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HIGH COURT OF CHHATTISGARH AT BILASPUR

SA No. 43 of 2015

{Arising out of judgment and decree dated 27-1-2010 in Civil Appeal No.5A/2007 of the 8th Additional District Judge (FTC), Durg}

Judgment reserved on: 25-9-2026

Judgment delivered on: 28-10-2026

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

1. Savitri Bai, Wd/o late Devdatt (wrongly typed name as Devdhar)
2. Ravishankar, S/o late Devdatt, aged about 49 years,
3. Maya Shankar, S/o late Devdatt, aged about 46 years,
4. Umashankar, S/o late Devdatt, aged about 38 years,

   All are R/o Village Odar Sakri, Post Office Gabdi, Via Arjunda, Tahsil Gunderdehi, District Durg (C.G.)
5. Khiland, S/o late Devdatt, aged about 35 years, R/o Village Panchsheel Nagar, Durg, Tahsil and District Durg (C.G.)
6. Smt. Leela Bai (wrongly typed name as Lilidev), W/o Purshottam Yadav, R/o Jhurhatola, Post Office Awari Daudi, Tahsil Balod, District Durg (C.G.)
7. Kamleshwari (Died) Through LRs

   7A. Toman Lal, S/o Late Salik Ram, aged about 37 years, R/o Village Manaud, Post Tarod, Tahsil & District Balod (C.G.)

   7B. Atmaram Yadav, S/o Late Lakhanlal Yadav, aged about 64 years, R/o Village Manaud, Post Tarod, Tahsil & District Balod (C.G.)

7C. Gayatri Yadav, D/o Late Lakhanlal Yadav, Wd/o Late Nandkumar Yadav, aged about 59 years, R/o Village Rengakathera, Post Mayaldabri, Tahsil Dongargaon, District Rajnandgaon (C.G.)

7D. Meena Yadav, D/o Late Dinbandhu Yadav, aged about 41 years,

7E. Prabha Yadav, D/o Late Dinbandhu Yadav, aged about 38 years,

7F. Ghanshyam Yadav, S/o Late Dinbandhu Yadav, aged about 35 years

7G. Vibha Yadav, D/o Late Dinbandhu Yadav, aged about 32 years,

7H. Seema Yadav, D/o Late Dinbandhu Yadav, aged about 30 years,

Appellant No.7D to 7H are R/o Village Machoud, Post Tavera, Tahsil Gunderdehi, District Balod (C.G.)

7I. Revti Yadav, D/o Late Lakhanlal Yadav, W/o Shri Dhansingh Yadav, aged about 56 years, W/o Shri Dhansingh Yadav, R/o Village New Borsi Colony, M.I.G. 359, Post Borsi, Tahsil & District Durg (C.G.)

7J. Girdhari Yadav, S/o Late Lakhan Lal Yadav, aged about 54 years, R/o Village Manaud, Post Tarod, Tahsil & District Balod (C.G.)

7K. Girish Kumar Yadav (Died) Through LRs

7K-i. Sangeeta Yadav, Wd/o Late Girish Kumar Yadav, aged about 50 years, R/o Village Manaud, Post Tarod, Tehsil & District Balod (C.G.)

7K-ii. Yogendra Kumar Yadav, S/o Late Girish Kumar Yadav, aged about 24 years, R/o Village Manaud, Post Tarod, Tehsil & District Balod (C.G.)

7K-iii. Urvashi Yadu, D/o Late Girish Kumar Yadav, W/o Shri Harikishan Yadu, aged about 26 years, R/o Ward No.62 (Mahamaya Mandir Ward), Purani Basti, Mahamai Para, Raipur, District Raipur (C.G.)

7L. Bhuneshwari Yadav, D/o Late Lakhanlal Yadav, W/o Shri Rohit Kumar Yadav, aged about 48 years, R/o Village Kouchwahi, Post Pondh, Tahsil & District Balod (C.G.)

