

Dusane

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

**INTERIM APPLICATION NO.30485 OF 2022
IN
SECOND APPEAL NO.748 OF 2004**

Bhaskar Murgyappa Kaulapure ...Applicants
(since deceased) thru LRs
Smt. Kamal Bhaskar Kaulapure
(since deceased) thru' her LRs.
Dilip Nandkumar Bhinge & Anr.

V/s.

Ashok Alias Virupaksha Murgyappa ...Respondents
& Ors.

Mr. Sanjay Thokade for Original Appellants in Appeal.

Mr. Ajay RajeNimbalkar i/by S.S. Patwardhan for Respondent No. 1 in Appeal.

Mr. Ketan Joshi for Original Respondent No.2 in Appeal.

Mr. Akshay Kulkarni i/by A.M. Kulkarni for proposed Respondent Nos. 4 to 7.

**CORAM: MADHAV J. JAMDAR, J.
DATE: 18th APRIL 2023**

P.C.:

1. This Interim Application is taken out by the Applicants i.e. Dilip Nandkumar Bhinge and Shivshankar Ganpatrao Mahajan for bringing them on record as legal representatives of sole

Appellant, deceased- Smt. Kamal Bhaskar Kaulapure. The said Smt. Kamal Kaulapure passed away on 23rd July 2022 and the present Interim Application is taken out on 27th September 2022 i.e. within time.

2. It is the claim of the Applicants that deceased Appellant i.e. Smt. Kamal Bhaskar Kaulapure has executed registered Will dated 30th November 2004 by which the properties which are subject matter of the present proceedings are bequeathed in favour of the Applicants. The Applicants are the sons of sister of the deceased- sole Appellant.

3. Respondent No.2 has filed Affidavit-in-reply dated 25th February 2023. In the said Affidavit-in-reply, various contentions are raised including that the probate is not granted of the Will on the basis of which, the Applicants are claiming right, title and interest. However, perusal of the Will shows that the properties which are the subject matter of the Will are at Miraj and the Will was also executed at Miraj. Therefore, as per Section 213 read with Section 57 of the Indian Succession Act, 1925, the probate is not required for the Wills, which have been executed outside Mumbai and which are not concerning the immovable property within the territories of Mumbai.

4. Mr. Thokade, learned Counsel appearing for the Applicants has relied on judgment of the Supreme Court in

the matter of **Kanta Yadav V. Om Prakash Yadav And Others**¹ wherein also the above legal position is clarified. Therefore, there is no substance in the contention of Respondent No.2 that as the probate is not obtained, the Will cannot be acted upon. Therefore, the Interim Application No.30485 of 2022 is allowed in terms of prayer clause (b).

5. Amendment be carried out within 14 days from today.

6. Mr. Ketan Joshi, learned Counsel appearing for Respondent No.2 has raised some other contentions. It is clarified that said contentions can be raised at the time of hearing of the Second Appeal.

7. Interim Application is disposed of in above terms with no order as to costs.

(MADHAV J. JAMDAR, J.)

¹ (2020) 14 Supreme Court Cases 102