2026:CGHC:5238

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

SA No. 183 of 2021

1 - Rampyare S/o Ram Awatar Ahir Aged About 50 Years R/o Village Paradol, Karhipara, Thana And Tahsil Manendragarh, District Korea Chhattisgarh., District : Koriya (Baikunthpur), Chhattisgarh

2 - Shivshankar S/o Ram Awatar Ahir Aged About 40 Years R/o Village Paradol, Karhipara, Thana And Tahsil Manendragarh, District Korea Chhattisgarh., District : Koriya (Baikunthpur), Chhattisgarh

... Appellants

versus

1 - Ramkishun S/o Jagdev Ahir Aged About 60 Years Village - Paradol, Karhipara, Thana And Tahsil Manendragarh, District Korea Chhattisgarh., District : Koriya (Baikunthpur), Chhattisgarh

2 - Government Of Chhattisgarh Through Collector, Baikunthpur, District Korea Chhattisgarh., District : Koriya (Baikunthpur), Chhattisgarh

---- **Respondents**

For Appellants : Mr. Hemant Kumar Agrawal, Advocate

For Resp. No.2/State : Mr. Santosh Singh, G.A.

Hon'ble Shri Bibhu Datta Guru, Judge
Judgment on Board

29.01.2026

1. By the present appeal under Section 100 of the CPC, the appellants/plaintiffs challenging the impugned judgment and decree dated 01/01/2020 passed by the learned 1st Additional District Judge, Manendragarh, District Korea, C.G. in Civil Appeal No.30A/2019 (Rampyare & Anr Vs. Ramkishun & Anr) arising out of the judgment dated 19/07/2016 passed by the learned Civil Judge Class-I, Manendragarh, District Korea, C.G. in Civil Suit No.48A/2016 (Rampyare & Anr Vs. Ramkishun & Anr) whereby the learned appellant Court dismissed the appeal and affirmed the judgment passed the learned trial Court. For the sake of convenience, the parties would be referred as per their status before the learned trial Court.

2. The plaintiffs preferred a suit seeking declaration of title, possession and permanent injunction pleading *inter alia* that the plaintiffs' grandfather, Mahadev, son of Late Amrit Ahir, executed a will on 12/08/1958 and got it registered on 28/11/1958 in the office of the Sub-Registrar, Manendragarh, thereby bequeathing his land ownership rights, i.e., the suit land, to Ramavatar Ahir, son of his younger brother Jagdev Ahir. Jagdev had two sons, Ramavatar and Ramkishun. The wife of Ramavatar is Sukharana and his sons are Rampyare and Shivshankar. Mahadev, Jagdev, and Ramavatar have all passed away. After the death of Jagdev, Ramavatar, along with his sons Rampyare and Shivshankar, started living with Mahadev and used to serve him and cultivate

his land. Mahadev died on 06/10/1988. Thereafter, in accordance with the will, Ramavatar got his name mutated in the revenue records. Upon the death of Ramavatar on 25/07/1998 (*sic* 25/07/1958) (Ex.P/4 is death certificate), the plaintiffs came into possession of the suit land as owners and got their names recorded in the revenue records. Defendant No. 1 is the real uncle of the plaintiffs, who, without any right, in collusion with revenue officers and employees, got his name recorded in the suit land along with the plaintiffs, without their knowledge and consent. In the year 2007–08, defendant No.1, Ramkishun, forcibly took possession of the suit land and is preparing to harvest the crops sown by him.

3. In the said Civil Suit, the defendant submitted his written statement and denied the plaint averments. He submitted that Amrit Ahir had two sons, namely Mahadev and Jagdev. The property of Amrit Ahir had already been partitioned between Mahadev and Jagdev, and both were in cultivating possession of their respective shares. Mahadev had only one daughter and no male issue; therefore, after the death of Mahadev, the lawful heirs to his property were Ramavatar and Ramkishun. After Mahadev's death, his property was partitioned between Ramavatar and Ramkishun, and both came into possession of their respective equal shares as owners and cultivators. Mahadev had no son as his heir; therefore, he used to live in the same house with his younger brother Jagdev, and the entire agricultural

land was cultivated by the sons of Jagdev. Mahadev had no separate house. Mahadev was served by all the sons of Jagdev. After the death of Jagdev, the entire ancestral property was mutually partitioned between Ramavatar and Ramkishun, and each remained in possession of his respective share as owner and cultivator. Mahadev never executed any will during his lifetime in favour of the plaintiffs' father, Ramavatar. The alleged will is forged and fabricated. Mahadev treated both sons of his brother Jagdev equally and had no special affection towards any one of them. The entire ancestral property situated at Village Paradol was, in fact, partitioned between Ramavatar and Ramkishun after the death of Mahadev and Jagdev, and both brothers remained in possession of their respective shares as owners and cultivators. However, the names of both brothers were recorded jointly in the revenue records. After the death of Jagdev, Defendant No. 1 has been in possession of the suit land as owner. When Jagdev and Mahadev were living together, Defendant No. 1 and his brother Ramavatar were also joint sharers, and the settlement was recorded in the names of Mahadev and Jagdev. There was no partition between Mahadev and Jagdev. During his lifetime, after the death of Mahadev, Jagdev partitioned the entire property situated at Village Paradol equally between Ramkishun and Ramavatar, giving half share to each, and since then Defendant No. 1 has been in possession and cultivation of his half share of the land. The plaintiffs

prepared a forged will in the year 1958, on the basis of which they do not acquire any right, title, or interest in the suit land.