8. Kasturi Bai, W/o late Harilal (wrongly typed name as Helal) Yadav, D/o late Pyarelal Yadav, R/o Village Dotopar, Post Sanaud, Palari, Tahsil Gunderdehi, District Durg (C.G.)

(Plaintiffs)

... Appellants

versus

1. Leeladhar, S/o Murlidhar, aged about 48 years, R/o Village & Post Latabod, Tahsil Balod, Distt. Durg (C.G.)

2. a. Smt Radha Bai, Wd/o late Ramkhilawan Yadav, D/o late Lakhan Lal, Kayasthapara, Near house of Advocate Ramanujlal Yadav, Durg, Tahsil and District Durg (C.G.)

   2b. Smt. Amrika Bai, D/o late Lakhanlal, Wife of not known, R/o C/o Mohan Yadav Kirana PCO, Village and Post Bhansoj, Via Aarang, District Raipur (C.G.)

   2c. Smt. Godawari Bai, W/o Sukhen, D/o late Lakhanlal, R/o Village Thethawar Para, Village and Post Pathari Lal Bahadur Nagar, Tahsil Dongargarh, District Rajnandgaon (C.G.)

   2d. Smt. Kirti Bai, W/o Pawan Yadav, D/o late Lakhanlal, R/o Village Odar Sakri, Police Gabdi, Via Arjunda, District Durg (C.G.)

   2d. Smriti Yadav (wrongly typed name as Miti Yadav) (Deleted)

3. Kunti Bai (died issueless) (Deleted)

4. State of Chhattisgarh, through Collector, Durg, Distt. Durg (C.G.)

(Defendants)

... Respondents

For Appellants	:	Mr. R.S. Patel, Advocate.
For Respondent No.1	:	Mr. Somnath Verma, Advocate.
For Respondent No.4	:	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 appellants herein/plaintiffs have preferred this appeal challenging the judgment & decree dated **27-1-2010** passed by the **First Appellate Court –** 8th Additional District Judge (FTC), Durg in **Civil Appeal No.5A/2007**, arising out of the judgment & decree dated **8-2-2005** passed by the **Trial Court –** 5th

Civil Judge Class-II, Durg in **Civil Suit No.13A/2000,** by which the learned Trial Court has decreed the suit for declaration of title and permanent injunction declaring the appellants herein/plaintiffs as owners of the disputed property as well as declaring the Adoption deed dated **23-12-1992** (**Ex.D-1**) and the Will deed dated **2-7-1995** (**Ex.D-2**) as null and void. The First Appellate Court while partly allowing the appeal filed on behalf of defendant No.1/respondent No.1 herein has set aside the finding recorded by the Trial Court in respect of issue No.5.

Factual Matrix

-:Case of the Original Plaintiff/Appellants 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.)

2. Following tables will demonstrate the relationship among the parties: -

Table I

Nahar Singh (died) **(grand-father of original plaintiff Pyarelal)**	
Son – Jaylal (died) **(father of original plaintiff Pyarelal)**	Son – Hari Singh (Heera Singh) (died) **(paternal uncle of original plaintiff Pyarelal)**

Table II

Jaylal (father of original plaintiff Pyarelal)		**Hari Singh (Heera Singh)** (paternal uncle of original plaintiff Pyarelal)	
Son – Pyarelal **(original Plaintiff)**	Son – Lakhanlal **(original defendant No.2)**	Son – Gangdev (died) Kanti Bai (died issue-less)	Son - Manthir (died) Kunti Bai **(original defendant No.3)**

3. It has been pleaded that **late Nahar Singh** was the owner of the ancestral property comprising Khasra Nos.**580/2, 1421** and **929**, admeasuring **0.33 hectare, 0.17 hectare and 0.88 hectare**, respectively, with a total area of **1.38 hectares**, situated at Village **Odar-Sakri**, **Patwari Halka No.13**, **Revenue Inspector Circle Gunderdehi, Tahsil Gunderdehi, District Durg (now District Balod)**. The suit property had already been partitioned approximately 50 years ago, and thereafter, the same was recorded in the revenue records in the names of the legal heirs, namely, the **original plaintiff Pyarelal**, **defendant No. 2 Lakhan Lal**, and **Kanti Bai** (wife of **Gangdev**, son of the paternal uncle of the plaintiff Heera Singh), who are stated to be the legal heirs of **Jay Lal and Heera Singh,** the two sons of **late Nahar Singh**, as reflected in **Annexure A** appended to the plaint.

