly proved by the propounder in accordance with law. The defendants have alleged that the Will is forged; however, it is pertinent to note that the burden of proving such an allegation lies upon the party making it. In the matter of ***Daulat Ram and others v. Sodha and***

others[4], the Supreme Court has held that the burden of proving that a Will is forged, or that it was obtained by fraud, undue influence or coercion, lies upon the person alleging the same. Therefore, unless the defendants establish the alleged forgery by cogent evidence, their mere allegation cannot be a ground for discarding an otherwise duly proved Will.

31. The defendants have not adduced any evidence to establish that the Will is forged or that it was executed under undue influence. Further, one of the circumstances that may give rise to suspicion regarding a Will is the exclusion of other rightful heirs without any apparent basis. However, the facts of the present case do not indicate any such unusual circumstance. Out of the four daughters, three were married, while the fourth daughter, who remained unmarried, had also attained an advanced age. The plaintiffs are five minor daughters who had lost their mother. In such circumstances, it is quite natural that their grandfather, Kenaram, might have been concerned about their future welfare. The present case is not one in which the Will was executed, in an apparently inexplicable manner, in favour of a third party to the exclusion of the natural heirs.

32. Further, the execution and attestation of the Will, as well as its registration, have all been duly proved by the evidence on record.

33. The **second objection** raised by the defendants is that the property in question has not been specifically mentioned in the Will.

4 (2005) 1 SCC 40

34. The Supreme Court, in the matters of ***Gnambal Ammal v. T. Raju Ayyar***[5] and ***Sadaram Suryanarayana and another v. Kalla Surya Kantham and another***[6], has explained that the intention of the testator is of paramount importance in construing a Will and must be ascertained by reading the Will as a whole, rather than by considering any particular expression or clause in isolation.

35. In the light of the aforesaid legal principle, a perusal of the Will **Ex.P-1** reveals that Kenaram intended to bequeath to his son all his properties, including those that he might acquire in future. It is particularly significant that the Will refers to lands situated in two different Revenue Circles, which indicates that the testator intended to bequeath his properties without restricting the bequest to any single locality.

36. In these circumstances, the contention that the suit property does not form part of the Will cannot be accepted merely because it has not been individually described therein. Had Kenaram intended to exclude the suit property from the bequest, he could have expressly provided for such exclusion in the Will. No such intention is discernible from the document when read as a whole. Accordingly, the learned Trial Court committed no error in holding that the suit property is covered by the Will Ex.P-1. The appellants have relied upon the judgments of the Supreme Court in **Ravi Kala** (supra) and **Sanjay Paliwal** (supra) concerning the identification of property.

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5 AIR 1951 SC 103
6 (2010) 13 SCC 147

However, in view of the facts and circumstances discussed herein-above, the said judgments are distinguishable and, therefore, do not inure to the benefit of the appellants.

37. The **third objection** raised by the defendants is that **Kenaram** had purchased the suit property from the sale proceeds of ancestral property and, therefore, being not its exclusive owner, he was not competent to bequeath the same under the Will. Although the aforesaid t**wo objections** raised by the defendants have been decided in favour of the plaintiffs**,** the **third objection** raised by the defendants still requires consideration.

38. The said third objection is that the suit property was purchased by Kenaram out of the sale proceeds of **9.54 acres** of land situated at **Village Newra**, which had been purchased from the income of the **joint family hotel situated at Dhamtari.**

39. The fact that the suit property was purchased from the sale proceeds of the land situated at Village Newra is stated by the plaintiffs' maternal uncle, **Vishaldhar (PW-2)**, in paragraph 1 of his examination, as well as by their witnesses, **Lala alias Shani (PW-4)**, in paragraph 2 and **Ashok Giri (PW-5)**, in paragraph 3 of their respective examinations. Thus, to this extent, even the plaintiffs' own evidence supports the fact that the **suit property was purchased out of the sale proceeds of 9.54 acres of land situated at Village Newra**.

40. The learned Trial Court rejected this objection of the defendants solely on the ground that the defendants had not adduced any evidence to establish that the house, hotel and other properties situated at Dhamtari were ancestral properties.

41. However, it is particularly noteworthy that the **plaintiffs** have instituted the suit seeking relief on the basis of the Will; therefore, the burden lies upon them to establish that the suit property was the self-acquired property of Kenaram from his separate income. However, they have not produced any documentary evidence concerning the land situated at Village Newra or the business of the house, hotel and other properties situated at Dhamtari. Furthermore, Vishaldhar (PW-2), in paragraph 11 of his cross-examination, has admitted that the house situated at Dhamtari was ancestral property. In paragraph 10, he has admitted that the double-storey house at Dhamtari was sold by Kenaram.

