

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Second Appeal No. 377 of 2017
[Smt. Prabhabei Bhaurao Chikhalkar Vs. Smt. Indirabai Bapuraoji Chohatkar & others]

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

Court's or Judge's orders

Mr. N. A. Gaikwad, Adv., for the appellant.
Mr. P. D. Dharaskar, Adv., for respondent nos. 1 to 6.

CORAM : A. S. CHANDURKAR, J.

DATE : 23rd February, 2018

The learned counsel for the parties have been heard on the following substantial question of law:-

In the light of Will dated 29th August, 1991 being duly proved, whether the plaintiff is entitled to the suit property by claiming absolute right over the same?

The appellant is the original plaintiff who had filed a suit for partition and separate possession of various properties owned by one Bapurao, her father. According to the plaintiff, said Bapurao had married one Satyabhamabai and she was their daughter. During subsistence of that marriage, her father married defendant no.1 - Indirabai and defendant nos. 2 to 6 are the children from that marriage. It is the case of the

plaintiff that Bapurao during his lifetime executed a "Vyawastha Patra" on 2nd June, 1958 giving some land from Survey No. 31/1 to her mother. Thereafter, her mother on 29th August, 1991 executed a Will in her favour. The plaintiff thereafter filed a suit for partition and separate possession in view of the obstruction raised by the defendants.

According to the defendants, there was no marriage between Bapurao and Satyabhamabai and therefore, the plaintiff was not entitled for any relief. The execution of the Will was also specifically denied.

The trial Court after holding that the plaintiff's mother Satyabhamabai did not get any right by virtue of the "Vyawastha Patra" dated 2nd June, 1958 further held that she did not get any right on the basis of the Will dated 29th August, 1991. It, however, granted her 1/7th share from various properties of Bapurao. The appellate Court has confirmed that decree.

Shri N. A. Gaikwad, learned counsel for the appellant, submitted that the Courts ought to have granted share to Satyabhamabai instead of the defendant no.1 - Indirabai as the marriage of defendant no.1 had taken place during subsistence of the earlier marriage. It is submitted that the defendant no.1 was not entitled to any share, whatsoever. Moreover, the execution of the Will by Satyabhamabai has not been

accepted.

Shri P. D. Dharaskar, learned counsel for the respondents, supported the impugned judgment. According to him, the marriage between Bapurao and the mother of the plaintiff has not been duly proved. On that count, the "Vyawastha Patra" granted only limited right to the plaintiff's mother during her life-time. As she had no right in the property, the execution of the Will by her was of no consequence. He, therefore, submitted that the decree did not call for any interference.

Perused the impugned judgments and heard the learned counsel.

It was the specific case of the plaintiff that her father Bapurao had married Satyabhamabai. However, the date when said marriage took place or any other evidence in that regard was not brought on record. On the contrary, the plaintiff in her cross-examination admitted that the defendant no.1 was the wife of Bapurao and defendant nos. 2 to 6 were her children. Thus, in absence of any evidence in that regard, it cannot be held that Satyabhamabai was the legally wedded wife of Bapurao so as to disallow any right in favour of Indirabai. The "Vyawastha Patra" dated 2nd June, 1958 was not duly exhibited or proved. It is on that basis that the further Will dated 29th August, 1991 has been held not conferring any legal right on the

plaintiff.

The adjudication by both the Courts is after considering the evidence on record. There is no perversity found. The substantial question of law is answered against the appellant. Second Appeal is, therefore, dismissed. No costs.

Judge

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