CGHC010098362017

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Judgment reserved on 13.08.2026

judgment pronouncement on 16.11.2026

Judgment uploaded on 16.11.2026

SA No. 244 of 2017

Smt. Bhula @ Bhagwati Thakur W/o Shambhu Singh Thakur, D/o Kunj Bihari Thakur, R/o Village Khapari S., Post Nipaniya, Tahsil Bhatapara, District Raipur Now Balodabazar-Bhatapara Chhattisgarh

... Appellant/plaintiff

versus

1. Manharan Singh Thakur S/o Kunj Bihari Thakur, R/o Village Jarvay @ Heerapur, P.H. No.103, Revenue Circle Raipur, Tahsil And District Raipur, Chhattisgarh

2. Udaya Econimics Housing And Construction Limited Tatiband, Raipur, Chhattisgarh, Through Proprietor Smt. Anil George, W/o George Charian, R/o Heerapur, Raipur, Tahsil And District Raipur, Chhattisgarh, D/o Late Shri Bisaru Ram Verma, District : Raipur, Chhattisgarh

3. State Of Chhattisgarh, Through The Collector Raipur, Collector Officer, Raipur, Chhattisgarh

... Respondents/defendants

For Appellant	:	Mr. B. P. Sharma with Mr. Rakshit Agrawal, Advocate
For Respondents No. 1 and 2	:	Mr. Ghanshyam Patel and Shri Vikash Shrivastava, Advocates
For Respondent No. 3/State	:	Mr. Narayan Prasad, PL

Hon'ble Shri Justice Sachin Singh Rajput

C A V Judgment

This second appeal has been filed by the appellant/plaintiff being aggrieved by the judgment and decree dated 21.12.2016 passed in Civil Appeal No.25-A/2012 by the District Judge, Raipur, District – Raipur (C.G.) whereby learned First Appellate Court has dismissed the appeal and affirmed the judgment and decree dated 16.11.2012 passed by the V Civil Judge Class – I, Raipur (C.G.) in Civil Suit No. 59-A/2011.

2. The appellant/plaintiff and respondent No.1/defendant happen to be real sister and brother respectively. Smt. Shanti Bai wife of Late Dalganjan Singh Thakur, resident of Village Ghuma, Police Station Hirri, Tehsil Bilha, District Bilaspur was the maternal grandmother of the appellant/plaintiff and the respondent No.1/defendant. She was the absolute owner of the land situate at Village Hirapur (Jarway) bearing Khasra Nos. 2/42, area 1.472 hectares; 118/8, area 0.053 hectares; 199/4, 200/4, 201/4 area 0.042 hectares; 228/2-3 area 0.049 hectares; 228/29 area 0.105 hectares; 228/78 area 0.890 hectares; 228/79 area 0.049 hectares; 228/80 area 0.762 hectares. The total Khasra thus, come to be 8 in number, total area being 3.428 hectares situate at P.H. No. 103, Tehsil and District Raipur. Smt. Shanti Bai being the sole owner of the suit land remained in possession thereof throughout her lifetime. From the pleadings, she appears to have died on 19.11.1999. Smt. Shanti Bai had only one legal heir namely Smt. Rukhmani Bai who happened to be her daughter. Rukhmani Bai was married to one Kunj Bihari Thakur R/o of Village Hirapur (Jarway), Tehsil and District Raipur. The appellant/plaintiff and the respondent No.1/defendant happened to be the offspring of Rukhmani Bai. Smt. Rukhmani Bai died during the lifetime of Smt. Shanti Bai. From the plaint averments, Smt. Shanti Bai does not appear to have appointed any nominee to succeed to her asset. Rukhmani Bai had predeceased her mother Smt. Shanti Bai, and there is nothing on record to demonstrate that Shanti Bai had alienated the suit

property to anyone either by testament or in any other manner whatsoever. Thus, the stand of the appellant/plaintiff has been that after the death of Smt. Shanti Bai and her only daughter Smt. Rukhmani Bai Thakur, the appellant/plaintiff and the respondent No.1/defendant succeeded jointly to the suit land in accordance with the provisions of the Hindu Succession Act in equal share.

