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**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**SECOND APPEAL NO. 628 OF 2016**

1. Rambali Gupta, S/o Late Murlidhar Gupta, aged about 44 years, R/o Sadar Road, Mahamaya Chowk, Ambikapur, Tahsil Ambikapur, District Surguja (C.G.)

2. Krishan Kumar Gupta (Died), S/o Late Murlidhar Gupta. Through LRs:-

**2(a)** Smt. Rukmani Devi, W/o Krishan Kumar Gupta, aged about 65 years, R/o Sadar Road, Mahamaya Chowk, Ambikapur, Tahsil Ambikapur, District Surguja (C.G.)

**2(b)** Sandeep Gupta, S/o Krishan Kumar Gupta, aged about 44 years, R/o Sadar Road, Mahamaya Chowk, Ambikapur, Tahsil Ambikapur, District Surguja (C.G.)

**2(c)** Manish Gupta, S/o Krishan Kumar Gupta, aged about 38 years, R/o Sadar Road, Mahamaya Chowk, Ambikapur, Tahsil Ambikapur, District Surguja (C.G.)

**2(d)** Manav Gupta, S/o Krishan Kumar Gupta, aged about 35 years, R/o Sadar Road, Mahamaya Chowk, Ambikapur, Tahsil Ambikapur, District Surguja (C.G.)

... Appellants

versus

1. Kedarnath Gupta (Died), S/o Late Murlidhar Gupta. Through LRs:-

**1(a)** Smt. Chandramani Gupta. [This Respondent stands deleted from the cause-title vide Court Order dated 2.8.2022.]

**1(b)** Shekhar Gupta, S/o Late Kedarnath Gupta, aged about 54 years, R/o Ramanujganj Road, Ambikapur, Tahsil Ambikapur, District Sarguja (C.G.)

**1(c)** Kanak Gupta (Died), through LRs:-

[This Respondent stands deleted from the cause-title vide Court Order dated 2.8.2022.]

**1(c)(i)** Mrs. Shashi Gupta, Wd/o Late Kanak Gupta, aged about 51 years, R/o Ring Road, Chandni Chowk, Mayapur, Ambikapur, District Sarguja (C.G.)

**1(c)(ii)** Kushagra Gupta, S/o Late Kanak Gupta, aged about 31 years, R/o Ring Road, Chandni Chowk, Mayapur, Ambikapur, District Sarguja (C.G.)

**1(c)(iii)** Naveeta Gupta, D/o Late Kanak Gupta, W/o Priyesh Agrawal, aged about 28 years, R/o Maharana Pratap Circle Road, Jagatpura, Jaipur (Rajasthan).

**1(d)** Hemant Gupta, S/o Late Kedarnath Gupta, aged about 50 years, R/o Ramanujganj Road, Ambikapur, Tahsil Ambikapur, District Sarguja (C.G.)



**1(e)** Devendra Gupta, S/o Late Kedarnath Gupta, aged about 46 years, R/o Ramanujganj Road, Ambikapur, Tahsil Ambikapur, District Sarguja (C.G)

**1(f)** Jayant Gupta (Died), through LRs:-

**[This Respondent stands deleted from the cause-title vide Court Order dated 2.8.2022.]**

**1(f)(i)** Mrs. Alpana Gupta, Wd/o Late Jayant Gupta, aged about 49 years, R/o Vasundhara Vihar Colony, Godhanpur, Ambikapur, Surguja (CG)

**1(f)(ii)** Rajul Gupta, S/o Late Jayant Gupta, aged about 29 years, R/o Vasundhara Vihar Colony, Godhanpur, Ambikapur, Surguja (CG)

**2.** Ashok Kumar Gupta, S/o Late Bhola Prasad Gupta, aged about 33 years, R/o Sadar Road, Mahamaya Chowk, Ambikapur, Tahsil Ambikapur, District Sarguja (C.G.)

