

Arjun

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

**SECOND APPEAL NO.680 OF 2022
WITH
INTERIM APPLICATION NO.19371 OF 2022
IN
SECOND APPEAL NO.680 OF 2022**

ARJUN
VITTHAL
KUDHEKAR

Digitally signed by
ARJUN VITTHAL
KUDHEKAR
Date: 2022.12.13
20:45:31 +0530

Ratnakar Balwant Bandiwadekar & Ors. ...Appellants/
Applicants

V/s.

Mahadev Shivram Patil & Ors. ...Respondents

Ms. Pratibha Shelke i/b Ajinkya Palav, for the
Appellants/Applicants.

Mr. V. A. Shastry, for Respondent Nos. 1 to 8.

**CORAM : MADHAV J. JAMDAR, J.
DATE : 29th NOVEMBER, 2022**

P.C.:

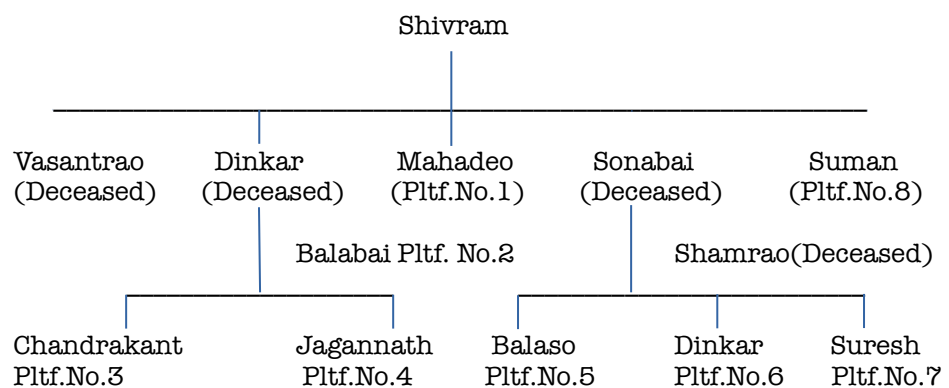
1. Heard Ms. Pratibha Shelke, learned counsel appearing for the Appellants/Applicants and Mr. V. A. Shastry, learned counsel appearing for Respondents.

2. The Appellants who are original Defendant Nos. 3, 8 & 9 are challenging legality and validity of the judgment and decree dated 7th January, 2019 passed by learned 4th Joint Civil Judge, Junior Division, Kolhapur in R.C.S. No. 37 of 2014 and the judgment and decree dated 13th November,

2021 passed by the learned District Judge-2, Kolhapur in R.C.A. No. 118 of 2019.

3. Ms. Shelke, learned counsel appearing for the Appellants submitted that, the substantial question of law in this Second Appeal is that, although Will of Pramila Vasantryao Patil dated 17th August, 2010 which has been held as genuine in a suit filed by Respondent No. 10 bearing suit No. 1970 of 2012 is held to be not legal and valid in the present proceeding and, therefore, both the Courts have non-suited the original Defendant Nos. 3, 8 & 9. It is her submission that the same is totally impermissible.

4. Before considering the substantial question raised by the Appellants, it is necessary to set out the admitted factual position. The genealogy of the family as set out in paragraph 3 of the Appellate Court judgment reads as under.



5. It is admitted position that, Pramila Vasantrao Patil

was married with Namdeo Watavkar and during subsistence of said marriage Pramila started staying with Vasantryao and, therefore, there was criminal prosecution wherein Vasantryao was acquitted.

6. It is the contention of the Appellants that the said Pramila married Vasantryao and, accordingly, marriage certificate at Exh. 81 have been produced before the Trial Court. On the basis of said marriage certificate it is tried to be contended that, the marriage between Pramila & Vasantryao is legal and valid. This aspect is important as, if the marriage between Vasantryao & Pramila is legal and valid then after the death of Vasantryao, Pramila will inherit the property which she can bequeath. The said Will has been held to be genuine in a suit filed by Respondent No. 10 bearing Suit No. 1970 of 2012. However, it is settled legal position that, the probate proceeding or proceeding relating to Will do not decide the title and the enquiry in those proceedings is only confined to the genuineness of the Will.

7. In the present case, after taking into consideration the evidence on record, both the Courts have held that the Appellants have failed to prove that the marriage between

Vasantrao and Pramila was legal and valid. In this case, the Appellants have not filed written statement. "No written statement order" was passed against them which has been confirmed by this Court. Resultantly, the Appellants have not stepped into the witness box and have not lead any documentary evidence. On the basis of cross examination, it is tried to be contended that, the said Pramila is legally wedded wife of Vasantrao. However, the factual position on record clearly shows that, there is no evidence to show that the marriage between Pramila and Namdev Watavkar has been dissolved in legal manner by passing decree of divorce or the marriage between Pramila and Vasantrao took place after demise of Pramila's husband-Namdev Watavkar. The only reliance of the Appellants is on the marriage certificate which is at Exh. 81. As far as the said marriage certificate is concerned, the said aspects are adequately dealt by the learned Appellate Court and learned Trial Court in paragraph 20. Learned Appellate Court observed as follows:-

"20....In regard to copy of memorandum of marriage placed on record at Exh. 81 it reveals that column No.4E is left as it is, without showing the status of Pramila. It is not mentioned in said column whether she was unmarried, widow or divorcee. This

certificate has not been proved by leading cogent and reliable evidence by the defendants. Hence, these documents not much helpful to the defendants to show that really Pramila was having legal relationship with Vasant Shivram Patil.”

There is concurrent finding of fact that as there is no evidence to show that marriage between Pramila and Vasantrao is legal marriage. Thus, suit property is not inherited by Pramila and therefore, she has no right, title and interest to bequeath suit property by Will.

8. In view of this, whether Will executed by Pramila dated 17th August, 2010 bequeathing properties in favour of the Appellants and Respondent Nos. 9, 11 to 14 is genuine or not is of no relevance. In absence of valid marriage between Vasantrao and Pramila, Pramila will have no right, title and interest in the properties of Vasantrao.

9. Hence, there is no substance in the substantial question of law as contended by the Appellants. The Second Appeal is dismissed with no order as to costs.

10. As the Second Appeal is dismissed, nothing survives in the Interim Application and the same is also disposed of.

(MADHAV J. JAMDAR, J.)