3. The appellant/plaintiff being a married lady used to visit her maternal home off and on where the suit property did situate, and taking advantage of the same, respondent No.1/defendant clandestinely initiated mutation proceedings before the Tahsildar, Raipur, in respect of the suit land on the basis of an unregistered Will dated 06.10.1999 purportedly executed by Shanti Bai in his favour, but without informing the appellant/plaintiff about the same. By order dated 10.11.2005 the concerned Tahsildar recorded his name over the suit land without issuing any notice to the interested parties including the appellant/plaintiff or affording an opportunity of being heard. The plaint further goes to show that on the strength of the said mutation proceedings, the respondent No.1/defendant is disputing the plaintiff's ownership and title over her 1/2 share in the suit land, which led her to institute the suit for declaration of her title and ownership over the suit land.

4. Furthermore, respondent No.1/defendant without seeking partition of the suit land got himself declared to be its sole owner by order dated 21.03.2007 passed by the Tehsildar, Raipur. In the said proceedings also, the appellant/plaintiff was neither impleaded as a party nor was any notice served upon her. The unregistered will purportedly executed by Shanti Bai in favour of respondent No.1/defendant is averred to be forged and illegal by the appellant/plaintiff. It is stated that with the sole intention of deliberately causing loss to the appellant/plaintiff, the respondent No.1/defendant has usurped her share in the suit land. Not only this, he also entered into a sale agreement of the entire suit land with respondent No.2/defendant on 07.10.2005 by receiving earnest money. The appellant/plaintiff came to know about all this act of the respondent No.1/defendant when she visited her parental village on 17.05.2007. She then obtained the information regarding the

mutation proceedings, partition proceedings and the alleged unregistered Will purportedly executed by Smt. Shanti Bai in favour of respondent No.1/defendant by engaging an advocate. Having come to know this, she demanded her share in the suit property but the respondent No.1/defendant hurled a blatant refusal for the same. The appellant/plaintiff has been persistent in pleading that Smt. Shanti Bai never executed any Will in favour of respondent No.1/defendant. The Will dated 06.10.1999 is stated to be highly suspicious looking to the proximity of time in death of Smt. Shanti Bai which took place on 19.11.1999 and its execution. Another reason assigned by the appellant/plaintiff with respect to the Will being forged is that though she met the respondent No.1/defendant at the time of last rites of Smt. Shanti Bai yet no such disclosure was made by him.

5. It is further stated that during the pendency of the suit, the respondents No.1 and 2/defendants in collusion with each other are attempting to give effect to the alleged agreement dated 07.10.2005 concerning the suit land. Defendant No. 2 has instituted Civil Suit No. 55-A/01 before the Court of the learned Additional District Judge, Raipur, seeking specific performance of the said agreement without impleading the appellant/plaintiff as a party. Upon coming to know of the said proceedings, the appellant/plaintiff filed an application before the Court of the learned Additional District Judge, Raipur, seeking to be impleaded as a party which is still pending. It is averred that if respondent No.1/defendant is not restrained from proceeding with the proposed sale, the appellant/plaintiff shall be deprived of her lawful 1/2 share, right and interest over the suit land causing irreparable loss to her which cannot be compensated in terms of money.

6. It is pleaded that the appellant/plaintiff being a Class-I heir of Smt. Shanti Bai is entitled for 1/2 share in the suit land. The plea of the appellant/plaintiff is that the sale of the suit land has not yet been completed, therefore, she has a *prima facie* case in her favour and the balance of convenience also lies in her favour.

7. The respondent No.1/defendant in his written statement has denied all the averments made by the appellant/plaintiff. It is stated that she has made false and concocted allegations as regards the Will dated 06.10.1999 being false and fabricated, and that she was well aware of its execution right from the inception. The respondent No.1/defendant has reiterated that after the death of Smt. Shantibai, the Will dated 06.10.1999 was in operation and for that the appellant/plaintiff could not derive any right, title, or interest over the suit property. On the contrary, the right, title and interest over the suit property tilts in his favour on the strength of the Will executed by Smt. Shantibai during her lifetime. In addition to this, the sale agreement entered into between him and respondent No.2/defendant is also stated to be valid and binding in law. The agreement entered into by defendant No.1 in favour of defendant No.2 is rather stated to be wholly valid and lawful. The plea taken by the appellant/plaintiff regarding her 1/2 share and interest in the suit property has also been denied by respondent No.1/defendant in toto. The plea of irreparable loss being caused to the appellant/plaintiff on account of suit land being sold to respondent No.2/defendant has also been denied in its entirety. The suit filed by the appellant/plaintiff was thus sought to be dismissed.

