

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**Second Appeal No. 340 / 2019
with
Civil Application No. 723 / 2019**

Jayant Arun Gokhale

.. Appellant

Vs.

Shri. Arun Ramchandra Gokhale & Ors.

.. Respondents

Advocate Sandesh D. Patil i/by P.S. Gole for Appellant.

Mr. Suraj Naik, Advocate for Respondent No.2.

Mr. R.M. Haridas i/by Mr. Nilesh M. Bhole, Advocate for Respondent No.3.

Mr. Kunal Kumbhat i/by Ms. Sunanda Kumbhat, Advocate for Respondent No.5.

CORAM : SANDEEP K. SHINDE J.

DATE : 31st MARCH, 2021.

P.C. : -

1. Plaintiff – Jayant Gokhale, who instituted Regular Civil Suit No. 613 / 2004 has preferred this appeal against the concurrent findings of facts.

2. Facts of the case are as follow;

Defendant No.1 is father of Plaintiff; Defendant No.2 is paternal uncle and Defendant No.3 is the wife of deceased paternal uncle. Husband of Defendant No.3 – Jagannath died on 1st July, 1979. Before death, he bequeathed a suit property to his wife Vijaya Gokhale (Defendant No.3). Indisputably, it was Jagannaths' separate property and not joint family property.

. Evidence point to in December, 1975, marriage of Defendant No.3 with Jagannath was dissolved. Before that in 1969, a decree of judicial separation was passed. Decree stipulated, Jagannath was mentally disturbed.

. Be that as it may, Plaintiff instituted the subject suit, seeking the decree of declaration that Will dated 31st May, 1979 executed by Jagannath in favour of his wife Vijaya and further alienation of suit property by Vijaya to Defendant No.5 was unlawful. Evidently, original Will of Jagannath was not produced by Plaintiff. Though the Plaintiff admitted the execution of 'Will', but attesting witness were

not examined by the Plaintiff, since their whereabouts were not known or at the material time, they were dead.

3. At any rate, two court have held the Plaintiff had no locus to institute the suit, in view of the Provision of Section 8 and 9 of the Hindu Succession Act. The Section 9 regulates the order of succession among heirs in the schedule appended to the Succession Act. The Plaintiff is a Class-II heir, in entry (iv). In terms of Section 9 of the Succession Act, heirs those in Class-I shall take the simultaneously and to the exclusion of all other heirs. Obviously, admittedly Plaintiffs' father being Class-I heir and living, Plaintiff had no right to claim right and interest in preference to living Class-I heirs.

4. In view of these admitted facts, the Courts below have held the Plaintiff (son of brother) had no right to claim over the property of his paternal uncle, Jagannath. I do not see any reason to interfere with the finding recorded by the Courts below.

5. Mr. Patil, learned Counsel for the Appellant argued, judicial proceedings between the Defendant No.3 Vijaya and her husband suggests Jagannath was incapable of executing the Will, since the decree of judicial separation indicates that Jagannath was person of unsound mind. As a matter of fact once it is held that, Plaintiff had no locus to institute the suit, other points, no longer needed to be answered.

6. In consideration of the facts of the case, appeal does not give to rise any substantial question of law. Appeal is dismissed. Civil Application is disposed of.

(SANDEEP K. SHINDE, J.)