

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

**SECOND APPEAL NO. 611 OF 2014
WITH
CIVIL APPLICATION NO. 1459 OF 2014
AND
CIVIL APPLICATION NO. 246 OF 2016
AND
CIVIL APPLICATION NO. 1206 OF 2016
AND
CIVIL APPLICATION NO. 582 OF 2017
AND
CIVIL APPLICATION NO. 584 OF 2017
IN
SECOND APPEAL NO. 611 OF 2014**

Dinesh Shantaram Nimbalkar & Anr. ...Appellants

Versus

Pushpa Shantaram Nimbalkar & Ors. ...Respondents

**WITH
APPEAL FROM ORDER NO. 862 OF 2016
WITH
CIVIL APPLICATION NO. 1069 OF 2016
IN**

APPEAL FROM ORDER NO. 862 OF 2016

Shri Ganesh Somnath Jagtap And Ors. ...Appellants

Versus

Dinesh Shantaram Nimbalkar & Anr. ...Respondents

WITH

APPEAL FROM ORDER NO. 969 OF 2016

WITH

CIVIL APPLICATION NO. 1213 OF 2016

IN

APPEAL FROM ORDER NO. 969 OF 2016

Dinesh Shantaram Nimbalkar & Anr. ...Appellants

Versus

Pushpa Shantaram Nimbalkar & Ors. ...Respondents

Mr. S.M. Gorwadkar, Senior Advocate, a/w Mr. Niranjana Mogre, for the Appellants in SA 611/2014 and AO 969/16 and Applicants in CAS 1459/14, CAS 582/17, CAS 584/2017 and CAA 1213/2016.

Mr. Himanshu Kode, a/w Mr. Pankaj Kode, for Appellants in AO 862/2016 and Applicants/Intervener in CAS 1206/2016 and CAA 1069/2016.

Mr. A.V. Anturkar, Senior Advocate, a/w Mr. Prathamesh Bhargude, for Respondents No. 1 to 3 in SA 611/2014.

Mr. P.K. Dhakephalkar, Senior Advocate, a/w Mr. Madhav Jamdar, for Respondent No. 4 in SA 611/2014.

Mr. R.D. Soni, i/b Ram and Co., for Applicants/Intervener in CAS 246/2016.

CORAM : N.M. JAMDAR, J.

DATE : 6 April 2017

ORAL ORDER :

1. These group of matters contains one Second Appeal, two Appeals from Order and various Civil Applications. The Second Appeal is filed challenging the judgment and order passed by the learned District Judge, Pune on 17 January 2014 allowing the Appeal and setting aside the judgment and order passed by the learned Civil Judge and dismissing the Suit No. 1125 of 2001 filed by the Appellants. Appeals from Order have been placed with the Second Appeal by an administrative order. Civil Applications also include applications for intervention.

2. It will be necessary to understand the family genealogy. Ancestor of the parties was one Bhivba Nimbalkar. He was survived by his two sons and three daughters, that is,

the sons, Bhausahab Nimbalkar-Defendant No. 1 and Shantaram-Defendant No. 2. Daughters, Kasabai-Defendant No. 3, Yashodabai-Defendant No. 4 and Krishnabai-Defendant No. 5. Pushpa-Defendant No. 6 is the first wife of Shantaram. Kalyani-Defendant No. 7 and Sulbha-Defendant No. 8 are daughters of Shantaram and Pushpa. Second wife of Shantaram is Sindhu. Dinesh-Plaintiff No. 2 and Rahul-Plaintiff No. 1 are the sons of Shantaram and Sindhu. The present Appeal is filed by the Plaintiffs.

3. Regular Civil Suit No. 1125 of 2001 was filed by Dinesh and Rahul Nimbalkar i.e. the sons of Shantaram Nimbalkar. In this Suit, their uncle Bhausahab was added as Defendant No. 1 Father-Shantaram was joined as Defendant No. 2. Kasabai is the sister of Shantaram i.e. Aunt of the Plaintiffs were joined as Defendant No. 3. Aunts Yashodabai and Krishnabai were joined as Defendants No. 4 and 5. Pushpa-Plaintiff's stepmother, Kalyani and Sulbha, their stepsisters were joined as Defendants No. 6, 7 and 8, upon their intervention, Application being allowed. The Plaintiffs sought relief in respect of the properties bearing Survey No. 41/2A, 41/2B, 65/1, 9/1A, 9/1B and house property, Grampanchayat Nos. 426, 427, 429, 431 and 432 properties situated at Mouje Undri, Taluka Haveli, District Pune.