8. So is the stand taken by respondent No.2/defendant according to whom the action of respondent No.1/defendant in entering into an agreement to sell the suit land to him cannot be said to be invalid as the said land was acquired by him on the basis of a duly executed Will by Smt. Shantibai during her lifetime. It is stated that the allegation made by the appellant/plaintiff that the said Will was a forged and fabricated one cannot be countenanced. Being this, the appellant/plaintiff cannot claim her share over the suit property in the wake of the exclusive ownership their over derived by the respondent No.1/defendant on the strength of a legitimately executed Will by Smt. Shantibai during her lifetime.

9. Learned Trial Court vide judgment and decree dated 16.11.2012 dismissed the suit of the appellant/plaintiff which subsequently came to be affirmed by the First

Appellate Court as well vide judgment and decree dated 21.12.2016. Hence, this appeal.

10. This appeal was **admitted** for hearing by order dated 03.01.2023 on the following substantial question of law:-

> "Whether finding of the Court below upholding the due execution, attestation and validity of the deed of Will, dated 06.10.1999, purported to have been executed by Smt. Shanti Bai in favour of Defendant No.1-Manharan Singh Thakur, while placing the burden of proof upon the plaintiff to establish the fact that it is a forged document, is perverse?"

11. Learned counsel for the appellant/plaintiff submits as under:-

(i) that the appellant/plaintiff filed civil suit for declaration, partition, separate possession and injunction with a plea that one Smt. Shanti Bai was the owner of the property bearing different khasra numbers situated at PH No. 103 Tahsil and District Raipur who died on 19.11.1999. He submits that the appellant/plaintiff and respondent No.1/ defendant being sister and brother are entitled to inherit the property left behind by Smt. Shanti Bai;

(ii) that the trial Court dismissed the suit as no evidence was led by the appellant/plaintiff;

(iii) that though the parties first entered into a compromise, subsequently the same was withdrawn;

(iv) that on appeal (MA No.39/2015) being preferred, this Court passed an order dated 20.01.2016 remitting the matter to the trial Court for fresh adjudication keeping in mind provisions of the Order XLI Rule 27 CPC;

(v) that on 02.05.2016 an order was passed in exercise of jurisdiction under Order XLI Rule 27 r/w 28 CPC, and certain documents were exhibited on behalf of the plaintiff, and defendant No.2 has examined one J. Samuel, who exhibited two documents Ex.D1 and Ex.D-2;

(vi) that the first appellate Court has wrongly placed the burden on the plaintiff about due and valid execution of the Will by Smt. Shanti Bai in favor of defendant No.1 Manharan Singh Rajput;

(vii) that so far as aspect of Will is concerned, the same is to be examined in the light of Section 68 of the Evidence Act;

(viii) that in the facts referred to above the conclusion which could be drawn is that the defendants have failed to prove the Will much less due execution of Will and for this reason the question of law framed has to be answered in favour of the plaintiff and consequence of which is that the appeal deserves to be allowed; and

(ix) that as the civil cases are decided on the preponderance of the probabilities which in this case tilts in favour of appellant/plaintiff, the impugned judgment and decree are liable to be set aside and the appellant/plaintiff deserves to be held entitled for half share in the suit property.

(x) Reliance is placed on the decisions of the Supreme Court in the matter of **Chinu Rani Ghosh vs. Subhash Ghosh and others** reported in **(2024) 20 SCC 125**, in the matter of **Vikkrant Kapila and another vs. Pankaja Panda and others** reported in **(2024) 18 SCC 695**, in the matter of **Leela and others vs. Muruganantham and others** reported in **(2025) 4 SCC 289** and in the matter of **Lilian Coelho and others vs. Myra Philomena Coalho** reported in **(2025) 2 SCC 633**.

