



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1013 OF 2015.

Jaishree Dilip Inamdar and Ors.

...Appellants.

Versus

Prabhavati Venkatrao Inamdar and Ors.

...Respondents.

Mr. Akshay Kulkarni i/b Mr. A. M. Kulkarni for the Appellants.

Mr. Umesh Mankapure a/w. Ms. Bhavika Shinde for the Respondents.

Coram : Sharmila U. Deshmukh, J.

Date : 28th August, 2024.

P. C. :

1. By this First Appeal, the original respondent Nos.1 to 3 are before this Court being aggrieved by the judgment dated 1st April 2015 passed in Civil Miscellaneous Application No.90/2006 issuing letters of administration with Will annexed in favour of respondent No.1 herein in respect of Will dated 18th June 1998 executed by the mother-in-law of respondent No.1 and the present petitioner.

2. The facts of the case are that the application was filed by respondent No.1 under Section 234 of the Indian Succession Act praying for letters of administration with Will of deceased Yashodabai which was executed on 18th June 1998. Application came to be resisted by the present petitioners claiming that the property which was

bequeathed by the Will was the joint family property and therefore Yashodabai had no right to bequeath the property in favour of respondent No.1. It was further contended that the deceased Yashodabai was not of sound and disposing mind when the Will was executed.

3. The parties went to trial and the Trial Court by the impugned judgment dated 1st April 2015 issued the letters of administration.

4. Heard Mr. Akshay Kulkarni for the appellants and Mr. Umesh Mankapure a/w. Ms. Bhavika Shinde for the respondents.

5. Learned counsel appearing for the appellants would submit that the application itself was not maintainable in view of Section 57 (b) of the Indian Succession Act, 1925 as the provisions of Part (VI) were not applicable to the Wills made outside the territory and limits of the Bombay High Court so far as it relates to immovable property situated in those territories. He would further submit that under Section 59 which deals with the persons capable of making Will, Explanation-1 provides that married women can dispose by Will any property which she could alienate during her life time. He submits that in view of specific contentions raised in the written statement that the property is the joint family property, the letters of administration could not have been issued. He would further submit that the Will was proved by examining one of the attesting witness Mousin Pathan and said witness

has deposed that at the time of execution of the Will deceased Yashodabai was in sound state of mind. He would further submit that in the cross examination of Mousin Pathan, he has stated that Yashodabai has not stated in the Will that she is unable to do any work. Pointing out to the Will, he would submit that in the Will it has been stated that due to her old age she is not able to do any work. He therefore submits that witness cannot be believed. He submits that in the written statement the defence taken was as to the property being ancestral property and therefore Yashodabai has no authority to execute the Will and secondly about the physical and mental condition.

6. Considered the submissions and perused the record.

7. As far as the submissions raised in respect of Section 57 of the Indian Succession Act is concerned, the provision does not impose any bar on filing of application seeking letters of administration. All that Section 57 of the Indian Succession Act speaks is that it is not necessary for an applicant to seek probate on letters of administration in the respect of Wills which are executed outside the territory and limits of the Bombay High Court so far as it relates to immovable properties situated in those territories. The same does not mean that the application seeking letters of administration itself is not maintainable. It is well settled that the Testamentary Court does not decide the issue of right, title and interest in the property and in

exercise of testamentary jurisdiction grants probate or letter of administration upon the authenticity of the Will being proved. In respect of any dispute as to the right of the testator/testatrix to dispose of the property, the same is outside the jurisdiction of testamentary Court. The limited question which is decided in testamentary jurisdiction is whether the Will has been executed by the testator/ testatrix in sound and disposing state of mind and whether the same constitutes the last Will. Therefore the submissions of Mr. Kulkarni that the property was the joint family property and therefore the deceased has no right to execute Will in respect of the said property is an issue which cannot be gone into in exercise of testamentary jurisdiction.

8. Perusal of the impugned judgment would indicate that the Will has been proved through the evidence of the attesting witness and thus the requirement of Section 68 of the Indian Evidence Act is satisfied. As far as the cross examination of the attesting witness that the said Yashodabai had not stated that due to her old age she is unable to do any work which finds place in the Will, is irrelevant to decide the authenticity of the Will. The attesting witness is only required to depose that the testator/testatrix has signed in his presence and the witnesses in presence of each other and in the presence of the testator had signed the Will. As regards the testatrix

not being of sound and disposing mind, which is one of the defences raised, in the cross examination of the present petitioner, she has admitted that prior to her death Yashodabai was not well for 4-5 years and except her bare words she has nothing to show about ill health of Yashodabai apart from the fact that there is no evidence on record to show that Yashodabai was suffering from any illness for 4-5 years prior to her death. The fact remains that Yashodabai expired in the year 2004 and the Will has been executed in the year 1998 that is almost 6 years prior to her death and even if accepted that she was not well for 4-5 years, the Will has been executed before her illness. It was necessary for sufficient material to be brought on record to demonstrate that Yashodabai at the time of execution of Will was suffering from such illness that it could be stated that she was not in sound and disposing state of mind when the Will was executed. It also needs to be noted that in the Will, Yashodabai has specifically stated that the present petitioner and her children had been given certain immovable and movable properties and therefore in respect of the property bequeathed by Will she does not desire to give the petitioner any further property. The Will further states that the respondent No.1 was staying with the deceased and was taking care of her and therefore it is her desire that the property be bequeathed to respondent No.1 It is well settled that merely because the property has

been bequeathed to one family member cannot be the sole factor to arrive at a conclusion that the Will has been executed in suspicious circumstances. In the present circumstances the Will states that the present petitioner has been given certain immovable and movable properties prior to execution of the Will and therefore it cannot be said that the property has been bequeathed to the Respondent No.1 to the exclusion of other family members. The deceased was working in Tasgaon Nagarpalika and therefore was used to take her own decisions about which there is no dispute. As such it cannot be said that the Will has not been executed on her own will free will and volition. In the application for letters of administration, the respondent No.1 has deposed that the deceased was of sound and disposing mind and was mentally and physically fit. She has further deposed that deceased was in receipt of pension. Till her death deceased used to herself withdraw the pension from the bank account and used to do her own work. Nothing has been pointed out from the cross-examination to controvert the said deposition of respondent No.1.

9. In light of the above, there is no evidence on record to doubt the authenticity of the Will and the same has been executed by the deceased while she was in sound and disposing state of mind and constitutes her last will and desire. In light of the above, there is no merit in the appeal. Appeal stands dismissed. In view of disposal of

Appeal, Interim/Civil Applications, if any, do not survive for consideration and stand disposed of.

[Sharmila U. Deshmukh, J.]