

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

SECOND APPEAL NO. 280 OF 2014
 Shuddhamati Ramdas Bondhate thr LRs. Prakash Ramdas Bondhate
 Vs.
 Chandrashekhar Waghmare & Ano.

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 Office Notes, Office Memoranda of Coram,
 appearances, Court orders or directions
 and Registrar's orders

Court's or Judge's Order

Ms. Deepali Sapkal Adv for appellant.

CORAM: A. S. CHANDURKAR J.

DATED: 09 JANUARY, 2015.

Heard. Challenge in the present second appeal is to the dismissal of the suit for declaration of title filed by the present appellants. According to appellants in view of Will dated 11.04.1985 executed in their favour by one Hari Kamble, they were owners thereof. According to the appellants the defendant who was not having any title in the suit property was obstructing their possession. Hence aforesaid suit came to be filed.

The attesting witnesses of said Will were not alive when the evidence was recorded. The witnesses examined by the appellants were not sure as to whether the scribe was alive or not. The scribe was also not examined. In view of death of both the attesting witnesses it was for

the appellants to have proved the will by taking recourse to provisions of Section 69 and 71 of the Indian Evidence Act. The same was however not been done. The trial Court after due consideration of the evidence on record held that said Will has not been proved in accordance with law. The first appellate Court after re-appreciating the evidence has affirmed said findings.

In view of aforesaid the second appeal does not give rise to any substantial question of law. The evidence on record has been taken into account while dismissing the suit. There is no merit in the second appeal. The same is dismissed with no order as to costs. In view of the dismissal of the second appeal pending civil applications are also disposed of.

JUDGE

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