

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE RATNESH CHANDRA SINGH BISEN
FIRST APPEAL No. 833 of 2000
RAMESH PRATAP SINGH (DEAD) THROUGH LRS. RAM SINGH
AND ANOTHER
Vs.
HITLER PRASAD (DEAD) THROUGH LRS. SMT. PARWATI BAI
VERMA AND OTHERS

Appearance:

Shri Kapil Rohra – Advocate for appellants.

Shri H.S. Verma – Advocate for respondents No. 1 to 4.

Shri Dinesh Prasad Patel – Govt. Advocate for respondent No.5/State.

Reserved on : 19/11/2025

Delivered on: 15/01/2026

JUDGMENT

With the consent of learned counsel appearing for the parties, appeal is heard finally at motion stage.

2. This first appeal has been preferred by the appellants/defendant No.1 and 2 challenging judgment and decree dated 10.11.2000 passed by First Additional District Judge, Satna in Civil Suit No.24-A/1999, whereby the trial Court has decreed the suit filed by respondents/plaintiffs for

declaring the will dated 18.09.1985 as null and void, declaring mutation order in favour of defendant No.1 on the basis of Will as null and void and declaring sale deed dated 29.02.1990 executed by defendant No.1 in favour of defendant No.2 as null and void and for return of possession of the suit land.

3. Learned counsel for appellants/defendant No.1 and 2 submitted that on 23.12.1994, the plaintiffs/respondents instituted a suit contending, inter alia, that plaintiff No.1 is the mother of plaintiff No.2 to 4 and that they all are legal heirs of Buddhsen. Buddhsen was the owner of the suit land, who died on 09.01.1988 leaving behind plaintiffs as his legal representatives. Buddhsen remained in the possession of suit land during his lifetime and after his death plaintiffs being his legal representatives continued in possession of the suit land. There was no dispute with regard to the title or possession, they did not immediately carried the mutation of their names. However, in September, 1992 when they approached revenue authority for mutation, then they came to know that the name of defendant No.1 Ramesh Pratap Singh had already been mutated on 30.05.1988 on the basis of an alleged Will said to be executed by Buddhsen. Based on this mutation entry, defendant No.1 executed a registered sale deed dated 29.02.1992 in favour of defendant No.2 illegally, took possession of the suit land and started construction over it.
4. Defendant No.1 filed a written statement denying the plaint allegation and contending that plaintiffs were always aware of Will dated 18.09.1985 executed by Buddhsen in favour of defendant No.1 Ramesh Pratap Singh and for this reason they never initiated mutation proceeding after death of Buddhsen, it was submitted that the Will dated 18.09.1985

and consequent mutation order dated 30.05.1988 passed on the basis of the Will were valid as during the mutation proceeding publication was carried and one of the plaintiff namely Patia Bai appeared and did her signature giving consent to the mutation, which demonstrate that plaintiffs had knowledge of the mutation, the defendant No.1 being lawful owner of the suit land and validly executed the sale deed dated 29.02.1992 in favour of defendant No.2. The defendant No.2 did not illegally took possession of the suit land. The defendant No.2 filed a separate written statement asserting that he possessed the suit land along with other lands from defendant No.1 through a registered sale deed dated 29.02.1992 and has been in possession even since. It was further contended that the plaintiffs had knowledge of mutation in favour of defendant No.1.

5. The trial Court framed the issue and taking evidence of both the parties, passed the impugned judgment and decree on 10.11.2000 and suit filed by the respondents/plaintiffs has been decreed.
6. Learned counsel for the appellants submitted that the execution and attestation of the Will dated 18.09.1985 Ex.D-2 has been established with the finding that the plaintiffs have failed to prove the Will as forged one, the trial Court ought to have given effect to it and held that plaintiffs though nearest heirs of Buddhsen have not right over title and possession of the suit land. As per Section 63(c) of Indian Succession Act, 1925, the Will shall be attested by two or more witnesses, each of who has seen the testator sign to the Will and each witness has signed the Will in presence of testator. The Will is proved by examining at least one attesting witness, who proves its execution (Section 68 of Indian Evidence Act,

