

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

SECOND APPEAL NO. 265 OF 2022

Sonabail Hari Jadhao thro POA__ Vs. __Gangubai Trimbak Dongardive and ors

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Ms. Prachi Joshi, Advocate h/f Ms. Kirti Satpute, Advocate for appellant.

CORAM : AVINASH G. GHAROTE, J.

DATE : 08/09/2022

1] The only argument raised by Ms. Prachi Joshi, learned counsel h/f Ms. Kriti Satpute, learned counsel for the apapellant, is that there was an oral Will executed by Darubai (who passed away on 27.9.1989), in favour of the appellant (Defendant.No.1) in RCS No. 3/2010) and therefore, the Court below could not have decreed partition of the suit property, holding that the plaintiff No.1 was entitled to 1/5th share and the plaintiff Nos. 2 to 4 were entitled for 1/5th share and so also the defendants were entitled to 1/5th share each. It is however admitted by her that there is no date on which the oral Will is alleged to have been made by deceased Darubai.

2] A perusal of the affidavit of Sonabai (defendant No.1/appellant) at page 64 would indicate that in para 1 thereof a bland statement has been made that approximately 40-45 years ago the suit property was bequeathed to her by deceased Darubai in the presence

of panchas. The affidavit does not bear any date nor the names of the alleged panchas. DW-2 Pralhad Sonone has been examined at Exh. 48 (pg 75) and so also Uttam Laxman Dongardive have been examined at Exh.49 (page 78) in support of the plea of oral Will. A perusal of their evidence would indicate that there is no date mentioned as to on which date the said oral will was said to have been made by Darubai. The evidence therefore brought on record by the defendant No.1/appellant falls woefully short of the requirement of law, as laid down in the provisions of the Indian Succession Act to establish an oral Will. That being the position, in my considered opinion, no substantial question of law is made out. There is no merit in the appeal. The same is accordingly dismissed. No costs.

JUDGE

Rvjalit