

SGA

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 755 OF 2022

Sakharbai Maruti Bharaskar
(Died) Through L.Rs.

A. Shivaji Dada Bharaskar

..Appellant

Versus

Yosef S/o Suryabhan Adhagale
and others

..Respondents

...

Mr.D.R. Markad - Advocate for Appellant

Mr.Appasaheb J. Nagode & Mrs.S.A. Nagode – Advocate
for Respondent Nos.1 to 4

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CORAM : GAURI GODSE, J.

DATE : 13th February, 2023

PER COURT :

1. This appeal is by the original defendant challenging the concurrent judgment and decree passed in favour of the respondents for declaration of ownership and injunction restraining the appellant from disturbing the possession of the respondents over the suit property.
2. By judgment and decree dated 15th January, 2022, learned Civil Judge, Junior Division, Newasa decreed the Regular Civil Suit No.1074 of 2011 filed by the respondents and declared the respondents as owners of the suit property by virtue of will

executed by one Malanbai, who was first wife of Maruti-original holder of the property. By the said judgment and decree, there was also a declaration granted in respect of heirship certificate issued in the name of appellant no.1 (“Sakharbai”) as illegal and it is further declared that the decree passed in Regular Civil Suit No.901 of 2011 inter-se between the defendants is illegal. Hence, by the said decree, the appellant is restrained from disturbing the peaceful possession of the respondents over the suit property. Learned District Judge-2, Newasa by judgment and decree dated 29th September, 2022 dismissed the Regular Civil Appeal No. 9 of 2022 preferred by the appellant against the decree of the trial Court. Hence the present Second Appeal.

3. Learned counsel for the appellant submitted that the defendant no.1-Sakharbai was the second wife of the original holder Maruti. After death of Malanbai (first wife of Maruti), heirship certificate was granted in the name of Sakharbai, being heir and legal representative of Maruti and Malanbai. Thus, the learned counsel submitted that there was no challenge to the said heirship certificate, hence, the said certificate could not have been declared as illegal in the suit filed by the respondents. Learned counsel submitted that the heirship certificate granted

in the name of Sakharbai was never challenged, hence there was no question of respondents being declared as owners of the suit property as per the will executed by Malanbai. Learned counsel for the appellants further submitted that Regular Civil Suit No.901 of 2011, which was between Sakharbai and the present appellant – Shivaji (defendant no. 2), there was a compromise and on the basis of the compromise in the said suit, present appellant Shivaji was entitled to the suit property. Learned counsel also submitted that the suit property was a class-II tenure property and hence, Malanbai was not entitled to alienate the property by way of a will. Therefore, this raises a substantial question of law and hence the second appeal needs to be admitted.

4. Learned counsel for the respondents submitted that admittedly, Maruti was the original holder of the property and Malanbai was his legally wedded wife. He submitted that Maruti expired on 28th March, 1992 and thereafter Malanbai was the sole heir and legal representative of Maruti and hence she was entitled to execute the will in favour of the respondents. He further submitted that Sakharbai was not in any way concerned with the suit property. She was not legally wedded wife of Maruti and

therefore, there was no question of she being heir and legal representative of Maruti or Malanbai. He, therefore, submitted that the trial Court has rightly declared the heirship certificate granted in the name of Sakharbai being heir and legal representative of Malanbai to be illegal. He further submitted that since Sakharbai had no right in the suit property, the compromise recorded in Regular Civil Suit No.901 of 2011 inter-se between Sakharbai and present appellant – Shivaji has no bearing on the title of the suit property and hence the same is rightly held to be illegal. He submitted that the proceedings of grant of heirship certificate is summary in nature and the same do not devolve any right, title and interest in the suit property. Hence, there is no substantial question of law involved in the second appeal and the second appeal is liable to be dismissed.

5. I have gone through the record of the second appeal and also considered the submissions made on behalf of both the parties. It is not in dispute that Maruti was original holder of the suit property and Malanbai was his legally wedded wife. It is further also not in dispute that Maruti predeceased Malanbai and that Malanbai and Maruti had no issue. Hence, after the death of Maruti, title of the suit property devolved upon Malanbai, being

sole heir and legal representative of Maruti. In these facts and circumstances of the case, there is no question of Sakharbai claiming any right over the suit property either through Maruti or through Malanbai. It is contention of the appellant that Sakharbai was second wife of deceased Maruti. Since it is not disputed that Maruti predeceased Malanbai, there is no question of Sakharbai being legally wedded wife of Maruti. In such circumstances, Sakharbai is neither heir and legal representative of Maruti nor she can be termed as heir and legal representative of Malanbai. Hence, the heirship certificate granted in favour of Sakharbai will not devolve any right in Sakharbai. Hence, the civil proceedings compromised inter-se between Sakharbai and present appellant Shivaji will have no effect on the title of the suit property. Hence, the heirship certificate as well as decree in Regular Civil Suit No.901 of 2011 is rightly declared as illegal by the impugned judgments and decrees.

6. Since, there is no dispute that Malanbai was the only heir and legal representative of deceased Maruti, the will executed by Malanbai in favour of the respondents is rightly relied upon by the respondents to claim title over the suit property. Record shows that there is no dispute raised with respect to actual

execution of the will and the objection that was raised was only with respect to Malanbai being not entitled to execute the will. Both the Courts have held that execution of will by Malanbai in favour of the respondents is proper. I do not see any illegality or perversity in the reasonings recorded by both the Courts declaring the respondents to be owners of the suit property by virtue of the will executed by Malanbai.

7. With respect to the submission made on behalf of the appellant that the suit property is class-II tenure land and Malanbai had no right to execute the will, the same is also dealt with by both the Courts. Malanbai had executed the will and bequeathed her right, title and interest in the suit property in favour of the respondents. The execution of the Will do not not create any superior title or right in favour of the respondents and whatever right, interest and title Malanbai had in the suit property, will stand transferred in favour of the respondents by virtue of the will.
8. For the reasons stated above, I do not find that second appeal involves any substantial question of law. Hence second appeal is dismissed. There will be no order as to costs.
9. In view of the dismissal of the second appeal, pending civil

application has become infructuous and hence the same is dismissed.

[GAURI GODSE, J.]