4. The learned Trial Court, after framing the issues and upon due consideration of the evidence adduced by both the parties as well as the material available on record, dismissed the suit filed by the plaintiffs, holding that the Will (Exhibit P-2) produced by the plaintiffs was not proved in accordance with the legal requirements. Consequently, it could not be held that the plaintiffs succeeded in proving Issue No. 1 in their favour. Accordingly, the finding on Issue No. 1 i.e. Whether the Will executed by Late Mahadev on 12/08/1958 is valid, was recorded as **"**Not proved.**"**

5. Against the said judgment and decree, the plaintiffs filed the Civil Appeal before the learned appellate Court who by order impugned, dismissed the Civil Appeal by maintaining the judgment and decree passed by the learned trial Court. Thus, this appeal by the appellants/plaintiffs.

6. Learned counsel for the appellant submits that before 2007-08, the disputed lands were being continued in the possession of the appellants for more than 40 years. Late Mahadev executed a registered Will in favour of the appellant's father namely Ram Awatar on 28/11/1958 and the said registered Will is more than 30 years old document. Learned counsel further submits that all the attesting witnesses to the Will have passed away; therefore, the due execution of the registered will stands proved under the

provisions of Section 90 of the Indian Evidence Act. The trial Court, in its judgment, has referred to the provisions of Sections 68, 69, and 101 of the Indian Evidence Act; however, by ignoring the provisions of Section 90, it has passed a decision and decree contrary to law, which is liable to be set aside. To buttress his contention, he placed reliance upon the decision rendered by the Supreme Court in the matter of **Muddasani Venkata Narsaiah (Dead) through LRs Vs. Muddasani Sarojana** reported in **2016 (12) SCC 288** and upon the decision rendered by the High Court of Madhya Pradesh in the matter of **Goverdhandas Agrawal (since deceased) Vs. Gopibai Agrrawal, Wd/o Shri Nathmalji** reported in **2008 (1) M.P.L.J. 425** and would submit that the Will being more than 30 years old document has come from the proper custody of the propounder i.e. plaintiffs the presumption regarding signature of the testator and also other part of it could be drawn in favour of the plaintiffs by virtue of Section 90 of the Indian Evidence Act.

7. I have heard learned counsel for the parties, perused the material available on record.

8. In the present case, the testimony of Rampyare (P.W.-1) and Shivshankar (P.W.-2) is that their grandfather Mahadev executed a Will dated 12/08/1958 in favour of Ramavatar, the elder son of his younger brother Jagdev, i.e., the father of the plaintiffs, bequeathing his cow, she-goat, utensils, and all agricultural land.

The said will was registered at Manendragarh on 28/11/1958. The scribe of the will, Tekchand Jain, and both the attesting witnesses, Rajdhar and Ramlakhan Singh, have since passed away. Rachhpal (P.W.-3) and Lalman (P.W.-4) have also supported the fact that Mahadev bequeathed his property in favour of Ramavatar. However, both these witnesses have stated that they did not personally see the execution of the will. The will, Exhibit P-2, has not been proved by the plaintiff in accordance with the mandatory legal requirements.

9. The principal basis for claiming title over the suit land is stated to be a 30-year-old document, namely a will of the year 1958. However, the said will has not been duly proved by the appellants through witnesses in accordance with the provisions of Section 63 of the Indian Succession Act and Sections 68 and 69 of the Indian Evidence Act. Therefore, merely on the ground that the will is a 30-year-old document, it cannot be presumed to have been duly executed under Section 90 of the Indian Evidence Act. Rather, it is mandatory that the will be proved by attesting witnesses in compliance with the aforesaid statutory provisions.

10. The Supreme Court in the matter of **M.B. Ramesh (dead) by LRs. Vs. K.M. Veeraje URS (dead) by LRs & Ors** reported in **2013 (7) SCC 490**, held that the presumption regarding documents which are 30 years old does not apply to Will. A Will has be proved in terms of Section 63(c) of the Indian Succession

Act, 1925 read with Section 68 of the Indian Evidence Act, 1872. The Supreme Court further held that merely because the Will is more than 30 years old, no presumption under Section 90 of the Evidence Act, 1872 can be drawn that said document has been duly executed and attested by the persons by whom it purports to have been executed and attested. Para 17 of the said judgment reads thus :

> 17. *At the same time we cannot accept the submission on behalf of the respondents as well that merely because the will was more than 30 years old, a presumption under Section 90 of the Evidence Act, 1872 ("the Evidence Act", for short) ought to be drawn that the document has been duly executed and attested by the persons by whom it purports to have been executed and attested. As held by this Court in Bharpur Singh v. Shamsher Singh, a presumption regarding documents 30 years old does not apply to a will. A will has to be proved in terms of Section 63(c) of the Succession Act read with Section 68 of the Evidence Act."*

