

JPP

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

***SECOND APPEAL NO.81 OF 2016
WITH
CIVIL APPLICATION NO. 113 OF 2016***

Rameshwar Pralhad Parakhe. ... Appellant/Applicant.

V/s.

Smt. Malan w/o. Parameshwar Parakhe. ... Respondent.

Mr. Machhindra Patil for the Appellant/Applicant.

Mr. M.A. Utagikar for the Respondent.

CORAM : N.M. JAMDAR, J.

DATE : 7 APRIL, 2016.

P.C. :-

The Appellant challenges the Judgment and Decree passed by the District Judge, Barshi in Civil Appeal No. 167 of 2014 allowing the Appeal and decreeing the suit filed by the Respondent.

2. The Respondent, wife of one Parameshwar who expired on 29 January 2015, filed a Regular Civil Suit No. 117 of 2006 for declaration that the Will stated to be executed by deceased Parameshwar giving the entire landed property to the

brother of deceased Parameshwar i.e. brother-in-law of the Plaintiff, be declared as void and the Respondent – Plaintiff be given share in the property. The learned District Judge, Barshi, by Judgment and Order dated 31 January 2012 dismissed the Suit. The Appeal filed by the Respondent – Plaintiff is allowed by the learned District Judge.

3. The learned Counsel for the Appellant submitted that the Will was duly registered and two attesting witnesses had deposed to the execution of the Will and therefore, the learned District Judge was not right in coming to the conclusion that the Will was bogus and fabricated. He submitted that the circumstances stated by the learned District Judge in the impugned Judgment do not lead to the conclusion that the Will was executed in suspicious circumstances and was void.

4. I have considered the submissions advanced by the learned Counsel for the Appellant. The Respondent – Plaintiff was the wife of deceased Parameshwar. There is nothing on record that the relation between deceased Parameshwar and the wife were strained so that deceased Parmeshwar would completely disinherit her from any property and this is one of the circumstances which is not in the normal course of events. Secondly, when the deceased Parameshwar executed the Will, he was admittedly at an advanced stage of AIDS, therefore his mental faculties at the time of execution of the Will, were in serious

doubt. It is also an admitted position that the deceased Parameshwar was a literate person and there was no reason why he would place his thumb impression on the Will, which is admittedly not written by him. The registration has been done after the death of Parameshwar.

5. Considering these factors cumulatively, it cannot be said that the conclusion reached by the learned District Judge that the Will was suspicious in nature can be termed as perverse. Merely because the Will is registered and two witnesses have deposed does not mean that a challenge cannot be levied to the validity of the Will. Such Will also can be set aside if sufficient suspicious surrounding circumstances are brought on record.

6. Considering the facts and circumstances narrated above, it cannot be said that the circumstances were not sufficient. Consequently, no question of law arises in this Appeal. The Appeal is accordingly dismissed. The Civil Application stands disposed of.

(N.M. JAMDAR, J.)