



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

FIRST APPEAL NO.2638 OF 2025

Deepak Shivram Patare,
Age : 50 years, Occ. Agri.,
r/o. Karegaon, Tq.Shrirampur,
Dist. Ahilyanagar

..Appellant

vs.

Vijay Shivram Patare,
Age : 45 years, Occ. Agri.,
r/o. Karegaon, Tq.Shrirampur,
Dist. Ahilyanagar

..Respondent

Mr.Shaikh Mazhar A. Jahagirdar, Advocate for appellant
Mr.Vishnu Y. Patil, Advocate for respondent - sole

CORAM : AJIT B. KADETHANKAR, J.
RESERVED ON : SEPTEMBER 26, 2025
PRONOUNCED ON : OCTOBER 08, 2025

JUDGMENT :-

Heard. Admit. At the instance of both the parties the First Appeal is taken up for final disposal, as the parties have supplied private paper book for early disposal of the appeal.

2. Feeling aggrieved by the judgment and order dated 10.11.2021, passed by learned Civil Judge, Senior Division, Shrirampur, Dist. Ahmednagar, in Probate Application No.2 of 2019, the applicant therein has preferred this appeal under Section 384 of the Indian Succession Act, 1925 ("the Act " for short).

Core Issues :-

(i) Whether a 'copy' of will deed not being an original document under Section 64 of the Evidence Act can be relied upon without demonstrating existence of the circumstances enumerated in Section 65(a) to (e) of the Evidence Act?

(ii) Merely because a will deed is executed prior to execution of a subsequent will deed, whether the subsequent will deed can be sought to be revoked without establishing any circumstances enumerated in Section 383(a) to (e), only on the ground that the party relying upon the earlier will deed was not made party in the probate proceedings pertaining to the subsequent will deed. In other words, whether a probate certificate granted under Indian Succession Act can be revoked excepting any ground mentioned in Section 383 of the Indian Registration Act?

Facts in brief:-

3. Both the parties, i.e. the appellant and the respondent, are the real brothers of each other. One Anjanabai happened to be the maternal grandmother of both the parties. Deceased Anjanabai was having undivided interest in land situated at Survey

No.26/8/C+9+10 and survey no.31/2/8, at Mauje Mundhawa, Tq. and Dist. Pune. Undisputedly, Anjanabai died on 04.03.2005 at Mauje Karegaon, Tq. and Dist. Shrirampur. It is undisputed fact that before she died, she used to stay with the respondent. The controversy in the appeal is about two Will-deeds, i.e. (i) Dated 22.12.2004, on which the appellant relies; and (ii) Dated 17.02.2005, executed in favour of the respondent by deceased Anjanabai and of which, probate has been issued by the trial court in Probate Application No.1 of 2018. The appellant challenged the probate granted by learned Civil Judge, Senior Division, Shrirampur, on 03.09.2019 in Probate Application No.1 of 2018 thereby seeking its revocation; and praying for probate in his own name on the basis of the will deed dated 22.12.2004.

Arguments of the Appellant:-

4. Mr.Sk. Mazhar Jahagirdar, learned counsel for the appellant, would submit that the will deed executed in favour of the appellant on 22.12.2004 is obviously prior to the will dated 17.02.2005, which was executed in favour of the respondent. He would submit that the appellant was not made a party in the Probate Application No.1 of 2018 and hence, on that count only, his Probate Application no.2 of 2019 ought to have been allowed. As such,

learned counsel for the appellant prays for allowing the appeal and pray for grant of his probate application no.2 of 2019.

Arguments of the respondent:-

5. Mr.Vishnu Patil, learned counsel representing the respondent, however, supports the findings rendered by the trial court and contends that there is no error in the impugned judgment and order. As such, he prays for dismissal of the appeal.

6. Upon hearing both the parties, following points appeal to my mind for determination in this proceedings:-

i	Whether the trial court rightly held that the appellant failed to prove the case for revocation of the probate granted by it in Probate Application No.1 of 2018 ?	Yes
ii	Whether the trial court is justified in not granting the prayer of the appellant for grant of probate in his name in Probate Application No.2 of 2019 ?	Yes
iii	What order ?	As per the final order

7. With the able assistance of learned counsel for both the parties, I have gone through the record of the proceeding, which is produced vide private paper book.

8. There is no dispute about the relationship *inter se* the parties as well as the parties and the deceased Anjanabai. It is a matter of record that vide Probate Application No.1 of 2018, the respondent examined himself and also a witness, to prove the execution and the contents of the will deed dated 17.02.2005. The probate was issued by learned Civil Judge, Senior Division, Shrirampur, in probate application no.1 of 2018 after a public notice was issued in the newspaper. As such, the procedure and mandate were duly followed when the Probate Application no.1 of 2018 was granted. Under these circumstances, the argument of the appellant is not convincing that as he was not impleaded as party to the said probate proceedings, there was a material and grave lapse in the probate proceedings filed by the respondent.

9. It is not in dispute that the appellant in his cross-examination, admitted that deceased Anjanabai was residing with the respondent until her death. Learned trial court has, therefore, rightly observed that in such circumstances, the appellant could not convince, as to why Anjanabai would execute the will deed in the appellant's favour. In the proceedings, i.e. Probate Application No.2 of 2019, the appellant merely examined himself and none else. The appellant filed certified copies of the earlier probate order under

challenge and the will deed. On the other hand, the respondent examined himself as well as the witnesses namely, Sunil Uttam Bagul and Kailas Nivrutti Patare. It is pertinent to note that the appellant even did not produce on record the original copy of the will deed dated 22.12.2004, on which he rely. The trial court has rightly observed that the appellant absolutely did not comply the requisite procedure under Section 68 of the Indian Evidence Act to prove the will deed.

