



2025:CGHC:47458



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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

SA No. 962 of 2000

1 - Smt. Basdeyi Died And Deleted Nil

2 - Siyaram, Died Through Lrs, Chhattisgarh

2.1 - (A). Smt. Kalawati, D/o Late Shri Siyaram, Aged About 60 Years R/o Village Saidabad, District Allahabad, Uttar Pradesh

2.2 - (B). Smt. Suman Dubey D/o Late Shri Siyaram, W/o Ramesh Dubey Aged About 60 Years R/o Village Taisaraiya, District Allahabad, Uttar Pradesh

2.3 - (C). Balmukund Mishra, S/o Late Shri Siyaram, Aged About 55 Years R/o D. C. Road, Near Collector Bungalow, Ambikapur, Chhattisgarh

2.4 - (D). Shivmukund Mishra, S/o Late Shri Siyaram, Aged About 50 Years R/o Village Digh, District Sant Ravidas Nagar, Bhadohi, Madhya Pradesh

2.5 - (E). Smt. Madhuri Shukla D/o Late Shri Siyaram, Aged About 50 Years W/o Ashok Kumar Shukla, R/o Village Unnah, District Allahabad, Uttar Pradesh

2.6 - (F). Smt. Nisha Mishra, D/o Late Shri Siyaram, Aged About 32 Years W/o Shushil Mishra, R/o Village Meja, District Allahabad, Uttar Pradesh

3 - Salikram Mishra Died Through Lrs

3.1 - (A) Malti Mishra (Died) Through Legal Heirs As Per Honble Court Order Dated 07-08-2023.

3.1.1 - (A-I) Arvind Mishra S/o Late Smt. Malti Mishra Aged About 52 Years R/o D.C. Bangla Road, Ambikapur, District Surguja (C.G.)

3.1.2 - (A-li) Sachindra Mishra S/o Late Smt. Malti Mishra Aged About 51 Years R/o D.C. Bangla Road, Ambikapur, District Surguja (C.G.)

3.1.3 - (A-ii) Sanjay Mishra S/o Late Smt. Malti Mishra Aged About 46 Years R/o D.C. Bangla Road, Ambikapur, District Surguja (C.G.)

3.1.4 - (A-iv) Dhananjay Mishra S/o Late Smt. Malti Mishra Aged About 42 Years R/o D.C. Bangla Road, Ambikapur, District Surguja (C.G.)

3.1.5 - (A-V) Smt. Kaushiki Dubey W/o Sanjay Dubey (D/o Smt. Malti Mishra)



Aged About 50 Years R/o Gandhinagar, Ambikapur, District Surguja (C.G.)

3.1.6 - (A-Vi) Seema Dubey W/o Uttam Dubey (D/o Smt. Malti Mishra) Aged About 42 Years R/o Gandhinagar, Ambikapur, District Surguja (C.G.)

3.2 - (B). Omprakash Mishra, S/o Salikram Mishra, Aged About 59 Years R/o D. C. Bangla Road, Ambikapur, District Surguja, Chhattisgarh

3.3 - (C). Rasbihari Mishra, S/o Salikram Mishra, Aged About 57 Years R/o D. C. Bangla Road, Ambikapur, District Surguja, Chhattisgarh

4 - Shambhunath Mishra, S/o Siyaram Mishra, Aged About 29 Years R/o Village Deegh, Police Station Gopiganj, Tahsil Rampur, District Varanasi U.P. At Present R/o Makbool Compound Pathan Badi, Malad Bombay 64, Maharashtra

... Appellant(s)

Versus

1 - Tilakdhari Mishra (Died) Through Lrs.

1.1 - (A). Tyageshwari Mishra (Died) Through Lrs. Nil

1.1.1 - (I). Kamlesh Mishra S/o Late Shri Tyageshwari Mishra Aged About 35 Years R/o In Front Of District Hospital, Ambikapur, District Surguja Chhattisgarh.

1.1.2 - (Ii). Smt. Durgawati Mishra Wd/o Late Shri Tyageshwari Mishra Aged About 58 Years R/o Sattipara, Tahsil Ambikapur, Ambikapur Chhattisgarh.

1.1.3 - (Iii). Deepak Kumar Mishra S/o Late Shri Tyageshwari Mishra Aged About 39 Years R/o Sattipara, Tahsil Ambikapur, Ambikapur Chhattisgarh.