12. On the other hand, learned counsel for the respondent No.1/defendant supports the judgment and decree impugned and submits that as the respondent No.1/defendant had inherited the suit property on the basis of a duly executed Will by Smt. Shantibai during her lifetime, the appellant/plaintiff cannot claim for any share much less the half thereof over the suit property. Likewise, counsel for respondent No.2/defendant also supports the judgment impugned on an analogy that as the defendant No.1 derived his ownership of the suit property on the strength of a validly executed Will by Smt. Shantibai and thereafter the defendant No.1

entered into sell agreement with it, no interference with the impugned judgment and decree is called for.

13. Heard counsel for the parties at length and gone through the evidence very minutely.

14. From the plaint itself it is manifest that the suit property comprising the land situate at Village Hirapur (Jarway) bearing Khasra Nos. 2/42, area 1.472 hectares; 118/8, area 0.053 hectares; 199/4, 200/4, 201/4 area 0.042 hectares; 228/2-3 area 0.049 hectares; 228/29 area 0.105 hectares; 228/78 area 0.890 hectares; 228/79 area 0.049 hectares; 228/80 area 0.762 hectares, total Khasras come to be 8 in number, total area being 3.428 hectares situate at P.H. No. 103, was the ancestral property of Shanti Bai which had devolved in her on the death of her **husband** Dalganjan Singh Thakur. The plaint also indicates that Shanti Bai had the single issue namely Rukmani who predeceased her leaving behind one daughter and one son (the plaintiff and defendant No. 1 herein). From the plaint it is also apparent that neither Shanti Bai nor Rukmani Bai made anyone as their nominee nor alienated the suit property to anyone in any manner. As already stated, though defendant No.1 in his written statement has stated that Shanti Bai had executed the Will on 06.10.1999 and got his name mutated in the revenue record, the same has not been proved by reliable and clinching evidence.

15. The law governing proof of a Will is well settled. Section 63 of the Indian Succession Act, 1925, prescribes the requirements for execution and attestation of a Will whereas Section 68 of the Indian Evidence Act, 1872 governs proof of a document required by law to be attested. For ready reference, section 68 of the Indian Evidence Act reads as under:-

> **“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 (XVI of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.]"

16. Close reading of this provision clearly indicates that the document such as Will in the instant case which is required to be attested shall not be used as an evidence unless one attesting witness at least is called for the purpose of proving its due execution. Though it was the bounden duty of the propounder of the Will to prove the Will said to be executed by Shanti Bai in his favour by calling at least one attesting witness, the defendant No. 1 did not bother to do so. Dealing with the matter pertaining to proof of Will it has been held by the Supreme Court in the matter of *Chinu Rani* Ghosh (supra) as under:-

> "21. In the matter of proof of Wills, it is necessary to rely on the dictum of this Court speaking through Gajendragadker, J. in H. Venkatachala Iyengar vs. B.N. Thimmajamma, AIR 1959 SC 443 of which Paragraphs 18 to 23 can be usefully extracted as under:
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> > 18. What is the true legal position in the matter of proof of wills? It is well-known that the proof of wills presents a recurring topic for decision in courts and there are a large number of judicial pronouncements on the subject. The party propounding a will or otherwise making a claim under a will is no doubt seeking to prove a document and, in deciding how it is to be proved, we must inevitably refer to the statutory provisions which govern the proof of documents. Sections 67 and 68 of the Evidence Act are relevant for this purpose. Under Section 67, if a document is alleged to be signed by any person, the signature of the said person must be proved to be in his handwriting, and for proving such a handwriting under Sections 45 and 47 of the Act the opinions of experts and of persons acquainted with the handwriting of the person concerned are made relevant. Section 68 deals with the proof of the execution of the document required by law to be attested; and it provides that

