



2026:CGHC:5427

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

SA No. 548 of 2025

1. Smt. Ful Bai W/o Shri Kanti Kumar Aged About 52 Years R/o Village - Sukulpara (Kharoud), Tah. Pamgarh, District - Janjir-Champa (C.G.)
2. Kanti Kumar S/o Shri Bhurwa Aged About 64 Years R/o Village - Sukulpara (Kharoud), Tah. Pamgarh, District - Janjir-Champa (C.G.)
3. Shivshankar S/o Late Shri Nandlal Aged About 27 Years R/o Village - Sukulpara (Kharoud), Tah. Pamgarh, District - Janjir-Champa (C.G.)
4. Pushpalata Wd/o Late Shri Nandlal Aged About 47 Years R/o Village - Sukulpara (Kharoud), Tah. Pamgarh, District - Janjir-Champa (C.G.)
5. Laxmi Kumari D/o Late Shri Nandlal Aged About 25 Years R/o Village - Sukulpara (Kharoud), Tah. Pamgarh, District - Janjir-Champa (C.G.)

... Appellant(s)

versus

1. Shanti Lal Yadav S/o Bhurwa Aged About 62 Years R/o Vill - Sukulpara (Kharoud), Tah. Pamgarh, Dist- Janjir-Champa (C.G.)
2. State Of Chhattisgarh Through - Collector Janjir, District - Janjir-Champa (C.G.)

... Respondent(s)

For Appellant(s)	:	Mr. P.K. Patel, Advocate
For Respondent NO. 1	:	Mr. Chandrikaditya Pandey, Advocate

For Respondent/ State	:	Mr. Lekhram Dhruv, P.L.
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Hon'ble Shri Bibhu Datta Guru, Judge
Judgment on Board

31.01.2026

1. The defendant/ appellant has preferred this second appeal under Section 100 of the Code of Civil Procedure, 1908 (for brevity CPC) against the judgment & decree dated 09.09.2025 passed by the Learned Fourth District Judge, Janjgir, dist Janjgir-Champa in Civil Appeal No. 27-A/2025 (Shanti Lal Yadav and Anr. Vs. Smt. Ful Bai and Ors.) whereby the appeal of the plaintiff has been allowed in part which was preferred against the judgment and decree dated 21.03.2025 passed by the Learned Additional Judge, Pamgarh, District Janjgir-Champa to the Court of First Civil Judge Senior Division Janjgir whereby the learned trial Judge has dismissed the suit of the plaintiff/ respondent herein. For the sake of convenience, the parties would be referred as per their status before the learned trial Court.
2. The plaintiff preferred the suit for declaration of title and injunction pleading inter alia that the disputed land was recorded in the revenue records in the name of late Bhurwa and others up to the year 2004–05, and Khasra No. 2450/1 stood recorded exclusively in the name of Bhurwa. Late Bhurwa was the father of the plaintiff and defendant No. 2, the grandfather of defendants No. 3 and 5, and the father-in-law of defendants No. 1 and 5. The disputed

lands comprising Khasra Nos. 1533, 1535 and 1537 were jointly recorded in the name of Bhurwa and others, whereas Khasra Nos. 1534 and 2450/1 were recorded in the name of Bhurwa alone. It is pleaded that defendant No. 1 has illegally got the disputed land mutated in her name without any lawful authority. The plaintiff further submits that with respect to Khasra No. 2450/1 admeasuring 0.30 acres, the defendants have produced a forged and fabricated Will before the Court. Suspecting the genuineness of the said Will, the plaintiff obtained a certified copy from the office of the Sub-Registrar, Pamgarh, and upon comparison with the Will produced by the defendants, it was found that the Will relied upon by the defendants shows material alterations and tampering, thereby rendering it suspicious and invalid. It is further pleaded that on the basis of the partition deed and title documents produced by the plaintiff, along with the certified copy of the Will dated 24.04.2002, the disputed land is the property of the plaintiff and is liable to be partitioned. The plaintiff states that Khasra Nos. 1534 and 2450/1 were purchased by late Bhurwa from his own earnings derived from his employment at Kati, and that there was no other source of income available to the family at the relevant time. Late Bhurwa had been working at Korba during the years 1980–90, and the said lands were acquired from his personal income. The plaintiff further submits that during his lifetime, late Bhurwa partitioned his movable and immovable properties among his three sons, namely Kanti Kumar, Shantilal, and the heirs of deceased

Nandlal Yadav, in which partition Khasra No. 2450/1 (Kesruwa field) fell to the share of the plaintiff, while the remaining disputed land was retained by late Bhurwa for his livelihood. The plaintiff has been in continuous possession of the land allotted to him since the said partition. It is further averred that presently the disputed land is wrongly recorded in the revenue records in the name of defendant No. 1, Phoolbai. Upon inquiry, defendant No. 2 admitted that he had reduced the plaintiff's share at the time of account division but subsequently denied the partition based on possession, thereby creating a cloud over the plaintiff's title. Hence, the plaintiff has been constrained to file the present suit seeking declaration of title, along with a permanent injunction restraining the defendants from interfering with his peaceful possession and from alienating the suit land.