1.2 - (B). Ramlolarak Mishra, S/o Late Shri Tilakdhari, Aged About 54 Years R/o D. C. Road, Near Collector Bungalow, Ambikapur, Chhattisgarh

1.3 - (C). Smt. Saroj Dubey, D/o Late Shri Tilakdhari, Aged About 50 Years R/o Village Umapur, P. S. Manda, District Allahabad Uttar Pradesh

1.4 - (D). Gyandevi Dubey (Died) Through Lrs As Per Hon'ble Court Order Dated 03-12-2024

1.4.1 - (D)(I) Umakant Dubey S/o Shri Lalmuni Dubey Aged About 59 Years R/o Metro Tower, Pehla Mahal, Ring Road, Surat 5 Gujarat

1.4.2 - (D)(Ii) Ajeet Kumar Dubey S/o Shri Umakant Dubey Aged About 41 Years R/o Metro Tower, Pehla Mahal, Ring Road, Surat 5 Gujarat

1.4.3 - (D)(Iii) Sujeet Kumar Dubey S/o Shri Umakant Dubey Aged About 38 Years R/o Metro Tower, Pehla Mahal, Ring Road, Surat 5 Gujarat

1.4.4 - (D)(Iv) Roshan Dubey S/o Shri Umakant Dubey Aged About 35 Years R/o Metro Tower, Pehla Mahal, Ring Road, Surat 5 Gujarat



1.4.5 - (D)(V) Rahul Dubey S/o Shri Umakant Dubey Aged About 32 Years
R/o Metro Tower, Pehla Mahal, Ring Road, Surat 5 Gujarat

1.4.6 - (D)(Vi) Akash Dubey S/o Shri Umakant Dubey Aged About 29 Years
R/o Metro Tower, Pehla Mahal, Ring Road, Surat 5 Gujarat

2 - (A) (Died And Deleted) Ramashanker Tiwari As Per Honble Court Order
Dated 07-08-2023.

2.1 - (B). Jai Shankar Tiwari, S/o Vishambhernath Tiwari, Aged About 32
Years R/o Village Etahra, Police Station Varanasi, Uttar Pradesh

2.2 - (C). Vijay Shanker Tiwari, S/o Vishambhernath Tiwari, Aged About 34
Years R/o Village Etahra, Police Station Varanasi, Uttar Pradesh

2.3 - (D). Kiran Tiwari, D/o Vishambhernath Tiwari, Aged About 26 Years R/o
Village Etahra, Police Station Varanasi, Uttar Pradesh

2.4 - (E). Hraday Shankar Tiwari, S/o Vishambhernath Tiwari, Aged About 23
Years R/o Village Etahra, Police Station Varanasi, Uttar Pradesh

**3 - State Of Madhya Pradesh Through Collector, Surguja, M.P. Now
Chhattisgarh**

... Respondent(s)

For Appellants	:	Mr. Y.C. Sharma, Senior Advocate assisted by Mr. Bhaskar Payashi, Advocate and Mr. Anjay Mishra, Advocate
For Respondents No. 1 and 2	:	Mr. Shubham Dewangan, Advocate on behalf of Mr. Shailendra Shukla, Advocate

Hon'ble Shri Justice Rakesh Mohan Pandey
Judgment On Board

16-09-2025

1) This second appeal has been preferred by legal representatives of original defendants No. 1 and 4 against the judgment and decree passed by the learned Second Additional District Judge, Ambikapur, in Civil Appeal No. 84-A/1996 dated 03.08.2000, whereby the appeal preferred by the original plaintiff, namely, Tilakdhari Mishra, was decreed.

2) This second appeal was admitted for hearing on 19.02.2015 on the following substantial questions of law:-

(i) Whether, the lower appellate Court erred in law in holding that execution of document Ex.