4. It was the case of the Appellants that the properties were ancestral properties of Bhivba Arjuna Nimbalkar, which came to his share. Property described in 1B was a self acquired property of Bhivba Arjuna Nimbalkar. It was stated that Bhivba expired on 21 October 1985. It was further stated that it had come to the Plaintiffs knowledge recently that on 7 December 1984 he had executed the Registered Will when the Appellants were around 9 to 6 years old, bequeathing the suit properties to them. It was only recently they came to know that they had right in the properties by way of Will executed by their grandfather. They alleged that, the Defendant No. 1 their uncle and Defendant No. 2 their father, in collusion and with malafide intention, tried to partition the property and gave an application to the Tahsildar. It was contended by them that such partition bypassing their right under the Will could not be binding on them and was illegal and accordingly, they sought a declaration that the Appellants have become owners of the suit property by way of Will executed by Bhivba and partition of the properties is done by Defendant No. 1 and Defendant No. 2 be declared as illegal. Consequently, directions in respect of the possession were sought.

5. Defendants No. 1 and 3 i.e. Bhausahab and the

heirs of Kasabai filed the Written Statement and contested the claim of the Appellants. They denied the claim that the properties in schedule 1B or the house properties were self acquired property of Bhivba. It was denied that Bhivba had purchased his properties out of his own income. The factum of Will was denied by the Defendants. They also contended that the original Will has not been produced before the Court. The Defendants No. 6, 7 and 8 also filed their Written Statement and contended that the exclusive claim of the Appellants to the suit property on the basis of the Will was not genuine as the Will was suspicious and fraudulently prepared. It was stated that the partition had already taken place between Defendants No. 1 and 2 and both Defendants No. 1 and 2 had received equal share. They have also reiterated that the partition has been made before Tahsildar on 7 April 1989.

6. On behalf of the Appellants Dinesh stepped in witness box and he was cross-examined. Witness Tapkir was examined in respect of Will. On behalf of the Defendants No. 1, Bhausahab deposed in cross-examination, so also Defendant No. 6 Pushpa i.e. the stepmother of the Appellants. The parties also produced documentary evidence. On this evidence parties went to trial. The learned Civil Judge framed issues as regards the validity of the alleged Will dated

17 December 1984 as to whether the Plaintiffs had proved that they had become owners as per the Will; whether they are entitled for declaration of title; whether the Appellants prove that the partition of survey No. 41/2 and 9 were void; whether the Suit was within limitation. Additional issues were framed as to whether Defendants No. 6 and 8 prove that they have equal share as that of Defendant No. 2 and whether the property described in paragraph 1B was self acquired property.

7. The learned Civil Judge held that the execution of the Will was proved, it was however, held that the Appellants were not entitled for a declaration of the title, except to the extent of their share in the partition. The Appellants failed to prove that the partition earlier effected was void. The Suit was held to be within limitation and the Appellants were held to be entitled to the possession in some of the properties from Defendant No. 2. As regards the additional issue, the learned Judge held that the Defendants No. 6 to 8 could not prove that the Will was fraudulently prepared. It was held that the property described in paragraph 1B was a self acquired property. Accordingly, by the judgment and decree dated 6 February 2012, the learned Civil Judge partly decreed the Suit and declared that the Appellants-Plaintiffs were entitled for

the land ad-measuring 14 Acres 3 Gunthas out of old Survey No. 39/1, Yeolewadi, Taluka Haveli, District Pune. It was directed that if the land is already disposed of by the Defendants, the Appellants-Plaintiffs were entitled for the total consideration received by the Defendants No. 1 and 2.

8. Appeal bearing No. 130 of 2012 filed by the Defendants No. 6, 7 and 8 i.e. Pushpa – stepmother of the Appellants-Plaintiffs and her two daughters. The learned District Judge framed issues regarding limitation and held that the Suit was within limitation. The learned Judge held that the Appellants did not prove that the Will dated 7 December 1984 was genuine and free from all suspicious circumstances. The learned District Judge, held that the Plaintiffs were not entitled to relief of declaration of title and possession of the suit property. Accordingly, by judgment and order dated 17 January 2014, the learned District Judge set aside the judgment and decree passed by the learned Civil Judge and dismissed the Suit. Cross objections filed by the Appellants-Plaintiffs were also dismissed.

