



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.214 OF 2024
AND
FIRST APPEAL NO.215 OF 2024
AND
FIRST APPEAL NO.722 OF 2025**

Sunil s/o. Vitthal Shinde,
Age: 55 years, Occ: Agril,
R/o Sindon, Tq. & Dist. Aurangabad,
At present Renukanagar, Garkhed Parisar
Aurangabad

..Appellant
(Orig. Applicant)

Versus

1. Ali Shan S/o. Noor Mohammad Shaikh,
Age: 55 years Occ: Agril,
R/o. Chitegaon, Tq. Paithan, Dist. Aurangabad
2. Bebe Wd/o Noor Mohammad Shaikh,
Age: 78 years, Occ: Nil.
R/o. As above.
3. Imtiyaz Bee @/o Peer Mohammad Shaikh,
Age: 59 years Occ: Household,
R/o. Shindon Tq/ & Dist. Aurangabad.
4. Rabiyaabee W/o. Vazir Shaikh,
Age: 52 years, Occ: Household,
R/o. As above.
5. Hamsheerabee W/o Shaikh Chand,
Age: 50 years, Occ: Household,
R/o. Garkheda, Aurangabad.
6. Shamshadbee W/o Latif Sayed,
Age: 47 years, Occ: Household,
R/o. Badgaon, Tq. & Dist. Aurangabad.
7. Lailabee Shamat Shaikh,
Age: 42 years, Occ; Household,
R/o. Shindon Tq. and Dist. Aurangabad.

8. The State of Maharashtra
The District Collector, Aurangabad

..Respondents
(R.No.1 to 7 are Orig. R. Nos.2

to 8 and R.No.8 is Ori. R.No.1.)

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Mr. P. F. Patni, Advocate for the Appellant.

Mr. Mohsin Khan, Advocate for Respondent Nos.1 to 7.

Mr. V. S. Badakh, AGP for Respondent No.8.

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON :- 18th MARCH, 2025.

PRONOUNCED ON :- 17th APRIL, 2025.

JUDGMENT:-

1. All proceedings are arising out of common order dated 30.09.2023 passed by Civil Judge Senior Division, Aurangabad. For better understanding, the details are mentioned in tabular form:

First Appeal No.	Civil M.A. No.	Remark
FA/214/2024	294/2022	For issuance of Probate and Letter of Administration under Section 299 of the Indian Succession Act by present appellant
FA/215/2024	293/2024	For issuance of probate and letter of administration under section 299 of the indian succession act in respect of amount and FD kept in bank by present appellant
FA/722/2025	2151/2021	For issuance of heirship certificate in respect of immovable properties and succession certificate in respect of deposits by Alishan and others.

2. All three proceedings were taken up for common hearing and disposal before Civil Judge Senior Division at Aurangabad, who allowed Civil M.A. No.2151/2021 and directed issuance of heirship certificate in name of Alishan and others in respect of immovable properties and succession certificate in respect of Alishan and

others in respect of Fixed Deposits at Maharashtra Gramin Bank, whereas rejected Civil M.A. Nos.293/2023 and 294/2023.

3. The facts giving rise to present proceedings are summarized as under:

One Tajuddin Noor Mohammad Shaikh was scholar of religious scriptures of Hindu religion and renowned preacher (Kirtankar). Although he was Muslim by birth, he had developed interest in Hindu scriptures since his young age and devoted in social and religious work in the interest of community. The appellant-Sunil Vitthal Shinde claims that Tajuddin Shaikh was residing with him as family member. Initially he came in contact with appellant's father and became family member. The appellant since childhood devoted himself in assisting Tajuddin Shaikh. During the lifetime Tajuddin Shaikh purchased some properties out of his income and had maintained certain Fixed Deposits. He executed two Will dated 11.12.2013 and 28.09.2020 and bequeathed his property to appellant. Tajuddin Shaikh died on 27.09.2021 due to heart attack. After demise of Tajuddin Shaikh, Appasaheb Admane handed over appellant both Will. Accordingly, he claims for grant of Probate in respect of Will or Letter of Administration as per Will.

4. It is contention of appellant that Alishan and others have no right to seek heirship or succession certificate as Tajuddin Shaikh

has executed Will and bequeathed his interest in movable and immovable properties in his favour.

5. Per contra, Alishan and others contested claim of Sunil Shinde contending that Tajuddin Shaikh never renounced Islam. During his lifetime, he maintained his family from his income. His last rites are performed as per Muslim rituals and dome is constructed near his house, which is looked and managed by Alishan and others. They denied execution of Will and contended that appellant has created false and fabricated documents with intention to grab properties left behind by Tajuddin Shaikh.

6. The Trial Court framed issues, recorded evidence of parties and rejected claim of appellant highlighting certain doubtful circumstances as regards to Will relied by appellant and passed impugned order.

