

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

SECOND APPEAL NO. 155 OF 2014

Kamalnarayan Darshanlal Jaiswal

Vs.

Pramila Jugalkishore Jaiswal & Ors.

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

Court's or Judge's Order

Shri Anand Deshpande Adv for appellant.

Shri R. B. Dhore Adv for respondent.

CORAM: A. S. CHANDURKAR J.

DATED: 29th APRIL, 2016.

The unsuccessful plaintiff has filed the present appeal challenging the dismissal of the suit for declaration that the plaintiff had become owner of the suit property on the basis of will dated 06.04.1999 executed by his mother in his favour.

One Darshanlal Jaiswal had three sons namely Kamalnarayan, Jugalkishore and Rajkishore. Sundarabai was the wife of Darshanlal. It is the case of the plaintiff-Kamalnarayan that on 06.04.1999 his mother Sunderabai had executed a will in respect of the properties which were received by her in a partition. Sunderabai expired on 28.01.2004. It is on this basis that the aforesaid suit for declaration of title came to be filed.

The defendants opposed the claim and disputed the execution of the will. The parties led evidence before the trial Court. After noting various circumstances, the trial Court held that the plaintiff had failed to prove that the will dated 06.04.1999 was executed by Sundarabai. It dismissed the suit. The appellate Court after re-appreciating the evidence dismissed the appeal.

Shri Anand Deshpande, the learned counsel for the appellant submitted that the will dated 06.04.1999 was attested by two witnesses Sanjay and Kisan. They had been examined to prove the execution of the will. Moreover, the will was registered on the same day when it was executed. According to him the legal requirements for proving the will were duly satisfied as the attesting witnesses have been examined. He, therefore, submitted that both the Courts were not justified in holding that the plaintiff had failed to prove the execution of the will. In support of his submissions the learned counsel placed reliance on the judgment of the Hon'ble Apex Court in ***Gopal Swaroop Vs. Krishna Murari Mangal & Ors. 2010(12) SCALE 470.***

Shri R. B. Dhore, the learned counsel for the respondent no. 2 supported the impugned judgment. According to him the plaintiff had failed to explain various suspicious circumstances

which were evident on the face of the record. He submitted that the other sons of Darshanlal had been excluded in the will and there was no justifiable reason for the same. He also submitted that the signature of the testator was found to be different at three different places in the will. He, therefore, submitted that the dismissal of the suit and the appeal was in accordance with law.

With the assistance of the learned counsel for the parties I have perused the records of the case. The will at Ex. 33 is dated 06.04.1999 and the said document indicates that the testator has signed the same on three pages and each signature is different from the other. There is no mention of the scribe who wrote the will. The evidence on record indicates that the attesting witness Kisan had stated that the contents of the will were not read over to Sunderabai. Though it was the case of said Kisan that he had met Sunderabai 2-4 days prior to execution of the will, this fact was disputed by the plaintiff in his cross examination. The circumstance noted by the trial Court is exclusion of all other relatives while bequeathing the property in favour of the plaintiff. It has been found that the will was executed on 06.04.1999 and Sunderabai came to reside with the plaintiff in the year 2002 and she expired in the year 2004.

These findings have been considered by the appellate Court and it has been concluded that the various suspicious circumstances on record had not been explained by the plaintiffs. Thus merely because two attesting witnesses have been examined, it cannot be said that the entitlement of the plaintiff had been duly proved. It was necessary for the plaintiff who was the propounder and beneficiary under the will to dispel the suspicious circumstances that were brought on record. Both the Courts had after considering the evidence on record have held against the plaintiff. These findings are pure findings of facts. The decision relied upon in the case of *Gopal Swaroop* (supra) on the aspect of attestation of the will does not further the case of the plaintiff in the light of the evidence on record. In absence of any explanation of various suspicious circumstances there is no case made out to interfere. The second appeal does not give rise to any substantial question of law. The same is dismissed. No costs.

JUDGE