



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

917 SECOND APPEAL NO. 254 OF 2015
WITH
CIVIL APPLICATION NO. 6761 OF 2015
IN SA/254/2015

Narayan Maharu Patil And Others

VERSUS

Smt. Laxumibai @ Guntabai Maharu Patil (Deceased) Through her legal
representatives 1-A Rajaram And Others

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Advocate for Appellant : Mr. R.M. Deshmukh

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CORAM : KISHORE C. SANT, J.

Dated : July 04, 2024

PER COURT :-

1. Heard the learned advocate for the appellant for quite some time.
2. This appeal arises out of a suit for declaration and perpetual injunction filed by the present appellants/original plaintiffs.
3. It is the case of plaintiffs that they are having ancestral properties. The properties were belonging to one Maharu Dagadu, the father of the plaintiff, who was husband of Gunatabai alias Laxmibai. Narayan Maharu, present appellant, plaintiff No. 1 claims to be their adopted son. Narayan Maharu has three sons namely Dhanraj, Premraj and Yuvaraj (plaintiff Nos. 2, 3 and 4). Deceased Laxmibai had filed Spl. Civil Suit bearing No. 25/A/1996 in respect of the suit land against the plaintiffs. The said suit came to decided on 17.7.1998 in favour of plaintiff No. 1 Narayan Maharu against which an appeal was preferred by Laxmibai. In the appellate Court, the decree was modified and suit was decreed in her favour to the extent of

1/4th share.

4. Being aggrieved by the said judgment, deceased Laxmibai preferred second appeal wherein it was held that she is entitled to receive share to the extent of 16.66 ps. in all the properties except Gat Nos. 10 and 140. After the second appeal came to be decided, she filed Special Darkhast No. 6/2006 which was then pending. During the pendency of the said execution, she died on 5.4.2006. After her death, name of Rajaram Mansing Patil came to be entered in the record in her place.

5. It is further case of the plaintiffs that plaintiff had raised objection when the decree had sent to the Collector for execution. It is alleged that defendant No. 1 – Rajaram is trying to take possession of the suit properties unlawfully. Rajaram claims to be successor in title of deceased Laxmibai on the basis of alleged sale deed dated 30.8.2001 which appears to be suspicious. On this, the decree of perpetual injunction and declaration was sought.

6. Present respondent No.1/defendant came with the case that he has become owner of the suit property in view of the will executed by Laxmibai. He was given share of Laxmibai as he happens to be son of deceased Laxmibai. The plaintiff, though appears to be adopted son, the relations between the parties are not cordial. Father of plaintiff No. 1 had driven Laxmibai out of the house and she was required to file proceeding under section 125 of Criminal Procedure Code bearing Cri.M.A.Nos. 31/2977 and 32/1977. The will is duly executed in the office of Sub-Registrar,

Amalner. He, thus, prayed for dismissal of the suit.

7. The learned Trial Court, after holding the trial and considering the evidence concluded that the plaintiff cannot claim right over the property and vide judgment and order dated 11.8.2009 dismissed the suit. In an appeal preferred by the plaintiffs, the learned District Judge confirmed the said findings of the trial Court and dismissed the appeal. Hence, the present second appeal.

8. The present second appeal is vehemently argued by Mr. R.M. Deshmukh, learned counsel for the appellants/plaintiffs. He submits that after the death of Laxmibai, the appellant/plaintiff No. 1 was natural successor of her properties being adopted son. The fact of adoption is not denied by the defendant. When the property was of joint family, Laxmibai could not have executed a will. He also doubted the genuineness of the will deed and the findings of both the courts below that deceased Laxmibai was held owner to the extent of 16.66 ps. Share in the property is not correct. He, thus, submits that a case is made out to issue notice.

9. On considering the oral arguments and on looking to the judgments, this Court finds that the deceased Laxmibai was held to be entitled to share of 16.66 ps. In Special Civil Suit No. 25/A/1996. That finding is never challenged by the appellants. The said findings attained finality. It is not open thereafter to go beyond it. So far as genuineness of will is concerned, both the Courts have considered that the will was duly executed in the office of Sub-Registera, Amalner. Nothing is pointed out to show that this finding

is perverse or based on the no evidence. The question of genuineness of will is necessarily a question of fact and hence, this Court need not go in to the same.

10. One more fact needs to be recorded that during the pendency of this appeal, a query was made by this Court vide order dated 7.5.2024 that whether execution proceeding bearing Darkhast No. 6/2006 is pending. There is no answer to the said query and the status of the said execution is not before this Court. For all the above reasons, this Court is not inclined to interfere in the impugned judgments and orders of the Courts below. No substantial question of law appears in the appeal. The appeal is, therefore, dismissed with no order as to costs. Civil application, if any, stands disposed of.

(KISHORE C. SANT, J.)

ssc/