4. It has also been pleaded that, in the partition, the plaintiff got **Khasra Nos.580/2 and 1421**, admeasuring **0.33 hectare and 0.17 hectare**, respectively, whereas **Khasra No.929,** admeasuring **0.88 hectare**, (hereinafter referred as suit land) was received by **Gangdeo**. It has also been pleaded that the disputed land was recorded in the name of **late Gangdeo** and during his lifetime, he was in possession and was cultivating the land. After the death of **Gangdeo**, the name of his **wife, Kanti Bai**, was recorded in the revenue records. **Kanti Bai** also died issue-less on 28-8-1995. Upon her death, her name was required to be deleted from the revenue records and the suit property was claimed to devolve upon the plaintiff, Pyare Lal, as her legal heir.

However, **defendant No. 1, Leeladhar**, who was the son of Kanti Bai's brother, applied before the Naib Tehsildar, Gunderdehi, for mutation of his name in the revenue records, claiming to be her adopted son.

5. Hence, the original **plaintiff, Pyare Lal,** instituted a suit seeking declaration of title and permanent injunction in respect of the disputed land comprising **Khasra Nos.580/2, 1421 and 929, admeasuring 0.33 hectare, 0.17 hectare and 0.88 hectare,** respectively, with a total area of **1.38 hectares,** as described in **Annexure A a**ppended to the plaint. He also sought a declaration that the alleged adoption deed executed in favour of **defendant No.1, Leeladhar, was not binding upon him, and that Leeladhar** was not the adopted son of late **Kanti Bai**. The original plaintiff Pyarelal further sought a permanent injunction restraining the defendants from interfering with his rights over the suit land.

-: Written Statement of Defendant No.1/Respondent No.1 herein before the Trial Court :-

6. **Defendant No.1/respondent No.1 Leeladhar** herein filed written statement on 10-4-2000 denying the averments made in the plaint. He has pleaded that he has also been in possession of **Khasra No.929, area 0.88 hectare**, and has been cultivating the said land. He has denied the plaintiff's claim regarding ownership and possession. It has further been pleaded by defendant No.1 Leeladhar that **Gangdev** died on 2-6-1990 and thereafter his wife **Kanti Bai** died on 28-8-1995, they were issue-less and thereafter, the property devolved upon the persons

entitled thereto. He has denied the plaintiff's assertion regarding succession and has stated that the claim made by the plaintiff is not legally sustainable.

7. **Defendant No.1, Leeladhar**, further pleaded that **late Kanti Bai** had no children and had adopted him by a registered adoption deed dated 23-12-1992. She had also executed a Will dated 2-7-1995 in his favour. Accordingly, the land received by **Kanti Bai** in the partition devolved upon him, and the plaintiff had no right or title over the said property.

8. Despite service of notice on 3-11-1997, defendant Nos.2 & 3 remained absent and consequently, they were proceeded ***ex parte***. Similarly, despite service of notice on 16-2-1999, defendant No.4/State remained absent and, therefore, proceedings against it were also conducted ex parte.

