

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 226 OF 2016

Pandurang Trimbak Waghmare (Gurav)
(deceased) Thr LRs ...Appellants
Versus
Balkrishna Shankar Gurav (Waghmare) & ...Respondents
Ors

Mr. Amey Deshpande, for Appellants Nos.1 to 5.
Mr. Girish Agrawal, for Respondents Nos.1 to 3 & 6.

CORAM: N. M. JAMDAR, J
DATED: 31 JANUARY, 2018

Oral Order:-

1. By this Second Appeal, the Appellants – original Plaintiffs have challenged the concurrent judgments and orders passed by the learned Civil Judge, Junior Division, Dindori and the learned District Judge, Nashik, dismissing the Suit and the Appeal filed by the Appellants.
2. The Appellants filed a Regular Civil Suit No.71 of 1994 in the Court of Civil Judge, Junior Division, Dindori, seeking a declaration that the Respondents – Defendants have no right or interest in the suit property and the entries made in the records in their favour are illegal. The Respondents – Defendants relied

upon a Will executed in their favour on 12 August, 1986 by deceased Parvatibai.

3. If the will is held to be valid then there is no question of setting aside the entries made in favour of the Respondents. The learned Counsel for the Appellants submitted that the Will being an assignment is not valid under provisions of Section 43 of the Bombay Tenancy and Agricultural Lands Act, 1948 (“the Tenancy Act”, for short). There was no such arguments advanced in the trial Court. There is no issue framed. The only contention advanced was that the Will was not executed by deceased Parvatibai. The learned Counsel for the Appellants has sought to draw my attention to a ground taken in the appeal-memo in the District Court. But, nowhere during the judgment of the learned District Court, there is a reference to the contentions raised by the Appellants. Obviously, the Appellants have not argued this point before the District Court. There is no issue framed by the learned district Judge. If the Appellants were aggrieved by non-consideration of an argument, which was allegedly advanced, the appellants could have approached the learned District Judge for necessary corrections. Merely, by one line in the appeal-memo in the District Court, without there being any argument reflecting in both the decisions, the Appellants cannot be permitted to take up this contention for the first time in the Second Appeal. The entire case of the

Appellants was that the Will was otherwise not valid and it is in this Court after the trial and appeal this submission is being advanced, which cannot be considered. No other argument was advanced. No substantial question of law arises. Second Appeal is accordingly dismissed.

[N. M. JAMDAR, J.]