

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.717 OF 2014
WITH
CIVIL APPLICATION NO.1347 OF 2013**

Smt. Phulabai @ Parvati Jagonda Patil ... Appellant
Vs
Smt. Akkatai Appa Patil & Ors. ... Respondents
...
Mr. Prashant Bhavke for the Appellant.
Mr. Gajanan M. Savagave for the Respondent No.1.

**CORAM : SANDEEP K. SHINDE J.
DATE : 4 MARCH, 2019**

P.C. :

Heard learned counsel for the parties.

2 In the suit for partition being Regular Civil Suit No.228 of 1989, the appellant was defendant no.1. I will refer the parties as per their status in the suit. The suit was decreed on 26th February, 2007 and decree was confirmed in Regular Civil Appeal No.41 of 2007 by the learned District Judge-1, Jaysingpur at Jaysingpur. It is against the decree passed in Regular Civil Appeal No.41 of 2007, the defendant no.1 has preferred this appeal.

3 Heard learned counsel for parties.

4 Courts below have rendered essentially finding of fact that the appellant/defendant could not prove will deed dated 20th February, 1979 allegedly executed by her father Appa Patil in her favour. It is the appellant's case that her father Appa Patil by the said will bequeathed the suit property to her and the respondent no.4. It appears respondent no.4 had applied for letters of administration vide application no.72 of 1989 but it was dismissed. The plaintiff had produced a copy of order passed in the Miscellaneous Civil Application No.72 of 1989 before the learned Trial Judge. It is not in dispute that the appellant/plaintiff had not led evidence to prove the said will executed by her father in her favour. It is an admitted fact that even attesting witness was not examined by the appellant. In the given set of facts and in view of available evidence, both the Courts have held and rendered finding of fact that the appellant had not proved the will deed dated 20th February, 1979 executed by her father in her favour and the respondent no.4.

5 In view of the facts aforesaid, appeal does not give rise to any substantial question of law. The appeal is, accordingly, dismissed. The Civil Application is disposed of.

(SANDEEP K. SHINDE, J.)