-: Proceedings before the Trial Court :-

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

S.No.	Questions for Consideration	Finding
1.	क्या ग्राम ओडा रसकरी तह. गुण्डरदेही जिला दुर्ग स्थित कृषि भूमि ख. न.580/2 रकबा 0.33 हे. खं. न.1421, रकबा 0.17 हे. वादी को बंटवार में प्राप्त हुई है ?	प्रमाणित नही है ।
2.	क्या ग्राम ओडारस्करी तह. गण्डरदेही जिला दुर्ग स्थित भूमि ख.न. 929 रकबा 0.88 हेक्टेयर भूमि स्व॰ गंगदेव एवं मंथीर के निःसंतान मृत होने के कारण विधिक उत्तराधिकार वादी को प्राप्त हुई है ?	प्रमाणित नही है ।
3.	क्या प्रतिवादी क्र–1 स्व॰ गंगदेव एवं क्रांतिबाई का गोदपुत्र है?	नहीं ।
4.	क्या प्रतिवादी का वाद समयावधि बाधित है ?	नहीं ।
5.	क्या स्व. क्रंतिबाई ने दि. 2–6–1995 को प्रतिवादी क्र–1 के पक्ष में वादग्रस्त संपत्ति से संबंधित वसीयतनामा निष्पादित की ?	नहीं ।

6.	सहायता एवं व्यय	वाद आंशिक रुप से स्वीकार किया गया ।

-: Evidence adduced before the Trial Court:-

Evidence led by the Plaintiff:-

10. Before the learned Trial Court, the plaintiff has examined himself as **Pyarelal (PW-1)** and **Palturam (PW-2)** in support of his case. In support of his oral testimony, he has neither produced nor exhibited any document. No other witness was examined by the plaintiff.

Evidence led by the Defendants:-

11. Similarly, defendant No.1 in support of his case has examined himself as **Leeladhar Yadav (DW-1), Bisram Prasad (DW-2)** & **Chintaram (DW-3)** before the trial Court and in support of his oral testimony, he has produced and exhibited documents **Ex.D-1** – Adoption deed dated 23-12-1992 & **Ex.D-2** – Will deed dated 2-7-1995.

12. Despite service of notice, **defendants No.2, 3 & 4** failed to appear before the learned Trial Court and were accordingly, proceeded ***ex parte***. Consequently, no written statement was filed on their behalf. Even thereafter, the defendants did not participate in the proceedings and adduce any evidence in support of their case. Neither any oral evidence nor any documentary evidence was adduced on behalf of **defendants No.2, 3 & 4**.

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 8-2-2005

partly decreed in favour of the plaintiff, declaring the adoption deed dated 23-12-1992 **(Ex.D-1)** and the Will deed dated 2-7-1995 **(Ex.D-2)** as null and void, and conferring no right or title upon original defendant No. 1 Leeladhar.

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

14. Being aggrieved by the judgment & decree dated **8-2-2005** passed by the Trial Court in **Civil Suit No.13A/2000** (Pyarelal v. Leeladhar and three others) decreeing the suit, defendant No.1 has filed appeal being **Civil Appeal No.5A/2007** (Leeladhar v. Savitri Bai and others) before the First Appellate Court.

15. The learned First Appellate Court, upon consideration of the evidence and material available on record, partly allowed the appeal and reversed the finding recorded by the learned Trial Court on Issue No.5, which had been decided in favour of the plaintiff, and held that the Will had been executed by Kunti Bai in favour of defendant No.1, Leeladhar. being aggrieved against which this second appeal has been preferred.

-: Substantial Questions of Law :-

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

> 1. Whether finding of the Lower Appellate Court holding that the execution of the Deed of Will dated 02.07.1995 (Ex.D-2), purported to have been executed by one Kanti Bai wd/o Gangdev, in favour of Defendant No.1-Leeladhar, cannot be held to be declared as null and void in absence of seeking the relief for its cancellation by the Plaintiff, is perverse?

2. Whether under the facts and circumstances of the case, the due execution, attestation and validity of the Deed of Will dated 02.07.1995 (Ex. D-2), purported to have been executed by one Kanti Bai wd/o Gangdev in favour of Defendant No.1-Leeladhar, was duly established by its propounder in the light of the provisions prescribed under Section 68 of the Indian Evidence Act, 1872?