9. Thereafter, the present Second Appeal has been filed. In this Second Appeal, Civil Application No. 1459 of 2014 is filed seeking interim reliefs. In this Civil Application,

the Appellants have sought an order of injunction to restrain the Respondents, their heirs, representatives or any other person claiming through or under them by way of injunction from selling, transferring, or creating any third party right, title or interest in the suit properties being Survey No. 9/1A, Survey No. 9/1B, Grampanchayat No. 426, 427, 429, 431 and 432 at Mouje Kondhave, Taluka Haveli, District Pune and Survey No. 65/5 situated at Undri, Taluka Haveli, District Pune and Survey No. 41/2A, Survey No. 41/2B situated at Yeolewadi, District Pune.

10. Additional Affidavit was filed by the Appellants on 16 January 2015 stating that part of Survey No. 9 is sold by Defendants No. 6 to 8 on 5 December 2014. The Affidavit in Reply is filed by Defendant No. 1 placing on record that the Development Agreement was executed between the Appellants and one M/s. A.P. Bhandari Developers on 12 November 2012 in respect of part of the property Survey No. 9. It was sought to be placed on record that in this Agreement Defendant No. 2 father of the Appellant was a confirming party. The said M/s. A.P. Bhandari Developers has filed a Civil Application No. 246 of 2016 for intervention. Another Affidavit dated 18 January 2017 is also filed by Defendant No. 1 seeking to place on record various transactions of Sale Deed

in respect of the suit properties. The Said Deed dated 1 January 2001, 22 October 2001 were sought to be placed on record. The Appellants also filed another Affidavit dated 1 October 2016 stating the execution of the joint venture agreement with M/s. A.P. Bhandari Developers and controverted the allegations made against them regarding unauthorised construction of the suit property. There is one more Civil Application No. 1206 of 2016 for intervention been filed by Ganesh Jagtap and others. They have sought intervention in the Second Appeal on the ground that the Defendants No. 6 to 8 and the Appellants have executed a Sale Deed in their favour dated 5 December 2014 and the Appellants have also filed a Suit challenging the said transaction. The Appeal from Order No. 862 of 2016 and Appeal from Order No. 969 of 2016 have been directed to be placed along with the Second Appeal by way of administration orders. The Appellants have also taken up a Civil Application No. 584 of 2017 for additional evidence. By the Civil Application, the Appellants have sought to place on record Plaint in Suit No. 1176 of 2000 and the order passed upon the same on 29 July 2010.

11. As the narration of facts would show, two central points that arise for consideration is, what is the effect

of two partitions that have taken place i.e. partitions dated 16 September 1985 and 7 April 1989 and whether said Will executed in favour of the Appellants can be relied upon and relief be granted in favour of the Appellants based thereon. Both the Plaintiffs and Defendant No. 2, and Defendants No. 6 to 8 have created third party rights in respect of some part of properties and substantial construction has come up on those properties.

12. The alleged Will was stated to be executed by Bhivba Nimbalkar, that is the grandfather of the present Plaintiff Dinesh and Rahul, on 7 December 1984. Thereafter, the Deed of Partition was entered into on 16 September 1985. On 21 October 1985, Bhivba expired. On 7 April 1989 partition took place before the Revenue Authorities and the present Suit was filed on 21 July 2001. Will is at Exh.97, Partition Deed at Exh.92 and partition affected is before the Tahsildar is at Exh.71. By way of partition, the Defendants No. 1 and 2, that is the brothers, have been allotted equal shares. It is the case of the Appellants that since Will was executed in their favour by their grandfather, the partition bypassing their rights given under the Will, will have no effect and under the Will the suit properties come to their share. According to the Appellants, they were minor at that time,

when the Will was executed and after they had become major, they instituted the present Suit. It is the case of the Defendants-Respondents herein that the Will is not genuine and has been created only to somehow set aside the partition which has been already effected. Defendant No. 2, the father of the Plaintiffs, has not filed any Written Statement not stepped in the witness box. Therefore, the central points of debate is, whether view taken by the learned District Judge that the Will in question cannot be relied upon is perverse or otherwise. This point will have to be decided within the parameters of Section 100 of the Code of Civil Procedure, 1908.