3. The defendants No. 1 and 2 have filed their written statement denying the allegations made by the plaintiff. It is pleaded that the disputed lands are situated at Village Sukulpara and comprise Khasra Nos. 1533, 1534, 1535, 1537 and 2450, admeasuring 0.20, 0.030, 0.011, 0.06 and 0.30 acres respectively, totaling 0.97 acres. According to the defendants, the said lands were recorded in the revenue records in the name of late Bhurwa and others up to the year 2004, while Khasra No. 2450 stood recorded exclusively in the name of late Bhurwa. It is further contended that Khasra Nos. 1534 and 2450/1, admeasuring 0.30 hectares, were lawfully

transferred in favour of defendant No. 1 through a registered Will executed by late Bhurwa. On the basis of the said registered Will, the disputed lands have been duly mutated and recorded in the revenue records in the name of defendant No. 1. The defendants have specifically denied the contention that the suit lands were purchased from the income or earnings of the plaintiff, and have asserted that the lands were the self-acquired properties of late Bhurwa. The defendants have further pleaded that during his lifetime, late Bhurwa had already divided the lands among his three sons, and thereafter executed a registered Will bequeathing the entire land, comprising Khasra Nos. 1533, 1534, 1535, 1537 and 2450/1, admeasuring 0.20, 0.30, 0.11, 0.06 and 0.30 acres respectively, in favour of defendant No. 1. Pursuant to the said Will, the entire suit land stands recorded in the name of defendant No. 1, and defendants No. 1 and 2 are in peaceful possession thereof. It is further pleaded that the plaintiff has no right, title or interest in the suit land and that the present suit has been filed on false and concocted grounds. On these premises, defendants No. 1 and 2 have prayed for dismissal of the suit.

4. Defendants No. 4 and 5 have also filed their written statement, wherein they have adopted and reiterated all the averments made by defendants No. 1 and 2. They have further stated that a registered Will in respect of the entire land comprising Khasra Nos. 1533, 1534, 1537 and 2450/1, admeasuring 0.20, 0.30, 0.11, 0.06

and 0.30 acres respectively, was executed by late Bhurwa in favour of defendant No. 1, and that on the basis thereof the entire land stands recorded in her name. It is lastly contended by defendants No. 4 and 5 that the disputed land is in the actual possession of defendants No. 1 and 2, and that the plaintiff has no subsisting cause of action to maintain the present suit. Accordingly, defendants No. 4 and 5 have also prayed for dismissal of the suit.

5. On the pleadings of the parties, the learned trial Judge framed as many as 9 issues and given opportunity to the parties to adduce evidence, both oral and documentary and after a full fledged trial dismissed the suit of the plaintiff mainly on the grounds that the plaintiff has failed to establish his title or possession over the disputed land. Although a partition among the sons of late Bhuruvadas is admitted, no reliable evidence has been produced to show that the suit land was allotted to the plaintiff's share. The revenue records consistently reflect possession in favour of defendant No. 1, which the plaintiff has failed to rebut. As regards the Will (Ex. D-1), though the scribe has been examined, the Will has not been proved in accordance with law due to non-examination of any attesting witness, however, even ignoring the Will, the plaintiff has independently failed to prove his own title or possession.
6. Against the judgment and decree passed by the trial Court the

plaintiff/ respondent has preferred first appeal before the First Appellate Court which has been allowed in part vide judgment and decree impugned herein and granting 1/3rd share in the suit property holding that the learned trial court committed error not declaring the plaintiff's 1/3rd share in the suit property. The learned First Appellate court has categorically observed that the execution of WILL has not been proved in accordance with the well settled principles of law. Therefore, since the suit property is joint property and the fact of its prior partition has not been proven, the plaintiff's share in the suit property is established. Against this impugned judgment and decree, the present Second Appeal has been filed by the defendants.

7. I have heard learned counsel for the parties, perused the material available on record.
8. Learned counsel for the appellant/defendants submits that the suit property is partitioned in the favour of the appellant through registered WILL. He further submits that as per Section 68 of the Evidence Act if the WILL is registered the attested witness are not required to be examined and thus the appellate court has erred in allowing the appeal of the plaintiff.
9. From the material available on record, it is evident that, upon due appreciation of the oral and documentary evidence adduced by the parties, the Appellate Court has recorded a categorical finding that as per the mandatory provisions of law, a Will is required to be proved by examining at least one attesting witness. In the present

case, defendant No. 1 failed to examine any attesting witness to prove the Will (Ex. D-01), and merely examined the scribe, whose testimony is insufficient in the absence of proof that the attesting witnesses were unavailable or deceased. Consequently, the Will and the mutation based thereon cannot be held to be valid, and defendant No. 1 cannot be said to have acquired title to the suit land through the said Will. In the absence of proof of a valid Will and of any prior partition, the suit land is held to be joint family property. As the plaintiff and his two brothers constitute the coparcenary, the plaintiff's entitlement to a 1/3rd share in the suit property stands established. Though the plaintiff failed to prove exclusive ownership over the entire suit land, his right to a 1/3rd share is proved, and to that extent the suit deserves to be and is allowed.

