

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.751 OF 2006
WITH
CIVIL APPLICATION NO.216 OF 2014
WITH
CIVIL APPLICATION NO.301 OF 2015**

Bhausahab Tukaram Kadam ... Appellant

V/s.

Sou.Shevanta Pandurang
Suryavanshi & Ors. ... Respondents

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Kiran C. Shivguppe i/b. Mr.Anil Kumar Patil, Advocate for the Appellant.
Sadika Naik, Advocate for Respondent No.1.

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CORAM : R.K. DESHPANDE, J.

DATED : JULY 20, 2015.

P.C.

The trial Court has dismissed Misc. Civil Application No.118 of 1985, for grant of probate under Section 276 of the Indian Succession Act on 29th April, 2000. Regular Civil Appeal No.208 of 2000 preferred by the original appellant has been dismissed on 25th April, 2006. Both the Courts below have concurrently held that Will executed to Krishnabai at Exhibit-83

dated 6th April, 1976 has not been proved in accordance with the provisions of Section 68 of the Evidence Act and Section 63 of the Indian Succession Act. Both the Courts below have taken into consideration the evidence of two attesting witnesses, namely:- Dattu Hari Patil and Babasaheb Patil. This Appeal was dismissed for want of prosecution on 4th July, 2007 and the Civil Application No.216 of 2014, has been filed seeking condonation of delay of 6 years and 189 days caused in filing an application for restoration of this Second Appeal.

2 The learned counsel for the appellant has taken through the judgments delivered by both the Courts below (although the copies of both the judgments are not available on record, the learned counsel has tendered certified copies of both these judgments across the Bench). He has also taken me through the evidence of both the attesting witnesses. The Courts below have held that witness Dattu Hari Patil has nowhere stated in his deposition that Krishnabai affixed her thumb impression on the Will in his presence. It is also the findings recorded by both the Courts below that the attesting witnesses have nowhere stated that the contents of Will dated 6th April, 1976 were read over to Krishnabai who was illiterate and upon understanding the

same, she put her thumb impression in their presence. No doubt, the Will was registered and the testator died on 20th January, 1980. The learned counsel could not point out any perversity in recording the aforesaid findings by the Courts below. Hence, without even considering the application for restoration of Second Appeal, the Second Appeal need to be dismissed on merits. The same is, therefore, dismissed.

3 Both the Civil Applications do not survive and are disposed of accordingly.

JUDGE