-: 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 Appellants herein :-

18. Vide written submission, Mr. R.S. Patel, learned counsel appearing on behalf of the appellants herein/plaintiffs, while reiterating the grounds urged in the memorandum of appeal, submitted that the learned First Appellate Court has failed to consider the statement of **Leeladhar Yadav (DW-1)** who has categorically stated that at the time of adoption (**Ex.D-1**), his age was 38 years and he was having four children. The learned First Appellate Court has further failed to consider his statement in which he has specifically stated that in his statement before the Court he has used the name of his biological father Murlidhar in spite of the fact that he was adopted son of late Kanti Bai, Wd/o late Gangdev. He has also stated, it is also true that it is not mentioned in the adoption deed that his mother and father had agreed for the said adoption and moreover, at the time of execution of the Will (**Ex.D-2**), he was not present and the Will was also not registered.

19. Mr. R.S. Patel, learned counsel for the appellants/plaintiffs, further submitted that the learned First Appellate Court has also failed to consider that the appellants/plaintiffs are in possession of the disputed land and also failed to consider the provisions contained in Order 7 Rule 7 of the Code of Civil Procedure, 1908, which states that the relief which the plaintiff claims has to be specifically stated in the plaint. In support of his contention, Mr. Patel, learned counsel, would rely upon the decision of the Supreme Court in the matter of **Bachhaj Nahar v. Nilima Mandal and others**[1] and that of this Court in the matter of **Chinttaram Pandey v. Kanti Bai and others**[2].

20. Mr. Patel has also submitted that the learned First Appellate Court has failed to consider that the attesting witnesses of the Will (**Ex.D-2**) namely, Chintaram, S/o Judavan and Bhagwan Singh, S/o Bisauha, have not been examined and that the First Appellate Court has wrongly reversed the finding of the Trial Court regarding Will dated 2-7-1995. He would further rely upon the decision rendered by the Supreme Court in the matter of **S.R. Srinivasa and others v. S. Padmavathamma**[3] to buttress his submission. Moreover, the Will is in favour of the defendants and in that situation, the plaintiff cannot claim for cancellation or rejection of Will **Ex.D-2** at the stage of evidence in trial. It is further contended on behalf of the appellants/ plaintiffs that the learned First Appellate Court has failed to consider that the witnesses of the documents **Exs.D-1 & D-2** are one and same

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1 AIR 2009 SC 1103
2 2020(2) CGLJ 427
3 2010(3) CGLJ 433

persons, which creates doubt and suspicion, as the signatures of both the witnesses are different in both the documents i.e. **Exs.D-1 & D-2**.

21. In support of the contentions raised on behalf of the appellants/ plaintiffs, Mr. R.S. Patel, learned counsel, would also rely upon the decisions rendered by the Supreme Court in the matters of **Dhani Ram (died) through L.Rs. and others v. Shiv Singh**[4] and **B. Venkatamuni v. C.J. Ayodhya Ram Singh and others**[5].

-: Submissions of Respondent No.1 herein/Defendant No.1 :-

22. Mr. Somnath Verma, learned counsel appearing on behalf of respondent No.1 herein/defendant No.1, while opposing the instant second appeal supports the judgment & decree of the First Appellate Court and submits that the learned First Appellate Court has rightly reversed the judgment & decree of the Trial Court in respect of issue No.5 i.e. the Will deed **Ex.D-2** executed by late Kanti Bai in favour of defendant No.1, and as such, the judgment & decree of the First Appellate Court requires to be affirmed and the second appeal preferred by the plaintiffs/appellants herein deserves to be dismissed. He would rely upon the decisions of the Supreme Court in the matters of **Gautam Sarup v. Leela Jetly and others**[6], **Sri Gangai Vinayagar Temple v. Meenakshi Ammal**[7], **Madhukar D. Shende v. Tarabai Aba Shedage**[8] and **Rajendra Tiwary v. Basudeo Prasad and another**[9] to buttress his submission.