1872). Suspicion must be real and based on evidence and not on conjecture or personal notion of “why a testator would choose a particular beneficiary”. The trial Court illegally found that due execution of Will is surrounded by a suspicious circumstances and had not been explained by defendant no.1 so that the Will is not enforceable and confers no title or interest upon defendant no.1, the legatee. The trial Court has made out a case for plaintiffs never set up in their pleadings that the Will is suspicious, inoperative and/or unenforceable. The only circumstances found was that there was no reason for excluding the nearest heir, the plaintiffs while bequeathing the suit property by Will Ex.D-2 while the reasoning have been clearly stated in the Will Ex.D-2 itself. It is further submitted that in the absence of plea and material that the testator was not in disposing mind the trial court unnecessarily emphasized on this aspect and held that the defendant No.1 has failed to discharge having burden upon him.

7. It is further submitted by counsel appearing for appellants that latter dated 13.12.1985 (Ex.D-1) written by Buddhsen mentions that his wife and children are not happy from Will and they want to take some consideration, but Buddhsen do not want to take any consideration as he had in past already got sufficient help from family of defendant No.1. In Will also the reason for its execution has been mentioned that in pat the family of defendant No.1 gave suit land to Buddhsen and he wants to return their favour.
8. Counsel for appellants placed reliance upon the judgments passed by the Apex Court in case of ***P.P.K. Gopalan Nambiar Vs. P.P.K. Blakrishnan Nambiar, 1995 Supp. (2) SCC 664*** and in case of ***Daulat Ram and***

others Vs. Sudha and others, reported in (2005) 1 SCC 40. In the light of aforesaid facts and circumstances of the case, the decree under appeal be set aside and instead the plaintiffs claim may hereby dismissed with costs throughout.

9. Counsel appearing for respondents/plaintiffs supported the judgment and decree passed by the trial Court. It is submitted that the pleadings of the parties and evidence was also considered in right perspective and no error has been committed by the trial Court in decreeing the suit.
10. Heard the learned counsel for the parties.
11. From the arguments and evidence of both the parties, it is clear that the disputed land Arazi No.1290 area 10 acre situated at Village Jamuna, Tehsil Rampur Baghelan belongs to the owner deceased Buddhsen and the plaintiffs/respondents are the legal heirs of the deceased Buddhsen. Appellant No.1 claimed ownership of the disputed land on the basis of the Will. In such a situation, it is the duty of the appellant No.1 to prove the Will beyond doubt. In this regard, Ramesh Pratap Singh (DW-1) stated in his chief-examination that Buddhsen had executed a Will in his favour regarding the disputed land in year 1985. The Will is Ex.D-2 and Buddhsen signed on the part of A to A of Ex.D-2. The plaintiffs were aware of the Will executed by Buddhsen in favour of defendant No.1. Buddhsen himself had informed the plaintiffs about execution of the Will in favour of the defendant, after which the plaintiff started fighting and quarreling with Buddhsen, with regard to which Buddhsen had given a letter Ex.D-1. This witness stated in para 15 of his cross-examination that on the date of the Will, Buddhsen had given to the house after getting the Will typed and had also brought the witnesses with him. He does not

remember the date when Buddhsen came to Satna. He did not go to the Notary with Buddhsen. In para 23, he stated that he does not remember whether Smt. Patia Bai and plaintiffs were made parties during the mutation proceedings. In paragraph 25, he stated that Shriniwas Sharma, Babulal and Mithilesh Prasad are from his village.