**3.** Anuj Kumar Gupta (Died), S/o Late Bhola Prasad Gupta. Through LRs:-

**3(a)** Smt. Meera Devi, W/o Late Anuj Kumar Gupta, aged about 40 years, R/o Sadar Road, Mahamaya Chowk, Ambikapur, Tahsil Ambikapur, District Surguja (C.G.)

**3(b)** Ku. Ruhi, D/o Late Anuj Kumar Gupta, aged about 22 years, R/o Sadar Road, Mahamaya Chowk, Ambikapur, Tahsil Ambikapur, District Surguja (C.G.)

**4.** Anil Kumar Gupta, S/o Late Bhola Prasad Gupta, aged about 29 years, R/o Sadar Road, Mahamaya Chowk, Ambikapur, Tahsil Ambikapur, District Surguja (C.G.)

**5.** Arvind Kumar Gupta, S/o Late Bhola Prasad Gupta, aged about 27 years, R/o Sadar Road, Mahamaya Chowk, Ambikapur, Tahsil Ambikapur, District Surguja (C.G.)

**6.** Anup Kumar Gupta, S/o Late Bhola Prasad Gupta, aged about 23 years, R/o Sadar Road, Mahamaya Chowk, Ambikapur, Tahsil Ambikapur, District Surguja (C.G.)

**7.** Sushil Kumar Gupta, S/o Kunjbihari Lal Gupta, aged about 36 years, R/o Ramanujganj Road, Ambikapur, Tahsil Ambikapur, District Sarguja (CG)

**8.** Sudhir Kumar, S/o Kunjbihari Lal Gupta, aged about 25 years, R/o Ramanujganj Road, Ambikapur, Tahsil Ambikapur, District Sarguja (CG)

**9.** Sunil Kumar Gupta, S/o Kunjbihari Lal Gupta, aged about 28 years, R/o Ramanujganj Road, Ambikapur, Tahsil Ambikapur, District Sarguja (CG)

[Smt. Mahadev Gupta W/o Late Bhola Prasad Gupta died during the pendency of the First Appeal. Therefore, she has not been add as a party]

