



**IN THE HIGH COURT OF BOMBAY AT GOA
SECOND APPEAL NO.48 OF 2026**

1. Mr Umesh Yeshwant Mayekar,
Son of Shri. Yeshwant Mayekar,
aged about 68 years, married,
Businessman, and his wife.
2. Mrs Pratima mesh Mayekar
Aged about 68 years, married, service
Both Indian Nationals and residents
of House no.90, Mayur Colony,
Karaswada, Mapusa,
Bardez Goa 403 507

..Appellants

Versus

1. Mrs Sarojini Tulshidas Gawandi,
Wife of Mr. Tulshidas Gawande,
Aged about 42 years, married, housewife,
And his husband
2. Mr. Tulshidas Jaganath Gawande,
Son of Shri Jaganath Gawande,
Aged about 43 years, married,
Business, both indian National
And resident of House no.252,
Colvale, Bardez Goa
3. Master Sahil Tulshidas Gawande,
Son of Mr. Tuishidas Jaganath Gawande,
Aged about 24 years, student, Indian National,
Resident of House no.252,
Colvale. Bardez Goa
4. Shri Suresh Yeshwant Mayekar,
son of the late Shri Yeshwant Mayekar,
aged About 57 years, businessman,
Resident of House no.166/2,
Block A, Dangui Colony.
Mapusa, Bardez Goa 403507
5. Shri Sanjay Yeshwant Mayekar,
Son of the late Yeshwant Mayekar,
aged about 40 years, businessman,
Indian National,

Resident of House no.160/2, Block A.
Dangui Colony, Mapusa,
Bardez Goa 403507

6. Shri. Rupesh Balkrishna Narvekar
Son of Shri. Balkrishna Narvekar
Aged about 35 years, married, business,
Indian National, resident of House no.39
Keniwaddo, Mapusa Bardez Goa 403507

7. Miss Rashi Rupesh Narvekar.
Daughter of Mr. Rupesh Narvekar,
Aged about 19 years, student, Indian National,
Resident of House no.39, Keniwaddo,
Mapusa, Bardez Goa 403 507

8. Mrs Shradha Suresh Mayekar
Wife of Mr. Suresh Mayekar,
Aged 52 years, business, Indian National,
Resident of House no.166/2, Block A.
Dangui Colony, Mapusa.

..Respondents

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Mr. J. A. Lobo, Advocate for Appellants.

Mr. V. A. Lawande with Mr. Parimal Redkar and Ms. Smita Gawas,
Advocates for Respondents.

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CORAM: S. G. CHAPALGAONKAR, J.

RESERVED ON : 22nd SEPTEMBER, 2026.

PRONOUNCED ON : 30th SEPTEMBER, 2026.

JUDGMENT:-

1. The appellants/original defendants impugn concurrent judgment and decree dated 02.01.2025 passed by District Judge at Mapusa in Regular Civil Appeal No.27/2023 dated 15.02.2023 passed by Civil Judge Junior Division at Mapusa in Regular Civil Suit No.261/2010/D, whereby suit has been decreed.

2. The respondents instituted Regular Civil Suit No.261/2010/D seeking relief of declaration, cancellation and injunction in respect of Will dated 25.02.2005 alleged to have been executed by late Namdev Mayekar. It was contention of respondents/plaintiffs that plaintiff no.1 is married daughter of Namdev Naguesh Mayekar and late Champavati Namdev Mayekar. Champavati passed away on 17.08.2002 leaving behind husband Namdev Mayekar and daughters i.e. Sarojini and Rupa. After death of Champavati, properties were not partitioned. They continued to be common and co-owned by daughters and their husband. On 15.12.2005, Namdev Mayekar expired. The appellants who were nephews of Namdev Mayekar taking disadvantage of his poor physical condition got executed Will dated 25.02.2005 in connivance with Sub-Registrar of Bardez, whereby it is shown that Namdev Mayekar bequeathed all his movable and immovable properties. The Will is null and void. Namdev Mayekar was knowing Marathi and Kokani languages, but Will is recorded in English language. The procedure contemplated under Portuguese law is not followed. Namdev Mayekar was not absolute owner and possessor of suit properties. He being co-owner, alongwith respondents and could not have disposed of entire suit property without their consent and knowledge.

3. The appellants contested suit by filing written statement, thereby denying all adverse contentions and stated that Will was genuine and valid.

4. The Trial Court framed issues, recorded evidence of parties and ultimately decreed suit declaring that Will dated 25.02.2005 is null and void and directed cancellation of registration and permanently restrained appellants from creating third party interest over suit property mentioned in Will or interfering in suit property in any manner. Aggrieved appellants filed Regular Civil Appeal No.27/2023 before District Judge at Mapusa, who dismissed Appeal upholding judgment and decree passed by Trial Court.

5. Mr. J. A. Lobo, learned Advocate appearing for appellants would submit that both Courts failed to appreciate Statutory scheme governing Will in Goa and primarily proceeded on the basis that Will had to be executed in compliance with provisions of Article 1911 to 1919 of Portuguese Civil Code, 1867 (hereinafter referred to as 'Civil Code'). The Goa Succession, Special Notaries and Inventory Proceedings Act, 2012 (hereinafter after referred to as 'Act of 2012'), particularly Section 236 deals with Printed Open Will. In present case, Will is printed Will executed in terms of all Statutory requirement before public Authority. Therefore, first substantial question of law arises as regards to interpretation and applicability of provision of Civil Code. Secondly, both Courts below have erroneously held that Namdev Mayekar could not have bequeathed specific portion of properties, which were jointly owned by Namdev Mayekar and his deceased wife Champavati.