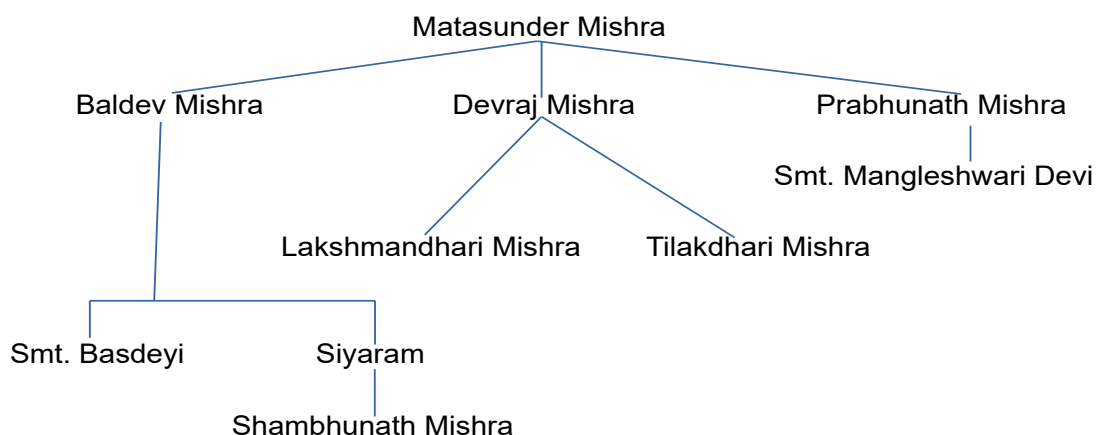
P-1 i.e. the Will executed in favour of the plaintiff by late Prabhunath Mishra was duly proved ?

(ii) Whether, the lower appellate Court erred in law in holding that the appellants/ defendants have failed to prove execution of Sale-Deed Ex. D-7 and Will Ex. D-8 ?

One more substantial question of law was framed by this Court on 09.05.2025 which reads as under:-

“Whether the suit property is liable to be dissolved as per Hindu Succession Act, 1956, in case Will (Ex.P/1) executed by the appellant and the Will (Ex. D/8) executed in favor of defendant are held to be not proved, in accordance with law?”

- 3)** Facts of the present case are that Baldev Mishra, Prabhunath Mishra, and Devraj Mishra were brothers. Baldev Mishra died in the year 1946, and Devraj Mishra, who is the father of the plaintiff, died in the year 1981. Prabhunath Mishra, the uncle of the plaintiff, died in the year 1976, and he was survived by one daughter, namely, Mangleshwari. The family tree of the parties is reproduced herein below :-



- 4)** Original plaintiff–Tilakdhari Mishra filed a civil suit for declaration of title and possession pertaining to the property mentioned in Schedules A, B



and C annexed to the plaint and pleaded that the suit property is the ancestral property and Lt. Prabhunath Mishra alienated the property mentioned in Schedule – B ad-measuring 5.342 hectares through a registered sale-deed dated 05.07.1976 (Exhibit D/7) in favor of Smt. Basdeyi. It was further pleaded that a will-deed was executed by Lt. Prabhunath in favor of the plaintiff on 23.10.1976 (Exhibit P/1), and he was declared the exclusive successor of the property, and the will-deed was executed in the presence of witnesses without any undue influence or pressure. It was also pleaded that an application was moved by defendants No. 1 to 4 before the Naib Tehsildar, Ambikapur, for mutation of the property described in Schedule B, and the said application was rejected vide order dated 07.02.1978. In the appeal, the SDO(R), Ambikapur, remitted back the matter and also directed the parties to approach the competent Civil Court for a declaration of their title.

- 5)** Defendants No. 1 and 4 filed their written statement and denied the plaint averments and pleaded that a registered sale-deed was executed by Lt. Prabhunath in favor of Smt. Basdeyi on 05.07.1976, whereas the alleged will-deed was executed in favor of the Plaintiff on 23.10.1976. They further pleaded that a will deed was executed in their favor on 07.09.1976, and the entire property, including the property sold to Smt. Basdeyi was bequeathed through the will-deed dated 07.09.1976 (Exhibit D/8). They also pleaded that the subsequent will deed dated 23.10.1976 is a forged document. Learned Trial Court framed issues; parties led evidence and vide judgment and decree dated 30.11.1995, the suit was dismissed. Plaintiff preferred a first appeal under Section 96 of CPC, and it was decreed by the learned First



Appellate Court vide judgment and decree dated 03.08.2000, against which the present second appeal has been preferred.