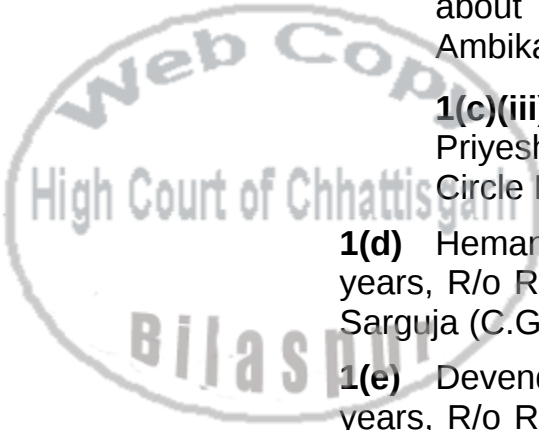
**... Respondents**

**And**



**SECOND APPEAL NO. 541 OF 2016**

1. Kedarnath Gupta (Died), S/o Late Murlidhar Gupta. Through LRs:-
  - 1(a) Smt. Chandramani Gupta.  
**[This Respondent stands deleted from the cause-title vide Court Order dated 27.4.2022.]**
  - 1(b) Shekhar Gupta, S/o Late Kedarnath Gupta, aged about 54 years, R/o Ramanujganj Road, Ambikapur, Tahsil Ambikapur, District Sarguja (C.G.)
  - 1(c) Kanak Gupta (Died), through LRs:-  
**[This Respondent stands deleted from the cause-title vide Court Order dated 27.4.2022.]**
    - 1(c)(i) Mrs. Shashi Gupta, Wd/o Late Kanak Gupta, aged about 51 years, R/o Ring Road, Chandni Chowk, Mayapur, Ambikapur, District Sarguja (C.G.)
    - 1(c)(ii) Kushagra Gupta, S/o Late Kanak Gupta, aged about 31 years, R/o Ring Road, Chandni Chowk, Mayapur, Ambikapur, District Sarguja (C.G.)
    - 1(c)(iii) Naveeta Gupta, D/o Late Kanak Gupta, W/o Priyesh Agrawal, aged about 28 years, R/o Maharana Pratap Circle Road, Jagatpura, Jaipur (Rajasthan).
  - 1(d) Hemant Gupta, S/o Late Kedarnath Gupta, aged about 50 years, R/o Ramanujganj Road, Ambikapur, Tahsil Ambikapur, District Sarguja (C.G.)
  - 1(e) Devendra Gupta, S/o Late Kedarnath Gupta, aged about 46 years, R/o Ramanujganj Road, Ambikapur, Tahsil Ambikapur, District Sarguja (C.G.)
  - 1(f) Jayant Gupta (Died), through LRs:-  
**[This Respondent stands deleted from the cause-title vide Court Order dated 2.8.2022.]**  
[Smt. Mahadev Gupta W/o Late Bhola Prasad Gupta has died.]
    - 1(f)(i) Mrs. Alpana Gupta, Wd/o Late Jayant Gupta, aged about 49 years, R/o Vasundhara Vihar Colony, Godhanpur, Ambikapur, Surguja (CG)
    - 1(f)(ii) Rajul Gupta, S/o Late Jayant Gupta, aged about 29 years, R/o Vasundhara Vihar Colony, Godhanpur, Ambikapur, Surguja (CG)
2. Ashok Kumar Gupta, S/o Late Bhola Prasad Gupta, aged about 33 years, R/o Sadar Road, Mahamaya Chowk, Ambikapur, Tahsil Ambikapur, District Sarguja (C.G.)





3. Anuj Kumar Gupta (Died), S/o Late Bhola Prasad Gupta. Through LRs:-

**3(a)** Smt. Meera Devi, W/o Late Anuj Kumar Gupta, aged about 40 years, R/o Sadar Road, Ambikapur, Police Station & Post Ambikapur, District Surguja (C.G.)

**3(b)** Ku. Ruhi, D/o Late Anuj Kumar Gupta, aged about 22 years, R/o Sadar Road, Ambikapur, Police Station & Post Ambikapur, District Surguja (C.G.)

4. Anil Kumar Gupta, S/o Late Bhola Prasad Gupta, aged about 29 years, R/o Sadar Road, Ambikapur, Police Station & Post Ambikapur, District Surguja (C.G.)

5. Arvind Kumar Gupta, S/o Late Bhola Prasad Gupta, aged about 27 years, R/o Sadar Road, Ambikapur, Police Station & Post Ambikapur, District Surguja (C.G.)

6. Anup Kumar Gupta, S/o Late Bhola Prasad Gupta, aged about 23 years, R/o Sadar Road, Ambikapur, Police Station & Post Ambikapur, District Surguja (C.G.)

7. Sushil Kumar Gupta, S/o Kunjbihari Lal Gupta, aged about 36 years, R/o Ramanujan Road, Police Station & Post Ambikapur, Tahsil Ambikapur, District Surguja (CG)

8. Sudhir Kumar, S/o Kunjbihari Lal Gupta, aged about 25 years, R/o Ramanujan Road, Police Station & Post Ambikapur, Tahsil Ambikapur, District Surguja (CG)

9. Sunil Kumar Gupta, S/o Kunjbihari Lal Gupta, aged about 28 years, R/o Ramanujan Road, Police Station & Post Ambikapur, Tahsil Ambikapur, District Surguja (CG)

... Appellants

versus

1. Rambali Gupta, S/o Late Murlidhar Gupta, aged about 44 years

2. Krishna Kumar Gupta (since died), S/o Late Murlidhar Gupta, through LRs:-

2(a) Smt. Rukmani Devi, W/o Krishna Kumar Gupta, aged about 65 years

2(b) Sandeep Gupta S/o Krishna Kumar Gupta, Aged About 44 Years

2(c) Manish Gupta, S/o Krishna Kumar Gupta, aged about 38 years

2(d) Manav Gupta, S/o Krishna Kumar Gupta, aged about 35 years

All R/o Sadar Road, Mahamaya Chowk, Ambikapur, Police Station & Post Ambikapur, District Surguja (C.G.)