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4 AIR 2023 SC 4787
5 AIR 2007 SC 311
6 2008 AIR SCW 4113
7 AIR Online 2014 SC 174
8 AIR 2002 SC 637
9 AIR 2002 SC 136

-:Analysis:-

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

23. Both the substantial questions of law are interconnected and, therefore, they are taken up together for consideration.

24. The present appeal is confined to the finding recorded on Issue No.5. Having regard to the controversy involved and the findings recorded by both the Courts below, it would be appropriate, for the sake of convenience, to commence the discussion with the finding recorded by the learned Trial Court on the said issue. The learned Trial Court recorded its finding on Issue No.5 as under:

Issue No. 5	Finding
क्या स्व. क्रांतिबाई ने दि. 2.7.1995 को प्रतिवादी क्र. 1 के पक्ष में वादग्रस्त संपत्ति से संबंधित वसीयतनामा निष्पादित की?	नहीं

The learned First Appellate Court reversed the aforesaid finding recorded by the learned Trial Court and, thereby, held that the Will dated 2-7-1995 had been executed by late Kranti Bai in favour of **original defendant No.1 Leeladhar**. Aggrieved by the reversal of the finding on the said issue, the **original plaintiff, Pyare Lal**, has preferred the present **second appeal**.

25. Both parties have advanced detailed arguments regarding the manner in which a Will is required to be proved. Learned counsel for the **appellants/original plaintiff, Pyare Lal**, has relied upon the judgments in **Dhani Ram** (supra), **B. Venkatamuni** (supra) and **S.R. Srinivasa** (supra), whereas learned counsel for the **respondent/**

original defendant No.1, Leeladhar, has relied upon the judgment in **Madhukar D. Shende** (supra).

26. The judgments relied upon by the respective parties deal with the legal requirements for proof of a Will under **Section 63** of the **Indian Succession Act, 1925,** read with Section 68 of the **Indian Evidence Act, 1872**. The settled legal position is that a Will can be held to have been duly proved only when the requirements prescribed under the aforesaid provisions are duly satisfied.

27. A perusal of the plaint filed by the **appellant/original plaintiff, Pyare Lal**, before the learned Trial Court reveals that he had sought only the relief of declaration of his **title over the suit land**, **deletion of the names** of original defendant No.2, Lakhan, **(his real brother)**, and defendant No. 3, Kunti Bai, **(wife of Manthir, son of his uncle Heera Singh)**, from the revenue records, and **a declaration** that the adoption deed executed by **Kranti Bai**, (**wife of Gangdev, another son of his uncle Heera Singh)**, in favour of **original defendant No.1, Leeladhar,** was null and void and not binding upon him.

28. Upon examination of the judgment of the learned Trial Court, it emerges that **no relief was granted in respect of the title over the suit land**. However, apart from **granting relief in respect of the adoption deed** executed by Kranti Bai, the learned Trial Court **also granted relief in respect of the Will**, the basis of which was confined to the defence raised by the respondent/original defendant Leeladhar in his written statement. It is pertinent to mention that the

plaint contains no averment concerning the Will, nor does it seek any relief in respect thereof, and the **respondent/original plaintiff Pyarelal** has not challenged the Will in the present suit.

29. The **respondent/original defendant Leeladahr** challenged the judgment of the learned Trial Court before the First Appellate Court on the aforesaid ground, and the learned First Appellate Court set aside the finding of the learned Trial Court on the same basis. In the present second appeal, the **appellant/original plaintiff, Pyare Lal**, has relied upon the provisions of Order VII Rule 7 of the Code of Civil Procedure, 1908, and contended that the Court could grant relief even if it had not been specifically claimed in the plaint, and that the learned Trial Court had committed no error in doing so. In support of his submission, learned counsel for the appellant has drawn attention to **Order VII Rule 7 of the CPC** and relied upon the judgments in **Bachhaj Nahar** (supra) and **Chittaram** (supra).

