

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 851 OF 2019
WITH
CIVIL APPLICATION NO. 1690 OF 2019
IN
SECOND APPEAL NO. 851 OF 2019

Baburao Nivrutti Panaskar and Ors. ... Applicants/Appellants
V/s.

Kalawati Anant Mane and Ors. ... Respondents

Mr. Sarthak Diwan I.by Mr. Paras Yadav for the appellants/applicants.
Mr. Girish R. Agrawal for the respondent nos. 1

CORAM : SMT. SADHANA S. JADHAV, J

DATED : 22nd JANUARY 2020.

P.C. :

The appellants herein impugn the judgment and order dated 3rd January 2018 in Civil Appeal No. 6 of 2012 passed by the learned District Judge, Karad thereby confirming the judgment and decree passed by Civil Judge Senior Division at Patan on 30th November 2011 in Regular Civil Suit No. 32 of 1999.

2. The substantial questions of law which fall for determination are as follows:-

1) Whether the defendant has consented to registration of the WILL in favour of the appellant and therefore, cannot challenge the WILL.

2) Whether it can be said that the contents of the WILL are proved.

3. The facts of the case are that the appellants happen to be the nephews of deceased Pandurang Panaskar. Kalawati was the only daughter of Pandurang. It is the case of the appellants that on 18th January 1998 Pandurang had executed a WILL in favour of the plaintiffs/appellants thereby bestowing his entire properties upon them. The defendant had forcibly taken possession by dispossessing them and therefore they were constrained to file a suit seeking declaration, injunction and possession of the properties bestowed upon them by their uncle Pandurang who had expired on 10th January 1999. The WILL purportedly executed by Pandurang was a registered WILL. It is pertinent to note that the said WILL is a registered document and the defendant is the attesting witness, as the WILL finds her thumb mark on the said WILL deed.

4. The defendant has specifically contended before the Court by way of written statement and pleadings that the WILL was attested by the defendant under a misconception that the said WILL was being executed to settle the dispute of cultivation of sugarcane and transportation of the same. The plaintiffs had examined the contesting witnesses who have only admitted their signatures but were unaware of the contents of the said document. In these circumstances it cannot be stated that the defendant had waived her right to contest the WILL by attesting the WILL in favour of the plaintiff. She had no knowledge about the contents of the WILL

5. It is in these circumstances, that it can be said that every attesting witness is bound to prove the contents of the document since this was not a public document and there was specific contention that

the document was signed under misconception of facts. It is pertinent to note that the scribe of the said document was also examined who admitted to have scribed the document as per the say of the deceased. However, before the Court in his substantive evidence he had not uttered a single word about the contents of the document. When confronted with the document which is at “Exhibit-100” (WILL deed) the scribe has specifically admitted that Page no. 1 and 3 i.e. the first and last page of the said documents are not signed or counter signed by the deceased Pandurang.

6. At this stage, learned Counsel submits that it would be suspicious as to whether the document which was filed before the Court is same which was executed before the Registrar or whether it had been tampered with before institution of the suit. The plaintiff has not examined the Registrar of the said document who could have in all probabilities established that the executants and the witnesses were fully having the knowledge about the contents of the document and the suspicion would be ruled out by the Registrar.

7. Perused the evidence of the scribe of the document. The witness no. 2 is the scribe of the said document. He has admitted that he has not signed the said document. However, it is further explained that since he was the scribe of the document he has not signed the same. His name appears on the said document as a scribe only. He has failed to identify the identity of the attesting witness who has signed in English and in the conclusion he has stated that besides being scribe of the document and obtaining the signature of the witnesses he has no knowledge about the contents of the documents.

8. It is in these circumstances, that both the Courts below have dismissed the suit as well as the appeal on the ground that firstly the document was executed under the misconception of fact. Secondly, contents of the document are not proved by the attesting witnesses. Thirdly, though the document is incomplete in the sense that the first and last page of the document which necessarily ought to have had the signature of the executant was not signed by the executant of the WILL.

9. It is contended that executant of the WILL was residing with the defendant and he had expired in the house of defendant. It is the contention of the plaintiff that in fact the executant was residing with them. However, the said fact has not been proved by the plaintiff and instead there are witnesses who have categorically stated that the executant was lastly residing with the Defendant.

10. The defendant had no knowledge about the nature of document and therefore rightly contested the suit. Secondly, the contents of the WILL are not proved either by the scribe or the attesting witnesses.

11. In view of the above discussion, the conclusion drawn by both the Courts do not warrant any interference by this Court. The second appeal being sans merits stands dismissed. The Civil Application is accordingly disposed of.

(SMT. SADHANA S. JADHAV, J)