

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

SECOND APPEAL NO.466/2017

Gulabrao s/o Laxman Mankhair..vs..Sau. Banabai w/o Shankar Kolhe & anr

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. J. B. Gandhi, Advocate for appellant.
Mr. A. Deshpande, Advocate for respondent no.1.
Mr. S. D. Chopde, Advocate for respondent no.2

CORAM : V.M. DESHPANDE, J.

DATED : NOVEMBER 20, 2017

1. Heard Mr. J. B. Gandhi, Advocate for appellant,
Mr. A. Deshpande, Advocate for respondent no.1 and Mr.
S.D. Chopde, Advocate for respondent no.2.

2. The present second appeal is filed by the original
defendant no.1. The respondent no.1 is the plaintiff. She
has filed the suit for permanent injunction against the
appellant and the respondent no.2. In the said suit, the
learned trial Court on 10.09.2009 granted the decree of
injunction against the appellant thereby restraining him
from causing obstruction to the respondent no.2-plaintiff's
possession over the agricultural field and house property.
The appeal carried by the appellant before the learned lower
appellant Court was dismissed by the learned District Judge-
2, Akola and confirmed the decree of injunction. Against
that, the present second appeal is filed.

3. According to the learned counsel for the appellant, both the Courts below have erred in recording a finding that the respondent no.1 is entitled to the decree of injunction. He submitted that by virtue of the will executed by Kasabai in his favour on 13.02.1996 in respect of Gat No. 187 and house property bearing No.419, he became the owner and therefore the Courts below committed error in granting injunction against the lawful owner.

4. In the suit filed by the respondent no.1 for injunction, the appellant set up the will of Kasabai and claimed that by virtue of the said will executed by Kasabai, he became the owner.

5. After hearing the parties and after perusing the record, following facts emerge.

One Jagdeo Lande was having two wives. One Mirabai who expired on 04.08.1945 and another was Kasabai. The plaintiff Banabai is daughter of Jagdeo through Kasabai. Kasabai was also having one son Maroti who died in the year 1991. Durgabai, defendant no.2 is daughter of Jagdeo from Mirabai.

6. It is not in dispute that Gulabrao, the present appellant is not in any way related to the executant of the will Kasabai. On the contrary, it is proved on record that Kasabai and Banabai for a particular period, availed the services of Gulabrao for agricultural operations.

7. Even it is an admitted position on record that after the death of Kasabai, Gulabrao did not attend her obsequies.

8. It is also an admitted position that the suit property in question was an ancestral property of Jagdeo and after his death, Kasabai-his widow, his daughter Banabai-the plaintiff and the predeceased son of Kasabai-Maroti, inherited the same. As per the will in dispute, Kasabai bequeathed the entire property to Gulabrao which in my view, both the Courts below have rightly found that Kasabai was not competent to execute the will in respect of the entire suit property since its nature was an ancestral one.

9. Further, both the Courts below have rightly recorded a finding of fact that Gulabrao, the appellant failed to prove that Kasabai executed will on 13.02.1996 in his favour. Both the Courts below found that the attesting witness is father in law of Gulabrao and another witness who was examined by Gulabrao is the close friend of father in law of Gulabrao. Further, both the Courts below, in my view have correctly recorded a finding that at the time of death, Kasabai was in the house of plaintiff-Banabai whereas, according to the defendant, her will was found in an open box which was kept in the house of Kasabai. Both the Courts below have also bestowed thoughtful consideration to the aspect that the will is totally silent as to why Kasabai is not giving any share to her daughter and is

alienating the property through an instrument of will entirely to a stranger.

10. The above discussion shows that no substantial question of law emerges and all are the finding of facts which, in my view, were correctly recorded by the Courts below. The appeal is therefore rejected.

JUDGE

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