

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

**SECOND APPEAL NO.733 OF 2019
WITH
INTERIM APPLICATION NO.507 OF 2020**

Shri. Sanjay Ambaji Dongare ..Appellant
Versus
Shri. Sambhaji Anna Dongare & Anr. ..Respondents

Mr. Dnyaneshwar J. Deshmukh, for the Appellant.
Mr. Manoj Patil, for the Respondents.

CORAM : NITIN W. SAMBRE, J.

DATE : 3rd OCTOBER, 2022

PC.

1. The appellant initiated Regular Civil Suit No.72 of 2006 on 10th November, 2006 for declaration of ownership based on Will dated 3rd August, 2000, Exh.48 executed by deceased Hari who died on 30th June, 2004. The suit came to be partly decreed with following observations :-

- “1. The suit is partly decreed.
2. It is hereby declared that the plaintiff is a owner of 1/6th share of land block no.87 and Grampanchayat property no.40 on the basis of will dated 3-8-2000 of late Hari Sambhu Dongare.
3. The relief of declaration in relation to block no.89 and 39 and the relief of perpetual injunction is hereby rejected.

4. The amount deposited by court receiver at 'C' register no.22 dated 6-1-2008, Sr.no.15 dated 29-6-2010, Sr.no.38, 39 dated 11-7-2011, Sr.no.15 dated 11-6-2012 be distributed alongwith interest to the plaintiff as 10%, to defendant no.1 as 25% and defendant no.2 as 65%.
5. Both the parties to bear their own costs.
6. Decree be drawn accordingly.”

2. The appeal preferred by the present appellant/original plaintiff being Regular Civil Appeal No.1 of 2013 was dismissed by learned District Judge, Gadhinglaj vide impugned judgment dated 31st March, 2018. Feeling aggrieved, present Second Appeal under Section 100 of the CPC.

3. Counsel for the appellant would urge that after the Will Exh.48 was executed and registered in favour of the appellant/plaintiff, two other Wills viz. Exhs.104 and 105 were executed on 19th December, 2003 in favour of defendant Nos.1 and 2 i.e. respondents herein. Drawing support from the provisions of Section 70 of the Indian Succession Act, 1925, the contentions are, unless the Will Exh.48 is revoked, the subsequent Wills Exhs.104 and 105 cannot be given effect to, as according to him, the question of law which warrants consideration is whether both the Courts have committed error in appreciating/interpreting the documents viz. Exhs.104 and 105 contrary to the scheme of Section 70 of the aforesaid Act.

4. The aforesaid contentions are appreciated by this Court.
5. It is not in dispute that the subsequent Wills which are at Exhs.104 and 105 specifically refer to the cancellation of earlier Conveyance/Deeds (Dast) which can be interpreted to mean a document executed by the deceased Hari.
6. Once there is an existence of such a clause, the Wills which are executed by deceased Hari at Exhs.104 and 105 cannot be said to be contrary to the scheme of Section 70 of the Act.
7. Apart from above, the reasoning given by Courts below cannot be faulted with particularly while dealing with the claim of appellant for declaration of ownership. The Court can always record a reasoning as to the entitlement of the parties to the suit property.
8. As such, against the concurrent finding, in my opinion, no question of law is noticed.
9. The appeal as such fails, dismissed.
10. In view of dismissal of appeal, interim application also stands disposed of.

[NITIN W. SAMBRE, J.]