



2026:CGHC:2957

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

SA No. 669 of 2017

1 - Smt. Itwara Bai (Died) As Per The Hon,ble Court Order Date 20-06-2022.

2 - Nagesar Bai (Died), Through Legal Heir As Per Hon'ble Court Order Date 20-06-2022

2.1 - (A) Narmada Bai W/o Panch Ram Aged About 49 Years R/o Ward No. 2, Parsada, Paunsara, Bilaspur, Tahsil And District - Bilaspur Chhattisgarh.

... Appellants

versus

1 - Doojram S/o Fekanram Suryavanshi, Aged About 45 Years R/o Village Selar, Tahsil And District Bilaspur, Chhattisgarh., Chhattisgarh

2 - Motilal, S/o Fekanram Suryavanshi, Aged About 40 Years R/o Village Selar, Tahsil And District Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

3 - Santosh, S/o Fekanram Suryavanshi, Aged About 35 Years R/o Village Selar, Tahsil And District Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

4 - State Of Chhattisgarh, Through Collector, Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Respondents

For Appellants	: Mr. Ashish Shrivastava, Senior Advocate assisted by Ms. Sangeeta Mishra, Mr. Udit Khatri, Mr.Ravi Singh and Mr. Ishan Rathore, Advocates.
For Respondent/State	: Mr. Malay Jain, Panel Lawyer

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

19.01.2026

1. By the present appeal under Section 100 of the CPC, the appellants/plaintiffs challenging the impugned judgment and decree dated 06/07/2017 passed by the learned 8th Additional District Judge, Bilaspur, C.G. in Civil Appeal No.03-A/2017 (Itwara bai & Ors Vs Doojram & Ors) arising out of the judgment dated 04/11/2016 passed by the learned Second Civil Judge Class-I, Bilaspur, C.G. in Civil Suit No.359-A/2014 (Itwara bai & Ors Vs Doojram & Ors). For the sake of convenience, the parties would be referred as per their status before the learned trial Court.
2. (a) The plaintiffs preferred a suit seeking declaration and permanent injunction pleading *inter alia* that the plaintiff No.1 is the legally wedded wife of Bisahu (since deceased) whereas plaintiff No.2 performed the marriage with the deceased by following the *Chudi pratha*. Thus, both the plaintiffs are the wives of the deceased. The plaintiffs pleaded that the deceased having the land bearing Khasra No.395/1 Rakba 2.227 hectare situated at village Ucchabhatti, P.H. No.10, R.I. Circle Beltara, Tahsil and District Bilaspur, C.G, and by doing the agricultural work, they are earning their livelihood, however, subsequently, looking to the age of the deceased and also the fact that no other male person is there to look after the agricultural work, the suit land was given

on *Adhiya* to the defendants. In the meanwhile, Bisahu died on 29/09/2011. After the death of deceased, on 25/01/2012, the defendants produced a Will allegedly executed by the deceased on 15/01/2007 in their favour.

(b) The plaintiffs contended that in fact, the deceased has not executed any will in favour of the defendants whereas by hatching a conspiracy in the name of agricultural seeds, the document has been executed. The contention of the plaintiffs is that prior to ten years of the execution of the alleged will, the mental condition of the deceased was not good and he used to forget each and everything and also left the home frequently without informing anyone and as such, the said alleged will is void. Despite the said fact, the Tahsildar, Bilaspur passed the order in favour of the defendants.

(c) The plaintiffs also averred in the suit that in the year 2006, they took the deceased to a Psychiatrist at CIMS Bilaspur where some medicine was given, however, his condition was not improved. They stated that the defendants by placing incorrect evidence, got the mutation proceedings in their favour.

3. (A) Though the defendants filed their written statement, however, it contains the signature of only defendant No.3 whereas, the defendants No.1 and 2 have not put their signatures and as such, the learned trial Court treated that the written statement has been filed by defendant No.3 only.