- 6) Mr. Y.C. Sharma, learned Senior counsel appearing for the appellants, submits that there was a partition between Baldev Mishra, Devraj Mishra, and Prabhunath Mishra, and the original plaintiff, namely, Tilakdhari Mishra, was the son of Devraj Mishra. He further submits that Lt. Prabhunath executed a registered sale deed in favor of Smt. Basdeyi pertaining to the property described in Schedule – B on 05.07.1976; the execution of the registered sale-deed has been proved by the witnesses and the legal representatives of Smt. Basdeyi are in possession of the property mentioned in Schedule – B. He also submits that thereafter, Lt. Prabhunath, in order to secure the interest of his daughter, namely, Smt. Mangleshwari executed a will-deed on 07.09.1976 in favor of Smt. Basdeyi and Smt. Mangleshwari, Thakur Prasad, and Gurmail Singh were the attesting witnesses of the said will-deed, whereas Vijay Kumar Sinha was the scribe of the document. He contends that Thakur Prasad died on 25.07.1986, whereas the whereabouts of Gurmail Singh were not known to anyone; therefore, an application was moved under Order 16 Rule 1 of CPC for the issuance of summons to the witnesses of the Sub-Registrar Office to prove the contents of the registered will-deed dated 07.09.1976, but the said application was rejected. He further contends that Vijay Kumar Sinha, the scribe of the will deed dated 07.09.1976, proved its contents according to the provisions of Section 69 of the Indian Evidence Act, 1872, whereas the sale deed dated 05.07.1976 was executed in favor of Smt. Basdeyi, prior to the execution of the will-deed, thus the learned first appellate Court committed an error of law while declaring the due exe-



cution of the sale-deed as null and void. He also contends that the plaintiff could not prove the due execution of the will-deed dated 23.10.1976, and the said document is not a registered document, as according to Bhuneshwar Pandey (PW/2), it was reduced into writing by Lt. Prabhunath, whereas the scribe has stated that the said document was written by him. With regard to the place of the execution of the will-deed dated 23.10.1976, learned Senior counsel contends that Bhuneshwar Pandey, in his evidence, has stated that the will-deed was executed at Shankar Ghat, Ambikapur, whereas the scribe has deposed that the said document was executed at the house of the testator/ Lt. Prabhunath, thus the execution of the will-deed dated 23.10.1976 is doubtful. He argues that the will-deed dated 23.10.1976 raises suspicion due to two key factors: firstly, the testator failed to provide any explanation for excluding his daughter from the will, and secondly, the testator's death occurred just a few days later on 02.11.1976. Furthermore, the will is silent regarding the testator's health condition at the time of its execution, which adds to the suspicion surrounding the document's authenticity. He further argues that Tilakdhari Mishra did not initiate any mutation proceedings based on the alleged will-deed dated 23.10.1976, until defendants No. 1 and 4 filed their own mutation application, and only in response to the defendants' application, the plaintiff raised objections and subsequently filed his own mutation application. He also argues that the plaintiff, in his evidence, has stated that Lt. Prabhunath was inclined to execute the will deed in favor of the husband of Smt. Basdeyi, namely, Salikram Mishra. He argues that Kashi Nath Tiwari (scribe) (PW/3), has nowhere stated that the will-deed was drafted by him. He avers that the attesting



witnesses to the registered will-deed dated 07.09.1976, Thakur Prasad and Gurmel Singh, were examined before the Nazul Officer and certified copies of their evidence have been placed on record along with applications under Order 41 Rule 27 of CPC before this Court. He prays to allow this appeal.

- 7)** On the other hand, learned counsel appearing on behalf of the respondents opposes. He submits that the subsequent will-deed dated 23.10.1976 (Exhibit P/1) was executed by Lt. Prabhunath in favor of the plaintiff, Tilakdhari Mishra. He further submits that Lt. Prabhunath canceled the earlier will-deed executed in favor of Smt. Basdeyi and Smt. Mangleswari, and there is a specific reference in the subsequent will-deed and the registered sale-deed executed in favor of Smt. Basdeyi dated 05.07.1976 was also canceled. He contends that the registered will-deed dated 23.10.1976 was executed in presence of three attesting witnesses and one attesting witness, namely, Bhuneshwar Pandey and Kashinath Tiwari, the scribe of will-deed dated 23.10.1976, have been examined and they have proved the due execution of the will-deed dated 23.10.1976; therefore, the suspicious circumstances as elaborated by learned Senior counsel are not made out in the present case. With regard to applications moved under Order 41 Rule 27 of CPC, he contends that the appellants ought to have placed those documents before the learned first appellate Court. He argues that this appeal deserves to be dismissed.
- 8)** Heard learned counsel for the parties and perused the material available on the record.
- 9)** In the present case, three separate applications under Order 41 Rule 27 of CPC, wherein the statements of the attesting witnesses, Thakur



Prasad and Gurmail Singh, who proved the due execution of the will-deed dated 07.09.1976, have been placed on record. It appears that the plaintiff, Tilakdhari Mishra, failed to cross-examine these witnesses, and they stated before the Nazul Officer that the will-deed was executed by Lt. Prabhunath in favor of Smt. Basdeyi and Smt. Mangleshwari. These documents were within the knowledge of defendants No. 1 and 4 (appellants herein) since inception, but they failed to produce them either before the learned trial Court or before the learned first appellate Court.

