

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO.121 OF 2021

Sheetal w/o Tanaji Belkunde,
age: 52 years, Occ: H.H. & Agri.,
Kasarkheda, at present,
Mantri Nagar, Latur.

Appellant

Versus

01 Gunwant s/o Babu Belkunde,
age: 60 years, Occ: Agri.,
R/o Kasarkheda,
Tq. & District Latur.

02 Shivaji s/o Balaji Belkunde,
age: 62 years, Occ: Agri.,
R/o Kasarkheda,
Tq. & District Latur.

Respondents

Mr. M.L.Dharashive, advocate for the appellant

CORAM : AVINASH G. GHAROTE, J.

DATE : 15th June, 2021.

ORAL JUDGMENT :

1 Heard Mr.M.L.Dharashive, learned Counsel for the
appellant.

2 It is not in dispute that the land admeasuring 5
hectares 4 Ares at Chikalthana was owned by Babu Belkunde.

Babu had four sons namely, Balwant, Gunwant, Shivaji and Tanaji. Appellant is the widow of deceased Tanaji. There was partition between Babu and his four sons, in which, Tanaji – husband of the appellant has received 0.81 Ares of land and Babu received 1 hectare 60 Ares of land. Other sons also received the land. It is not disputed that the appellant is in possession of this land admeasuring 0.81 Ares which Tanaji had received in partition between Babu and his four sons. Babu, during his life time, executed a Will in the year 2009 in respect of the land admeasuring 1 hectare 60 Ares, received by him in the partition between himself and his sons, in favour of respondents – original defendants.

3 Present appellant filed suit against the respondents claiming a declaration that the compromise decree passed in RCS No.15/2012 be declared as null and void as well as a declaration that the Will was forged and fabricated. Insofar as the compromise decree in RCS No.15/2012 is concerned, the trial Court has held that nothing turned on it as the same was filed by the widow of Babu claiming share in the property, which was fallen to the share of Babu, admeasuring 1 hectare 60 Ares, which was compromised and that has no bearing upon the claim made by the present

appellant, for if the appellant had share in the property, which had fallen to the share of Babu, which was incapable of being bequeathed by him, then only she would have any right therein.

4 Insofar as the land received by Babu in partition, admeasuring 1 hectare 60 Ares is concerned, the trial Court found that the same was as a result of partition between Babu and his four sons and, therefore, the share received by Babu in the partition was his absolute property and can be bequeathed.

5 So far as Will is concerned, the trial Court found that the attesting witness Sidram has proved the Will which was in favour of original defendants no.1 and 2. The trial Court has, therefore, dismissed the suit, filed by the appellant – original plaintiff. The learned appellate Court concurred with the findings recorded by the trial Court.

6 Mr.Dharashive, learned Counsel for the appellant, contends that the finding in respect of the Will having been proved by the attesting witness, arrived at by both the Courts is perverse. No other ground for challenging such a finding has been advanced, apart from the plea that the land in the hands of Baburao was

ancestral in nature, and therefore, was not capable of being bequeathed by him. It is clear that once there was partition between Baburao and his four sons and the property was received by Baburao in partition, same became his absolute property and was capable of being bequeathed by him by virtue of a Will. That being the position, the contention raised by Mr.Dharashive, learned Counsel for the appellant, cannot be sustained. Insofar as the Will is concerned, both the Courts below have correctly relied upon the requirement of law that at least one attesting witness should be examined. In this case, attesting witness, namely D.W.2 – Sidram has proved execution of the Will. Thus, no substantial question of law arises in the matter.

7 The appeal is, therefore, devoid of merit and is accordingly dismissed. There shall be no order as to costs.

(AVINASH G. GHAROTE)
JUDGE

adb