However, even assuming that properties were jointly owned by Namdev and Champavati, only that part of testamentary disposition will be hit by provision pertaining to relative incapacity of testator. As such, entire Will could not have been faulted, but held valid to the extent of disposable share of testator i.e. Namdev Mayekar. The Appellate Court erroneously discarded entire Will giving reason that it is recorded in English language and Namdev Mayekar was not conversant with said language, however, Appellate Court lost sight that Will has been duly registered before Civil Registrar cum Sub Registrar, Bardez by following due process of law. No evidence is brought on record to demonstrate incapacity of Namdev Mayekar to understand contents of Will or procedural lapses in recording Will.

6. Per contra, Mr. V. A. Lawande, learned Advocate appearing for respondents would submit that undisputedly Namdev Mayekar was Goan, governed by provisions of Civil Code, which was continued in force by virtue of sub-section (1) of Section 5 of Goa, Daman and Diu (Administration) Act, 1962. The defendants' witness candidly admitted that properties under Will were jointly owned by Namdev Mayekar and his wife Champavati. Champavati pre-deceased Namdev Mayekar. Her share devolved upon her daughters. Namdev Mayekar could not have disposed of properties without consent of co-owners/daughters. Apart from aforesaid fallacy, there is blatant violation of mandatory

formalities under Civil Code, which renders Will ineffective. The Trial Court as well as Appellate Court on appreciation of evidence recorded concurrent findings of facts, which need not be interfered in Second Appeal. No substantial questions of law arises for consideration. In support of his contentions he relies upon observations of Supreme Court in case of *Rabindranath Panigrahi Vs. Surendra Sahu*¹ and *Kondiba Dagadu Kadam Vs. Savitribai Sopan Gujar and Others*².

7. Having considered submissions advanced by learned Advocates appearing for respective parties and after perusal of reasoning adopted by Courts below, it can be observed that dispute between parties is as regards to validity, legality and existence of Will dated 25.02.2005 alleged to have been executed by late Namdev Naguesh Mayekar. The appellants are nephew of Namdev Mayekar, whereas respondents are daughters, son-in-law and their children. Before appreciating contentions raised on behalf of parties, first objection of appellants requiring consideration is as to

‘Whether Will in question is governed by Civil Code as was applicable in State of Goa or Act of 2012?’

8. The birth certificate of Namdev Mayekar is on record at Exhibit-65, which clearly demonstrate that he is Goan. The Appellant No.1 (original Defendant No.1) testified as DW-1 and admitted during

¹ 2025 SCC OnLine SC 504.

² (1999) 3 SCC 722.

his cross-examination that properties, which are subject matter of Will were jointly owned by Namdev Mayekar and his wife and half undivided share of Namdev's wife Champavati would devolve upon their daughters. He admitted that parties are governed by Civil Code. As such, further deliberation on this issue is not required.

9. The Act of 2012 came into force in year 2016. The Will in question is executed on 25.02.2005. Namdev Mayekar expired on 15.12.2005. Section 460 of Act of 2012 deals with repeal and saving on and from the date of coming into force of Act of 2012. However, protects anything duly done or suffered or any right, privilege, obligation or liability acquired cum accrued under any law so repealed and further stipulates that any such act shall be deemed to have been done, suffered, acquired, accrued under provisions of Act of 2012. The Act of 2012 replaces relevant provisions as to law of intestate and testamentary succession, partition and inheritance as applicable in State of Goa. Therefore, it cannot be disputed that Will in question is governed by provisions of Civil Code as was applicable prior to commencement of Act of 2012.

10. Perusal of Will demonstrates that specific properties are bequeathed under Will. In wake of admission of Appellant No.1, suit properties were jointly owned by Namdev Mayekar and his wife Champavati prior to her death and thereafter Namdev Mayekar and his

daughters, in absence of specific partition of common properties and assignment of specific share, Namdev Mayekar was not authorized to bequeath specific shares of co-owned properties. Section 220 of Act of 2012, which is *para materia* to Article 2177 of Civil Code provides that *‘it shall not be lawful for co-heir to dispose of any specific asset of inheritance or part of specific assets, unless such asset or right to such part, is allotted to him in partition and disposition made in contravention shall be null and void’*. Admittedly, while making disposition under Will, Namdev Mayekar had not obtained consent from his daughters. They are not signatories to Will. In this backdrop, concurrent findings recorded by Courts below that Will is inconsistent with Statutory requirements under Civil Code or Act of 2012 need not be disturbed.

11. Article 1916 of Civil Code prescribes that *‘where testator does not know, or is unable to write, notary shall so declare: in such event, disposition shall be witnessed by six persons, any one of whom shall sign at the request of testator’*. The aforesaid provision corresponds to Section 330 of Act of 2012 with certain modifications. In present case, there is no declaration that Namdev Mayekar was unable to write. Admittedly, he was not conversant with English language. The Will is written in English. There is no declaration that it was read over to him in vernacular language. None of the witness on Will stepped into

witness box. All these circumstances are duly considered by Courts below while discarding Will and declaring same to be null and void.

12. It is trite that, Second Appeal can be heard only on substantial questions of law and same cannot be decided merely on equitable grounds. The finding of facts, however, erroneous cannot be disturbed in Second Appeal. In facts of present case, both Courts have duly appreciated pleadings of parties, evidence on record and applicable provisions of law and concurrently held that Will in question is inconsequential being inconsistent with provisions of Civil Code and otherwise unreliable being suspicious. The appellant could not remove cloud of doubts, so as to accept genuineness and validity of Will.

13. In result, Second Appeal sans merit. Hence, dismissed.

(S. G. CHAPALGAONKAR)
JUDGE