

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

S.A. No. 264 of 2018

1. Devnarayan Awadhiya S/o Late Shri Anantram Awadhiya Aged About 56 Years R/o Awadhiya Para, Raipur, District And Tehsil Raipur, Chhattisgarh.
2. Vyasnarayan Awadhiya S/o Late Shri Anantram Awadhiya Aged About 51 Years R/o Awadhiya Para, Raipur, District And Tehsil Raipur, Chhattisgarh.

---- Appellants

Versus

1. Nand Kishore Awadhiya S/o Late Shri Anantram Awadhiya Aged About 59 Years R/o Awadhiya Para, Raipur, District And Tehsil Raipur, Chhattisgarh.
2. Smt. Rukhmani Bai W/o Shri Rahaslal Awadhiya Aged About 63 Years R/o Awadhiya Para, Raipur, District And Tehsil Raipur, Chhattisgarh.
3. Smt. Madakini Bai W/o Shri Mangal Mohan Alias Rajjan Awadhiya Aged About 43 Years R/o Gadha Fatak In Front Of Jagdish Mandir, Behind Maida Mill, Aga Chowk, In Front Of R.K.Biscuit Gali, Jabalpur, District Jabalpur (M.P.).
4. State Of Chhattisgarh Through Collector Durg, District Durg, Chhattisgarh.

---- Respondents

18.07.2018	Shri Abhyuday Singh, counsel for the Appellants. Shri Ajay Kumar Chandra, counsel for Respondent No. 1. Shri V. B. Singh, Panel Lawyer for the State/Respondent No.4. Heard on admission. This appeal is admitted for hearing on the following substantial questions of law: 1. “Whether the lower appellate Court, while affirming the findings of the trial Court and that by negating the due execution, attestation and validity of the registered deed of will dated 04.07.1985 (Ex.D.3), purported to have been executed by Smt. Kalindri Bai in favour of Defendants No. 1 & 2, namely, Devnarayan Awadhiya and Vyasnarayan Awadhiya, has committed an illegality in rejecting their application filed under Order 41 Rule 27 of the
------------	--

Code of Civil Procedure, 1908 seeking to produce one of its attesting witnesses, namely, R. K. Thakur on irrelevant considerations as observed at paragraph 40 of its judgment, is perverse ?

2. Whether non-compliance of the provisions prescribed under Order 20 Rule 18(2) of Code of Civil Procedure, 1908, while decreeing plaintiff's claim for partition without drawing preliminary decree has materially effected the decision and consequent upon its decree?"

Issue notice to Respondents No. 1 to 3 only on payment of P.F., as per rules.

Also heard on I.A. No.02/2018, an application filed under Order 41 Rule 27 Read with Section 151 of CPC, 1908.

Issue notice to the Respondents on this application also, as above.

Also heard on I.A. No. 01/2018, an application filed under Order 41 Rule 5 Read with Section 151 of CPC, 1908 praying for staying the effect and operation of the impugned judgment and decree dated 22.01.2018 passed by Fifth Additional District Judge, Durg in Civil appeal No. 65-A/2013, pending decision of this appeal.

Issue notice to the Respondents on this application also, as above.

Meanwhile, purely as an interim measure, it is directed that the effect and operation of the impugned decreed dated 22.01.2018 passed by Fifth Additional District Judge, Durg in Civil appeal No. 65-A/2013 shall remain stayed till the next date of hearing.

Post this matter after the said Respondents are served.

Sd/-

(Sanjay Agrawal)
Judge