



2026:CGHC:5836

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

SA No. 465 of 2024

Lochan Prasad S/o Late Puniram Rajwade, Aged About 52 Years Presently Aged About 61 Years, Presently Resided At - Village- Bhathimuda, Tah.- Katghora, Distt.-Korba (C.G.)

Appellant(s)

Versus

1 - Hiralal S/o Late Anandram, Aged About 50 Years R/o School Mohalla Kanki, Tahsil Kartala, District-Korba (C.G.)

2 - The State Of Chhattisgarh, Through The District Collector- Korba (C.G.)

3 - Anandram S/o Devsai (Died)

3.1 - (A) Leelakram, S/o Lage Anandram, Aged About 55 Years R/o Village- Bhathimuda, Tahsil-Katghora, District-Korba (C.G.), Presently Resided At- House Of Mohan Rajwade, School Mohalla, Vill- Kanki, Tahsil - Kartala, District- Korba (C.G.)

3.2 - (B) Itwari S/o Late Anandram, Aged About 50 Years R/o Village- Bhathimuda, Tahsil- Katghora, District-Korba (C.G.), Presently Resided At- House Of Mohan Rajwade, School Mohalla, Village-Kanki, Tahsil- Kartala, District- Korba (C.G.)

... Respondent(s)

(Cause-title taken from Case Information System)

For Appellant(s) : Mr. Sangeet Kumar Kushwaha, Advocate

For Resp. No. 1, 3A & 3B : Mr. Anil Tripathi, Advocate

For Resp. No. 2 : Mr. Malay Jain, PL

Hon'ble Shri Justice Bibhu Datta Guru**Judgment on Board****02/02/2026**

1. The present Second Appeal has been filed under Section 100 of the Code of Civil Procedure, 1908 by defendant No.1, the appellant herein, assailing the judgment and decree dated 27/08/2024 passed in Civil Appeal No. 35/2019 (*Lochan Prasad v. Hirlal & Others*) by the learned Additional District Judge, Kathghora, District Korba. By the said judgment, the First Appellate Court dismissed the appeal preferred by defendant No.1 and affirmed the judgment and decree dated 23/08/2019 passed in Civil Suit No. 51-A/2016 (*Smt. Shyamkunwar v. Lochan Prasad*) by the learned Civil Judge, Class-I, Kathghora, District Korba, whereby the suit filed by the plaintiff was decreed.
2. For the sake of convenience, the parties shall hereinafter be referred to as per their status before the Trial Court.
3. The plaintiff instituted a civil suit seeking declaration of title, permanent injunction and recovery of possession in respect of agricultural land situated at Village Bhatheekuda, Police Station Kusmunda, Tahsil Katghora, District Korba, bearing Patwari Halka No.26, comprising various khasra numbers with a total area of 7.16 acres (2.895 hectares). It was pleaded that the suit land originally belonged to Bodhwa, whose children were Ramji (son) and the plaintiff (daughter), and that both Bodhwa and Ramji have since expired. Defendant No.2 Dhankunwar

was the wife of Ramji, and Defendant No.1 is the husband of Ramji's daughter Gulapabai, who died issueless. The plaintiff pleaded that the suit land was ancestral and had been partitioned by Bodhwa during his lifetime, pursuant to which the plaintiff and Ramji were in possession of their respective shares, but after Bodhwa's death Ramji got his name mutated over the entire land suppressing the plaintiff's name. It was further pleaded that after Ramji's death, the name of Dhankunwar was recorded on the basis of a forged relinquishment deed and thereafter Defendant No.1 got the land mutated in his favour on the basis of a fabricated Will allegedly executed by Dhankunwar.

4. In his written statement, Defendant No.1 denied the pleadings and asserted exclusive title and possession on the strength of the Will, while Defendant No.4 claimed possession over Khasra No.45 on the basis of an oral sale allegedly made by the plaintiff's husband in the year 1981.
5. The Trial Court, upon due appreciation of the oral and documentary evidence on record, including the revenue records, mutation proceedings and the alleged Will, decreed the suit in favour of the plaintiff by declaring her to be the exclusive owner of the suit land, holding the Will to be null and void, directing delivery of possession and granting permanent injunction.
6. Aggrieved by the said judgment and decree, defendant No.1 preferred an appeal before the Appellate Court; however, the same came to be dismissed and the judgment and decree passed by the Trial Court were affirmed. Thereafter, the present Second Appeal has been preferred.

