

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Second Appeal No. 430 of 2016
[Devidas Laxmanrao Ingale & another Vs. Uttamrao Laxmanrao
Ingale & another]

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

Court's or Judge's orders

Ms. P. S. Kosare, Adv., for the appellants.
Mr. H.I. Kothri, Adv., for the respondents.

CORAM : A. S. CHANDURKAR, J.

DATE : 21st August, 2017

This appeal has been filed by the original defendants who are aggrieved by the decree for partition and separate possession passed by the appellate Court.

One Laxmanrao was married with one Manjulabai. They had three sons and a daughter. Two sons filed a suit for partition of the ancestral property after the death of Laxmanrao and Manjulabai. The defendants raised a plea that Manjulabai in her capacity as a "Karta" of the family had executed Will dated 28th December, 2001 in favour of defendant no.1 - Devidas. It was, therefore, pleaded that the defendants had become owners by virtue of said Will. The trial Court dismissed the suit by upholding the right of Manjulabai to execute the Will. The appellate Court, however, held

the said Will to be not proved and also recorded a finding that she had no capacity to execute the same. Accordingly, decree for partition came to be passed.

The learned counsel for the appellants submitted that the appellate Court was not justified in holding that Manjulabai had no right to execute the Will. Being the widow of Laxmanrao, she had all the authority to dispose of the joint family property and on that basis the Will at Exh.49 came to be executed. It was further submitted that by examining an attesting witness, the Will had been duly proved. It was, therefore, submitted that the trial Court had rightly dismissed the suit and that decree deserves to be restored.

The learned counsel for the respondents supported the judgment of the appellate Court. It was submitted that Manjulabai as a widow had no right to alienate the suit property by executing the Will. The Will was also not proved in accordance with law, inasmuch as the attesting witness admitted that he had signed the said document without being ware of its contents. It was, therefore, submitted that the appellate Court rightly granted 1/3rd share each to the sons of Laxmanrao.

Perused the impugned judgment as well as the records of the case.

It is not in dispute that the suit property was the ancestral property of Laxmanrao. After his death, though Manjulabai was looking after the property, she had no right to execute the Will in favour of defendant no.1 before the suit property was partitioned. The evidence led by the defendant no.1 is also not sufficient to prove the Will at Exh.49. The attesting witness clearly admitted that he was not aware of the purpose for which he had signed the Will. The finding recorded by the appellate Court is, therefore, according to law.

While passing the decree for partition, the appellate Court has taken into consideration the construction of the house property made by the defendant no.1 and has accordingly directed the same to be allotted to him as his share. The judgment of the appellate Court is found to be in accordance with law. The appeal does not give rise to any substantial question of law. Same is, therefore, dismissed. No costs.

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Judge