13. Mr. Gorwadkar, the learned Senior Advocate for the Appellants contended that First Appeal No. 130 of 2012 filed by the Appellants was not maintainable and they had no locus to file the same. He submitted that the Defendants No. 6 to 8 had earlier filed a Suit No. 1176 of 2000 on 6 July 2000 for the same reliefs wherein share in the property was sought and this Suit was not prosecuted and was dismissed for non prosecution on 29 July 2000. The learned Counsel submitted that in view of the provisions of Order XXIII Rule 1 of the Code of Civil Procedure, 1908, the Defendants No. 6 to 8 have deemed to have abandoned their

challenge to the partition. The learned Counsel submitted that no Appeal was filed and therefore, the Defendants No. 6 to 8 were not entitled to file an Appeal seeking to agitate the same issue which they had abandoned earlier. The learned Counsel for the Defendants No. 6 to 8 contended that since Defendant No. 6- the first wife of Shantaram and Defendants No. 7 to 8 her daughters have become co-parcener and they had independent share in the properties and this ground has not been urged by the Appellants when the Defendants No. 6 to 8 had filed an Appeal and this objection ought to have been taken for.

14. Only for the sake of appreciating the contention, I have permitted the learned Counsel for the Appellants to place the copies of the Plaint of Suit No. 1176 of 2000 and order passed, which the Appellants have sought to produce by way of a Civil Application No. 584 of 2017 in this Appeal. The dismissal of their Suit for non prosecution is of the year 2010. An independent and different right has conferred upon the Defendants No. 6 to 8, the Hindu females, in the property. Their legal status therefore, has undergone a change. Furthermore, if the wife and children, who were admittedly parties in the Suit, were being deprived of their rightful share, and that no issue regarding maintainability of

the Appeal at the behest of the Defendants No. 6 to 8 was raised, neither any argument was made before the learned District Judge, I am not inclined to set aside the impugned judgment and order, only on that count.

15. Turning now to the alleged Will, which is stated to have been executed on 7 December 1984 by Bhivba. The document states that Bhivba had certain ancestral properties. He had started a business of stone crushing and he had an independent income from which he purchased certain properties. He stated that his daughters and sons were settled. Thereafter, he gave details of the properties which were stated to be ancestral properties and stated that the properties which were described in clause 8 was being bequeathed by him to the Appellants. The said Will bears signatures of the two witnesses and the executant. The next document to be considered is the Partition Deed. This Partition Deed dated 16 September 1985 states that Bhivba was partitioning the property and the details of the partitions were given. While distributing the properties, it was stated that out of Survey No. 39/1, 14 acres 3 Gunthas land was given to the Appellants and it was stated that Bhivba was cancelling the Will Deed which was executed earlier.

16. It was sought to be contended by the learned Mr. Anturkar and Mr. Dhakephalkar, the learned Senior Advocates for the Defendants that the Partition Deed dated 16 September 1985 would act as codicil to the Will. It was contended that under Section 70 of the Succession Act, 1956 methodology in respect of the revocation of unprivileged Will has been specified. It was urged that no separate methodology is specified in respect of the codicil and all that it required is some writing declaring that the Will is revoked and it is to be executed in the same manner as an unprivileged Will is required to be executed. It was contended that Bhivba has expressed his intention to revoke the Will which was also signed by two witnesses. Mr. Gorwadkar submitted that the methodology for proving the Will is by examining the attesting witness and the same applies to the codicil as well. It was therefore, contended that the Deed dated 16 September 1985 cannot be considered as codicil.

17. The existence of Partition Deed dated 16 September 1985 has been held to be proved by both the Courts. In fact in the Plaint itself shows that the Appellants-Plaintiffs have referred to the Deed and have sought to contend that it is by way of these actions of Defendants No. 1 and 2 that the rights of the Appellants have been sought to be

bypassed. The learned Civil Judge has also recorded a finding that the Plaintiffs had accepted that Bhivba has signed the said Partition Deed. Even if, the said Partition Deed is not considered as codicil, it can certainly be used to find out whether the Will relied upon by the Appellants is free from suspicious circumstances or otherwise. Therefore, even assuming the contention of the learned Counsel for the Appellants is accepted that the Partition Deed dated 16 September 1985, more particularly, when it seeks to cancel the earlier Will, cannot be treated as a codicil, this document which is now has been accepted by both the Courts, can be looked into as surrounding circumstances to find out, whether the Will is free from suspicious circumstances.

