

IN THE COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

SECOND APPEAL NO. 178/2014

with

CIVIL APPLICTION NO. 393/2014

(Sau. Geetabai w/o Nandlal Jaiswal vs. Sau.Savita w/o Ramkishor Jaiswal)

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

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Mr.C.AJoshi, Advocate for appellant
Mr. R.S.Kurekar, Adv. for respondent

CORAM: A.B.CHAUDHARI, J.

DATED : 3rd March, 2016.

Heard learned counsel for the rival parties.

It is not in dispute that the appellant/plaintiff, on the basis of registered document of will dated 13.7.1999, has claimed that she became legatee and as such owner after the death of her mother-Smt.Kamlabai whose death took place on 18.1.2004. From the submissions of Mr.C.A. Joshi, learned counsel for the appellant, it appears that though the appellant/plaintiff claimed to have the registered will in her favour, she merely produced a photocopy of the same and did not even make an attempt to prove the will in accordance with the provisions of the Evidence Act. It is well-settled legal position that will must be proved, that too in the teeth of the provisions of the Evidence Act, which have been held to be mandatory. Not only that, the will is required to be proved by the propounder thereof. However, in the instant case, perhaps unfortunately, though the appellant/plaintiff entered

the witness box, she did not prove the will at all. It is difficult to fathom as to why the appellant/plaintiff did not produce the registered will on record if the same was in her favour. This was all the more so because the respondent/defendant claims to have a share in the suit property. Since the respondent has not admitted the ownership of the appellant/plaintiff, it was all the more expedient for the appellant to produce the registered document of will in original. The very foundation of claiming the suit house against the respondent, was the registered will and that itself was not produced. The lower Appellate Court, therefore, was justified in not entertaining the claim and reversing the decree of the trial judge.

Mr. Joshi, learned Advocate for appellant made a fervent appeal to make a remand order, in order to remove the lacuna, namely, produce the document of will before the Court so that the appellant would be able to prove it now. This Court is unable to help the appellant since the *lis* must come to an end at some point of time and the litigating parties have full opportunities at the time of trial in the trial court or even at the appellate stage. In the result, the Appeal is dismissed summarily.

Civil Application 392/2014 seeking temporary injunction does not survive. The same is disposed of.

JUDGE