

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

34 SECOND APPEAL NO.334 OF 2018
WITH CA/6113/2018 IN SA/334/2018

VITHAL FAKKAD TAKE DIED LRS VIJAY AND ANOTHER
VERSUS
RAWAJI ALIAS NANA FAKKAD TAKE LRS RAKESH AND OTHERS

Mrs.M.V. Narwade, Advocate for the appellants.

Mr.D.A. Naik, Advocate for the respondents.

CORAM : KISHORE C. SANT, J.
DATED : 01.12.2023

PC :-

01. Heard learned Advocates for the parties. This appeal is filed by the original defendants. Appeal is already abated against appellant No.1. The respondents are the legal representatives of original plaintiffs. Respondent Nos.1A to 1E are legal heirs of original plaintiff No.1. Respondent Nos.2A to 2E are legal heirs of deceased respondent No.2/original defendant No.2. Both the plaintiffs and defendant No.1 are real brothers. Defendant No.2 is son of defendant No.1.

02. Plaintiffs had filed a suit for injunction against the defendants seeking injunction from disturbing their possession over the suit land. The case of the plaintiffs is that their father had executed will on 07.11.1979. By way of will he bequeathed its property to his three sons. Though he had four daughters also, it is stated that since they were already married and substantial amount was given to them in marriages, he did not want to give any property to them. In the will he prepared three charts showing land to be given to each of the sons. In these charts, it is mentioned that out of open plot from Gram Panchayat House No.254, 1/3rd share be given to each of the sons.

03. The plaintiff's case is that Gram Panchayat Gat No.52 is given to the share of defendant No.1 and therefore he was obstructing possession of others in 1/3rd share in open plot. Thus, the entire case is about interpretation of the wording in the will. As per the case of the defendants once entire property No.52 is

given to defendant No.1, the plaintiff could not have claimed $1/3^{\text{rd}}$ share in the open plot which is part and parcel of property No.52. Both the Courts have accepted that when there is specific mention of $1/3^{\text{rd}}$ share in open plot in Gram Panchayat Property No. 254, it is to be interpreted that each of the son was given $1/3^{\text{rd}}$ portion in the said open plot. Said open plot is admeasuring 30 R and thus 10 R land is given to each son.

04. The learned Advocate for the appellants/original defendants vehemently argued that both the Courts have committed mistake and have wrongly interpreted the words of the will. Once entire property No.52 is given to defendant No.1 and since open space is also part of said property, it is wrongly interpreted that the plaintiffs are given share in that open space. The learned Advocate for the appellants submits that since there is question of interpretation and that goes to the root of the matter, there is substantial question of law involved in the appeal.

05. The learned Advocate for the respondents – original plaintiffs vehemently opposes the appeal stating that when both the Courts have held concurrently in favour of the plaintiffs, there is no scope to interfere in the appeal. The appeal being second appeal, the appellants have to make out case that substantial question of law is involved. Taking the view as it is, it is clear that testator wanted to give 1/3rd share in the open plot from the property. Once there is specific mention about 1/3rd share, no other interpretation is possible. Both the Courts have rightly interpreted the will and no substantial question of law is involved and prays for dismissal of the appeal.

06. This Court has gone through the contents of the pleading. It is seen that in all these charts the deceased has specifically mentioned 1/3rd portion from open plot and Gram Panchayat property No.254. This Court finds that when specifically there is reference made to

1/3rd land out of open land, it is clearly intention of the testator that he specifically wanted each of the son to get 1/3rd share in the open plot. This Court does not find the interpretation to be perverse or incorrect. This Court thus finds that except this question, there is no other question raised. This Court finds that there is no substantial question of law involved in the appeal. The appeal is thus dismissed. In view of dismissal of the Appeal, connected Civil Application does not survive and is disposed off accordingly.

[KISHORE C. SANT, J.]