



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

First Appeal No. 332 of 2023

Sukhlal S/o Vishnu Khawle,
aged about 32 years, Occ.-Agriculturist,
R/o :- At & Post :- Hingna Bhota,
Tahsil :- Nandura, District :- Buldhana.

... Appellant

- Versus -

Ukharda S/o Pandhari Khawle
Aged about :- 42 years, Occ- Agriculturist,
Residence : Hingna Bhota,
Taluka : Nandura. District : Buldhana.

... Respondent

Mr. H. R. Gadhia, Advocate for the appellant
Smt. S. W. Deshpande, Advocate for the respondent

CORAM : ANIL L. PANSARE, J.
DATE : 07-02-2024

ORAL JUDGMENT

Heard.

2. Admit. Heard finally at the stage of admission.
3. The only point that arises for consideration is :

Whether the appellant had opportunity to contest
the petition filed by the respondent – original
petitioner for probate of Will ?

4. The respondent has filed petition for probate of Will of Pandhari Khawle, who was his father. The respondent in paragraph no. 8 of the petition has disclosed names of successors of Pandhari Khawle but has not disclosed their address. The appellant is one of such successors. He is grandson of Pandhari Khawle.

5. There is nothing on record to indicate that the successors were noticed or were made aware of pendency of probate proceedings. The successors including appellant has, therefore, no opportunity to contest the probate proceedings.

6. Learned counsel for the appellant has invited my attention to Section 295 of the Indian Succession Act, 1925 which reads thus :

***“295. Procedure in contentious cases.** - In any case before the District Judge in which there is contention, the proceedings shall take, as nearly as may be, the form of a regular suit, according to the provisions of the Code of Civil Procedure, 1908 (5 of 1908) in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who has appeared to oppose the grant shall be defendant.”*

7. As could be seen where the probate proceeding is contested, it will have to be tried as nearly as possible as regular suit. In the present case the opportunity to contest the probate proceeding was not granted.

8. Learned counsel for the appellant made an attempt to point out as to how the Will under question has been prepared under suspicious circumstances. However, I need not go into these details as these circumstances will be examined by the court below.

9. Learned counsel for the respondent, though opposed the appeal, failed to show that the appellant or other successors were ever served with probate proceeding or were aware of the pendency of the proceeding.

10. In view of the above and in the interest of justice, it will be appropriate to permit the appellant to contest the probate proceeding and for doing so, matter will have to be remanded back. The point formulated is answered in the negative, resulting into following order.

ORDER

(i) The appeal is partly allowed.

(ii) The judgment and order passed by the Civil Judge Senior Division, Khamgaon dated 13-6-2019 in Probate Case No. 1/2018 granting probate of Will dated 1-9-2015 is quashed and set aside.

(iii) Probate Case No. 1/2018 is restored on the file of the Civil Judge Senior Division, Khamgaon for deciding it afresh by giving an opportunity of hearing to all the successors, in accordance with law.

(iv) The petitioner shall furnish the address of the successors to the trial Court.

(v) The parties herein shall appear before the trial Court on 4-3-2024 at 11.00 a.m.

(Anil L. Pansare, J.)

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