7. Mr. Patni, learned Advocate appearing for the appellant vehemently contends that late Tajuddin Shaikh never resided with his family. At young age of about 18 years, he left home and resided in shelter of appellant's family. The appellants from his young age, remained in service of Tajuddin Shaikh. Hence, he executed his Will dated 11.12.2013 bequeathing his properties in the name of appellant. The Will is duly notarized and signed by two witnesses. Second Will dated 28.09.2020 does not conflict with

first Will and reiterates intention of Tajuddin Shaikh to bequeath properties purchased by him in favour of appellant. There cannot be dispute about valid execution of Will. The attesting witnesses are examined, whose testimony cannot be doubted. The physical and mental condition of Tajuddin Shaikh at the time of execution of Will is admitted to be sound. The disposition of property under Will needs to be respected. The circumstances considered against grant of Probate / Letter of Administration in favour of appellant does not exist. Mr. Patni in support of his contentions relies upon observations of Supreme Court of India in case of ***Smt. Indu Bala Bose and Others Vs. Manindra Chandra Bose and Another***¹, observations Allahabad High Court in case of ***Smt. Hadi Begum (Deceased by LR) Vs. Smt. Ruqqiya Sultana***² and lastly observations of this Court in case of ***Damodar Kashinath Rasane Vs. Smt. Shahajadibi and Others***³.

8. Per contra, Mr. Khan, learned Advocate appearing for the respondent nos.1 to 7 submits that apparently, perusal of both Will would show that those are typewritten at a time. The contents are word to word same. The property which was not purchased or possessed by Tajuddin Shaikh on the date of alleged execution of first Will is made part of Will. Similarly, land which is transferred in the name of brother is shown in Will. The Stamp Paper on

¹ AIR 1982 SC 133.

² 1984 ALL.L.J. 408.

³ AIR 1989 BOMBAY 1.

which alleged Will is typewritten is purchased by appellant. As per Muslim law, Will cannot be valid beyond 1/3rd of the property possessed by testator. On this count also, Will cannot be accepted to be valid. The appellant failed to clear suspicious circumstances. Therefore, he urges to dismiss the Appeals.

9. Having considered submissions advanced and on perusal of record, apparently claim of appellant for issuance of Probate or Letter of Administration has been rejected on following counts:

- (i) There is no explanation for purchase of Stamp Paper in the name of appellant.
- (ii) As per Muslim law bequest beyond 1/3rd of total property is impermissible.
- (iii) The Gut No.177 is given to respondents by gift, however, same is made part of bequest under Will.
- (iv) The property purchased in the year 2014 is made part of Will alleged to be executed in the year 2013.

10. Undisputedly, Tajuddin Shaikh was Muslim by birth. Although appellant contends that Tajuddin Shaikh professed Hindu religion, there is nothing to show his conversion to Hinduism. On the other hand, witnesses of appellant namely Appasaheb and Rajendra gave vital admissions, which depicts that Tajuddin Shaikh never renounced Muslim religion. The findings recorded by Trial Court on this issue does not require interference.

11. Section 63 of the Indian Succession Act provides for mode and manner of attestation of Will. The onus to prove Will is on propounder. The propounder has to establish execution of Will and remove suspicious circumstances surrounding execution of Will. It is also necessary to establish the testamentary capacity and signature of testator. The term suspicious circumstances has been explained by Supreme Court of India in case of ***Shashi Kumar Banerjee & Ors. Vs. Subodh Kumar Banerjee & Ors.***⁴. The suspicious circumstances may be as to genuineness of signature of testator, condition of testator's mind, the dispositions made in the Will being unnatural, improbable or unfair in the light of relevant circumstances, or there might be other indications in the Will to show that testator's mind was not free. When circumstances are not normal or normally expected of a normal person, it would be termed as suspicious circumstances. Upon discharge of such onus, the Court required to decide issue as to genuineness and due execution of Will. The Probate Court does not decide any question of title or existence of property itself.

12. In light of aforesaid parameters of law, it is to be find out if appellant had discharged his burden to establish execution of Will free from suspicious circumstances. The witness Appasaheb Admane deposed that Tajuddin Shaikh executed two Will dated

⁴ AIR 1964 SC 529.

11.12.2013 and 28.09.2020 in his presence. The first will was notarized before Advocate Ankush Jadhav and second Will was notarized before Ulhas Kadam, which is signed by Tajuddin Shaikh and then by both witnesses. The Will was kept in his custody. After death of Tajuddin Shaikh, he informed appellant about execution of Will and handed over original to him.

13. The respondents have objected evidence adduced by appellant. Firstly, it is contended that Stamp Paper was not purchased by Tajuddin Shaikh, but it was by appellant. Perusal of first Will shows that stamp was purchased for appellant by Tajuddin Shaikh. There appears signature of Tajuddin Shaikh below name of purchaser. The Trial Court observed that it was purchased by appellant. On careful reading of document, contention of Mr. Patni, learned Advocate that this was purchased by Tajuddin Shaikh for appellant appears to be more probable and acceptable. The findings of Trial Court on this aspect appears to be inconsistent to record or based on misreading of documents.

