



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

SECOND APPEAL NO. 37 OF 2025

Krushnarao Natthuji Solao (Dead) thru. LR's Smt. Padmabai

Vs.

Sau. Jyoti Vinayakrao Rode

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. S. S. Shingane, Advocate for appellant.

CORAM : ROHIT W. JOSHI, J.

DATE : 19.09.2025.

. The dispute between the parties pertains to an agricultural land which was owned by one Tulshiram Solao. The appellant is the original plaintiff, who is the nephew of deceased Tulshiram, being son of his real brother. The respondent is the original defendant. Tulshiram treated mother of the defendant as his sister. (Hereinafter, the parties will be referred to as the 'plaintiff' and 'defendant').

2. The defendant claims ownership over the suit property by virtue of a will dated 03.04.1999, executed in her favour by the deceased Tulshiram. This will was registered on 21.08.1999 after demise of Tulshiram on 01.08.1999, the will is at Exh.138.

3. As against this, the plaintiff claims ownership on the basis of will dated 31.07.1999, executed in his favour by Tulshiram. This will is just one day prior to the date of demise of Tulshiram.

4. The plaintiff filed a suit, being Regular Civil Suit No. 8 of 2001, claiming a declaration of ownership and

possession of the suit property. The learned Trial Court decreed the suit vide judgment and decree dated 28.07.2014. The learned Trial Court has held that the will in favour of the plaintiff was duly proved by examining attesting witness. The learned Trial Court has observed that the plaintiff had examined a doctor to show that the testator, Tulshiram, was in a fit disposing state of mind and had also examined an attesting witness to prove due execution of the will.

5. The defendant had disputed the signature of the testator on the will in favour of the plaintiff. However, the said contention was rejected by the learned Trial Court, observing that documents pertaining to admitted signature of the testator, Tulshiram, were not placed on record.

6. The learned Trial Court has not made elaborate discussion about the veracity of the will dated 03.04.1999 (Exh. 138), which is executed in favour of the defendant, probably in view of the subsequent will dated 31.07.1999 in favour of the plaintiff, which was duly proved, according to the learned Trial Court. In view of such findings the suit came to be decreed.

7. Aggrieved by the said decree, the defendant filed appeal, being Regular Civil Appeal No.129 of 2014. The learned Appellate Court has reversed the findings by the learned Trial Court. Dealing with the proof of the will at Exh. 52 in favour of the plaintiff, the learned Appellate Court has recorded a categorical finding that the signature of the testator on will at Exh. 52 in favour of

the plaintiff did not tally with his signature on registered Sale Deed which was at Exh. 48. The learned First Appellate Court has also discussed the evidence of the doctor who was examined by the plaintiff. The learned Appellate Court found that, the will was executed on 31.07.1999 and on the following day i.e. on 01.08.1999, the testator expired which was a suspicious circumstance about which satisfactory clarification was not offered by the plaintiff.

8. As regards the will in favour of the defendant, the learned Appellate Court recorded findings that the scribe of the will, an attesting witness and a doctor were examined to prove due execution and attestation of the will and also that the testator Tulshiram was in a sound mental condition on 03.04.1999 when the will was executed.

9. In view of the above, the learned Appellate Court has reversed the judgment and decree by the learned Trial Court.

10. Perusal of the learned Appellate Court's Judgment will demonstrate that the learned Appellate Court has recorded a finding of fact that the signature on will at Exh. 52 in favour of plaintiff does not tally with his signature on a registered Sale Deed at Exh. 48.

11. Perusal of judgment by the learned Trial Court will demonstrate that the document at Exh. 48 is not considered by the learned Trial Court. The Findings by the learned Appellate Court with respect to suspicious

circumstances surrounding the will at Exh. 52 are also supported by cogent reasons.

12. In that view of the matter, in the considered opinion of this Court, while entertaining appeal under Section 100 of the Code of Civil Procedure, 1908, the evidence which is duly appreciated by the learned First Appellate Court cannot be re-appreciated. The findings by the learned First Appellate Court do not appear to be perverse and no part of evidence has skipped the attention of the learned First Appellate Court. On the other hand the learned Trial Court has not taken into consideration a crucial aspect of the matter that the signature of testator on the will set up by the plaintiff does not tally with his signature on the sale deed at Exh. 48.

13. In that view of the matter, no substantial question of law arises for consideration. Hence, the second appeal is **dismissed**.

(ROHIT W. JOSHI, J.)