10. The Supreme Court in the matter of Gopal Krishan and Ors. Vs. Daulat Ram and Ors. 2025 (2) SCC 804 laid down the principles which are required for proving of a WILL. Para 15 of the said decision reads as under:-

15. The requisites for proving of a will are well established. They were recently reiterated in a judgment of this Court in Meena Pradhan v. Kamla Pradhan. See also Shivakumar v. Sharanabasappa, The principles as summarised by the former are reproduced as below: (Meena Pradhan cases, SCC pp. 737-38, para 10)

"10.... 10.1. The court has to consider two aspects: firstly, that the will is executed by the testator, and secondly, that it was the last will executed by him:

10.2. It is not required to be proved with mathematical accuracy, but the test of satisfaction of the prudent mind has to be applied.

10.3. A will is required to fulfil all the formalities required under Section 63 of the Succession Act, that is to say:

(a) The testator shall sign or affix his mark to the will or it shall be signed by some other person in his presence and by his direction and the said signature or affixation shall show that it was intended to give effect to the writing as a will;

(b) It is mandatory to get it attested by two or more witnesses, though no particular form of attestation is necessary;

(c) Each of the attesting witnesses must have 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 such signatures;

(d) Each of the attesting witnesses shall sign the will in the presence of the testator, however, the presence of all witnesses at the same time is not

required.

10.4. For the purpose of proving the execution of the will, at least one of the attesting witnesses, who is alive, subject to the process of court, and capable of giving evidence, shall be examined;

10.5. The attesting witness should speak not only about the testator's signatures but also that each of the witnesses had signed the will in the presence of the testator.

10.6 If one attesting witness can prove the execution of the will, the examination of other attesting witnesses can be dispensed with;

10.7. Where one attesting witness examined to prove the will fails to prove its due execution, then the other available attesting witness has to be called to supplement his evidence;

10.8. Whenever there exists any suspicion as to the execution of the will, it is the responsibility of the propounder to remove all legitimate suspicions before it can be accepted as the testator's last will. In such cases, the initial onus on the propounder becomes heavier;

10.9. The test of judicial conscience has been evolved for dealing with those cases where the execution of the will is surrounded by suspicious circumstances. It

requires to consider factors such as awareness of the testator as to the content as well as the consequences, nature and effect of the dispositions in the will, sound, certain and disposing state of mind and memory of the testator at the time of execution; testator executed the will while acting on his own free will;

10.10. One who alleges fraud, fabrication, undue influence et cetera e has to prove the same. However, even in the absence of such allegations, if there are circumstances giving rise to doubt, then it becomes the duty of the propounder to dispel such suspicious circumstances by giving a cogent and convincing explanation:

10.11. Suspicious circumstances must be "real, germane and valid" and not merely "the fantasy of the doubting mind [Shivakumar v. Sharanabasappa". Whether a particular feature would qualify as "suspicious" would depend on the facts and circumstances of each case. Any circumstance raising suspicion legitimate in nature would qualify as a suspicious circumstance, for example, a shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the will under which he receives a substantial benefit, etc."

11. Even otherwise, the scope of interference in a Second Appeal under Section 100 of the Code of Civil Procedure is extremely limited. Interference is permissible only when the appeal involves a substantial question of law. Findings of fact recorded by the Court cannot be interfered with unless such findings are shown to be perverse, based on no evidence, or contrary to settled principles of law.
12. In the present case, the First Appellate Court has recorded finding, on the basis of evidence available on record. The appellants have failed to demonstrate any perversity, illegality, or misapplication of law in the concurrent findings so recorded.
13. The questions sought to be raised in the present Second Appeal essentially relate to re-appreciation of evidence and challenge to findings of fact. Such questions do not give rise to any substantial question of law within the meaning of Section 100 of the Code of Civil Procedure.
14. Be that as it may, the argument advanced by learned counsel for the appellants and the proposed question of law cannot be regarded as satisfying the test of being 'substantial question of law' within the meaning of Section 100 of CPC. These questions, in my view, are essentially question of facts. The appellants failed to raise any substantial question of law which is required under Section 100 of the CPC. In any event, the Second Appeal did not involve any substantial question of law as contemplated under Section 100 of

the CPC, no case is made out by the appellants herein. The judgments impugned passed by the learned First appellate Court is just and proper and there is no illegality and infirmity at all.

15. Accordingly, the present appeal is liable to be and is hereby **dismissed** at the motion stage itself.

SD/-
(Bibhu Datta Guru)
Judge

Jyoti