



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

37 SECOND APPEAL NO. 655 OF 2022

1. Shree. Pramod Suresh Adhalkar
Age : 37 yrs, Occ : Welding,
R/o. Gut No.6-8-3 Near Gurudatta Nagar,
Home Fabrication work Yawal
Tq. Yawal Dist. Jalgaon.

2. Mahesh Suresh Adhalkar,
2.A Harshala W/o. Mahesh Adhalkar
Age : 32 years, Occ : Housewife

2.B Pranav S/o Mahesh Adhalkar
Age 8 years, Occ: Nil.

2.C Tanuj s/o Mahesh Adhalkar
Age : 4 years Occ : Nil

2B and 2 C represented through their mother
as a natural guardian

3. Shree. Deepak Suresh Adhalkar,
Age : 32 years, Occ : Welding
R/o. Gut No.6-8-3 Near Gurudatta Nagar,
Home Fabrication work Yawal
Tq. Yawal Dist. Jalgaon

...Appellants

VERSUS

1. Shree. Arun Shankar Adhalkar
1.A Pramila W/o. Arun Adhalkar
Age : 50 years, Occ: Household
R/o. Vallabh Nagar, Bhusawal
Tq. Bhusawal, Dist. Jalgaon

1.B Manish S/o Arun Adhalkar
Age : 30 years, Occ : Household
R/o. Vallabh Nagar, Bhusawal
Tq. Bhusawal, Dist. Jalgaon

1.C Ashwini Dixit

Age : 28 Years, Occ: Household
R/o. Maharashtra Furniture, MIDC, Jalgaon

2. G. H. Shaikh
Age : 50 years, Occ : Advocate,
R/o : Kazi Plot, Bhusawal,
Taluka Bhusawal,
District Jalgaon.
3. Shree. Vikas Waman Soparkar (dead)

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Mr. S. S. Kulkarni, Advocate for Appellants
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CORAM : ROHIT W. JOSHI, J.
DATE : 7th APRIL, 2025

ORAL JUDGMENT :

The original defendants have come in the present appeal challenging the concurrent judgments and decrees passed in Regular Civil Suit No.78 of 2012 by the learned Civil Judge, Junior Division, Yawal and Regular Civil Suit No.557 of 2014 passed by the learned District Judge-II, Bhusawal.

Respondent no.1 who is original plaintiff had filed a suit challenging Will dated 12.10.2010 stated to be executed by one Sumanbai Shankar Sutar, grandmother of the parties, in favour of the appellant no.2-Mahesh Adhalkar, who is the original defendant no.2. The said Will is executed on 12.10.2010. It is notarized on 16.10.2010 at Bhusawal and the testator has expired on 19.10.2010. The testator was more than 80 years of age on the date of her demise. It is undisputed that till some point of time the testator used to sign documents. It is also undisputed that Will bears a thumb impression and not signature of the testator. The plaintiff is residing at Bhusawal, District Jalgaon and defendant nos.1 to 3 are residing at Taluka Yawal,

District Jalgaon and the Will is stated to be drafted at Bhusawal. The Defendants who are propounders of the Will have examined defendant no.2-Mahesh and one attesting witness, namely, Mr.Deepak in order to prove execution of the Will.

The learned Trial Court has observed that the evidence on record suggested that the testator who was more than 80 years of age was suffering from illness prior to her demise. The learned Trial Court has considered that the testator used to sign documents and the Will on which her alleged thumb impression is affixed. In view of the aforesaid the learned Trial Court has held that the defendant had failed to remove suspicion surrounding the Will and therefore, the learned Trial Court has decreed the suit granting a declaration that Will allegedly executed by Sumanbai was null and void and not binding on the plaintiff. As stated above, the defendants filed appeal challenging the said decree passed by the learned Trial Court. The learned First Appellate Court has confirmed the findings. The learned First Appellate Court has referred to inconsistencies in the evidence of the defendants and contents of the Will and the fact that she did not sign the will although she was able to sign documents till a particular point of time. The learned Appellate Court has held that the defendant nos.1 to 3 had taken active participation in execution of the Will. The learned First Appellate Court has also referred to judgment of the Hon'ble Supreme Court in the matter of *H. Venkatachal Iyengar vs. B. N. Thimmajamma & Ors.*¹ to hold that in order to prove genuineness of thumb impression of a testator, examination of attesting witness by itself is not enough. It is held that the suspicious circumstances surrounding the Will were not cleared by the respondents.

¹ 1959 SC 443

Having seen the findings recorded by the learned Courts along with the evidence with the able assistance of the learned Advocate for the appellants, I find that the findings are based on proper appreciation of evidence. The findings cannot be said to be perverse by any stretch of imagination. Apart from the reasons recorded by the learned Courts two more aspects need to be noted that the mode and manner in which the testator furnished instructions to the scribe is not clear from the evidence on record. Likewise, the Will is stated to be executed on 12.10.2010, it is notarized on 16.10.2010 and thereafter the testator has expired on 19.10.2010. In these circumstances, it was necessary that some Doctor should have certified that the testator was in a fit state of mind for execution of the Will. It also needs to be mentioned that the defendants have not examined any medical practitioner to establish the medical condition of the deceased testator as on the date of the alleged execution of the Will. In that view of the matter, I find no reason to interfere with the findings recorded by the learned Courts. The Second Appeal does not give rise to any substantial question of law and deserved to be dismissed.

The Second Appeal is therefore dismissed. No order as to costs.

Pending civil applications, if any, stand disposed of.

[ROHIT W. JOSHI J.]

Narwade/