... Respondents

- 
- Mr. Ravindra Sharma, Advocate, for Appellants in S.A. No.628/2016 and for Respondents in S.A. No.541/2016.
  - Mr. Manoj Paranjpe, Advocate, for Appellants in S.A. No.541/2016 and for Respondents in S.A. No.628/2016.
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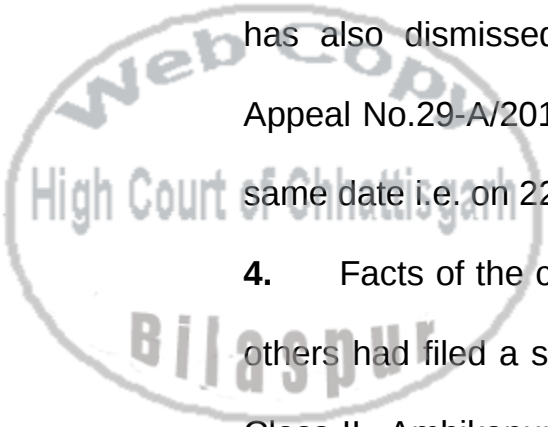


**Hon'ble Shri Justice P. Sam Koshy**

**Judgment/Order on Board**

**[28.09.2022]**

1. Since the present two Appeals arise out of the same dispute, both these Appeals are being decided by this common Order.
2. The Second Appeal No.628/2016 is an Appeal filed by the Plaintiffs and the Second Appeal No.541/2016 is an Appeal by the Defendants.
3. Challenge in the Second Appeal No.628/2016 is to the Judgment and Decree dated 22.8.2016 passed by the 3<sup>rd</sup> Additional District Judge, Ambikapur in Civil Appeal No.33-A/2015, whereby the First Appellate Court has dismissed the Appeal preferred by the Plaintiffs. The very same Court has also dismissed the Appeal preferred by the Defendants, i.e., Civil Appeal No.29-A/2015 vide a separate Judgment and Decree passed on the same date i.e. on 22.8.2016.
4. Facts of the case, in brief, are that the Plaintiffs - Rambali Gupta and others had filed a suit i.e. Civil Suit No.348/2009 before the 3<sup>rd</sup> Civil Judge Class-II, Ambikapur, seeking for injunction restraining the Defendants – Kedarnath Gupta and others from interfering with the possession and construction being raised by the Plaintiffs on the suit property. The suit property in the instant case is that which situates at Khasra No. 1389, 1390 and 1397 and the construction that stands on that property. The aforesaid suit property was originally in the name of one Late Murlidhar Gupta. The Plaintiffs and the Defendants are the successors of said Murlidhar Gupta.
5. Contention of the Plaintiffs before the Trial Court was that there was a Will executed by Late Murlidhar Gupta on 19.1.1979 (Exhibit P-2) whereby the entire suit property was bequeathed in the name of the Plaintiffs and



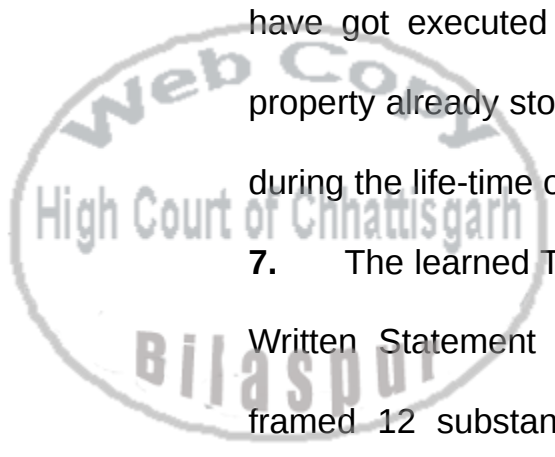


thus it was on the basis of the said Will that the Plaintiffs were seeking the relief of injunction against the Defendants. It was the further claim and contention of the Plaintiffs that the said Will (Exhibit P-2) further stood amended/modified by another modified Will dated 6.5.1981 (Exhibit P-1) whereby the portion which has been marked as blue in the schedule attached to the Civil Suit was given to the Defendants No.2 to 7 for residential purpose. By virtue of the said Will, the Defendants No.2 to 7 have been retaining the said property since then.

