

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

SECOND APPEAL NO.575/2012

Smt. Lilabai Rajendra Deshmukh and others

..Versus..

Rajeshwar Manoharrao Deshmukh and others

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

Court's or Judge's orders

CORAM : Z.A. HAQ, J.

DATE : 21.11.2015

Heard Shri A.M. Deshpande, advocate for the appellants and Shri J.J. Chandurkar, advocate for respondent no.5. None for the others, though served.

The respondents - original plaintiffs filed the civil suit contending that they became the owner of the suit field by virtue of the Will dated 21st March, 1988 executed by Chandrakantabai who died on 29th April, 1992. Subsequently, the civil suit was converted into a suit for possession on the ground that the plaintiffs lost the possession after the filing of the civil suit. The learned trial Judge rejected the claim of the plaintiffs concluding that the plaintiffs have failed to prove the execution of the Will. The learned trial Judge considered the

evidence led on behalf of the parties and relying on the evidence of Dattu Panduji Atkare recorded that the plaintiffs have failed to prove that the Will was signed by two witnesses as required by Section 63(C) of the Hindu Succession Act. The trial Court dismissed the civil suit.

The plaintiffs had filed appeal before the District Court challenging the judgment and decree passed by the trial Court. The learned District Judge has recorded that the trial Court has erroneously given undue weightage to the evidence of Dattu Atkare who is not the attesting witness. The learned District Judge, after exhaustively dealing with the factual aspects in paragraph nos.20 and 21 of the judgment has concluded that the plaintiffs have proved the execution of the Will. The learned District Judge has recorded that Shri Vausdeo Deshmukh and Shri Babulal Mahadeo Chirde are the attesting witnesses to the Will. It is undisputed on the record that the plaintiffs intended to examine Shri Babulal Mahadeo Chirde as the witness before the trial Court, however, the application (Exh. No.96) filed by the plaintiffs seeking permission to examine Shri Babulal Mahadeo Chirde was

opposed by the defendants. The learned District Judge recorded that subsequently Shri Babulal Mahadeo Chirde died on 3rd November, 2004.

Shri Deshpande, learned advocate has submitted that the District Court has committed an error in re-appreciating the evidence and recording a different finding. It is submitted that the findings recorded by the trial Court that the plaintiffs have failed to prove the execution of Will could not have been set aside by the learned District Judge by re-appreciating the evidence. According to the learned advocate for the appellants the following substantial question of law arises for consideration :

“Whether the Will (Exh. No.85) dated 21st March, 1988 can be said to be a valid document in the absence of proper proof ?”

The Will is registered on 21st March, 1988. The learned District Judge has recorded specific finding of fact that the plaintiffs have proved the execution of the Will.

It is not permissible for this Court to re-appreciate the evidence while considering the appeal under Section 100 of the Code of Civil Procedure unless the appellants show that

the findings recorded by the learned District Judge suffer from perversity. I do not find any perversity in the findings recorded by the learned District Judge. The substantial question of law formulated on behalf of the appellants does not arise for consideration. The appeal is dismissed. In the circumstances, the parties to bear their own costs.

At this stage, Shri Deshpande, advocate for the appellants requested that the interim order granted by this Court may be continued for eight weeks to enable the appellants to take appropriate steps in the matter. Shri J.J. Chandurkar, learned advocate for the respondent no.4 has opposed the request made on behalf of the appellants. However, considering the fact that this Court had granted an interim order, the protection shall continue till 15th January, 2016.

JUDGE

Tambaskar.