such a document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. These provisions prescribe the requirements and the nature of proof which must be satisfied by the party who relies on a document in a court of law. Similarly, Sections 59 and 63 of the Indian Succession Act are also relevant. Section 59 provides that every person of sound mind, not being a minor, may dispose of his property by will and the three illustrations to this section indicate what is meant by the expression “a person of sound mind” in the context. Section 63 requires that 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 that the signature or mark shall be so made that it shall appear that it was intended thereby to give effect to the writing as a will. This section also requires that the will shall be attested by two or more witnesses as prescribed. Thus the question as to whether the will set up by the propounder is proved to be the last will of the testator has to be decided in the light of these provisions. Has the testator signed the will? Did he understand the nature and effect of the dispositions in the will? Did he put his signature to the will knowing what it contained? Stated broadly it is the decision of these questions which determines the nature of the finding on the question of the proof of wills. It would prima facie be true to say that the will has to be proved like any other document except as to the special requirements of attestation prescribed by Section 63 of the Indian Succession Act. As in the case of proof of other documents so in the case of proof of wills it would be idle to expect proof with mathematical certainty. The test to be applied would be the usual test of the satisfaction of the prudent mind in such matters.

19. However, there is one important feature which distinguishes wills from other documents. Unlike other documents the will speaks from the death of the testator, and so, when it is propounded or produced before a court, the testator who has already departed the world cannot say whether it is his will or not; and this aspect naturally introduces an element of solemnity in the decision of the question as to

> whether the document propounded is proved to be the last will and testament of the departed testator. Even so, in dealing with the proof of wills the court will start on the same enquiry as in the case of the proof of documents. The propounder would be called upon to show by satisfactory evidence that the will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the dispositions and put his signature to the document of his own free will. Ordinarily when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature as required by law, courts would be justified in making a finding in favour of the propounder. In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts just indicated. “

17. It is thus well settled that the burden of proving a Will is distinct from the burden of proving an allegation of forgery. Merely because the appellant/plaintiff has failed to establish that the Will was forged, the document cannot automatically be treated as genuine. The propounder must independently establish its due execution and attestation in accordance with law. In the present case, though the respondent No.1/defendant – the propounder of the Will has got the suit land mutated in his name on the basis of so-called will, he cannot claim title thereof as such since he has utterly failed to prove the execution of the will by leading cogent and clinching evidence. In this factual backdrop, the Courts below were required to examine whether respondent No.1/defendant had proved the Will in accordance with the statutory requirements. Mere exhibition of a document or the recording of a mutation entry cannot by itself establish the testamentary title. The proximity between the alleged execution of the Will on 06.10.1999 and the death of Smt. Shanti Bai on 19.11.1999 may be considered along with the other evidence, though it does not independently establish forgery. Therefore, if the Courts below upheld the Will merely because the appellant/plaintiff failed to prove forgery, without first determining whether the propounder had proved its due execution and attestation,

their approach would be legally unsustainable. Such an error would warrant interference under Section 100 CPC notwithstanding the concurrent findings of fact. In the absence of a duly proved Will, the succession to the property of Smt. Shanti Bai must be determined in accordance with Sections 15 and 16 of the Hindu Succession Act, 1956 after establishing the relevant facts concerning the source of the property and the surviving heirs.

18. Accordingly, looking to the factual and legal position adumbrated above, keeping in mind the fact that the civil cases are decided on preponderance of probability which in this case tilts in favour of the appellant/plaintiff, the substantial question of law is answered in the affirmative to the extent that the burden of proving the due execution and attestation of the Will could not be shifted to the appellant/plaintiff merely because she alleged forgery.

19. Consequently, the second appeal is allowed. The judgment and decree under assail in this Second Appeal are set aside. The appellant/plaintiff is held entitled for declaration, partition and separate possession over one half share of the suit property – the land situate at Village Hirapur (Jarway) bearing Khasra Nos. 2/42, area 1.472 hectares; 118/8, area 0.053 hectares; 199/4, 200/4, 201/4 area 0.042 hectares; 228/2-3 area 0.049 hectares; 228/29 area 0.105 hectares; 228/78 area 0.890 hectares; 228/79 area 0.049 hectares; 228/80 area 0.762 hectares). Defendant Nos. 1 and 2 are restrained from proceeding further with the sale agreement dated 07.10.2005 in respect of the suit property entered into between them. Let decree be drawn accordingly. The parties shall bear their own costs.

Sd/-

(Sachin Singh Rajput)
Judge

Jyotishi

AVANISH JYOTISHI
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