

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1200 OF 2018

IN

SECOND APPEAL NO.624 OF 2018

Mr.Popatlal Krishnachand

Shaha (Deceased Thru Lrs)

1.Shri.Jetendrakumar Popatlal Shaha & Ors.

... Applicants

Versus

Sou.Nanda Kantilal Shah & Ors

...Respondents

Adv. Y. S. Jahagirdar, Senior Advocate a/w Adv. B. K. Raje i/b Adv. Santosh M. Suryavanshi for the Applicants.

Adv. Prafulla Shah a/w Adv. Gunjan Shah for Respondent Nos. 1 & 2.

Coram : Sharmila U. Deshmukh, J.

Date : March 18, 2024.

P. C. :

1. The Civil Application is preferred under Order XLI Rule 27 of CPC seeking permission to bring on record the Will dated 13th October, 1961. The contention of Mr. Jahagirdar, learned Senior Advocate for the Applicant is that the Will executed by Ganesh clearly mentions that Champabai had died issueless. He submits that the present Plaintiffs who were claiming through the branch of Champabai were not legal heirs of Ganesh which is evident from the Will and is necessary to be permitted to be brought on record for proper adjudication of the dispute.

2. The judgment of the Trial Court clearly records that in the written statement the Defendants had accepted the genealogy which was produced on record. It was not pleaded in the written statement that Champabai who was the daughter of Ganesh had died issueless. In the affidavit of evidence, Defendant No. 1 had improved his case and deposed that Champabai was not the daughter of Ganesh and that the mother of Champabai and Ganesh were not married. Now subsequently by way of Will, a new case is sought to be brought that Champabai had died issueless. By way of present Application, the Applicant pleads that the Will was found subsequently. However, considering that firstly without any submission being made in the written statement the Will itself cannot be evidence of the fact that Champabai had died issueless and, secondly, the case of Defendant No. 1 in the Trial Court being that Champabai herself was not the daughter of Ganesh, the production of Will of Ganesh is not necessary for the purpose of adjudication of the dispute. In that view of the matter, as the ingredients of Order XLI Rule 27 of CPC are not satisfied, the application for production of additional evidence cannot be allowed.

3. Application stands dismissed.

[Sharmila U. Deshmukh, J.]