



sound disposing state of the testator, on the date of execution of the will and of the attesting witnesses one B.D. Pawar and Advocate M.P. Dubey. The lower appellate court on perusal of the application and the record found that the addresses of the attesting witnesses were very much available to the appellant, the same having been stated on the document of will itself. This would mean that the application for additional evidence filed under Order 41, Rule 27 C.P.C., by the appellant was a false and dishonest application. The lower appellate court further noted that the document of the will produced shows overwriting on the names of the attesting witnesses. The original names of Diwakar Kulkarni and Vitthal Pawar have been changed to Sudhakar Krishnaji Kulkarni and Balasaheb Dinkar Pawar. The court also found that the first page of the will bears the year of 1991 as the year of the execution of the will which by overwriting was changed to 1992. Similarly, the name of the testator was initially typed as "Satyabhama", which was corrected by deleting the word "Satya" from the name. The name of the Medical Officer, who had examined the disposing state of mind of the testator was shown in the document as Dr. M.P. Sidhaye, who has not been examined as the witness in the application. For these reasons, the courts below found the document of will to be a suspicious document and rejected the application.

3           Mr. Tapkir, the learned advocate for the appellant submits that the lower appellate court has decided the appeal without deciding the application for additional evidence under Order 41, Rule 27 CPC.

The submission is without merit. The learned Judge, though has not passed a separate order on the application has extensively dealt with the same and decided it in the impugned order itself. In any case, it is patent from the application that it was a false and dishonest application. It has been rightly rejected by the lower appellate court.

4           There is be no infirmity whatsoever with the orders of the courts below in dismissing the application for probate. The appellant has not only failed to establish the will by the necessary evidence before the court, but filed a false and dishonest application for additional evidence before the lower appellate court. Hence, the Second Appeal is dismissed with costs. The appellant shall pay costs quantified at Rs.25,000/- (Rupees twenty five thousand only) to the respondent.

(Smt. R.P. SondurBaldota, J.)