

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO.451 OF 2018
WITH**

CA/7729/2018 IN SA/451/2018

WITH

CA/14319/2018 IN SA/451/2018

WITH

CA/9361/2021 IN SA/451/2018

**ARUNDAS SHIVRAO KANEGAONKAR
VERSUS
THE STATE OF MAHARASHTRA THRO. COLLECTOR, NANDED AND OTHERS**

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Mr. S.V. Adwant a/w Ms. N. B. Kamble, Advocates for Appellant
Mr. N. T. Bhagat, AGP for Respondent Nos.1 and 2 – State.
Mr. G. R. Syed, Advocate for Respondent Nos.3 and 5

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CORAM : MANGESH S. PATIL, J.

DATED : 25 APRIL 2022

PER COURT :

1. Heard the learned advocate Mr. S. V. Adwant for the appellant, learned AGP Mr. Bhagat for the respondents - State and learned advocate Mr. G. R. Syed who appears for some of the respondents.

2. This is a second appeal by the original defendant no.3, questioning the judgment and findings recorded by the lower appellate court in an appeal under section 96 of the Code of Civil Procedure preferred by the original defendant nos.1 and 2 i.e. the State.

3. The respondents/plaintiffs had filed a suit for declaration of their title to the suit property and for perpetual injunction for protection of their possession. They had also sought a declaration that the order passed by the defendant no.2, who is respondent no.2 herein, in a review proceeding, was null and void.

4. The present appellant who was arrayed as defendant no.3 propounded a will and claimed to have derived title to the suit property thereunder.

5. The trial court recording a negative finding regarding title and possession being claimed by the plaintiffs, dismiss the suit. However, it recorded a finding about the appellant/defendant no.3 having become owner on the basis of the bequest.

6. Admittedly, the respondents/plaintiffs preferred an appeal under section 96 of the Code of Civil Procedure being aggrieved and dissatisfied by dismissal of their suit, but subsequently they abandoned it and it was dismissed.

7. The original defendant nos.1 and 2 i.e. the State preferred another appeal challenging the findings recorded by the trial court about the present appellant/defendant no.3 having the right and title to the suit property on the basis of the will.

8. By the judgment and order under challenge in this second appeal the lower appellate court has reversed the findings as recorded by the trial court in favour of the appellant.

9. The second appeal is admitted on following substantial question of law :-

(I) Whether the respondent nos.1 and 2 - State could have preferred an appeal under section 96 of the Code of Civil Procedure against only a finding recorded by the trial court and whether the lower appellate court had jurisdiction to decide it under section 96 of the Code of Civil Procedure?

10. In view of admission of the appeal, the execution and operation of the judgment and order under challenge shall stand stayed till the decision of the second appeal.

11. Hearing of the second appeal is expedited.

12. Civil application No.7729 of 2018 is disposed of.

13. Pending application for intervention to be decided with the appeal.

14. Call the Record and Proceedings.
15. Place the second appeal for final hearing on 5 May 2022.
16. Learned AGP Mr. Bhagat waives service on behalf of respondent Nos.1 and 2 - State.

(MANGESH S. PATIL, J.)

Tandale/-