

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

FIRST APPEAL (ST.) NO.3749 OF 2017

Shri Shyam Sunder Giri And Another ... Appellants
Versus

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.....

Mr. Rajesh S. Patil a/w Ms. Swati Pande and Mr. Meet Sawant for the
Appellants.

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CORAM : S.C. GUPTE, J.

DATE : 24 APRIL 2017

P.C. :

. Heard learned Counsel for the Appellants.

2 The First Appeal is admitted. There is no respondent to the First Appeal. In the circumstances, which are noted below, the First Appeal is taken up for hearing forthwith.

3 This First Appeal challenges an order passed by the Court of Civil Judge, Senior Division, Thane, on a miscellaneous application for probate of a will.

4 The deceased Shri Khandeshri @ Khandesari @ Khandeshwari Maharaj Mauni (Shri Giriji Maharaj) died on 24 July 2016 at District Thane. The deceased had executed a will at Mumbai on 4 January 2016. The deceased owned properties, which are mentioned in Schedules I and II

of the application for probate. The deceased was unmarried and left behind no legal heir. The Applicants, who are beneficiaries of the will of the deceased, therefore, prayed for probate of a will. After presentation of the application, a publication notice was issued to all persons in 'Kokan Sakal newspaper'. Nobody, however, appeared in response to the notice. The Trial Court in its impugned order accepted the fact that the proclamation issued by the Court in the prescribed form to appear in Court within one month from the date of proclamation and enter their objection was duly published and no objection was offered by any party. Yet, the Trial Court refused to grant probate purportedly on the ground that execution of the will was not proved. The Trial Court particularly noted that the will was not registered and the medical certificate of the concerned doctor was separately affixed to the original will and was not on the paper of the will. The Trial Court held that, in the premises, the will set up by the Applicants did not inspire confidence. The Trial Court further observed that the Applicants had not examined the doctor issuing the certificate to prove the disposing state of mind of the deceased at the time of execution of the will.

5 It is seen from the order itself that the Applicants had filed alongwith their application for probate, an affidavit of the Applicants as well as affidavits of witnesses who had witnessed the execution of the will, alongwith the original death certificate of the deceased, the original will and xerox copies of Aadhar cards of the Applicants as also witnesses to the will. In the premises, there being no contest as to the execution of the will and there being evidence on record in the form of affidavits filed by the Applicants as well as both witnesses of the will, which testimonies were

unchallenged, there is nothing further the Court was required to do. The purported reasons on which the probate is refused, namely, that the will was not a registered document or that medical certificate of the doctor was not endorsed on the will, but was separately prepared, are not germane to the decision on the factum or validity of execution of the subject will. There was adequate material before the Court, which was uncontested, and on the basis of which, the Trial Court could grant the probate. The impugned order of the Court of Civil Judge, Senior Division, Thane, cannot, accordingly, be sustained.

6 The First Appeal is, in the premises, allowed by setting aside the impugned order passed by the Court of Civil Judge, Thane and allowing Misc. Application No.808 of 2016. No order as to costs.

(S.C. GUPTE, J.)