



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Second Appeal No.317 of 2021

Suman wd/o Babanrao Madne vs. Anandrao s/o Narayanrao Madne

 Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.

Court's or Judge's Orders

Mr. V.N. Morande, Advocate for the Appellant.

Mr. R.T. Anthony, Advocate for the Respondent.

CORAM : M.W. CHANDWANI, J.
DATE : 27th JUNE, 2024.

The appellant/plaintiff filed a suit for cancellation of will-deed, declaration, possession and injunction on the premise that her husband late Babanrao Madne was residing with deceased Kunjilal Madne, the owner of the suit property, till his last breath. Part of the suit property was rented by deceased Kunjilal Madne to Mr. Elic Brow. After the death of Kunjilal Madne, the rent of the rented property was being paid to the plaintiff. The plaintiff came to know about the alleged will-deed claimed to be executed in favour of the respondent/defendant by deceased Kunjilal Madne. It is pleaded that the plaintiff's husband was a relative of the deceased, whereas, the defendant is not related to the deceased. Deceased Kunjilal was bedridden and was unable to talk to anyone. The will-deed is bogus. The suit filed by the plaintiff came to be dismissed vide judgment and order dated 23/11/2015. The appellate Court also confirmed the judgment and decree of dismissal of the trial Court.

02] Heard the learned Counsel for the respective parties.

03] The evidence, which came on record, shows that the plaintiff's husband was not related with deceased Kunjilal. On the

contrary, the defendant proved the alleged will-deed by examining two attesting witnesses. The sole ground taken in this appeal is that the will is surrounded by suspicious circumstances and, the same have not been removed by the propounder of the will i.e. the defendant. It is argued that the will-deed contains two photographs of deceased Kunjilal. In one photograph, there is no hair on the head of deceased testator, whereas in another photograph, some hairs are present on the head of the deceased. This ground was not raised in the suit. However, for the first time, it was raised before the first appellate Court. The first appellate Court in paragraph 56 has very well dealt with the ground raised by the appellant, which is reproduced here:

“56] Moreover, plaintiff has not applied for referring the photographs on affidavit and Will-Deed to any expert for calling its opinion. It is matter of common knowledge that there may be different angles, lights and WATS of lights under which photographs are obtained which may have different result of photographs.”

04] The attention of this Court is drawn to those photographs contained in the will. It appears that both the photographs are taken out from a computerized camera on the same day. One is before the Tahsildar, before whom the affidavit was sworn by the testator and another is before the Sub-Registrar at the time of execution of the will-deed. Both the photographs are taken from different angles. Therefore, I do not find substance in the argument of the learned Counsel for the appellant that the will is surrounded by suspicious circumstances. There is no fault in the concurrent findings of both the Courts that the will is duly executed by deceased Kunjilal Madne. Thus, no question of law arises in this appeal, much less substantive question of law. Hence, the appeal is dismissed.

JUDGE