

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

**SECOND APPEAL NO. 1132 OF 2012
IN
CIVIL APPEAL NO. 165 OF 2007
IN
REGULAR CIVIL SUIT NO. 654 OF 2002
ALONGWITH
CIVIL APPLICATION NO. 2189 OF 2012**

Shri Jayant Annarao Hingmire & Anr. ...Appellants

vs.

Shri Arvind Annarao Hingmire ...Respondent

Mr.G.S. Godbole I/b. Drupad S. Patil for Appellants.

Mr.Surel S. Shah for Respondent No.1.

CORAM : S.C. GUPTE, J.

18 JANUARY 2017

P.C. :

Heard learned Counsel for the parties.

2 This second appeal impugns a judgment and order passed by the Court of Principal District Judge, Solapur in Regular Civil Appeal No.165/2007. By the impugned order and judgment, the learned District Judge allowed the regular civil appeal and set aside the judgment and decree dated 26 April 2007 passed by 4th Joint Civil Judge, Junior Division, Barshi in Regular Civil Suit No.654/2002. By his judgment and decree, the learned Joint C.J.J.D. had dismissed RCS No.654/2002 filed by the Respondent herein.

3 The subject matter of controversy concerns the title of the Respondent (original Plaintiff) to the property of which possession was sought from the Appellants (original Defendants). The title was claimed by

the Respondent on the basis of a will executed by his deceased father, Annarao, who was also the father of Appellant No.1 herein. Deceased Annarao had three other sons and a daughter. He also had a widow surviving him. The Respondent's suit was dismissed by the trial court holding that the will purportedly executed by deceased Annarao was not duly proved. The first Appellate Court, however, reversed that finding holding that the will of deceased Annarao was duly proved by the Respondent. The first Appellate Court has extensively gone into the evidence before the court and circumstances attending the making of the will. The court noted that the Respondent had duly examined the attesting witness as well as the scribe of the will deed, both of whom were Advocates. The attesting witness deposed that deceased Annarao, who himself was an Advocate, had read the contents of the will and having found the contents to be correct put his signature on the will. The witness also testified to the presence of the attesting witnesses, affixing of the signature of deceased Annarao in their presence and their own signatures being made on the will in the presence of deceased Annarao. It appears that on the very same day of its execution deceased Annarao himself submitted the will for registration in the Sub-Registrar's office. The witnesses testified to the identity of the will and the truth of its contents. The Appellate Court, after carefully going through the cross-examination of both the attesting witness and the scribe, recorded its satisfaction that there was no ground to disbelieve their testimony on the point of execution of the will by deceased Annarao. Having accepted the proof of execution of the will, the Appellate Court directed its inquiry to the alleged suspicious circumstances surrounding the making of the will as contended by the Appellants herein. The Appellate Court noted that there were no specific averments concerning the alleged suspicious circumstances in the written statement of the Appellants and that there was

no evidence adduced concerning such circumstances or the exercise of undue influence by the proponent of the will, i.e. the Respondent, on the deceased Annarao, save and except the testimony of Appellant No.2 (wife of Appellant No.1). Appellant No.2 had obviously no personal knowledge of any family affairs prior to the year 1988 when she was married to Appellant No.1. Appellant No.1 himself did not step into the witness box to make out any case of undue influence. The Court, however, noted that the deceased Annarao was an Advocate having practised for 40-50 years at Barshi; that the will was made as far back as in 1982; that the deceased Annarao was alive for about 19 years after the execution of the will; that there was absolutely no evidence on record to show that the deceased was not physically or mentally fit at the time of execution of the will; and that there was absolutely no evidence or circumstance brought on record to show that the deceased had no intent to bequeath the suit property to the Respondent or that the Respondent had exercised undue influence on the deceased for execution of the will. The Court, in particular, noted that the Respondent was not present either at the time of execution of the will or at the time of its submission to the office of the Sub-Registrar for registration by the deceased Annarao. There was no evidence even to show that prior to the date of execution of the will, the deceased Annarao was residing with the Respondent, when the Respondent would have had opportunity to exercise influence on the deceased Annarao. There was one more important circumstance considered by the Appellate Court, namely, the deceased Annarao having issued a public notice in newspapers specifically taking up a position that the suit property was his self-acquired property and his sons or married daughter or wife had no concern with the suit property at all. From all these circumstances, and not only the recitals of the will itself by which the deceased Annarao had expressed its expectations from the Respondent,

the first Appellate Court came to the conclusion that the registered will of deceased Annarao was duly proved and that there was absolutely no suspicious circumstance on record to show that the will was executed under pressure or undue influence of the Respondent. The court came to the conclusion that the property was bequeathed by deceased Annarao to the Respondent whilst being mentally and physically fit and with consent and free mind.

4 The appreciation of the evidence by the first Appellate Court is absolutely proper and beyond reproach. The conclusion drawn by the Appellate court is not only a possible conclusion but a pre-eminently probable conclusion and no fault can be found with the same.

5 There is, accordingly, no merit in the second appeal and the same is dismissed. No order as to costs.

6 Learned Counsel for the Appellants applies for stay. There is no interim order in favour of the Appellants at least since 2012. There is no question of stay, therefore, at this stage. Learned Counsel for the Respondent, however, on his own makes a statement that he shall not execute the judgment and decree passed by the District Judge for a period of six weeks from today. The statement is accepted.

7 In view of the dismissal of the second appeal, the civil application does not survive and the same is also dismissed.

(S.C. Gupte, J.)