



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO. 489 OF 2019
WITH
CIVIL APPLICATION NO. 4443 OF 2024**

**POPAT JANARDHAN KULKARNI
VERSUS
AJINATH SHASHIKANT KULKARNI AND OTHERS**

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Mr. S. S. Kulkarni, Advocate for appellant
Mr. A. B. Kadethankar, Advocate for respondent Nos. 2-a to 2-e
Mr. V. S. Badakh, Advocate for respondent Nos. 4 to 7

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CORAM : Y. G. KHOBRAGADE, J.

DATE : 06 MAY 2024

PER COURT :-

1. After advancing the argument for quite some time, the learned Counsel for the appellant/original plaintiff seeks leave to withdraw the present appeal with liberty to file application under Section 263 of the Indian Succession Act., before the same Court which has granted probate certificate.

2. Needless to say that the appellant/plaintiff filed R.C.S. No.202 of 2003 and prayed for decree of declaration that the will

deed dated 01.07.1995 allegedly executed by deceased Janardhan Kulkarni, the father of the appellant/plaintiff in favour of his nephew defendant No.1 Ajinath Shashikant Kulkarni as well as order dated 16.10.1997 passed by the learned Civil Judge Senior Division, Ahmednagar in Probate Application No. 10 of 1997 in favour of defendant No.1 is null and void.

3. It is submitted that, since the Civil Judge Senior Division, Ahmednagar passed an order in probate proceeding and granted probate in favour of the defendant, therefore, only remedy is available to the plaintiff under Chapter 3 of the Indian Succession Act. However, the plaintiff filed separate suit seeking declaration that the order passed in probate proceeding is null and void. On 16.10.1997, the learned Civil Judge Senior Division, Ahmednagar passed the judgment and dismissed the suit of the plaintiff. Further, the first appellate Court upheld the judgment and order of the trial Court vide its judgment and order dated 19.12.2017 passed in R.C.A. No.362 of 2011.

4. Section 299 provides appeal from order of District Judge. Since under Section 263 of Indian Succession Act, the appellant

having remedy for seeking revocation of succession certificate, therefore, I do not find that both the Courts have committed any illegalities.

5. Since the plaintiff sought withdrawal of the appeal with permission to file application under Section 263, therefore, leave granted as prayed for. However, the point of limitation is kept open and it can be decided on its own merit.

6. Accordingly, Second Appeal is dismissed as withdrawn with liberty as prayed for.

7. Pending civil application is disposed of.

[Y. G. KHOBRAGADE, J.]

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