Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.297 OF 2017

Prakash Anna Bele ...Appellant
Versus
Mahavir Annso Bele & Ors ...Respondents

Mr TS Ingale, *with AA Kulkarni, for the Appellant.*
Mr Mandar Limaye, *for the Respondents.*

CORAM: G.S. PATEL, J
DATED: 14th July 2017

PC:-

1. The Appeal should be disposed of at the earliest. Hence, admit. By consent, taken up forthwith for hearing and final disposal on the basis of the appeal compilation.

2. The limited challenge is that in his Will, the testator (the father of the probate Petitioner and Respondents Nos.2 and 3, and the deceased husband of Respondent No.1) purported to dispose of the Joint Family Property.

3. It is well settled that the questions of title to property are not decided in probate proceedings. The grant or refusal of probate does not either confer or take away title. This is the only controversy.

The clarification I have given is sufficient to dispose of the First Appeal. If the property is indeed joint family property or HUF property, the rights and remedies of the persons who so claim lie elsewhere and these will be unaffected by the grant of probate. All contentions are expressly kept open as to the title of the property and as to whether or not it is joint or undivided family property, ancestral property, or HUF property. The parties are at liberty to adopt appropriate proceedings in a Civil Court of competent jurisdiction to establish their rights in respect of the property, if not already done. The Probate Court could not have decided any question of title. Its observations, if any, in that regard are clearly not binding on a Civil Court that is asked to decide a question of title. Those observations are incorrect and unnecessary and, in any case, are wholly immaterial to the proof of a Will in its solemn form.

4. There is no further point that falls for consideration in First Appeal. The nature of the property and its title was the only objection to the grant of probate.

5. The First Appeal is accordingly disposed of with this clarification.

(G. S. PATEL, J.)