

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 135 OF 2016

Narsingrao Kisanrao Murme

... Appellant
(Orig. Defendant)

Versus

Mahananda Sudhakar @ Sudam Ingle

... Respondent
(Orig. Plaintiff)

....

Mr. P. V. Barde, Advocate for appellant

Mr. N. L. Jadhav, Advocate for respondent

....

CORAM : R. G. AVACHAT, J.

DATED : 8th SEPTEMBER, 2022

PER COURT :-

. Heard.

2. This is original defendant's Second Appeal. The respondent is the real sister of the appellant herein. Their father died on 27.05.2009. The mother predeceases the father. The respondent filed the suit for partition and separate possession of ancestral property. The learned Advocate for the appellant would submit that the suit property was the self acquisition of the father. The said had been averred in so many words. The trial Court answered the issue No.1 as regards nature of the suit property in not more than 3 - 4

lines. In view of this Court, in the facts and circumstances of the case, answer to the question whether the property was ancestral or self acquired property of the father, would make little difference.

3. The appellant had come with the case of the father to have executed a 'Will' in his favour on 26.05.2009. According to him, the respondent/plaintiff did not challenge the Will. The appellant had no occasion to see the Will is given effect to in revenue record. The fact that the appellant purchased the stamp paper on which the Will was executed in no way lead to infer that he played any role in getting the Will executed. Since the father was old, he simply purchased the stamp paper on father's request. The Will has been duly proved in terms of Section 63 of the Evidence Act.

4. Considered the submissions advanced. It is a case of concurrent finding of fact recorded by both the Courts below. The Will is unregistered. It is said to have been executed on 26.05.2009. The father passed away within 24 hours of execution of the Will. Admittedly, the father had not been keeping well for about eight days next before the alleged Will was executed. Admittedly, the father was not examined by medical practitioner to find him to be conscious oriented to execute a Will.

5. Both the Courts below cannot be observed to have erred in holding the 'Will' to have not been duly proved. This Court, after having gone through the impugned judgments and considering the submissions advanced, do not find any substantial question of law, as has been suggested, to have been arisen in the present appeal. The Second Appeal is therefore dismissed.

6. In view of dismissal of the Second Appeal, Civil Application No.2053 of 2016 does not survive. The same is therefore, disposed of.

[R. G. AVACHAT, J.]

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