

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

**SECOND APPEAL NO.796 OF 2012  
WITH  
CIVIL APPLICATION NO.240 OF 2013**

Sachin Vilas Londhe & Ors. ... Appellants

V/s.

Smt.Kaweribai R. Adhav & Ors. ... Respondents

.....  
Mr.A.P. Kulkarni, Advocate for the Appellants/Applicants.  
Mr.Dilip Bodke, Advocate for the Respondents.  
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**CORAM : RAVI K. DESHPANDE, J.**

**DATED : JULY 8, 2015.**

**P.C.**

Regular Civil Suit No.23 of 2004 was decreed by the trial Court holding that the Will dated 9<sup>th</sup> February, 1984 executed by Vithabai in favour of defendant nos.1 to 4, is illegal and the plaintiffs have 1/4<sup>th</sup> share in the property. This decision of the trial Court delivered on 9<sup>th</sup> October, 2008 was the subject matter of challenge in Regular Civil Appeal No.25 of 2008, which is partly allowed by the Lower Appellate Court on 15<sup>th</sup> March, 2012. The decree passed by the trial Court was modified. The appellants / original plaintiffs are before this Court in the Second Appeal.

2           It was the case of the defendant nos.1 to 4 before the trial Court that they have become owners of the suit property by virtue of Will dated 9<sup>th</sup> February, 1984 executed by Vithabai. The plaintiffs have challenged the said Will and claimed a declaration that the said Will is illegal. If the Will is ignored, undisputedly, the plaintiffs and the defendants will have 1/4<sup>th</sup> share in the suit property. Both the Courts below have held that the defendants have failed to establish the Will dated 9<sup>th</sup> February, 1984. I have gone through the findings recorded by the Courts below. Two attesting witnesses examined were - (1) Sanjay Jagannath Londe and (2) Shravan Kesu Kamble. None of the witnesses have deposed the requirement of the execution of the Will in terms of Section 63 of the Evidence Act and Section 68 of the Indian Succession Act. Once it is held that the Will was not proved, the consequences would follow to grant the decree for partition and separate possession of 1/4<sup>th</sup> share of the plaintiffs and defendants. No substantial question of law arises. Second Appeal is dismissed.

3           In view of the order passed in Second Appeal, Civil Application No.240 of 2013 is disposed of.

**(RAVI K. DESHPANDE, J.)**