30. Per contra, the **respondent/original defendant, Leeladhar**, has relied upon the judgment in **Rajendra Tiwary** (supra), which lays down that a relief larger than the one claimed cannot be granted under Order VII Rule 7 of the CPC.

31. In this context, it would be appropriate to refer to Order VII Rule 7 of the Code of Civil Procedure, 1908, which reads as under:

> "**7. Relief to be specifically stated.—**Every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been

> asked for. And the same rule shall apply to any relief claimed by the defendant in his written statement."

32. A plain reading of the aforesaid provision makes it clear that the relief claimed must be specifically stated in the plaint. The Court may, however, grant an unclaimed relief, provided that such relief is incidental to or connected with the principal relief claimed and is otherwise considered just and proper. The judgments relied upon by both parties also proceed on the aforesaid legal principle.

33. The present case, however, stands on a different footing. The principal relief claimed in the suit was a declaration of title over the suit land, which was not granted by the learned Trial Court. Consequently, the relief granted in respect of the Will could not have been granted in the circumstances of the case. **Firstly**, no such relief was claimed in the plaint; **secondly**, the relief granted was beyond the scope of, and larger than, the relief claimed; and **thirdly**, once the question of the Will was considered, the learned Trial Court ought to have examined whether, in the event of Kranti Bai dying intestate, any other person was entitled to succeed to the suit property.

34. Instead, the learned Trial Court, on the basis of the pleadings and evidence concerning the plaintiff alone, declared the Will to be null and void, without examining the rights of other persons who might have been entitled to succeed to the property. Such a determination could not be sustained in law.

35. Before recording any conclusive finding regarding the Will, it was necessary to examine whether Kranti Bai had any other legal heirs or

persons entitled to succeed to the property, particularly since the suit land had devolved upon her through her husband's father. These aspects were material to the proper adjudication of the dispute and ought to have been considered before any final conclusion was drawn regarding the validity of the Will.

36. In view of the foregoing discussion, the learned First Appellate Court committed no error in setting aside the finding recorded by the learned Trial Court with regard to the Will. The finding of the learned Trial Court, if allowed to stand, would have the effect of declaring the Will null and void, even in relation to third parties who were not before the Court. The view taken by the learned First Appellate Court in this regard is, therefore, fully justified.

37. As regards the due execution and proof of the Will dated 2-7-1995 (Ex. D-2), it would not be appropriate to record any conclusive finding in the present appeal, particularly when, from the submissions advanced by both parties and the written submissions filed on behalf of the appellant/original plaintiff, it emerges that **Civil Suit No.1-A/21/ 2016** concerning the said Will is pending before the Court of the learned First District Judge, Balod, Chhattisgarh. The question shall, therefore, remain open for adjudication in the said proceedings.

38. The **appellant/original plaintiff Pyarelal** has referred to the subsequent proceedings before the Revenue Courts in his written submissions. However, the said proceedings have no bearing on the controversy requiring adjudication in the present second appeal.

39. The learned First Appellate Court, upon consideration of the relevant legal aspects, has reversed the finding recorded by the learned Trial Court on Issue No.5 concerning the Will. As discussed herein above, the finding of the learned Trial Court could not be sustained in law, particularly in the absence of any specific relief claimed in respect of the Will and without consideration of the rights of other persons who may be interested in the suit property. The view taken by the learned First Appellate Court, therefore, does not suffer from any legal infirmity warranting interference in the exercise of second appellate jurisdiction.

-:Final Conclusion:-

40. In view of the foregoing discussion, the second appeal is **dismissed** with costs. The judgment and decree passed by the learned First Appellate Court are affirmed.

41. Decree be drawn-up accordingly.

Sd/-
(Sushma Sawant)
JUDGE

Soma