

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

**SECOND APPEAL NO.131 OF 2024
WITH
INTERIM APPLICATION NO.1871 OF 2024
IN
SECOND APPEAL NO.131 OF 2024**

Shalini Govind Gharat **....Appellant/Applicant**

V/S

Madhusudan Moreshwar Naik

Since deceased through L.Rs. **....Respondents**

Mr. Drupad Patil a/w Suyash Sule *for the Appellant/Applicant.*

Mr. V.A. Gangal i/b Ms. Shweta Parab *for Respondents.*

CORAM: SANDEEP V. MARNE, J.

DATE : 8 MARCH 2024.

P.C.:

1 Appellant has filed this Appeal challenging the judgment and decree dated 15 June 2023 passed by the District Judge-2, Alibag, by which the First Appellate Court has allowed Regular Civil Appeal No.13

of 2015 filed by Respondents and has set aside Decree dated 24 December 2014 passed by Joint Civil Judge Junior Division, Alibag in Regular Civil Suit No.51 of 2009. The First Appellate Court has dismissed Regular Civil Suit No.51 of 2009 filed by the Appellant.

2 Land bearing Survey No.13/2 (Gat No.60) admeasuring 0 H 37 R situated at village Mandve Bamangaon, Taluka Alibag, District Raigad is the suit property. One Narayan Manasu Thakur was the tenant of the suit property. According to the Plaintiff, Narayan expired leaving behind his wife-Gangabai Thakur as his sole legal heir. It appears that Narayan had two other brothers Kashinath and Janu. Kashinath died without any issues and Plaintiff-Shalini is the daughter of Janu.

3 It is the case of the Defendants that Gangabai executed a Will in favour of her brother Moreshwar and his children Madhusudan, Sadanand, Janardhan and Mohan on 18 June 1974.

4 In the above factual background, Plaintiff Shalini instituted Regular Civil Suit No.51 of 2009 in the Court of Civil Judge Junior Division, Alibag seeking declaration that she has become owner in respect of the suit property by heirship and seeking recovery of

possession thereof from Defendants. Defendants appeared in the suit and relied upon Will dated 18 June 1974, on the strength of which Defendants claimed ownership in respect of the suit property. Trial Court proceeded to decree the suit on 24 December 2014 declaring that Plaintiff Shalini became the owner of suit property being legal heir of Gangabai. Defendants were directed to handover possession of the suit property to Plaintiff and were also enjoined not to disturb the Plaintiff's possession or to create third party interest in the suit property. The First Appellate Court has reversed the Trial Court's decree holding that Will executed by Gangabai on 18 June 1974 was valid and that therefore Defendants became owners of the suit property.

5 I have heard Mr. Patil, the learned counsel appearing for the Appellant and Mr. Gangal, the learned counsel appearing for the Respondents.

6 Plaintiff doubts the will and claims that the same was not proved. However the Will dated 18 June 1974 is a registered document. It appears that both the attesting witnesses to the Will has passed away when evidence was recorded. However the son of one of the attesting witnesses-Mr. Gajanan Nagaonkar identified the witness's signature on the Will. Additionally, evidence of DW2 was led, who deposed that he

was present when the Will was executed. DW1 also led evidence affirming the thumb impression put by Gangabai on the Will. In the light of death of both the attesting witnesses, the first appellate court held that the Will is proved as per the requirements of section 69 of the Indian Evidence Act. The First Appellate Court has given presumptive value to the execution of the Will considering that the same is registered in the office of Sub-Registrar of Assurances.

7 If the circumstances surrounding the Will are considered, execution of Will by Gangabai in favour of her brother and nephews does not seem unnatural. As observed above, Plaintiff-Shalini is the only heir in respect of the three brothers Narayan, Kashinath and Janu. Gangabai herself held several properties in addition to the suit property. All those properties of Gangabai, except the suit property, are inherited by Shalini as Gangabai did not have any issue. Additionally, Plaintiff has also inherited properties which came to the shares of Kashinath and Janu. In such circumstances, it is not unnatural that Gangabai executed Will of only one of the several properties owned by her, in favour of her brother and nephews.

8 In my view the First Appellate Court has properly appreciated the evidence and has correctly held the Will to be proved. No interference is

warranted in the well-reasoned judgment of the First Appellate Court. No substantial question of law is involved in the present Appeal. The Second Appeal is accordingly **rejected**.

9 In view of the disposal of the Second Appeal, nothing survives in the Interim Application and the same is accordingly disposed of.

(SANDEEP V. MARNE, J.)

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KATKAM
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