

cf 1d (1)
(03)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR
(C.G.)

Single Bench

CIVIL REVISION NO. 16 OF 2005

APPLICANT

:

Baccha Kumar Samant
S/o Late Dukhbandhu
Samant, aged about 60
years, Occupation-
Agriculture, R/o Patrapara
Dharamjaigarh, District
Raigarh (C.G.).

VERSUS

NON-APPLICANTS

:

1. Indira Singh D/o Late
Chandrachud Prasad
Singh, aged about 45 years,
Occupation Agriculture,
R/o Kothi House
Ambikapur, District
Surguja (C.G.) Presently
Residing at Dharamjaigarh,
District Raigarh (C.G.).
2. Vijay Singh S/o Late
Chandrachud Prasad
Singh, aged about 50 years,
Occupation Agriculture,
R/o Palace Dharamjaigarh,
District Raigarh (C.G.).
3. Public At Large.

P.R. No. 912/05
Presented by Shri. S.P. Singh
dated. 31-1-05

CIVIL REVISION UNDER SECTION 115 OF THE CODE OF
CIVIL PROCEDURE, 1908

आदेश पत्रक

मामला क्रमांक C. Rev. No: 16/03
सन 200

(32)

..... विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<p><u>28/02/2005</u></p> <p>Shri P.P.Sahu, counsel for the applicant.</p> <p>Shri Manoj Paranjape, counsel for the Caveators/respondents 1 & 2.</p> <p>Heard.</p> <p>The applicant has preferred the instant revision under Section 115 of the Code of Civil Procedure against the impugned order dated 28/01/2005 passed by First Additional District Judge, Raigarh in Misc. Civil Appeal No. 14/2004 by which the appeal of the applicant was rejected upholding the order of the Civil Judge Class I, Dharamjaigarh to the Court of First Civil Judge Class-1, Raigarh in the Succession Certificate Case No. 01/98 and Succession Certificate Case No. 04/2001 which were decided by a common order and by the said order, the application of the applicant for Succession Certificate on the basis of will dated 16/05/77 of late Rangnath Kumari has been rejected and the Succession Certificate in favour of respondents 1 & 2 has been issued.</p> <p>Learned counsel for the applicant has challenged the aforesaid order passed by the Appellate Court on the ground that both the Courts below had erroneously arrived to a conclusion that the applicant has failed to prove the due execution of the will only on the ground that the attesting witnesses of the said will were not examined though they could not be examined for the reason that the attesting witnesses were dead.</p> <p>Learned counsel for the applicant further submits that the applicant was validly appointed attorney of the deceased Smt. Rangnath Kumari</p>	

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<p>and registered power of attorney was executed in his favour and on the strength of this power of attorney, the applicant was looking after the estate of the deceased during her life time and registered power of attorney filed in the case also bears the signature of the applicant as also of the signature of the two attesting witnesses and the Courts have committed a material illegality by not ascertaining the signature in the will by comparing the signatures available on the power of attorney which would have established that the same was duly executed by Late Rangnath Kumari in the presence of the attesting witnesses.</p> <p>On the other hand, learned counsel for the non applicants submits that the scope of interference under the revisional jurisdiction either under Section 115 of CPC or under Section 388 (3) of the Indian Succession Act is very limited and the facts and findings recorded by both the Courts below that the applicant has failed to prove the will by examining the attesting witnesses or in case of the death of the attesting witnesses, by examining some one who is conversant with the signatures of the attesting witnesses or findings of fact and the same cannot be interfered with any reason.</p> <p>However, learned counsel for the applicant further submits that even otherwise the applicant has not proved that the attesting witnesses are dead and there is no material on record that they are dead as no death certificate of the attesting witnesses are filed. The will has been held to be suspicious also on the ground that the will is executed in two separate stamp papers whereas in the first stamp paper, the date is prescribed as 15/05/1974 and in the second sheet it is shown</p>	

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	<p>as 16/05/1974 and this has been taken by both the Courts below for arriving to the conclusion that the will is suspicious.</p> <p>Learned counsel for the non applicant relying upon the judgment of the Full Bench of the Apex Court reported in <u>AIR Supreme Court 1966 Page 153 Para 10 Pandurang Dhondi Chougule & Others Vs. Maruti Hari Jadhav & Others</u>, wherein it was held that the Apex Court has circumscribed the limitations under which the powers of Section 115 of CPC has to be exercised by the High Courts and submits that the concurrent finding of the fact cannot be interfered in revision.</p> <p>This has been subsequently followed and reiterated in various other judgments reported in <u>AIR 1971 SC Page 2324 Para 8 M/s. D.L.F. Housing and Construction Co. (P) Ltd. Vs. Sarup Singh & Others, 2003 AIR SCW Page 177 Para 11 Janki Narayan Bhoir Vs. Narayan Namdeo Kadam and 2004 AIR Supreme Court Page 2162 Para 6 Ram Dass Vs. Davinder.</u></p> <p>In view of the judgments cited above, the counsel for the non applicant submits that the concurrent findings of the facts recorded by both the Courts below cannot be questioned by the applicant by invoking jurisdiction under Section 115 of Code of Civil Procedure read with Section 388 (3) of the Indian Succession Act.</p> <p>I have heard learned counsel for the parties and I have gone through the impugned order dated 28/01/2005 passed by First Additional District Judge, Raigarh confirming the order of the Succession Court and I</p>	

आदेश पत्रक

मामला क्रमांक C. Rev. No. 16/85 सन् 200

(35)

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<p>am of the opinion that both the Courts below have arrived to a conclusion that the applicant has failed to prove the execution of the impugned order by proving the same in accordance with law and further that the will in question is suspicious. The above finding is the finding of fact which is based on material available on record and the same does not call for any interference under Section 115 of CPC or under Section 388 (3) of the Indian Succession Act.</p> <p>Accordingly, the instant revision petition deserves to be dismissed and it is dismissed.</p> <p>Consequently, M.C.P. No. 173/2005 stands disposed of.</p>	<p>Sd/- Dhirendra Mishra Judge</p>