

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

SECOND APPEAL NO.15 OF 2021

Shri.Vijay Gopal Bhagwat ..Appellant
V/s.
Shri.Suresh Gopal Bhagwat & Ors. ..Respondents

Mr.Dormaan J. Dalal for the Appellant.

Mr.Samir A. Vaidya for the Respondents.

CORAM : C.V. BHADANG, J.

DATE : 27th JANUARY 2021

PC.

1. The challenge in this Second Appeal is to the concurrent finding of the Courts below, dismissing the suit filed by the appellant.

2. The appellant filed Special Civil Suit no.1537 of 1993 against the respondents, before the learned Civil Judge Senior Division, at Pune. That suit was filed for declaration/partition and possession of the suit property, more specifically described in the plaint. The appellant also sought a declaration that the Will Deed dated 22nd March 1988 executed by father of the appellant i.e. Gopal

Bhagwat was invalid. Mr.Gopal Bhagwat was a practicing lawyer who died on 24th August 1992 at Pune.

3. The suit was resisted on behalf of the respondent No.1 (Defendant No.1). The record discloses that the defendant Nos.2 to 5 did not enter appearance and the suit proceeded ex-party against them.

4. The learned Trial Court framed the following issues :

Sr.No.	Issues
1	Whether plaintiff proves that the property described in Schedule 'C' is self-acquired property ?
2	Whether the Will Deed dated 22.03.1988 is executed by late Shri.G.B. Bhagwat voluntarily and at his freely ?
3	Whether the will deed is proved to the satisfaction of the court ?
4	Whether plaintiff proves that the property in Schedule A and B are joint family properties ?
5	Does he further prove that he has 1/4th share in the property described in Schedule A and B ?
6	Is plaintiff entitled to the relief of declaration, partition and separate possession, as prayed for ?
7	What order, decree and costs ?

5. The appellant/plaintiff examined himself along with Balkrushna M. Apte (PW-2). The defendant No.1 examined himself

alongwith Shrikant Sharangpani (D.W-2), Ramchandra Bhide (D.W.3) and Ananda Mathuji Gaikwad (D.W. 4).

6. The learned Trial Court answered Issue no.1,4,5 and 6 in the negative and Issue Nos.2 and 3 in the affirmative and by a judgment and decree dated 28th February 2006 dismissed the suit. In short the learned Trial Court came to the conclusion that late Gopal Bhagwat had voluntarily executed the Will Deed dated 22nd March 1988 and the said will was valid.

7. The appellant challenged the same before the learned District Judge in Civil Appeal No.696 of 2012 (Old First Appeal No.2810 of 2006). The learned District Judge framed the following points for determination.

Sr.No.	Issues
1	Whether the plaintiff proved that Will dated 22.03.1988 was not voluntarily executed by Shri.Gopal Bhagwat, during his lifetime ?
2	Whether the plaintiff proved that he is entitled to 1/4th share in the properties described in Schedule-A and B of the plaint ?
3	Whether the plaintiff proved that the property described in Schedule-C is his self acquired property ?

- 4 Whether the impugned judgment and decree suffers from any illegality, requiring interference at the hands of this court ?
- 5 What Order ?

8. The learned District Judge answered Point No.1 and 4 in the negative and found that the Point No.2 does not survive. In that view of the matter, the learned District Judge by a judgment and order dated 07th September 2015 dismissed the appeal. That is how the appellant is before this Court.

9. There was a delay in filing the appeal which was condoned as per order dated 08th January 2021 in Civil Application No.1482 of 2017 after which the Second Appeal came to be registered.

10. I have heard the learned counsel for the appellant and the learned counsel for the respondents. With the assistance of the learned counsel for the parties, I have gone through the record.

11. The learned counsel for the appellant submitted that late Gopal Bhagwat was residing jointly with the appellant and the other brothers and there is no reason why late Gopal Bhagwat

would execute a Will Deed to the exclusion of the appellant. It is submitted that there was no independent Medical evidence about the physical and mental fitness of Gopal Bhagwat.

12. It is submitted that there are over writings in the said will and all the circumstances taken together make the said will suspicious. It is submitted that the will is a typed document which is not registered. It is submitted that late Gopal Bhagwat being a practicing advocate, it is unlikely that he will not get the Will registered.

13. The learned counsel for the respondent has supported the impugned order. It is submitted that both the courts below after appreciating oral and documentary evidence on record have concurrently found that the will is genuine and properly proved and this finding of fact properly recorded is not amenable to challenge in the second appeal.

14. I have considered the circumstances and the submissions made and I do not find that the appeal raises any substantial question of law. It is not disputed that the Will is not a compulsorily registerable document. Thus merely because the Will

was executed by practicing advocate and it is not registered will be inconsequential. It also transpired during the course of the arguments that the attesting witness of the Will who was examined, was a doctor. Thus the contention about the absence of an independent medical evidence about the physical and mental fitness of late Gopal Bhagwat would also not be decisive. I have gone through the copy of the will and additions made have been countersigned by the testator. I have gone through the impugned judgment passed by the learned trial Court as well as the First Appellate Court and on appreciation of the evidence on record they have concurrently found the will to be genuine and properly proved. This finding of fact in the absence of it being perverse and/or against the weight of the evidence on record, does not partake of the nature of a substantial question of law. No other grounds were raised. In the result, I find that the appeal is without any merit and is accordingly dismissed, with no order as to costs.

C.V. BHADANG, J.