**6.** The claim and contention of the Defendants was that the whole of the Will Exhibit P-2 is a fake and fraudulent document which is never said to have got executed by Late Murlidhar Gupta during his life-time and the property already stood partitioned between the Plaintiffs and the Defendants during the life-time of the said Murlidhar Gupta.

**7.** The learned Trial Court taking into consideration the Civil Suit and the Written Statement submitted by the Plaintiffs and the Defendants, had framed 12 substantial Issues. Two of the said substantial Issues from among the 12 were: whether Murlidhar Gupta had modified/amended the earlier Will dated 19.1.1979 (Exhibit P-2) on 6.5.1981 (Exhibit P-1) and had given the right to reside over the suit property in favour of the Defendants. The other issue being, whether the Will dated 19.1.1979 and the amendment brought to it on 6.5.1981 is fake or fraudulent or not.

**8.** Taking into consideration the evidence that have come on record, the learned Trial Court answered the Issue No.6 with respect to the amendment/modification in the Will dated 19.1.1979 on 6.5.1981 to be a properly executed document. The learned Civil Court gave its finding in the affirmative taking into consideration the evidence of one of the Attesting

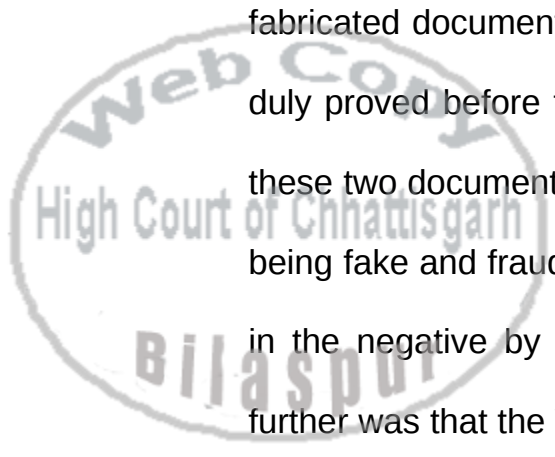




Witnesses Hari Shankar Tripathi who had clearly deposed before the Court in respect of the Will dated 19.1.1979 being executed in his presence and he being one of the Attesting Witnesses. The finding of the learned Trial Court also was on the basis of the evidence of one Dr. A.S. Dau who too had clearly deposed before the Court below in respect of the subsequently amended/modified Will dated 6.5.1981.

**9.** However, as regards the aspect whether the Will dated 19.1.1979 and the amended Will dated 6.5.1981 to be a fake and fraudulent document, the learned Trial Court gave a categorical finding that the Defendants have not been able to prove their case so far as the said Will to be a fake and fabricated document. Coupled with the fact that both these Wills have been duly proved before the Court by the evidence of the Attesting Witnesses to these two documents. Thus, the ground raised by the Defendants of the Will being fake and fraudulent, was not accepted and accordingly was answered in the negative by the Trial Court. The finding of the learned Trial Court further was that the Will in fact has been duly proved in terms of Sections 65 and 68 of the Indian Evidence Act, 1872 and Section 63 of the Indian Succession Act, 1925. While deciding the Civil Suit, the learned Civil Court on one hand had rejected the prayer for grant of injunction. However, the learned Court gave a finding so far as the Will is concerned, to have been properly proved and executed before the Court.

