

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 90 OF 2015
ALONGWITH
CIVIL APPLICATION NO. 184 OF 2015
IN
SECOND APPEAL NO. 90 OF 2015

Vasant Shankar Magdum and Others

.....Appellants
(Orig. Defendants)

: V/S :

Pandurang Ananda Warang and Others

.....Respondents
(Orig. Plaintiffs)

* * * * *

Mr. Pradeep Dalvi, Advocate for the appellants.

Mrs. Shakuntala Mudbidri, Advocate for respondent no.2.

* * * * *

Coram :- Smt. R.P. SondurBaldota, J.

11th February, 2015.

P.C. :-

1). The appellants who are original defendants, by this Second Appeal, challenge the judgment and decree dated 28th October, 2014 passed by the District Court, Kolhapur allowing Regular Civil Appeal No. 271 of 2011. The impugned order sets aside the judgment and decree of dismissal of the suit by the trial Court and decrees the suit. It declares

that the respondents are the owners of the suit property and the Will allegedly executed by deceased, Rayanabai dated 9th November, 2005 is void. The order further directs the appellants to handover possession of the suit property to the respondents.

2). The suit property originally belonged to one, Shripati. On his death, it devolved upon his wife, Rayanabai. She died issueless on 11th November, 2005. Shripati had two brothers, Krishna and Sakharam. The appellants are the grandchildren of Sakharam and the respondents are the grandsons of Krishna. Sakharam had gone out of the family on his adoption in Magdum family. Therefore, according to the respondents, on the death of Rayanabai they being her heirs became entitled to the suit properties. There is no dispute as regards these facts. Consequently, there can be no dispute that the respondents would inherit the suit properties in case of intestate death of Rayanabai. The appellants, however, claimed that just two days prior to her death i.e. on 9th November, 2005 Rayanabai had executed Will and bequeathed the suit properties to them to the exclusion of the respondents.

3). The respondents allege in the plaint that, the will of Rayanabai relied upon by the appellants is fabricated and bogus. At the time of her death, Rayanabai was 96 years old. She used to reside with

the plaintiffs. According to the respondents, about 4 to 5 days before her death, Rayanabai was unconscious and she did not regain consciousness before death. In anticipation of some activity, the respondents had not only published a notice of health of Rayanabai, but also intimated the Sub-Registrar, Shahuwadi about the fact and requested him not to register any document concerning Rayanabai. On the background of these allegations, heavy burden lied upon the appellants to prove the Will. As noted by the lower Appellate Court, the appellants did not examine either of the attesting witnesses. The appellants simply produced the document of Will, without stating anything about the writer of the Will, the date and place of its execution and the manner in which the same was executed. The person who had purchased the stamp paper for the Will is the beneficiary under the Will. Admittedly, the appellants were not even present near Rayanabai at the time of her death. Hence, there was no question of they saying anything in their deposition as regards the health of Rayanabai. The appellants had thus in fact failed to prove the document of the Will. Further, the lower Appellate Court also noticed several aspects about the document of the Will itself, that raised suspicion about it. In the circumstances, the lower Appellate Court was correct in holding that the appellant had failed to establish any right to the property left by Rayanabai. Thus, there is no infirmity in the impugned order. There is also no substantial

question of law arising for consideration of the Court. Hence, the Second Appeal is dismissed.

4). In view of dismissal of the Appeal, the Civil Application does not survive. The same is accordingly disposed off.

(SMT. R.P. SONDURBALDOTA, J)