(B) In the written statement, the defendant denied the plaintiff's averments and stated that the suit suffers from deficit Court fee and as such, the same is not maintainable. According to the defendants, as per the provisions enumerated under the Hindu Marriage Act, during the lifetime of the first wife, the second marriage is not permissible and as such, the plaintiff No.2 cannot be treated as the legally wedded wife of the deceased. According to the defendants, the deceased/Bisahu was issueless. The mother of the deceased is the Aunt (Bua) of the father of the defendant namely Fekan, thus, the deceased was having closed family relations with family of the defendants. Since the deceased was septuagenarian, suffering from several ailments and nobody is there to look after him, therefore, the defendants used to do the agricultural work of the land of the deceased and take care of the family of the deceased. Being satisfied with the services rendered by the defendant on 15/01/2007, the deceased on his own sweet will, executed the will in their favour and as such, it cannot be stated that the same has been executed by hatching a conspiracy. Therefore, the plaintiffs are not entitled for any relief and sought for dismissal of the suit.

4. After hearing the parties and considering the evidence available on record, the learned trial Court dismissed the suit observing that though the plaintiffs pleaded that the defendants obtained the will dated 15/01/2007 by hatching a conspiracy and in a fraudulent manner, however, they failed to adduce any cogent

and clinching evidence in their support. Against the said judgment and decree by passed by the learned trial Court, the plaintiffs preferred the appeal before the learned First Appellate Court who dismissed the appeal by the impugned judgment and decree. Thus, this appeal by the plaintiffs.

5. Learned counsel appearing for the appellants/plaintiffs would submit that learned both the Courts dismissed the suit as well as the civil appeal in an illegal manner that too without appreciating the material available on record in its true perspective. He would submit that the suit as well as the appeal have been dismissed by the learned Courts merely on the ground that except levelling the allegation of fraud while executing the Will by the deceased in favour of the defendants, the plaintiffs failed to establish their case by placing relevant material in this regard. He placed reliance upon the decisions rendered by the Supreme Court in the matter of ***Jaswant Kaur v Amrit Kaur & Ors. (1977) 1 SCC 369, H. Venkatachala Iyengar v B.N. Thimmajamma and Ors. AIR 1959 SC 443, Ramchandra Rambux v Champabai & Ors. AIR 1965 SC 354*** and would submit that where circumstances exist which would excite the suspicion of the Court, the burden is upon the propounder of the will to remove such suspicion.
6. I have heard learned counsel for the parties, perused the material available on record.
7. Kishore Kumar (DW-2) and Panchram Suryavanshi who were

attesting witnesses of the Will is question adduced their evidence in the instant case. Kishore Kumar DW-2 in his cross-examination stated that the will was executed on 15.01.2007. He stated that about one week prior to 15.01.2007, late Bisahu came to his shop and at that no one else was present except both of them. He stated that it is incorrect to say that the health condition of Bisahu had been poor for a long time before the execution of the will. He stated that he is aware that the plaintiffs used to get late Bisahu treated in the village. Apart from the village, no treatment regarding his illness was taken elsewhere. Bisahu did not suffer from any serious illness. There was no cutting or overwriting in the will marked as Ex.D-2. It is also incorrect to say that earlier the date 10 was written in the will and later it was cut and changed to 15.

8. Similarly, defence witness Panchram Suryavanshi also stated in his examination-in-chief at para -6 that Bisahu was completely physically and mentally sound before the execution of the will, at the time of its execution, and for about three years thereafter. He remained alive for more than three years after the execution of the Will.
9. From the evidence adduced by the aforesaid witnesses, who are the attesting witnesses of Will (Ex.D/2), it is crystal clear the deceased has executed the Will on his own sweet will and at that time he was mentally and physically sound. The plaintiffs herein

have failed to bring out anything which could have put a doubt regarding physical or mental incapacity of the deceased Bisahu to execute the Will.

10. Once the plaintiffs failed to prove the circumstances which would excite the suspicion of the court about execution of Will and when the propounder of the Will proved execution of the same, which was in accordance with the requirement of the Indian Evidence Act and there are concurrent findings of both the Trial Court and the First Appellate Court regarding this, no interference is required, as the plaintiffs failed to raise any substantial question of law which warrants interference of this Court under Section 100 of the Code of Civil Procedure, 1908. Thus, looking to the aforesaid facts and circumstances of the case and particularly considering the detailed analysis made by both the Courts, the case laws relied upon by the plaintiffs are not applicable to the facts of the present case.
11. 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.
12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

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

**SD/-
(Bibhu Datta Guru)
Judge**

Gowri/
Amardeep