11. Similarly, the Supreme Court, in the matter of **Ashutosh Samanta (Dead) by LRs & Ors. v. Ranjan Bala Dasi & Ors.**, reported in **(2023) 19 SCC 448**, held that presumption regarding documents which are 30 years old does not apply to Will which must be proved in terms of Section 63(c) of the Succession Act

and Section 68 of Evidence Act. Paras 11 to 13 of the said judgment read thus :

> "11. *The main argument of the appellant is that the application for letters of administration was made after a considerable delay, and that the courts below should not have relied on Section 90 of the Evidence Act, 1872, which reads as follows*:
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> "***Section 90 – Presumption as to documents thirty years old-****Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.*
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> *Explanation-Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or the circumstances of the particular case are such as to render such an origin probable.*
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> *This explanation applies also to section 81."*

12. This court, in *M.B. Ramesh* v. *K.M. Veeraje Urs reported in 2013 7 SCC 490* while dealing with a similar argument regarding applicability of Section 90 in the case of proof of will, held as follows:

> *17. At the same time we cannot accept the submission on behalf of the Respondents as well that merely because the will was more than 30 years old, a presumption under Section 90 of the Indian Evidence Act, 1872 ('Evidence Act' for short) ought to be drawn that the document has been duly executed and attested by the persons by whom it purports to have been executed and attested. As held by this Court in* Bharpur Singh *v.* Shamsher Singh *reported in 2009 (3) SCC 687, a presumption regarding documents 30 years old does not apply to a will. A will has to be proved in terms of Section 63(c) of the Succession Act read with Section 68 of the Evidence Act.*
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> *18. That takes us to the crucial issue involved in the present case, viz. with respect to the validity and proving of the concerned will. A Will, has to be executed in the manner required by Section 63 of the Succession Act. Section 68 of the Evidence Act requires the will to be proved by examining at least one attesting witness. Section 71 of the Evidence Act*

is another connected section "which is permissive and an enabling section permitting a party to lead other evidence in certain circumstances", as observed by this Court in paragraph 11 of Janki Narayan Bhoir v. Narayan Namdeo Kadam reported in 2003 (2) SCC 91 and in a way reduces the rigour of the mandatory provision of Section 68. As held in that judgment Section 71 is meant to lend assistance and come to the rescue of a party who had done his best, but would otherwise be let down if other means of proving due execution by other evidence are not permitted."

13. In view of the above decision, wills cannot be proved only on the basis of their age – the presumption under Section 90 as to the regularity of documents more than 30 years of age is inapplicable when it comes to proof of wills, which have to be proved in terms of Sections 63(c) of the Succession Act, 1925, and Section 68 of the Evidence Act, 1872.

12. Considering the aforesaid facts and evidence, it is evident that the alleged will dated 12/08/1958 (Exhibit P-2) has not been proved in accordance with law. The testimonies of P.W.-1 and P.W.-2 merely state the factum of execution of the will, while P.W.-3 and P.W.-4 admittedly did not witness its execution. The scribe and the attesting witnesses to the will are no longer alive,

yet no effort has been made to prove the will in the manner prescribed under Section 63 of the Indian Succession Act read with Sections 68 and 69 of the Indian Evidence Act. Mere registration of the will does not dispense with the mandatory requirement of proof by attesting witnesses.

13. It is further well settled that the presumption contemplated under Section 90 of the Indian Evidence Act in respect of documents more than 30 years old does not apply to a will, as a will is required to be proved by strict compliance with statutory provisions governing its execution and attestation. A will speaks only from the death of the testator and remains revocable during his lifetime; therefore, its genuineness cannot be presumed merely on account of its antiquity. Consequently, the will Exhibit P-2 cannot be held to be duly proved or legally valid, and the claim of title based solely thereon is unsustainable in the eyes of law.

14. 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. Concurrent findings of fact recorded by both the Courts cannot be interfered with unless such findings are shown to be perverse, based on no evidence, or contrary to settled principles of law.

15. In the present case, both the Trial Court and the First Appellate

Court have concurrently recorded findings, on the basis of evidence available on record, that the appellants/plaintiffs failed to establish their case by placing cogent and sufficient material. The appellants have failed to demonstrate any perversity, illegality, or misapplication of law in the findings so recorded.

16. The questions sought to be raised in the present Second Appeal essentially relate to re-appreciation of evidence and challenge to concurrent 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.

17. 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.

18. 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.

19. 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 trial Court as well as by the learned First appellate Court are just and proper and there is no illegality and infirmity at all.

20. Accordingly, the present appeal is liable to be and is hereby **dismissed**.

SD/-
(Bibhu Datta Guru)
Judge

Gowri/
Amardeep

Head Note

Presumption regarding documents which are 30 years old does not apply to Will which must be proved in terms of Section 63(c) of the Succession Act and Section 68 of Evidence Act.