

the Trial Court that the Plaintiff has not proved that the deceased Radhabai had bequeathed her share in the suit property in his favour by executing a Will dated 22-03-2000 was dismissed. The Appellant/Original Defendant No.1 once again being aggrieved therefrom has preferred the above Second Appeal under Section 100 of the Code of Civil Procedure, 1908.

2. For the sake of convenience, the Appellant and Respondent are referred to hereinafter as per their original status i.e. Defendant No.1 and Plaintiff respectively.

3. According to the Plaintiffs the properties described in paragraph No.1A and 1B of the Plaint are the Suit properties. Defendant No.1 is the uncle of the Plaintiff, Defendant Nos.2, 3 and 4 are aunts, Defendant No.5 is his mother, Defendant Nos.6, 7 and 8 are his brothers and Defendant Nos.9 to 12 are his married sisters. His grandfather Mr. Anandram Jagwani was residing in Pakistan before the partition. After the partition, the Government of India allotted the Suit Property 1A to Anandram Jagwani. Anandram Jagwani purchased the Suit property described in Paragraph No.1B of the Plaint out of his own income in the year 1958. Thus both the suit properties are the properties of Anandram Jagwani. Anandram Jagwani died intestate on 06-01-1981 and after his demise, his wife Radhabai and his two sons namely Narayandas and Hundal and daughters Bhagwanti, Nanki and Rekha succeeded to the suit properties. They each have 1/6 undivided share in the suit properties. Narayandas is the father of the Plaintiff and Defendant Nos.6 to 12.

Narayandas died intestate on 03-12-1998 and hence, the Plaintiff and Defendant Nos.5 to 12 have succeeded to the 1/6 share of their father Narayandas in the suit property and have become the joint owners of 1/6 share in the suit property. In the lifetime of Anandram Jagwani, Defendant No.1 started residing separately in a part of the suit property. After the demise of Anandram, his wife Radhabai started residing with the Plaintiff. The Plaintiff was maintaining Radhabai till her death. Radhabai expired on 20-11-2002. During her lifetime, she executed a Registered Will dated 22-03-2000 and had bequeathed her 1/6 share in the suit property to the Plaintiff. Therefore, after the death of Radhabai, the Plaintiff became the owner of 10/54 undivided share in the suit properties. During the lifetime of Anandram Jagwani or Radhabai Jagwani, there was no partition between the Plaintiff and Defendant No.1. After the demise of Radhabai, the Defendant No.1 has erected one wall in cement and bricks without the consent of the Plaintiff and has obstructed the Plaintiff. Defendant No.1 is trying to alienate the suit properties by claiming himself as the absolute owner. Hence, the Plaintiff has filed the Suit for partition and separate possession of his 10/54 share in the suit properties.

5. Defendant No.1 filed his Written Statement at Exhibit 26 and denied all the allegations. He contended that the suit properties are not the joint family properties. He denied that the Plaintiff has a share in the suit properties as alleged. He contended that Radhabai had never executed any Will and the Will produced by the Plaintiff is a

false and fabricated document. Defendant No.1 further submitted that Radhabai was not the owner of the suit properties, she never understood Marathi language and was not literate. It was further contended that after the death of Anandram Jagwani, the partition took place between Defendant No.1 and his brother Narayandas, mother Radhabai and three married sisters by an Affidavit executed before the Taluka Magistrate, Haveli. All the heirs of Anandram Jagwani have admitted the partition and the same is acted upon. Accordingly, Defendant No.1 and his brother Narayandas got executed their names in the record of City Survey and municipal Corporation. They are paying taxes separately. They also executed a letter of Consent before the public notary on 08-11-1987 and confirmed that the partition took place on 16-06-1986. The deceased Narayandas never challenged this partition. However, the Plaintiff made a false application in the name of deceased Radhabai before the City Survey Officer, Pimpri, Pune. The same was rejected on 22-02-2000. The wall was already existing in the suit properties. The Suit is false and baseless and therefore, deserves to be dismissed.

6. The learned Trial Judge framed the following issues in the Suit :

(i) Does the Plaintiff prove that the Suit properties are joint family properties ? (ii) Does Defendant No.1 prove that the Suit properties are already partitioned ? (iii) Does the Plaintiff prove that deceased Radhabai bequeathed her share in the suit property in his favour by executing a Will dated 22-03-2000 ? (iv) Is

the Plaintiff entitled to partition and separate possession of his share in the suit properties ? If yes, how much ? (v) What Order ?

