



2026:CGHC:15324

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**SA No. 781 of 2017**

- 1** - Rajesh Mittal S/o Joharmal, Aged About 56 Years R/o Gharghoda, Tahsil And Police Station Gharghoda, District Raigarh, Chhattisgarh.
- 2** - Rishi Mittal S/o Joharmal, Aged About 53 Years R/o Gharghoda, Tahsil And Police Station Gharghoda, District Raigarh, Chhattisgarh.
- 3** - Shiv Mittal S/o Joharmal, Aged About 50 Years R/o Gharghoda, Tahsil And Police Station Gharghoda, District Raigarh, Chhattisgarh.
- 4** - Pawan Mittal S/o Joharmal, Aged About 40 Years R/o Gharghoda, Tahsil And Police Station Gharghoda, District Raigarh, Chhattisgarh.
- 5** - Deepak Mittal S/o Joharmal, Aged About 35 Years R/o Gharghoda, Tahsil And Police Station Gharghoda, District Raigarh, Chhattisgarh.
- 6** - Amit Mittal S/o Joharmal, Aged About 30 Years R/o Gharghoda, Tahsil And Police Station Gharghoda, District Raigarh, Chhattisgarh.
- 7** - Nitesh Mittal S/o Shiv Mittal, Aged About 24 Years R/o Gharghoda, Tahsil And Police Station Gharghoda, District Raigarh, Chhattisgarh.
- 8** - Vishal Mittal S/o Shiv Mittal, Aged About 27 Years R/o Gharghoda, Tahsil And Police Station Gharghoda, District Raigarh, Chhattisgarh.
- 9** - Piyush Mittal S/o Pawan Mittal, Aged About 25 Years R/o Gharghoda, Tahsil And Police Station Gharghoda, District Raigarh, Chhattisgarh

... Appellant(s)**Versus**



1 - Poonam Choubey D/o Ramesh Choubey, Aged About 27 Years R/o Ward No.10, Gharghoda, Tahsil Gharghoda, District Raigarh, Chhattisgarh

2 - State Of Chhattisgarh, Through Collector, Raigarh, District Raigarh, Chhattisgarh

Respondent(s)

(Cause-title taken from Case Information System)

For Appellant(s) : Mr. T.K. Jha and Mr. Parth Kumar Jha, Advocates

For Respondent(s) : Mr. Lekhrum Dhruw, learned Panel Lawyer

Hon'ble Shri Justice Bibhu Datta Guru

Judgment on Board

02/04/2026

1. The present Second Appeal has been filed under Section 100 of the Code of Civil Procedure, 1908 by the defendant, who is the appellant herein, assailing the judgment and decree dated 13/10/2017 passed in Regular Civil Appeal No. 12/2017 (*Poonam Choubey v. Rajesh Mittal & Others*) by the learned II Additional District Judge, Raigarh (C.G.). By the said impugned judgment, the First Appellate Court allowed the appeal preferred by the plaintiff/respondent No.1 herein and set aside the judgment and decree dated 07/03/2017 passed in Civil Suit No. 05-A/2009 (*Poonam Choubey v. Rajesh Mittal & Others*) by the learned Civil Judge, Class I, Gharghoda (C.G.).
2. For the sake of convenience, the parties shall hereinafter be referred to as per their status before the Trial Court.

Facts of the case:

3. (a) The plaintiff instituted a civil suit seeking declaration of title, permanent injunction, and protection of possession over the suit land.



The suit land was described as measuring approximately 112 feet on the eastern and western sides, bounded by a main road towards the north, the agricultural lands of Daddu Vishal and Lala towards the south, the house of Natwar and Pawan (Vidya's house) towards the east, and the house of late Smt. Sundarmati towards the west.

(b) It was the case of the plaintiff that the suit property originally belonged to her grandmother, late Smt. Sundarmati, who had allegedly acquired the same during the period of the erstwhile rulers of Raigarh in an auction, though the transaction was stated to be oral in nature. It was pleaded that since such acquisition, late Smt. Sundarmati had remained in continuous and peaceful possession of the suit land. The plaintiff had further pleaded that during her lifetime, late Smt. Sundarmati had executed a Will dated 12.11.2007 before a Notary in the presence of two witnesses, whereby she had bequeathed the suit land along with her other properties in favour of the plaintiff to take effect after her death. It was also pleaded that the plaintiff had been residing since birth with her grandmother in a house adjoining the suit land and continued to reside there.

(c) It was further the case of the plaintiff that prior to accrual of the cause of action, the possession of late Smt. Sundarmati over the suit land had never been disputed by the defendants or their predecessors. It was also pleaded that neither late Smt. Sundarmati nor her husband had ever transferred or alienated the suit land in favour of any person. A site map (Nazri Naksha) was stated to have been prepared by the Halka Patwari during her lifetime indicating her possession over the suit land.