10. Mr.Sk. Jahagirdar urged that the Ld. Trial Court ought to have relied upon the will deed that the Appellant produced. His contention is that as the said document is executed prior to the will deed that is executed in favor of the respondent in 2005, Ld. Trial Court ought to have given due consideration to his will deed of 2004. In view of this now let us see what evidentiary value the will deed of 2004 relied upon by the Appellant does hold. Firstly, the Appellant has not produced the original of the will deed of 2004, which he relies upon and claims his right on that basis. Instead, the Appellant produced a copy of the said will deed. As such the Appellant sought to prove his case by introducing secondary evidence. Chapter V of the Evidence Act deals with the 'Evidence by Documents', in the light of which, now, I test merit of the case placed by the appellant.

11. Section 61 enables that a document can be proved either by Primary Evidence or by Secondary Evidence. Under Section 62 'Primary Evidence' means the 'Document' itself produced before the court and sought to be proved. 'Document itself' means the Original Document itself. Section 63 to Section 65 of the Indian Evidence Act deal with what is Secondary evidence and When secondary evidence is admissible in a trial.

Section 63 of Evidence Act:

Secondary evidence means and includes --

(1) certified copies given under the provisions hereinafter contained;

(2) copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies;

(3) copies made from or compared with the original;

(4) counterparts of documents as against the parties who did not execute them;

(5) oral accounts of the contents of a document given by some person who has himself seen it.

12. Section 64 of the Evidence Act mandates that every document must be proved by Primary Evidence. The provision however leaves a room for exceptional circumstances. The exception to Section 64 is 'Secondary Evidence' which can be produced subject to the Section 65 of the Evidence Act. Thus, the secondary evidence which is in the either form of above is permissible to be offered in

exceptional circumstances which are defined at Section 65 of the Evidence Act, which reads thus:-

Section 65 of Evidence Act:

65. Cases in which secondary evidence relating to documents may be given.— *Secondary evidence may be given of the existence, condition, or contents of a document in the following cases: —*

(a) when the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it;

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d) when the original is of such a nature as not to be easily movable;

(e) when the original is a public document within the meaning of section 74;

(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force to be given in evidence;

(g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection

The Section further provides that,

In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

13. In view of above, neither the Appellant demonstrated any contingency that constrained him to produce Secondary Evidence to take exception to Section 64 of Evidence Act nor complied the provisions of Section 65 of the Evidence Act. In view of this I hold that a document (will deed in this case) which is sought to proved by a party has to be proved by producing Primary Evidence. Unless either of the exceptional circumstances as mentioned in the Section 65 of the Evidence Act are demonstrated to the satisfaction of the Court, no document can be proved by Secondary Evidence. In view of this, I hold that the Ld. Trial Court rightly discarded the Will deed of 2004 relied upon by the Appellant. There is another lapse on the part of the Appellant as regards to procedure to prove a document. Section 68 of the Evidence Act mandates that the documents which are required to be attested, must be proved by examining at least one attesting witness to such document.

Section 68 of the Evidence Act:

68. Proof of execution of document required by law to be attested.—

If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

[Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.]

It is apparent that the Appellant has not even complied to the Section 68 of the Evidence Act. In view of this too, Ld. Trial Court has rightly discarded the will deed of 2004 relied upon by the Appellant.

14. As such in view of failure on the part of the Appellant to produce correct and admissible evidence and also to prove the same in accordance with Section 68 of the Evidence Act, probate can not be granted in his name in respect of the Will deed of 2004 relied upon by him.

15. To my mind, an application under Section 383 of the Indian Succession Act must demonstrate, at least, one ground as provided therein. For the sake of convenience, the provision is reproduced herein below:-

383. Revocation of certificate.—

A certificate granted under this Part may be revoked for any of the following causes, namely:

(a) that the proceedings to obtain the certificate were defective in substance;

(b) that the certificate was obtained fraudulently by the making of a false suggestion, or by the concealment from the Court of something material to the case;

(c) that the certificate was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant thereof, though such allegation was made in ignorance or inadvertently;

(d) that the certificate has become useless and inoperative through circumstances;

(e) that a decree or order made by a competent Court in a suit or other proceeding with respect to effects comprising debts or securities specified in the certificate renders it proper that the certificate should be revoked.

16. It would be seen that the appellant miserably failed to make out a case under Section 383 with the cogent evidence. Merely because he was not party to the Probate Application no.1 of 2018, it cannot be accepted that the trial court or this court would exercise

the powers under Section 383 of the Act. As observed above, the respondent examined himself and also the attesting witnesses to the will dated 07.02.2005. The probate that was granted in the name of the respondent, was granted by learned Civil Judge, Senior Division, Shrirampur, after due process. I do agree with the findings of the learned Civil Judge, Senior Division, Shrirampur, that as the appellant even could not produce his original will deed to seek probate in his name, there is neither any reason to discard the probate in the name of the respondent nor any case is made out to issue probate in the name of present appellant.

17. In view of the above, I do not find any reason to interfere into the findings rendered by learned Civil Judge, Senior Division, Shrirampur, in his judgment and order dated 10.11.2021 in Probate Application no.2 of 2019.

18. Hence, I pass the following order:-

O R D E R

The appeal stands dismissed. No order as to costs.

[AJIT B. KADETHANKAR, J.]

KBP