7. The learned Trial Judge after appreciating the oral as well as documentary evidence, has held that it is not in dispute that the suit properties are acquired by deceased Anandram Jagwani, who is the father of Defendant No.1 and grandfather of the Plaintiff. Anandram Jagwani died intestate and hence his sons and daughters have inherited the suit properties, which are joint family properties. The partition deed relied upon by Defendant No.1 is admittedly not registered and therefore, not admissible in evidence. The consent letter produced by Defendant No.1 is executed for the purpose of being produced before the City Survey Office and other government offices. The Defendant No.1 has not made out any case of oral partition and the purported written deed of partition cannot be taken cognizance of for want of registration. In the absence of evidence of partition, the consent letter has no evidentiary value. No separate water connection is available to the Plaintiff and Defendant No.1 in the suit properties. Infact, Radhabai had filed an Application to the City Survey Office challenging the entries recorded by the City Survey Officer in the property extract. This oral evidence goes to show that there is no partition by metes and bounds. The record shows that the suit property 1B i.e. Survey No.5733 has been sold by deceased Radhabai to one Rukmini Shetty. The said transaction took place on 13-01-1997. Admittedly, the sale deed is executed by deceased Radhabai and

consented by the Plaintiff and Defendants and therefore, the Suit property 1B has no longer remained the suit property. Accordingly, the Trial Court has held that the Plaintiff proved that the suit property 1A is the joint family property and Defendant No.1 has failed to prove that the properties are partitioned.

8. The Trial Court has also noted that the Plaintiff has deposed that Radhabai has executed a Will in his favour which is registered and in order to prove the execution of the Will, the Plaintiff has adduced evidence of Mr. Ashok Thakurmal Chandanani, Mr. Mahesh Laxmandas Nagpal and has also examined Dr. Rajendra Sadashiv Rabade to prove that Radhabai was mentally and physically fit to execute the Will. Witness Ashok Chandanani has deposed that he has witnessed the Will and had signed the Will in the Office of the Registrar. Witness Mahesh Nagpal who is other attesting witness of the Will, deposed that he is not aware as to who has put the thumb impression on the Will. He deposed that he has not seen Radhabai putting her thumb impression on the Will. The evidence of witness Mahesh Nagpal shows that he is not the real attesting witness and therefore, there is no compliance of execution of a valid Will. The Will must be attested by two witnesses. The requirement in respect of the Will is not fulfilled. Though Dr. Rajendra Rabade has deposed that he found Radhabai to be mentally and physically fit, he has admitted that Radhabai spoke to him in Hindi. The Will is typed in Marathi. According to the Defendant No.1, deceased Radhabai was not knowing Marathi. According to the

Plaintiff, Radhabai knew little Marathi. The Trial Court held that therefore, there is a suspicion qua the understanding of Radhabai in respect of the Will. The Plaintiff as well as the witnesses nowhere deposed that the Will or its contents are translated to Radhabai in her language i.e. Hindi and she has signed the same after having understood its contents. The Trial Court has therefore, decided that the Plaintiff has not proved that the deceased Radhabai bequeathed her share in the suit property in favour of the Plaintiff by executing a Will dated 22-03-2000. The learned Trial Judge also held that since the suit properties were the self acquired properties of Anandram Jagwani, after the death of Anandram, his sons, daughters and widow gets equal right. The Trial Judge proceeded to hold that *"after death of Anandram Jagwani, Radhabai, Plaintiff's father Narayandas, Defendant Nos.1 to 4 have equal share in the suit property. The will executed by Radhabai is not proved. Therefore, Radhabai is presumed to be died intestate. Hence, her share devolves upon her sons and daughters. Therefore, after death of Anandram Jagwani and Radhabai, Plaintiff's father Narayandas and Defendant Nos.1 to 4 will get equal share. Therefore, Narayandas was having 1/5 share in the suit property. Defendant Nos.1 to 4 have each 1/5 share in the suit property. Plaintiff, Defendant No.5 to 12 are the legal heirs of Narayandas. Therefore, after death of Narayandas, they will get 1/5 share of Narayandas. As such Plaintiff and Defendant Nos.5 to 12 are having jointly 1/5 share in the suit property"*.

9. The learned Trial Judge therefore, partly decreed the Suit and declared that the Plaintiff and Defendant Nos.5 to 12 have joint 1/5 share in the Suit property and Defendant Nos.1 to 4 have each 1/5 share in the suit property.

10. Being aggrieved by the judgment and order passed by the learned Trial Court, the Defendant No.1 has filed Civil Appeal No.744 of 2012 before the District Judge - 9 at Pune. The Appellate Court after appreciating the oral as well as documentary evidence by its detailed judgment and order, dismissed the Civil Appeal preferred by the Defendant No.1. The Cross Objection filed by the Plaintiffs on the ground that the Trial Court ought not to have held that the Plaintiff has failed to prove the Will dated 22-03-2000 executed by Radhabai was also dismissed.

11. In the above Second Appeal, the Advocate for the Appellants has raised the same grounds namely that after the death of Anandram Jagwani, the suit property was partitioned and the Will executed by Radhabai is genuine. In fact, this Court enquired from the Advocate for the Appellant that if the partition as alleged by him had taken place in the year 1986, how could Radhabai sell the property bearing Survey No. 5733 to Rohini Shetty and why the Appellant admittedly consented to such sale. The learned Advocate for the Appellant had no answer to offer. Therefore, in my view, the Trial Court as well as the Appellate Court after appreciating oral as well as documentary evidence adduced/led by the parties, have by their detailed/reasoned judgment, given concurrent findings namely that the suit properties were not

partitioned and that the Plaintiff has failed to prove that the Will dated 22-03-2000 executed by Radhabai. In view of these concurrent findings of fact, in my view no question of law much less substantial question of law arises in the present Appeal. The above Second Appeal is therefore dismissed.

(S.J.KATHAWALLA, J.)