18. That brings to the main questions in this Appeal as regard the Will dated 7 December 1984. It was contended by Mr. Gorwadkar that the Will dated 7 December 1984 is duly proved and that Bhivba has signed the said Will, and the contents therein ought to have been given affect to. It was contended that it was upon the Defendants to show, since the Will was held to be validly executed, that the Will was suspicious. Reliance was placed on the decisions of the Apex Court in the cases of *Smt. Indu Bala Bose & Ors. Vs. Manindra*

*Chandra Bose & Anr.*¹, *Bharpur Singh & Ors. Vs. Shamsher Singh*² and *Mahesh Kumar (Dead) By LRs. Vs. Vinod Kumar & Ors.*³

19. The Apex Court, in the above decisions, has laid down the basic proposition that the onus is on the propounder to remove all doubts and explain suspicious circumstances to the full satisfaction of the Court. Though the facts of each case may differ, there is no deviation from this basic proposition and the duty casts upon propounder of a will. The learned District Judge found that this burden has not been discharged by the Appellants. The question is whether this conclusion gives rise any question of law. Question of law would arise if the conclusion is perverse. If it is a possible view after taking into consideration all aspects, then this finding cannot be interfered with.

20. Perusal of the decision of the learned District Judge would show that the learned District Judge found various suspicious circumstances which shrouded the Will, were not satisfactorily explained. The learned District Judge held that there was no evidence or any assertion either in the

¹ (1982)1 SCC 20

² (2009)3 SCC 687

³ (2012)4 SCC 387

Plaint or in the evidence or in the Will that Bhivba had any independent source of income, which was necessary in view of existence of joint family nucleus. The learned District Judge found that Defendant No. 2 father of the Appellants, against whom allegations were made, did not step into the witness box and also did not explain the factum of ownership of the properties by Bhivba. It was held that nothing was shown as regards the documentary evidence to prove the existence of house property and also whether they belong to the testator. The learned District Judge also held that the property Survey No. 65/1 was also sold, yet included in the Will. The learned District Judge found that the Will did not surface for 16 long years and the Defendant No. 2 executor did not take any steps, was the most suspicious circumstances. The learned District Judge also noted that the partition was given effect to and the properties were also renumbered. The learned District Judge examined the evidence of the attesting witnesses. The learned District Judge also held that the properties described in paragraph 1(A) and 1(B) was not in possession of either of the Appellants or Defendants No. 1 and 2. Considering the cumulative effect thereof, the learned District Judge found that the Will was not free from suspicious circumstances.

21. Mr. Gorwadkar submitted that each of the factors held as suspicious were duly explained by the Appellants and there is nothing suspicious about the same. The learned Counsel submitted that as far as independent source of income of Bhivba is concerned, in the Will itself, it is mentioned that he had stone crushing business and the learned District Judge has committed clear error in not assessing the averments itself. He submitted that therefore, this cannot be considered as suspicious circumstances. It was urged by the learned Counsel for the Defendants that wife of Bhivba was not given any share whatsoever and that too, without any explanation, which fact is also glaring. It was also submitted by them that the mother of the Appellants, who was guardian under the Will, also did not take any steps.

22. Mr. Gorwadkar countered the submissions by relying upon the decision of the Apex Court in case of *Mahesh Kumar (Dead) By LRs. Vs. Vinod Kumar & Ors.* (supra), wherein the Apex Court followed a case of *Uma Devi Nambiar Vs. T.C. Sidhan*⁴ and submitted that merely because a relation have not been gained any share, it cannot amount to a suspicious circumstances.

⁴ (2004) 2 SCC 321

23. However, though this factor alone may not be held suspicious, what is to be seen and is emphasised by the Apex Court is the cumulative effect. The Apex Court in *Uma Devi Nambiar Vs. T.C. Sidhan* (supra) has held that the fact that the natural heirs have been excluded 'by itself' is not a suspicious circumstances. Mr. Gorwadkar would have been right if there existed no other circumstances, then exclusion of the wife of Bhivba by itself would not have amounted to the suspicious circumstances. But there are other circumstances. Therefore, this factor, which has gone unexplained, will have to be read along with the other factors. That no provisions has been made in respect of wife of Bhivba in the Will, cannot be disputed. Neither the Will refers as to the reason why she is excluded.

24. The next suspicious circumstances, upon which heavy reliance was placed by the learned Counsel for the Defendants as well as the learned District Judge, is the time period between the execution of the alleged Will and filing of the Suit by the Appellants and the events that had transpired in between.

