

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

SECOND APPEAL NO.121 OF 2018

Raju s/o Kisan Kharkate and ors.

-vs-

Nirmala wd/o Vinayak Kharkate and ors.

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

Court's or Judge's Orders.

Shri A. P. Chaware, Advocate for appellants.
Shri V. R. Thote, Advocate for respondents.

CORAM : A.S.CHANDURKAR, J.
DATE : November 02, 2018

The original defendant Nos.1, 2 and 4 have filed this appeal challenging the decree for partition as granted by the trial Court that has been confirmed by the appellate Court. A declaration has been granted that the Will executed in favour of defendant No.1 on 24/05/2002 is null and void and consequential sale-deed executed in favour of defendant No.4 is also not binding.

According to the plaintiffs who are legal heirs of one Vinayak, they were entitled for a share in the suit property that was owned by Kisan. The defendant Nos.1 and 2 came up with the defence that on 24/05/2002 said Kisan had executed a Will in favour of defendant No.2 and on that basis part of the suit property came to be alienated on 03/01/2006. The trial Court after considering the evidence on record held that the Will propounded by the defendant No.2 was not

duly proved and that various suspicious circumstances were not explained. The appellate court after re-appreciating the evidence confirmed that finding.

2. The learned counsel for the appellants submitted that the evidence on record that was led by the propounder as well as the attesting witness sufficiently removed various suspicious circumstances and both the Courts committed an error in holding otherwise. Merely because the executant died within period of five days from executing that Will, the same was not a reason to doubt its execution. The Will in question was duly registered and that aspect indicated valid execution of the sale-deed. It was submitted that both the Courts committed an error in granting the decree for partition.

3. The learned counsel for the respondents supported the impugned judgment. He submitted that there were various suspicious circumstances had had been considered by both the Courts and the appreciation of evidence in that regard is not perverse. The executant was suffering from paralysis and there was no medical evidence to indicate his disposing state of mind. The scribe was also not examined and the Will in question has rightly

been held to be not proved.

4. On hearing the learned counsel for the parties and on perusing the impugned judgment it can be seen that both the Courts have taken into consideration various suspicious circumstances. It has been found that the executant was suffering from paralysis and was unable to walk and talk. Though he used to sign documents, the Will was having his thumb impression. The attesting witness has deposed of being to the office of Sub Registrar between 11 am to 12 noon while the Will was registered at 5.42 pm. The manner in which the testator was taken to that office which was located on the upper floor is also not explained. It is thus found that the propounder has not been able to dispel the doubts with regard to various suspicious circumstances surrounding execution of the Will. The evidence has been properly appreciated and hence there is no reason to interfere in the Second Appeal. Same is therefore dismissed with no order as to costs.

JUDGE