

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**Second Appeal No.438 of 2014
With
Civil Application No.7230 of 2014**

Anuradha W/o Shridhar Mukhedkar. .. **Appellant.**

Versus

Sangita D/o Shridharrao Mukhedkar
@ Sangita w/o Deshbhushan Chakavate
And Another. .. **Respondents.**

Shri. C.R. Deshpande, Advocate, for appellant.

Shri. S.S. Panale, Advocate, for respondent No.1 -
Caveator.

CORAM: T.V. NALAWADE, J.

DATE : 6th OCTOBER 2015

ORDER:

1) The appeal is filed to challenge the judgment and decree of Regular Civil Suit No.264/2012 (Old Special Civil Suit No.119/2010) which was pending in the Court of the Joint Civil Judge, Senior Division, Latur and also to challenge the judgment and order of Regular Civil Appeal No.312 of 2012 which was pending in the Court of the Ad-

hoc District Judge-1, Latur. The suit filed by the present respondents for relief of declaration of their ownership and for possession is decided in their favour. Both the sides are heard.

2) The suit was filed in respect of house property bearing city survey No.286/H-100 which is given House No.R-5/2746 in the assessment record of local body of Latur. It is the case of the plaintiff No.2 that deceased Shridhar was her husband and plaintiff No.1 is her daughter born from Shridhar. It is her case that the defendant was living with Shridhar but there was no marriage between defendant and Shridhar. Shridhar died on 7-4-2006. It is contended that the suit property was self acquired property of Shridhar and so, as the heirs of Shridhar, plaintiffs are entitled to get this property. It is their case that behind their back the defendant got mutated her name in the record of rights of the suit property and as she is occupying the suit property, they are required to file the suit.

3) The defendant filed written statement and she denied that plaintiff No.2 was legally wedded wife of Shridhar. It is the case of the defendant that there was marriage between her and Shridhar and they started living in the suit property from the year 1980 and prior to that they were living in rented house. It is her case that after death of Shridhar she applied to the city survey office for entering her name as owner as she is the widow of Shridhar. The defendant contended that deceased Shridhar had executed a will to bequeath the suit property to her and so under that will also she has become the owner.

4) Issues were framed by the trial Court. Only the plaintiffs gave evidence. For proving their case, plaintiffs examined plaintiff No.1 and one witness Bansi. They produced record like ration card and succession certificate obtained by them. The record of school of plaintiff No.1 was also produced to show that she was using the name of Shridhar as the father and she had taken admission in school in 1976 much prior to the establishment of relationship by defendant with Shridhar. Record of voters list was also produced.

5) The defendant did not step in witness box but she produced some record like record of ration card and the entries made in the city survey record after death of Shridhar. The record of identity card issued by the Election Commission in favour of the defendant was also produced.

6) It appears that the proceeding filed for succession certificate was challenged by the present defendant but the proceeding came to be decided in favour of the plaintiffs. Thus in the succession certificate proceeding bearing No.173/2006 and in appeal - Regular Civil Appeal No.190/2007, after contest, the Civil Court came to the conclusion that present plaintiffs are the successors of Shridhar. In addition to that record, there was record of aforesaid nature. In rebuttal, there is only some record showing that defendant was using name of Shridhar as her husband. Though she was using the name of Shridhar as husband that record was comparatively recent one and further the defendant did not step in witness box. In succession certificate proceeding, which was contested matter, this point was also decided. Thus,

there was only one option before the defendant to prove her case that she had become owner due to other circumstances like will. It appears that in view of specific case put up by the defendant there was issue with regard to the will. However, no evidence was given to prove that there was such will in existence and it was duly executed as provided under the Indian Succession Act.

7) The learned counsel for the appellant submitted that the Advocate of the defendant did not defend the matter properly in the trial Court and so the defendant did not step in witness box. He submitted that opportunity needs to be given to the defendant to lead evidence for proof of the will and for that the decision of the District Court needs to be set aside.

8) The submissions made and the record like the reasoning given by two Courts show that no attempt was made either in the trial Court or in the first appellate Court by the defendant to lead evidence with regard to the will. There was specific issue in respect of this case of the defendant. This Court holds that at this stage in the

second appeal such opportunity cannot be given. She could have applied to the first appellate Court for leading additional evidence but that was not done. As no evidence at all was given by the defendant there was no alternative before the Courts below than to decide the suit in favour of the present respondents. There is no material at all on the basis of which substantial questions of law can be formulated.

9) In the result, the appeal stands dismissed. Civil Application No.7230 of 2014 stands disposed of.

Sd/-

(T.V. NALAWADE, J.)

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