



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

SECOND APPEAL NO.132 OF 2025

[Kekdas S/o Narayan Lavatre ..Vs.. Devidas S/o Narayan Lavatre and
Another]

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Mr D. G. Paunikar, Advocate for Appellant.

Mr R. T. Anthony, Advocate for Respondent No.1/Caveator.

CORAM : M. W. CHANDWANI, J.

DATE : 30th JULY, 2025.

1. Having heard the learned counsels appearing on behalf of the respective parties, the following substantial question of law is framed :

Whether the First Appellate Court while allowing the appeals of respondent – Devidas Narayan Lavatre was correct in directing that a share be carved out solely for respondent – Devidas in the partition suit filed by him ?

2. With the consent of both the parties, the matter is taken up for final hearing at the admission stage. The appellant and the respondents are brothers. The appellant filed a suit bearing Special Civil Suit No.370 of 2004 for declaration, partition and separate possession of the suit property and also challenging the will dated 13.01.2004 executed by deceased Narayan. Whereas, respondent No.1 –

Devidas also filed a suit bearing Special Civil Suit No.291 of 2005 for declaration, partition and separate possession of the suit property on the basis of will dated 13.01.2004. The suit filed by the appellant came to be partly decreed whereas, the suit filed by respondent – Devidas was dismissed. Therefore, respondent – Devidas preferred two appeals before the Adhoc District Judge-8 and A.S.J, Nagpur. The First Appellate Court by its common judgment and decree allowed both the appeals of respondent – Devidas declaring that the will dated 13.01.2004 executed by deceased Narayan is genuine and directed that the partition of the suit property be effected as per the shares allotted to the parties in the will dated 13.01.2004. In the operative order, the First Appellate Court also directed that the possession be handed over to Devidas as per his share in the will dated 13.01.2004. The grievance of the appellant in this appeal is only to the extent that, though it was directed that separate possession as per will be handed over to Devidas, but there is no direction for handing over possession of the suit property which fell in the share of the appellant and respondent No.2 - Harish as per will dated 13.01.2004.

3. According to the learned counsel for the appellant, in a suit for partition, all joint owners are entitled to have separate possession of the property that falls within their share, either by way of general partition or by way of a will. Learned counsel for respondent No.1 did not dispute this aspect and conceded that the First Appellate Court ought to have directed handing over of separate possession of the suit property that falls within the share of the appellant and respondent No.2 - Harish as per the will dated 13.01.2004. In my view, the First Appellate Court while allowing the appeals ought to have directed for separate possession to be handed over to the respective parties including the appellant and respondent No.2 - Harish as per the share allotted to them in the will dated 13.01.2004.

4. To that extent, the operative part of the impugned judgment and decree dated 31.07.2024 passed by the Adhoc District Judge-8 and A.S.J., Nagpur is required to be modified.

5. The appeal succeeds to that extent.

6. Apart from respondent No.1 – Devidas, separate possession of the suit property which fell in the share of the appellant and respondent No.2 - Harish as per will dated 13.01.2004 be handed over to them.

7. In the above said terms, the appeal is disposed of.

JUDGE

Tambe.