

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

CIVIL APPLICATION NO.1118/2017 IN SECOND APPEAL NO.181/2013

Smt. Gumfabai Waman Fulzele & ors. ..vs.. Smt. Vimal Govindrao Tamgadge & anr.

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

Court's or Judge's orders.

Mr. S. V. Sohoni, Advocate for appellant.
Mr. A. N. Ansari, Advocate for respondents.

CORAM : V.M. DESHPANDE, J.

DATED : OCTOBER 3, 2017

This is an application for early hearing. The application is moved by the respondents. The respondents -are original plaintiffs. They preferred a suit in the year 2000 claiming share in the suit property on the basis of the will dated 09.08.1990, alleged to have been executed by their mother Late Rukhmabai. The said suit was dismissed. No appeal was carried against the said order.

The suit then reaches to the lower appellate court in view of the recording of the finding in respect of issue Nos.2 and 3 by which the learned Judge of trial Court disallowed the claim of the present appellants-original defendants that Rukhmabai allegedly executed a will dated 16.02.1998 in respect of her share. The learned lower appellate court, by the impugned judgment, concurred with the findings recorded by the learned Judge of the trial Court. Against the said concurrent findings, the present appeal is filed.

On 02.04.2014, this Court has admitted the appeal.

The reason for moving the present application on behalf of the original plaintiff is that they accepted the verdict of the learned Judge of the trial Court dismissing their suit. However, subsequently, they preferred another suit i.e. Regular Civil Suit No.259/2008 for partition and claimed the share in the property left by Rukhmabai on the basis of incoherence. It is stated in the application and it is also disputed by the learned counsel for the appellant-original defendant that in view of the pendency of the present second appeal, an application under Section 10 of the Code of Civil Procedure was moved by the present appellants and the learned Judge of the trial Court in the Regular Civil Suit No.259/2008 has stayed further progress of the suit.

In view of the aforesaid, Mr. Ansari, learned counsel for the respondents-applicants prayed for early hearing of the appeal.

Mr. Sohoni, learned counsel for the appellant has no objection for grant of early hearing.

In that view of the matter, fix this second appeal for final hearing in the second week of November-2017.

The application is allowed and disposed of accordingly.

JUDGE