- 10)** The first application under Order 41 Rule 27 of CPC [I.A. No. 23/2015] was moved on 19.02.2015. A perusal of the said application would reveal that the appellants herein have not assigned reasons for filing the said application at a belated stage.

The second application under Order 41 Rule 27 of CPC [I.A. No. 34/2025] was moved on 02.07.2025 by defendants No. 1 and 4, whereby the certified copy of the application moved before Nazul Officer and the certified copy of the order dated 03.05.1982 passed by the Nazul Officer have been annexed. In this application as well, the appellants have not assigned reasons as to how and when documents were acquired and why this application has been filed at a belated stage, particularly after 25 years from the date of the institution of this second appeal.

The third application under Order 41 Rule 27 of CPC [I.A. No. 35/2025] was moved on 09.07.2025, and along with this application, the appellants have placed the complete order sheet of the Nazul Officer.

- 11)** Order 41 Rule 27 of CPC reads as under:-



27. Production of additional evidence in Appellate Court.—

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if —

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

- 12)** A bare reading of this provision would make it clear that parties to an appeal shall not be permitted to produce additional evidence but such permission may be granted if the Court below has refused to admit evidence or the party establishes that despite exercising the due diligence, such evidence was not within his knowledge or could not be produced at the time when the decree was passed.

In the aforementioned applications moved under Order 41 Rule 27 of CPC, i.e., I.A. No. 23/2015, I.A. No. 34/2025 and I.A. No. 35/2025, the appellants/defendants No. 1 and 4 have not assigned any grounds as mentioned in Order 41 Rule 27 of CPC. Consequently, these applications are hereby rejected.



- 13)** Firstly, this Court proceeds on to deal with the substantial question of law No. 1. Admittedly, a registered sale-deed was executed by Lt. Prabhunath in favor of Smt. Basdeyi on 05.07.1976 (Exhibit D/7) pertaining to Khasra Nos. 1/2 , 10/25, and 10/28 ad-measuring 5.342 hectares for the sale consideration of Rs. 4,000/-. Ramdhani Ram and Rasbihari Mishra were the attesting witnesses. Rasbihari Mishra has been examined as DW/1, and he has proved the due execution of the sale deed. Vijay Kumar Sinha, scribe of the sale-deed dated 05.07.1976, has deposed that the said sale-deed was drafted by him and it was signed by Lt. Prabhunath and the witnesses. The plaintiff could not prove the fact that Lt. Prabhunath had no entitlement or right to execute the sale deed in favor of Smt. Basdeyi, as the sale-deed was executed prior to the execution of will-deeds dated 07.09.1976 and 23.10.1976; therefore, the genuineness, authenticity, and validity of the sale-deed cannot be doubted.
- 14)** With regard to the execution of the will-deed dated 07.09.1976, defendants No. 1 and 4 have examined Vijay Kumar Sinha, the scribe of the said document, as DW/3, who deposed that the will-deed was executed by Lt. Prabhunath in favor of Smt. Basdeyi and Smt. Mangleshwari on 07.09.1976 in the Tehsil Office, Ambikapur. He further stated that the will-deed was signed by Lt. Prabhunath, and it contains his signature too. He also stated that Rasbihari Mishra, who is the son of Smt. Basdeyi was an attesting witness to the said document. He admitted that there is a difference in the signatures of Lt. Prabhunath in the sale-deed dated 05.07.1976 and the will-deed dated 07.09.1976. He has clarified that it might be so on account of the age of Lt. Prabhunath.
- 15)** Section 69 of Indian Evidence Act deals with the proof where no



attesting witness is found. According to this provision, if the attesting witness cannot be found, it must be proved that (i) attestation of one attesting witness at least is in his handwriting, and (ii) signature of the person executing the document is in the handwriting of that person.