(d) The plaintiff had averred that she intended to construct a temple over the suit land in accordance with the wishes of her grandmother. However, due to increase in the value of the land, the defendants, without any right or title, had allegedly attempted to interfere with the plaintiff's possession on 05.01.2009 by trying to demolish the boundary wall through defendants No. 07 to 09. Upon objection by the plaintiff, the defendants were stated to have abused and threatened her, claiming the suit land to be their ancestral property. It was further pleaded that the plaintiff had lodged a report at Police Station Gharghoda, pursuant to which preventive action had been taken against the defendants. Thus, the cause of action was stated to have arisen on 05.01.2009.

(e) The defendants No. 01 to 09 had filed a joint written statement and had denied the plaint allegations except those specifically admitted. It was contended that the plaintiff had no proper knowledge regarding the suit land and that the description, measurement, and boundaries as stated by her were incorrect. According to the defendants, the suit land measured 118 feet on the east and west, 63 feet on the north, and 77 feet on the south, and was bounded differently, including land of Utkal Brahmin Samaj towards the south and the house of Murlidhar towards the west.

(f) The defendants had further denied that late Smt. Sundarmati had ever owned or possessed the suit land or that any auction had taken place. It had also been denied that any Will had been executed in favour of the plaintiff. According to the defendants, the alleged Will was a fabricated document created in collusion with the plaintiff's father with



an intention to harass the defendants. It was the specific case of the defendants that the suit land originally belonged to Murlidhar Choubey, who had sold the same by a registered sale deed dated 12.07.1966 in favour of Joharmal, predecessor of defendants No. 01 to 09, and had delivered possession thereof. It was pleaded that Joharmal had remained in peaceful possession during his lifetime, and thereafter the defendants had continued in possession. It was further stated that part of the land had subsequently been sold to third parties, including the family of Pawan Kumar Agrawal. The defendants had also contended that no cause of action had arisen in favour of the plaintiff, that the suit had not been properly valued, and that the Court lacked pecuniary jurisdiction. On these grounds, dismissal of the suit with costs had been prayed for. Defendant No. 10 had not appeared before the Trial Court and was proceeded ex parte.

4. The Trial Court dismissed the suit holding that the plaintiff failed to prove her title over the suit property, as the claim of acquisition by her grandmother through oral auction was unsupported by any documentary evidence. The Will dated 12.11.2007 was also held to be not duly proved due to material contradictions and non-compliance with legal requirements. In contrast, the defendants proved a registered sale deed dated 12.07.1966 in favour of their predecessor, which remained unrebutted, and their possession was found more probable. Accordingly, the suit was dismissed.
5. Aggrieved by the judgment and decree of the Trial Court, the plaintiff preferred an appeal. The First Appellate Court, upon re-appreciation of



evidence, held that the Trial Court failed to properly consider the core issue of title. It found that municipal and revenue records from 1965 to 2015 reflected the name of late Smt. Sundarmati, thereby prima facie establishing her ownership. The Court further held that the registered sale deed dated 12.07.1966 executed by Murlidhar did not confer valid title, as his exclusive ownership over the suit property was not proved. It also observed that the Trial Court erred in discarding material documentary evidence and in disbelieving the Will without first determining title. On possession, the Appellate Court found the evidence, including official reports and oral testimony, sufficient to support the plaintiff's case. Accordingly, the judgment of the Trial Court was set aside and the suit was decreed in favour of the plaintiff.

6. Learned counsel for the appellant submits that the execution of a Will must satisfy the test of a prudent mind and the Court must be satisfied that it was duly executed by the testator as his last testament, and strict compliance with Section 63 of the Indian Succession Act, 1925 is mandatory, requiring that the Will be signed by the testator and attested by at least two witnesses, each of whom must have either seen the testator sign or received a personal acknowledgment of such signature and must have signed in the presence of the testator, and at least one attesting witness must be examined to prove due execution and attestation in accordance with law; it is further submitted that where suspicious circumstances surround the execution of a Will, the burden on the testator... becomes heavier and all such suspicions must be removed by cogent and convincing evidence, with the Court applying the test of



judicial conscience to ensure that the Will reflects the free and voluntary act of the testator in a sound disposing state of mind; it is also well settled that the initial burden of proving title lies upon the party asserting it under Sections 101 and 102 of the Indian Evidence Act, 1872, and failure to discharge such burden is fatal to the claim; in this regard, reliance is placed upon **Meena Pradhan and Others v. Kamla Pradhan and Another, (2023) 9 SCC 734**, wherein it has been held that due execution of a Will must be proved in accordance with Section 63 of the Indian Succession Act by examining at least one attesting witness, and by establishing that the Will was executed by the testator in a sound disposing state of mind after removing all suspicious circumstances, failing which the Will cannot be accepted as valid.