7. Learned counsel for the appellant submits that the judgments and decrees passed by both the Courts are contrary to law and the evidence on record and, therefore, are not sustainable. It is contended that both the Courts have erred in declaring the Will Deed dated 27.12.1996 (Exhibit A-1) to be null and void, despite the fact that the said Will was duly executed by the testator in favour of the appellant/defendant No.1 and stood proved in accordance with the mandatory provisions of law. Once the execution of the Will was established, the appellant became the lawful title holder of the subject land, which aspect has been erroneously ignored by both the Courts. It is further submitted that the decree has been passed in respect of the entire suit property, whereas the plaintiff herself had claimed entitlement only to $\frac{1}{2}$ share, rendering the decree beyond the pleadings and legally unsustainable. The Courts have also erred in holding that late Dhankunwar had independent rights over the suit land merely on the basis of her marital status as the wife of Ramji, without examining the nature and source of title in accordance with law. The findings recorded, therefore, suffer from misapplication of legal principles and perversity, giving rise to substantial questions of law warranting interference by this Court.
8. I have heard learned counsel for the appellant on the question of admission, and the impugned judgments and decrees passed by both the courts have been carefully examined.
9. At the outset, it is apposite to note that the scope of interference by this Court in exercise of jurisdiction under Section 100 of the Code of Civil Procedure is confined to cases involving a substantial question of law. It

is well settled that concurrent findings of fact recorded by the Courts cannot be interfered with unless such findings are shown to be perverse, based on no evidence, or founded upon an erroneous application of law.

10. In the present case, both the Trial Court as well as the First Appellate Court have, upon a detailed appreciation of oral and documentary evidence, concurrently held that the Will dated 27.12.1996 relied upon by the appellant was not proved in accordance with law. The Courts have recorded a categorical finding that none of the attesting witnesses to the Will were examined, nor was any explanation furnished regarding their non-examination. In view of the mandatory requirement of Section 68 of the Indian Evidence Act, 1872, the said finding cannot be faulted with.
11. Both the Courts have further taken note of the fact that mutation on the basis of the alleged Will was effected during the lifetime of the testator, whereas a Will becomes operative only after the death of the testator. Such mutation, therefore, was rightly held to be legally unsustainable. The appellant has failed to demonstrate any legal infirmity in the said reasoning.
12. The contention of the appellant that the plaintiff was entitled only to half share and, therefore, the decree granting declaration of exclusive title is beyond the pleadings, is also devoid of merit. Both the Courts have examined the issue of succession in the light of Sections 15 and 16 of the Hindu Succession Act, 1956, and have rightly concluded that upon the death of Defendant No.2 Dhankunwar and her daughter Gulapabai without leaving any issue, the property devolved upon the heirs of her

husband, of whom the plaintiff is the sole surviving legal heir. The said conclusion is in consonance with statutory provisions as well as settled legal principles.

13. The submission that Defendant No.2 did not acquire any independent right over the suit property has also been duly considered by the Courts. The findings recorded in this regard are based on proper appreciation of the nature of succession and do not suffer from any misapplication of law. It is well established that when there is a concurrent finding of fact, unless it is found to be perverse, the Court should not ordinarily interfere with the said finding.
14. In the matter of *State of Rajasthan and others Vs. Shiv Dayal and another*, reported in (2019) 8 SCC 637, reiterating the settled proposition, it has been held that when any concurrent finding of fact is assailed in second appeal, the appellant is entitled to point out that it is bad in law because it was recorded *de hors* the pleadings or based on misreading of material documentary evidence or it was recorded against any provision of law and lastly, the decision is one which no Judge acting judicially could reasonably have reached.
15. The arguments advanced on behalf of the appellant essentially invite this Court to re-appreciate the evidence and to take a view different from the one taken by both the Courts . Such an exercise is impermissible in a Second Appeal unless a substantial question of law arises, which is conspicuously absent in the present case.
16. Upon an overall consideration of the matter, this Court is satisfied that

the findings recorded by both the Courts are reasoned, based on evidence on record, and in accordance with law. No perversity or legal error has been pointed out so as to warrant interference by this Court.

17. In view of the foregoing discussion, this Court is of the considered opinion that no substantial question of law arises for consideration in the present Second Appeal. The appeal is, therefore, devoid of merit and is accordingly dismissed at the admission stage.

Sd/-
(Bibhu Datta Guru)
Judge

Rahul