14. The Trial Court relied upon second suspicious circumstance as to genuineness of Will that Tajuddin Shaikh was not entitled to bequest in any case beyond 1/3rd of his estate as per Muslim law. The Trial Court rightly relied upon Chapter 18 of Mohammedan Law (Mulla), which suggests that power of Muslim to bequest has been limited or restricted in two ways, namely, he cannot Will for

more than $1/3^{\text{rd}}$ of his estate, and secondly, he cannot bequest to an heir validly, unless some conditions are fulfilled. The bequest to an heir is not valid unless the other heirs consent to the bequest after death of the testator. If a Will, bequest, limited one third to a stranger, it would be perfectly valid, binding on heirs and lawful, otherwise, it would be invalid, without the consent of heirs. In light of aforesaid provision, even it is assumed that bequest beyond $1/3^{\text{rd}}$ was invalid, there is no difficulty in accepting Will as valid to the extent of permissible limit under Mohammedan Law. Mr. Patni has rightly relied upon observations of Division Bench of this Court in case of ***Damodar Kashinath Rasane*** (supra) in this regard, particularly observations in paragraph no.17:

“17. The second question which, no doubt, has been raised on behalf of the defendants, for the first time, in this Second Appeal can also be disposed of by us since it is a question of law and the matter is at large before us on all point of law. As pointed out earlier while summarizing the position of law, a widow's share in her husband's property is limited only to one-fourth of his estate, when there are no other blood-relations of the husband left/ This will also mean that when the sole heir left is the widow and the bequest of the entire property is made in favour of a stranger the bequest will have to be upheld to the extent of the widow. There is no reason why such a consequence should not follow in law for ever where the consent of the heir is needed to validate the bequest in excess of one-third that consent is required so that the heir or heirs concerned are not deprived of their rightful share in the estate. That rightful share in the estate in the present case being only of the widow and limited only to one fourth of the unbequeathable estate of the testator, that is $2/3^{\text{rd}}$ of the estate, the plaintiff is entitled to only one-fourth of the two-thirds of the said estate. In other words she is entitled only to one-sixth of the entire estate. This being the case, the suit be decreed only to the extent of one-sixth of the land in dispute.”

15. The next contention doubting genuineness of Will is that land Gut No.177 was given by Tajudding Shaikh to his brother Alishan. Eventually, mutation entry was recorded. The appellant as well as his witness Rajendra admitted mutation in favour of Alishan, which depicts that 62R land was allotted to him under partition deed and name of Tajuddin Shaikh was removed. Second Will has been executed on 28.09.2020. Prior to that mutation Entry No.2274 dated 01.04.2020 was certified as to partition and transfer of land in favour of Alishan. It is accordingly submitted that once such a transfer was effected, a Will executed at a later point in time would not have reference of its bequeathal to the appellant. Perusal of document, particularly second Will dated 28.09.2020 depicts that reference as regards to land Gut No.177 is made stating that suit property is part of earlier Will dated 11.12.2013 and then it makes reference of further estate to be bequeathed under Will. It is true that, in said Will there is no reference of gifting land Gut No.177 to Alishan. In natural course, Tajuddin Shaikh would have explained aforesaid fact. This circumstance is not properly clarified by appellant.

16. Last and most important objection is that Will dated 11.12.2013 makes reference of land Gut No.2 to the extent of 40R. The certified copy of sale deed dated 12.05.2014 depicts that Tajudding Shaikh became owner of land after execution of Will

dated 11.12.2013. No explanation is coming forward from appellant as to how in the Will executed in the year 2013, there is reference of land purchased after six months of execution of Will. Mr. Patni, learned Advocate endeavours to explain that there was agreement for purchase of land and Tajuddin Shaikh was aware about its acquisition, hence reference is made. However, this explanation are not supported by documentary or oral evidence. The appellant never stated in his evidence that such agreement existed prior to execution of Will. The vendors or witnesses of such transaction is not examined to clear aforesaid circumstances. This Court, therefore, holds that appellant failed to remove suspicious circumstances as regards to mention of land Gut No.2 in Will dated 11.12.2013.

17. Mr. Khan, learned Advocate appearing for respondents points out that Will of 2013 and 2020 are word to word same and uses same font. There appears some substance in contention of learned Advocate appearing for respondents. The first Will is executed in 2013, whereas second is executed in 2020. No explanation is coming forward as to how both Will are similar as to print and font. Therefore, there is no reason to interfere in conclusion drawn by Trial Court.

18. So far as grant of heirship certificate and succession certificate in the name of Alishan and others vide Civil M.A.

No.2151/2021, there is no reason to interfere, since respondents are natural successors of Tajuddin Shaikh, particularly when it is held that appellant failed to prove valid execution of Will in his favour and remove suspicious circumstances as to execution of Will.

19. Consequently, First Appeals sans merits and accordingly, stand dismissed.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/April-2025