12. Shriniwas Sharma (PW-2) stated in his testimony that the disputed land initially belongs to the family of Ramesh Pratap Singh and later came to be in the name of Buddhsen. Buddhsen had executed a Will of disputed land in the name of the Ramesh Pratap Singh. The Will is Ex.D-2 with Buddhsen Signature on part A to A. When Buddhsen signed the Will, then Mithila Prasad, Babulal and Ramnath Singh were present. He signed as a witness on part B to B of the Will Ex.D-2 and on part C to C of Ex.D-2 Babulal signed in his presence. This witness admitted in para 7 of his cross-examination that a case of misappropriation of Rs.1,24,000/- was established against him. Due to misappropriation, he was suspended and dismissed from his service. In para 10, he stated that Buddhsen signed the Will at Ramesh Pratap Singh's house in his presence and that of other witnesses. Several days after signing the Will, Buddhsen came to Satna to the Notary for registration of the Will. In para 13, he stated that after Buddhsen's death his last rites and rituals would have been performed by his family members. In para 15, he stated that after preparation of the Will and getting it attested by the Notary, Buddhsen returned to the village and gave it to the defendant Ramesh Pratap Singh.
13. Mithila Prasad (DW-3) stated that the disputed land initially belongs to Ramesh Pratap Singh and his family members. Buddhsen had given the disputed land to Ramesh Pratap Singh by Will. The Will is Ex.-D/2, on

which is he signed on part D to D and Buddhsen signed at places on part A to A of Will. The signatures on Ex.D-2 were made in his presence. Besides him Shriniwas Sharma and Babulal signed as witness on the Will, then Sarpanch Ramnath Singh also signed on the Will after attesting it. This witness admitted in para 7 of his cross-examination that during Buddhsen's life, he had appointed his son in a bank. In para 9, he stated that he cannot say how the Rajasahab of Gauraiya gave the land to Buddhsen. In para 11, he stated that after signing the Will, he did not go to Satna with Buddhsen. Earlier, his father used to perform Priest duty in Ramesh Pratap Singh's house.

14. In contrast, considering the evidence presented by the plaintiff, it is clear that Chhedilal Verma (PW-1) stated in his chief-examination that the disputed land is in his father's name. His father neither sold the said land to anyone nor gifted it to anyone. This witness stated in para 13 of his cross-examination that the previous owner of the disputed land was Dhirendra Singh. He does not know Dhirendra Singh and his family member. Similarly, from the statement of Ramkrishna Singh (PW-2) and Suresh Adiwasi (PW-3), it is clear that the owner of the disputed land was deceased Buddhsen.
15. Thus, from the submissions and evidence of both the parties, it is indisputably established that the deceased Buddhsen and defendant Ramesh Pratap Singh belong to different caste communities. Meaning thereby, there was no close relationship between them. It does not become clear from defendant Ramesh Pratap Singh and his evidence why the deceased would deprive his children and wife from his property by giving the disputed property to defendant Ramesh Pratap Singh through a

Will. As regards Ex.D-1 letter, it is typed and states that it bears Buddhsen's signature. Upon considering the contents written in the said letter, it appears that it mentions the will Ex.-D-2 was made afterward, stating that after execution of the Will, his wife and sons became angry with him and said why he did not write it after taking money. Thus, upon considering the entire subject matter of Ex.D-1, it appears that the said letter seems fabricated and appears to have been prepared later merely to justify the writing of the Will. Additionally, the letter being typed indicates that the said letter was prepared by defendant Ramesh Pratap Singh himself by getting it typed. Hence, the defendant does not get any benefit on the basis of the letter (Ex.D-1).

16. As regards the Will (Ex.D-2), it states: "I only have immovable property, one piece of land in Mauza Jamuna given by Shri Raja Sahab Goraiya whose current address is Jamuna, who gave this land in such a way that as long as I serve them, I maintain my livelihood from this land too; now I am completely incapacitated. My sons are in jobs and will not be able to honor my word. In my name, in Mauza Jamuna, Tehsil Rampur Baghelan, District, one piece of land given by Shri Raja Sahab for livelihood, Arazi No. 1290 area 10 acres. I give this Arazi of mine to Shri Ramesh Pratap Singh son of Akhand Pratap Singh, resident of Jamuna, Tehsil Rampur Baghelan, District Satna, who belongs to Raja Sahab's family in sound mind and senses. They have fully cared for my family and fully helped in the marriage of my daughter and sons."
17. Thus, the reason stated in the Will (Ex.D-2) for writing the same appears completely fabricated and it shows that defendant Ramesh Pratap Singh prepared this Will to grab Buddhsen's property. Defendant Ramesh

