

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

**SECOND APPEAL NO 269 OF 2003**

- |                               |   |                |
|-------------------------------|---|----------------|
| 1. Indubai Namdeo Rengde      | ) |                |
| age 45                        | ) |                |
| 2. Sakhubai alias Shakuntala  | ) |                |
| Shantaram Ragatan, age 32     | ) |                |
| 3. Yamunabai Sambhaji Bhange  | ) |                |
| age 30                        | ) |                |
| 4. Anjanabai Shantaram Madave | ) |                |
| age 28                        | ) |                |
| Occ: Housewives, all residing | ) |                |
| at House No. 277, More Chawl, | ) |                |
| Dapodi, Pune                  | ) | ... Appellants |

Vs.

- |                                  |   |                 |
|----------------------------------|---|-----------------|
| 1. Hirabai Namdeo Rengde,        | ) |                 |
| deceased through heir and        | ) |                 |
| legal representative as per      | ) |                 |
| Will dated 16/11/1999.           | ) |                 |
| 1A. Shri Dyandeo Soma Gavari     | ) |                 |
| age 46 years, Occu : Agriculture | ) |                 |
| R/o. At & Post: Godre,           | ) |                 |
| Tal: Junnar, Dist : Pune.        | ) | ... Respondents |

.....

*Smt. V. M. Gotsurve for Appellant.*  
*Shri U. B. Nighot for Respondent.*

**CORAM: R.K. DESHPANDE, J.**  
**DATE: 23<sup>rd</sup> JULY, 2015.**

**ORAL JUDGMENT**

In Regular Civil Suit No.110 of 1990 the Trial Court dismissed the claim of the plaintiff for declaration of title and possession over the entire suit

property, but passed a decree granting the declaration that the plaintiff is having 1/4<sup>th</sup> share in the suit property more particularly described in Part-2 of the plaint. The defendants are directed to hand over 1/4<sup>th</sup> share of the plaintiff by way of partition by metes and bounds. This decree passed by the Trial Court on 25/01/1999 was the subject matter of challenge in the Civil Appeal No. 113 of 1999 which has been dismissed by the Lower Appellate Court on 24/1/2003. Hence this second appeal.

2. On 24<sup>th</sup> June, 2015, this Court framed the following substantial questions of law:

- (i) Whether the finding recorded by the Courts below that the Will was shrouded by suspicious circumstances is based upon the valid and admissible evidence available on record?
- (ii) Whether the finding recorded by the Lower Appellate Court that Gat No.752 was the ancestral property, is based upon the relevant and admissible evidence available on record?

3. Admit. Heard finally by consent of the learned counsel for the parties.

4. The original plaintiff Smt.Hirabai Namdeo Rengde was the first wife of the deceased Shri Namdeo

Rengde and the defendant Smt.Indubai Namdeo Rengde was the second wife. The plaintiff challenged the status of defendant no. 1 as the second wife of Shri Namdeo Rengde and claimed a declaration that she has become absolute owner of the ancestral property of Shri Namdeo Rengde, upon his death. Defendant No. 1 put forth the registered Will dated 14/3/1986 said to have been executed by Shri Namdeo Rengde in favour of defendant No 2, 3 and 4 the daughters of Defendant No. 1, who bequeathed the entire suit property in their favour.

5. The Trial Court recorded the finding that the plaintiff has failed to establish that the suit properties were the ancestral property in the hands of Shri Namdeo Rengde. The Trial Court recorded the finding that all the properties were the self-acquired properties of Shri Namdeo Rengde. The Trial Court further held that the Will dated 14/3/86 (Exhibit - 66) was not duly proved in accordance with Section 63 of the Indian Succession Act and that it was shrouded by suspicious circumstances.

6. The Lower Appellate Court recorded the finding that except Gat No.752 all other properties were the self-acquired properties of Shri Namdeo Rengde. The Appellate Court recorded the finding that Gat No.752 was the ancestral property of Shri Namdeo Rengde. The Lower Appellate Court recorded the findings that the Will at Exhibit 66 was proved, but it was shrouded by suspicious circumstance proved in

accordance with section 63 of the Indian Succession Act.

7. With the assistance of the Learned Counsel appearing for the parties I have gone through the findings of both the Courts below on the aspect of suspicious circumstances. It is brought on record that the Testator Shri Namdeo Rengde was about 70 years of age and had suffered Paralytic stroke. The Will was attested by two witness (1) Shri Balasaheb Shinde and another (2) Shri Khandeora Malegaonkar, has been examined as witness to prove the Will.

8. The Trial Court has recorded the finding that the evidence on record does not disclose that both the witnesses put their signature on the Will after putting the thumb impression by the testator Shri Namdeo Rengde. His deposition also does not disclose the presence of another witness Balasaheb Shinde at the time of putting thumb impression. The thumb impression was attested by one Shri C.M.Joglekar, Advocate who is said to have prepared the Will, but he has not been examined. None of the relatives of Shri Namdeo Rengde were present at the time of registration of the Will.

9. Both the Courts below have held that Shri Namdeo Rengde had passed 5<sup>th</sup> standard and was therefore able to sign document. Will in question was not signed, but it bore the thumb impression of the testator. Certain sale deeds are produced on record appearing signature of Shri Namdeo Rengde. The

Courts below have held that there is absolutely no evidence brought on record to show that the testator Shri Namdeo Rengde was unsound state of mind at the time of execution of the Will. Thus, the finding recorded by both the Courts below are based upon valid and admissible evidence available on record holding that the Will was shrouded by suspicious circumstances. The substantial question of law is, therefore, answered accordingly.

10. The Lower Appellate Court has referred to the finding recorded by the Trial Court on the nature of property i.e. Gat No.752. The Trial Court recorded the finding that it was the self-acquired property of Shri Namdeo Rengde, whereas the Lower Appellate Court recorded finding that it was ancestral property of Shri Namdeo Rengde. Nothing turns upon this finding of the Lower Appellate Court for the reason that the Lower Appellate Court dismissed the appeal and did not grant declaration in respect of the said property regarding exclusive ownership of the plaintiff. The Plaintiff has not come up in appeal. Hence no substantial question of law arises.

Second appeal is dismissed. No costs.

**JUDGE**