**10.** It is this Judgment and Decree dated 20.7.2015 passed by the learned Trial Court, which was challenged by filing two separate first Appeals before the learned First Appellate Court. The Civil Appeal No.33-A/2015 was filed by the Plaintiffs questioning the rejection of their prayer for injunction by the Civil Court. The other Civil Appeal No.29-A/2015 was





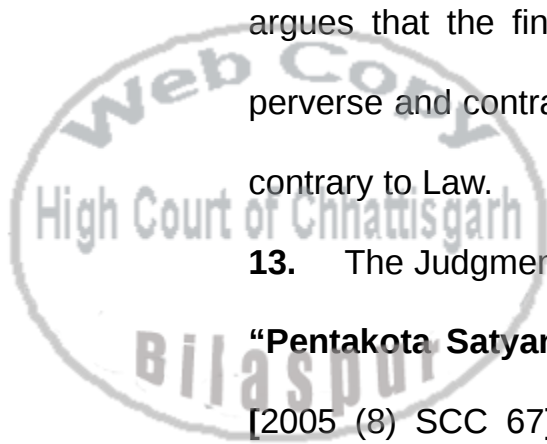
preferred by the Defendants questioning the aspect of the finding of the Civil Court on the Will dated 19.1.1979 and 6.5.1981.

**11.** The learned First Appellate Court also taking into consideration the pleadings/submissions by the parties and also on due perusal of the evidence which have come on record, did not find any merit in the aforesaid two Appeals preferred on either side and accordingly rejected both the Appeals vide two separate Judgment and Decree passed on the same date i.e. on 22.8.2016. This led to the filing of the present two Second Appeals.

**12.** Learned Counsels appearing on either side questioning the findings given by the Trial Court as also by the First Appellate Court, vehemently argues that the findings arrived at by the two learned Courts below are perverse and contrary to the evidence which have come on record and also contrary to Law.

**13.** The Judgments of the Hon'ble Supreme Court rendered in the case of "**Pentakota Satyanarayana & Ors. v. Pentakota Seetharatnam & Ors.**" [2005 (8) SCC 67] and also in the case of "**Bharpur Singh & Ors. v. Shamsher Singh**" [2009 (3) SSC 687], primarily lay down the principle that it is the onus on the party which alleges fraud in execution of a Will to prove the element of fraud.

**14.** In the instant case, from perusal of the entire evidence which have come on record so also taking note of the contentions that have been put forth by the Defendants, the aspect of fraud does not seem to have been in any manner displayed by the Defendants to establish the same or for proving the Will dated 19.1.1979 and 6.5.1981 not to have been executed at all. On the contrary, there are cogent evidence that have come on record, particularly the evidence of the Attesting Witness to both these documents







dated 19.1.1979 and 6.5.1981 which meets the requirement as is otherwise required under Sections 65 and 68 of the Indian Evidence Act, 1872 and Section 63 of the Indian Succession Act, 1925. There further is a clear finding of facts with concurrent findings being there by the two learned Courts below.

**15.** Under the circumstances, so far as the Second Appeal filed by the Defendants is concerned, there is hardly any scope left for interference with the finding of fact which is also concurred by the two learned Courts below. Since the finding is purely a finding of fact and the documents having been proved strictly in accordance with the requirement under law, this Court does not find any substantial question of law made out. Thus the Second Appeal No.541/2016 preferred by the Defendants deserves to be and is accordingly dismissed.

**16.** Similarly, as regards the Second Appeal preferred by the Plaintiffs, the facts and circumstances as narrated here-in-above would further establish that the execution of the Will in accordance with Law stands established and which is being concurred by the two learned Courts below. The suit for injunction already stood rejected in the year 2015 and the modified Will executed on 6.5.1981 also stands accepted to have been duly executed and proved. The Defendants also having come in possession of the suit property by virtue of the said Will dated 6.5.1981 and their remaining in possession of the said property also is not in dispute. For the said reasons also this Court does not find any substantial question of law involved in the Second Appeal No.628/2016 filed by the Plaintiffs and the same also deserves to be and is accordingly dismissed.



17. Consequently, the Second Appeal No.628/2016 filed by the Plaintiffs so also the Second Appeal No.541/2016 preferred by the Defendants both stand dismissed.

Sd/-

**[P. Sam Koshy]**  
**Judge**

Jyoti