Pratap Singh considering the disputed land as his ancestors', attempted to obtain the disputed land by adopting the above method. It is necessary to mention here that even if it is assumed that the disputed land was given by Ramesh Pratap Singh's ancestors, still Ramesh Pratap Singh has no right to re-acquire the said land through a Will. Thus, the reason shown for executing the will is completely fabricated and cannot be accepted. If property is given to any person through a Will in this manner, every powerful/rich person will pressure weak and poor persons to get a Will executed and take their property. The evidence presented by the defendants regarding the Will appears to be highly unnatural. The witnesses produced on behalf of the defendants testified that the deceased Buddhsen had brought the typed Will himself and had also brought the witnesses along with him. It is stated that Buddhsen signed the Will in their presence and said that he wanted to make the Will. After the writing and signing Exhibit D-2 was completed, Buddhsen reportedly said that they should go for registration. It is also stated that Buddhsen took them to Satna before a notary for verification and authentication of said Will.

19. These facts are highly unnatural and unreliable because it appears that the said Will was drafted under pressure. From the overall observation of the Will, it does not appear anywhere that why Buddhsen wanted to deprive his wife and children from the property. Thus, the statements made in the Will are unreasonable, unnatural and improbable because no person of sound mind would deprive his own children from inheritance without strong and irrefutable reasons.
20. It is also necessary to mention here that in Ex.D-2, the date of writing is mentioned as 18.09.1985, whereas the date of verification is 01.03.1987.

The Will also indicates that defendant no.1 belongs to the “Raja Sahab’s family” and that the disputed land was given to the deceased Buddhsen by the Raja Sahab’s family for his subsistence. Considering that Buddhsen had a wife and a son, it is highly doubtful that a poor and weak person like him would execute a Will in favor of a wealthy, powerful, and non-relative person of another caste. It is also noteworthy that apart from the disputed land, the deceased Buddhsen owned no other land. This fact itself raises suspicion regarding the execution of the Will.

21. As far as the case law presented by the appellants passed in case of ***Daulat Ram and Others v. Sodha and Others, (2005) 1 SCC 40*** and in case of ***P.P.K. Gopalan Nambiar v. P.P.K. Balakrishnan Nambiar (1995) 2 SCC 664*** are concerned, the principles established in those cases do not help the appellants. In both cases, the testators had bequeathed their property to their family members. However, in the present case, the deceased Buddhsen was not related to defendant no.1, who belonged to a different caste. Buddhsen was a poor person, whereas the defendant Ramesh Pratap Singh was a wealthy and influential man from a higher caste (Kshatriya Community).
22. In this context, as law laid down by the Hon’ble Supreme Court in ***Aadiwekka & Others v. Hanmavva Kom Venkatesh (through legal representatives); reported in 2007 (3) SCCD 1348 (SC)***, when a Will is executed by a person depriving his wife and children from the property, the existence of suspicious circumstances arises. Similarly, in ***Venga Vehera v. Braja Kishore Nanda, reported in 2007(3) SCCD 1645 (SC)***, the Hon’ble Supreme Court has held that the presence of suspicious

circumstances by itself is sufficient to conclude that the execution of the Will has not been duly proved.

23. It must also be noted that if such Will is accepted as genuine, then every powerful or wealthy person could easily usurp the property of poor and helpless people through Will.
24. In such circumstances, the trial Court has decreed the suit of the plaintiffs considering the Will to be doubtful and unreliable, there is no error in it. Consequently, no merit is found in this appeal filed on behalf of the appellants.
25. In view of the above, first appeal is **dismissed**.

(RATNESH CHANDRA SINGH BISEN)

JUDGE

sp/-