

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2673 OF 2021

Ravindra Gangadhar Bhale and others ... Appellants

Versus

1. Krushnabai w/o Gangadhar Bhale
(Died) through
2. Vilas s/o Gangadhar Bhale and another ... Respondents

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Mr. Santosh S. Naik, Advocate for appellants
Mr. L. K. Pradhan and Mr. M. B. Ubale, Advocate for respondent Nos.
2 and 3

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CORAM : R. G. AVACHAT, J.

DATED : 06th DECEMBER, 2021

PER COURT :-

. Heard.

2. The challenge in this appeal is to the order dated 18.08.2021, refusing to revoke the order granting probate of a Will dated 13.11.2011.

3. Admittedly, the testator was a Hindu. The alleged Will has been executed at Aurangabad. The property, which is said to have been bequeathed under the Will, is situated at Wadodbajar, Taluka Phulambri. As such, it is not the case of execution of a Will in Bombay or existence of the property in Bombay itself and the parties being Hindu, the Will does not require to be probated. Moreover, in view of Section 222 of the Indian Succession Act, the probate can be granted only to an appointed executor under a Will. Perusal of the alleged Will indicates no executor was appointed for execution of the Will. It is a case of a Will executed by father in favour of his three sons and a grand-son excluding his own daughter from inheritance.

4. It appears that two of the appellants herein had permanent residence at Aurangabad. They had not been served with the notice of the said proceedings. The grant of probate only authenticates the will. It does not decide or confer any right, title and interest in an immovable property left behind by testator.

5. In this view of the matter, the parties to this proceedings may have recourse to have a civil suit to establish their rights of succession or as legatee/s under the Will.

6. The appeal is therefore allowed. The impugned order is hereby set aside.

7. Pending civil application No.12067 of 2021 stands disposed of.

[R. G. AVACHAT, J.]

SMS