

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**NAGPUR BENCH, NAGPUR.****SECOND APPEAL NO.317/2015**

(Gajanan s/o Dinkarrao Mandekar ..vs.. Sau. Sunita Sudam Kathale & ors.)

AND**SECOND APPEAL NO.318/2015**

(Gajanan s/o Dinkarrao Mandekar ..vs.. Sau. Sunita Sudam Kathale & ors.)

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

Court's or Judge's orders.

Mr. A. S. Kilor, Advocate for appellant.

Mr.J.J.Chandurkar, Advocate for respondent nos.1 to 3.

Mr. M. D. Lakhe, Advocate for respondent no.4.

CORAM : A. B. CHAUDHARI, J.

DATE : FEBRUARY 26, 2016

Heard learned counsel for the parties.

Mr. Kilor, learned counsel for the appellants vehemently contended that the Will Exh.-87 executed by deceased Gopalrao has wrongly been rejected by the Courts below when the same was duly proved. According to him, the relations between the parties were such that it was the appellant-Gajanan, who was looking after affairs of the family of deceased Gopalrao and, therefore, the will was executed out of love and affection by Gopalrao in his favour. He then submitted that the finding for rejecting the will as to the signature found to be allegedly doubtful is also perverse and hence the substantial question of law arises on the aforesaid facts.

Mr. Lakhe, in support of the contentions raised by Mr. Kilor in his appeal, submitted that in

consequence his client would be entitled to continue with the possession of the suit property.

Per contra, Mr. Chandurkar, learned counsel for the respondent, in both these appeals submitted that there are concurrent findings recorded by the Courts below for rejecting the Will Exh.-87 for the reasons more than one. None of the reasons can be said to be perverse and at the outset, Exh.-87 will was wholly suspicious document in the sense that it was a typed document and there is serious doubt about signature of Gopal. He then submitted that Gopalrao was not competent to dispose of the property by will. Therefore, the Courts below rightly accepted the contentions in respect of Survey Nos. 23/3, 96/3 and 106/2 that he could not execute the Will in respect of those survey numbers. He, therefore, prayed for dismissal of the appeal.

Heard learned counsel for the rival parties for quite some time. Perused the impugned orders. I find that the judgment recorded by the appellate Court is in minute details running in about 119 paragraphs. The appellate Court has considered all the facts and evidence in legal and correct perspective and I do not find any element of perversity therein. Undoubtedly, the finding of fact that the Will Exh.-87 was a typed document and the signature of the bequeather Gopalrao was doubtful is a finding of fact, which cannot be

interfered with. That apart, the million dollar question is as to why Gopalrao would deprive all his three daughters of the properties belonging to him when he had no son and as to why he would gift his entire property in favour of Gajanan, the appellant, in the absence of sound and cogent explanation. There was no reason for Gopalrao to divest his daughters, though married, of the property owned by him and give away the property to his nephew. This is a very strong circumstance, which has been recognized as suspicious circumstance while finding out the validity of the Will. The Courts below held so, with which I find no fault, all the more because the same is concurrently held.

Consequently, respondent no.4-Pankaj Madhukarrao Bondre, will have to suffer the decree passed by the Courts below.

In the result, I find that there is no substantial question of law arising in this second appeal and hence following order is passed.

ORDER

(i) Second Appeal Nos.317/2015 and 318/2015 are dismissed summarily.

JUDGE