

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

**SECOND APPEAL NO.329 OF 2019
WITH
CIVIL APPLICATION NO.1847 OF 2016**

Mrs.Priya Vilas Gosavi ..Appellant
Vs.
Mrs.Usha Suryakant Gosavi
(Through POA Mr.Ladnath Bapu Gosavi) ..Respondent

Mr.Sagar A. Joshi for the Appellant.

Mr.Prashant Kamble i/b Mr.A.J. Rao for the Respondent.

CORAM : C.V. BHADANG, J.

DATE : 08th MARCH 2021

PC.

1. The challenge in this appeal is to the concurrent orders passed by the Courts below, thereby decreeing the suit filed by the respondent, *inter alia* granting ½ share to her in the suit property.

2. Daji Gosavi is the common ancestor who died in the year 1968. Daji had a son Sonu and daughter Usha Gosavi (The plaintiff), Sonu predeceased Daji in the year 1948. Sumati was the widow of Sonu. The case made out by the plaintiff was that Sumati had executed a registered Will in her favour on 27th May 1998. However, subsequently, the appellant (Original Defendant) taking

undue advantage of the physical and mental condition of Sumati got another registered Will executed on 04th March 1999 (Exhibit-81) in her favour. Sumati died on 10th May 2000. It appears that a Mutation Entry No.10204 was taken in the name of the appellant in the Revenue records pertaining to the suit property.

3. The plaintiff filed RCS No.53 of 2001 for declaration that the Will Exhibit-81 is got executed by practicing fraud and is a fabricated document. Alternatively the plaintiff sought partition and separate possession of her share in the suit property.

4. The suit was resisted on behalf of the appellant by filing written statement Exhibit-23. It was the material defence that Sumati was the exclusive owner of the suit property on account of the fact that she was a permanent tenant in possession of the suit property. In short it was contended that the Sumati being the exclusive owner had a disposable interest in the suit property which was bequeathed in favour of the defendant, by virtue of the Will Deed at Exhibit-81. It was contended that after the death of Sumati the defendant is the exclusive owner of the suit property on the basis of the said will.

5. On the basis of the rival pleadings, the learned Trial Court framed as many as six issues. The plaintiff examined her Power of Attorney holder Lادنath Gosavi (PW-1). The appellant (defendant) examined herself as DW-1 along with attesting witness Milind Zad as DW-2 and Dasharath Gholye (DW-4) and the scribe of the Will Yashwant Ramchandra Mithbavkar as DW-3.

6. The learned trial Court by judgment and decree dated 18th August 2010 partly decreed the suit holding that the plaintiff had ½ share in the suit property. The learned trial Court also declared that the Will Exhibit-81 was not binding on the plaintiff to the extent of her 1½ share in the suit property.

7. Feeling aggrieved the appellant challenged the same before the learned District Judge in Regular Civil Appeal No.117 of 2010. The First Appellate Court concurred with the findings recorded by the trial Court and dismissed the appeal by judgment and decree dated 08th September 2014. Hence this appeal.

8. I have heard Mr.Joshi, the learned counsel for the appellant and Mr.Kamble, the learned counsel for the respondent.

With the assistance of the learned counsel for the parties, I have gone through the record.

9. It is submitted by the learned counsel for the appellant that the Courts below were in error in holding that the appellant had failed to establish that Sumati was exclusive owner of the suit property on account of she being a permanent tenant. It is submitted that thus Sumati had a disposable interest in the suit property which was bequeathed by Will Exhibit-81. It is submitted that both the Courts having refused to accept the case of the plaintiff that the Will Exhibit-81 was obtained by fraud or was a fabricated document ought to have dismissed the suit. It is submitted that the plaintiff after her marriage was residing at Mumbai and it was the defendant Priya who was looking after Sumati in her old age and therefore it was perfectly natural, that Sumati bequeathed the suit property in favour of the appellant.

10. The learned counsel for the respondent has supported the impugned judgment. It is submitted that the appellant failed to establish that Sumati was the exclusive owner of the suit property. It is submitted that Sonu, having predeceased Daji, there were only two sharers namely the appellant and the original plaintiff who have

succeeded to the suit property belonging to the father of the plaintiff.

11. The learned counsel has placed reliance on the decision of the Supreme Court in the case of **Vineeta Sharma V/s. Rakesh Sharma¹**, in order to submit that even otherwise the plaintiff being a daughter of Daji would have equal share in the property with Sonu.

12. In reply the learned counsel for the appellant placing reliance on the proviso to Section 6 of the Hindu Succession Act has submitted that the testamentary disposition prior to 20th December 2004 will not be affected by the amended Section 6 of the Hindu Succession Act.

13. I have carefully considered the rival circumstances and the submissions made. In my considered view, it is not necessary to go to the amended Section-6 of the Hindu Succession Act as otherwise after the death of Daji the appellant and the respondent (Original Plaintiff) were the only heirs in Class-I of Daji. The schedule appended to the Hindu Succession Act would show that

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the daughter as well as the widow of the predeceased son are the Class-I heirs.

14. The Courts below have concurrently found and to my mind rightly so that the appellant has failed to establish that Sumati was the exclusive owner of the suit property on the basis of the alleged permanent tenancy. The First Appellate Court in this regard has found that the appellant had failed to establish her defence about Sumati being the exclusive owner. The First Appellate Court in this regard has taken note of the Mutation Entry No.10204 (Exhibit-155) which shows that Daji Gosavi was in possession of the suit property as tenant. In any event nothing has been brought to my notice to hold that the finding of fact so recorded is perverse or suffers from to any infirmity so as to give rise to any substantial question of law.

15. I have carefully gone through the judgment of the Courts below and I do not find that a case for interference is made out. The appeal is without any merit and it is accordingly dismissed, with no order as to costs.

Decree be drawn accordingly.

C.V. BHADANG, J.