In the present case, defendants No. 1 and 4, by examining Vijay Kumar Sinha, have proved that the document was executed by Lt. Prabhunath, but with regard to the attestation by one of the attesting witnesses, this witness has not stated anything.

16) Now, coming to the substantial question of law No. 2, the will-deed dated 23.10.1976 was executed by Lt. Prabhunath Mishra in favor of the plaintiff, Tilakdhari Mishra. The attesting witnesses to the said document were Bhuneshwar Pandey, Bagar Sai, and Vikramaditya Mishra, and this document was drafted by Kashi Nath Tiwari. In the said document, the signatures of Lt. Prabhunath are present on all three pages, and Bhuneshwar Pandey has been examined as PW/2. While executing the will-deed dated 23.10.1976, Lt. Prabhunath canceled his previous will-deed executed in favor of Smt. Basdeyi and Smt. Mangleshwari dated 07.09.1976, as well as the previous sale deed executed in favor of Smt. Basdeyi dated 05.07.1976. The earlier will-deed also finds reference in the subsequent will-deed.

17) Bhuneshwar Pandey (PW/2) in his evidence has stated that **the** will-deed dated 23.10.1976 was signed by Lt. Prabhunath in his presence and signatures of the testator were marked as “a” to “a”, “b” to “b” and “c” to “c” on all pages and in para-4 of the cross-examination, this witness has stated that he signed the will-deed and thereafter, it was signed by two persons, whom he does not know; although, he clarified that except four persons, no one signed the said document.



- 18)** Kashi Nath Tiwari, the scribe of the will-deed dated 23.10.1976, who was examined as PW/3, has deposed that a will-deed was drafted by Lt. Prabhunath in the year 1976, and he was called by Lt. Prabhunath and thereafter, he drafted the said document as per the version of the testator. This witness further stated that the will-deed was signed by Lt. Prabhunath, and thereafter it was read over to him. In cross-examination, this witness has deposed that the will-deed dated 23.10.1976 was attested by Bhuneshwar Pandey, Bagar Sai, and one more person. He has admitted that the will deed was drafted at Shankar Ghat, Ambikapur.
- 19)** With regard to the suspicious circumstances surrounding the venue at which the said document was drafted, Bhuneshwar Pandey (PW/2) has stated that the will-deed dated 23.10.1976 was executed at Shankar Ghat, whereas Kashi Nath Tiwari (PW/3) has deposed that the said will-deed was drafted at the house of Lt. Prabhunath. Questions were not put to Bhuneshwar Pandey (PW/2) and Kashi Nath Tiwari (PW/3) to the effect that Shankar Ghat and the house of Lt. Prabhunath are distantly placed or not; therefore, in the absence of evidence, it cannot be presumed that both places are different.
- 20)** One more ground has been raised with regard to the exclusion of the daughter of Lt. Prabhunath in the will-deed dated 23.10.1976. The testator has specifically stated that Smt. Mangleshwari has already been married, and she is residing at her matrimonial house. It was further stated by the testator that the original plaintiff, Tilakdhari Mishra, was taking care of him and that was the reason for executing the will-deed in his favor. Furthermore, the exclusion of the daughter of Lt. Prabhunath would not affect the due execution of the will deed.



- 21)** Considering the above-discussed facts and evidence led by the parties, the first substantial question of law is answered in the negative against the appellants.
- 22)** With regard to the second substantial question of law, the sale-deed dated 05.07.1976 was executed prior to the will-deed dated 23.10.1976 and its execution has been proved by defendants No. 1 and 4 by adducing clinching evidence; therefore, the findings recorded by the learned first appellate Court in this regard are hereby set-aside.
- 23)** But, with regard to the will-deed dated 07.09.1976, in my opinion, defendants No. 1 and 4 could not prove the due execution of the will-deed dated 07.09.1976, and further, the subsequent will-deed executed in favor of the plaintiff has been proved strictly in accordance with Section 68 of the Act, 1872. Considering the above-discussed facts, the second substantial question of law is also answered partly in favor of appellants and partly against them.
- 24)** With regard to the third substantial question of law, as the two substantial questions of law have been decided in favor of the plaintiff, there is no need to discuss and decide the third substantial question of law.
- 25)** Accordingly, the instant second appeal is partly allowed. The sale deed dated 05.07.1976 executed in favor of Smt. Basdeyi shall remain intact.
- 26)** A decree be drawn accordingly.

Sd/-
(Rakesh Mohan Pandey)
JUDGE