7. I have heard learned counsel for the appellant on the question of admission and have carefully perused the impugned judgments and decrees passed by both the Courts as well as the material available on record.
8. At the outset, it is to be noted that the scope of interference in a Second Appeal under Section 100 of the Code of Civil Procedure is confined to substantial questions of law. Even where the First Appellate Court has reversed the findings of the Trial Court, interference is warranted only when such findings are shown to be perverse, based on no evidence, or suffering from a substantial error or misapplication of law.
9. The plaintiff's claim is founded upon the assertion that the suit property originally belonged to her grandmother, late Smt. Sundarmati, who allegedly acquired the same during the erstwhile regime and remained in



continuous possession thereof. The plaintiff further relied upon a Will dated 12.11.2007 said to have been executed by late Smt. Sundarmati in her favour. The defendants, on the other hand, denied the plaintiff's title and asserted their ownership on the basis of a registered sale deed dated 12.07.1966 executed in favour of their predecessor, claiming continuous possession thereafter.

10. The Trial Court dismissed the suit holding that the plaintiff failed to prove her title, observing that the alleged oral auction was wholly unsubstantiated by any documentary evidence and that the Will dated 12.11.2007 was not proved in accordance with law, there being material contradictions and non-compliance with the mandatory requirements of Section 63 of the Indian Succession Act, 1925. The Trial Court further placed reliance on the registered sale deed dated 12.07.1966 and found the defendants' possession more probable.
11. The First Appellate Court, upon a complete re-appreciation of the evidence, recorded findings that the Trial Court had adopted an erroneous approach in ignoring material documentary evidence. It held that municipal and revenue records from 1965 to 2015 consistently reflected the name of late Smt. Sundarmati, thereby lending strong corroboration to the plaintiff's claim of ownership and possession. The Appellate Court further held that the registered sale deed dated 12.07.1966 could not, by itself, confer valid title in the absence of proof of lawful ownership of the vendor over the suit property. It also observed that the Trial Court erred in discarding the Will without first determining the foundational question of title and without proper appreciation of the



surrounding evidence.

12. Learned counsel for the appellant has contended that the Will has not been proved in accordance with law and has placed reliance upon *Meena Pradhan and Others (Supra)* wherein it has been held that strict compliance with Section 63 of the Indian Succession Act, 1925 is mandatory, that at least one attesting witness must be examined, and that in cases involving suspicious circumstances, the burden on the propounder is heavier and such circumstances must be satisfactorily explained. It is further submitted that the burden of proving title lies upon the party asserting it under Sections 101 and 102 of the Indian Evidence Act, 1872.
13. The aforesaid propositions of law are well settled and not in dispute. However, their application depends upon the facts and the manner of appreciation of evidence in each case. In the present case, the First Appellate Court has recorded a finding that the discrepancies pointed out by the Trial Court did not go to the root of the requirements under Section 63 of the Indian Succession Act and were not of such nature as to constitute legally sustainable suspicious circumstances. Even upon perusal of the Will (Ex.P/1), it appears that two witnesses have attested the execution of will and even attesting witness namely Haridas has proved his presence and signature as also the signature of the testator of the Will. The Appellate Court has further found that the surrounding circumstances, including long-standing municipal and revenue entries and the overall evidence on record, supported the plaintiff's case.



14. Similarly, while the burden of proof under Sections 101 and 102 of the Evidence Act lies on the party asserting a fact, the First Appellate Court has found that the plaintiff discharged her initial burden by producing consistent documentary and oral evidence. In contrast, the defendants failed to establish a superior title merely on the basis of a registered sale deed dated 12.07.1966, without proving the complete chain of title of their vendor. The burden, therefore, stood duly discharged in the facts of the present case.
15. It is well settled that revenue entries do not by themselves confer title; however, they are relevant pieces of evidence, particularly in relation to possession and continuity, when considered along with other material on record. In the present case, the First Appellate Court has rightly relied upon long-standing revenue and municipal records as corroborative evidence supporting the plaintiff's case. The First Appellate Court has also correctly appreciated that mere production of a registered sale deed does not ipso facto confer title unless the vendor's right and title are established, and in the absence of such foundational proof, the defendants' claim cannot, by itself, prevail.
16. Upon consideration of the entire record, this Court finds no perversity, patent illegality, or misapplication of law in the findings recorded by the First Appellate Court warranting interference under Section 100 CPC. The First Appellate Court has undertaken a proper and lawful re-appreciation of evidence and has corrected the material errors committed by the Trial Court. The findings recorded by the First Appellate Court are essentially findings of fact based on appreciation of evidence. No



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perversity, misreading of evidence, or substantial error of law has been demonstrated by the appellant so as to give rise to any substantial question of law.

17. In view of the above, no substantial question of law arises for consideration in this Second Appeal within the meaning of Section 100 CPC. Accordingly, the appeal fails and is hereby dismissed at the admission stage itself. There shall be no order as to costs.

Sd/-
(Bibhu Datta Guru)
Judge

Rahul/Gowri