42. Late Sanjay Bairagi could have been the best witness on this point; however, he could not be examined as he had passed away.

43. Although the mutation proceedings between the parties are undisputed, a certified copy of the statement of Sanjay Bairagi recorded in those proceedings has been produced by **Meena Ghosh (DW-2)** as **Ex.D-3**. In the said statement, Sanjay Bairagi has categorically admitted that all the brothers and sisters used to sit together at the hotel and that the land situated at Village Newra had been purchased out of the income of the said hotel. **Ex.D-3,**

produced by **Meena Ghosh (DW-2)**, is a copy of the statement recorded during proceedings before a competent court. Its authenticity was not challenged during the cross-examination of the witness; therefore, its veracity cannot be disregarded.

44. Thus, an analysis of the evidence available on record establishes that the plaintiffs have failed to prove that the **suit property is the self-acquired property of Kenaram**, in absence of which it will be presumed that it was purchased from the income of the ancestral property.

45. In the aforesaid background, it would be necessary to determine the respective shares of the **appellants/defendants** (daughters of Kenaram) and the other coparceners in the suit property. It is pertinent to mention that **Kenaram Bairagi** died on **25-5-2010**, leaving behind his son **Sanjay Bairagi** and four daughters **Seema Bairagi, Madhuri Pramanik, Laxmi Roy & Mina Ghosh (defendants)**. Since the suit property has been found to be ancestral coparcenary property, the respective shares are required to be determined in accordance with the provisions of **Section 6** of the **Hindu Succession Act, 1956**, as amended by the **Hindu Succession (Amendment) Act, 2005.**

46. In view of the amended provisions of **Section 6** of the **Hindu Succession Act**, the daughters of a coparcener acquire the status of coparceners in their own right and are entitled to the same rights and liabilities in the coparcenary property as a son. Accordingly, the

four daughters of Kenaram Bairagi were also entitled to equal shares in the coparcenary property. For the purpose of determining the share of **Kenaram Bairagi** upon his death, a notional partition is required to be assumed immediately before his death, in accordance with Section 6(3) of the Act.

47. On such **notional partition**, the suit property would be divided into **six equal** shares, namely, one share each for Kenaram Bairagi, his son Sanjay Bairagi and his four daughters. Consequently, Kenaram Bairagi was entitled to **only one-sixth share** in the suit property.

48. In these circumstances, even accepting Will Ex.P-1 to be valid and duly proved, Kenaram Bairagi could have bequeathed only the share which belonged to him and not the entire suit property. Therefore, under Will **Ex.P-1,** late Sanjay Bairagi acquired only the one-sixth share of Kenaram Bairagi. Apart from the aforesaid testamentary acquisition, late Sanjay Bairagi was independently entitled to his own one-sixth share as a coparcener. Thus, upon the death of Kenaram Bairagi, the total share acquired by Sanjay Bairagi in the suit property would be one-third, i.e., 1/6 + 1/6 = **2/6 (one-third share)**.

49. Subsequently, Sanjay Bairagi also died on 30-1-2011. Consequently, his **one-third share** in the suit property devolved upon his legal heirs in accordance with the provisions of the Hindu Succession Act. The plaintiffs, being his daughters, are, therefore, entitled to succeed

to his aforesaid one-third share in the suit property, in accordance with the applicable rules of succession. The remaining shares of the four daughters of Kenaram Bairagi, being their independent coparcenary shares, remain unaffected by the bequest made under Will **Ex.P-1**.

50. Thus, the plaintiffs cannot claim title over the entire suit property merely on the basis of Will **Ex.P-1**. Their entitlement under the said Will, read with the independent share of Sanjay Bairagi, is confined to his **one-third share** in the suit property. The learned Trial Court, therefore, committed an error in declaring the plaintiffs to be owners of the entire suit property. The decree to that extent is liable to be modified, and the plaintiffs are entitled to a declaration of their title only in respect of the **one-third share** of late Sanjay Bairagi, to be shared amongst them in accordance with law.

-:**Final Conclusion:-**

51. In view of the foregoing discussion, the appeal deserves to be and is hereby partly allowed. The judgment and decree passed by the learned Trial Court are modified to the extent that the declaration granted in favour of respondents No.1 to 5 herein/plaintiffs on the basis of the Will executed by Kenaram Bairagi shall be confined to one-sixth of the share in the suit property being the extent of share which Kenaram Bairagi had bequeathed. Parties shall bear their own costs.

52. Decree shall be drawn up accordingly.

Sd/-
(Parth Prateem Sahu)
JUDGE

Sd/-
(Sushma Sawant)
JUDGE

Soma