25. When Will was executed by Bhivba, he had made Defendant No. 2 father of the Appellants as executor.

The Defendant No. 2, as noted by the learned District Judge, did not act upon the said Will and the Will remained dormant. In fact, Defendant No. 2 entered into partition in the year 1985 and in the year 1989. In natural course of events a father would not permit a complete deprivation of his sons' rights under the Will, of which he is the executor. Neither the mother, who is the guardian under the Will, will do. Therefore, it was upon the Appellants to explain as to under what circumstances the Will surfaced after 16 years and their father and mother did not act in their interest. Only explanation offered by Mr. Gorwadkar is that after the Appellants become major within period of 4-5 years, the Suit is filed. The question will remain about complete inaction on the part of the Defendant No. 2, this inaction has to be seen in the light of the allegations of the Defendants that the Suit was filed at the behest of Defendant No. 2 and Will was only a got up document to resile away from the Partition Deed.

26. Therefore, the case put up by the Appellants as regard the time period will have to be noticed. The reaction is sought to be provided. The Appellants in paragraph 7 of the Complaint stated in general and vague terms that the Defendants No. 1 and 2 have acted in collusion. There is absolutely no reason given as to why the Defendant No. 2-father would

have acted against the interest. There is neither any dispute pending between the father and the sons nor any details have been given thereof. The learned Counsel for the Defendants have pointed out that the Appellants and Defendant No. 2 are in fact staying in the same building. The theory that Defendant No. 2 has acted against Defendants is impossible to believe. In the Affidavit in Reply filed in the Application for intervention filed by M/s. A.P. Bhandari Developers, it has been placed on record that in the transaction in favour of the intervener by the Appellants, Defendant No. 2 that is father has acted as a confirming party. This will would show that the reason put forward by the Appellants the Will did not surface for 16 years because Defendant No. 2 deliberately acted against their interest, is completely bogus.

27. In the cases cited by Mr. Gorwadkar, the Apex Court has laid down various principles regarding the approach of the Courts in respect of the suspicious circumstances in the Will. Ultimately, as explained by the Apex Court, it should be the satisfaction of prudent mind and judicial conscience. Even though Mr. Gorwadkar has sought to give explanation as regards the other factors held by the learned District Judge as suspicious, there is hardly no explanation as to why the Defendant No. 2 did not act as

executor. Even the mother of the Appellants as a guardian also did not take any steps. These circumstances have gone completely unexplained. Defendant No. 2 has not filed any Written Statement nor stepped into the witness box. If needless and unwarranted allegations were made by the sons i.e. Appellants, the Defendant No. 2 would have immediately filed the Written Statement and controverted the same. Complete silence on the part of the Defendant No. 2 is loud enough.

28. It has been proved on record and also accepted by the Appellants-Plaintiffs that pursuant to both the partitions of the year 1985 and 1989, the parties have acted and third party rights were also created. The unexplained position of the Will as narrated above from the year 1985 till filing of the Suit, it is the most suspicious circumstances, which has been rightly taken note of the learned District Judge. It is not the position of law that the moment the Will is proved, the Court has to brush aside the suspicious circumstances and must give the effect of the Will as it is. No absolute position of law to that effect is shown. In fact, it is to the contrary, that the conscience of the Court must be satisfied that the Will is free from suspicious circumstances.

29. The Cross objections filed by the Appellants were dismissed by the learned District Judge. Even adjudication of the cross objections of the Appellants will depend on the factum of genuineness of the Will.

30. The manner in which parties have acted, after the partition, clearly shows that the Will and the present litigation is only set up by Defendant No. 2 to resile away from the partition, as contended by the learned Counsel for the Defendants. Having held that there is no perversity to the conclusion of the learned District Judge that the Will is not free from doubt, I do not find that any question of law arises for consideration. The Second Appeal is accordingly, dismissed.

31. As far as the Applications for intervention are concerned, since I am not inclined to interfere with the impugned judgment and order passed by the learned District Judge, dismissing the Suit, no orders need to be passed on the intervention Applications, which the learned Counsel for the Intervenor also agree. The Civil Applications are disposed of.

32. As far as the Appeals from Order are concerned, the learned Counsel for the parties agree that they

can be heard independently before the appropriate Court. Registry to take necessary steps to place the Appeals from Order before the appropriate Court.

33. All pending Civil Applications are accordingly, disposed of.

[N.M. JAMDAR, J.]