



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

Second Appeal NO.154/2025

Arun s/o Mahadeorao Kayarkar through Legal Heirs Vs. Vanita w/o Kunjilal Zilpe and
anr.

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

Court's or Judge's order

Mr. Prakash Randive, Advocate for appellants.
Mr. S.C. Meshram, Advocate for respondent no.1.
Mr. M.V. Bute, Advocate for respondent no.2.

CORAM : ROHIT W. JOSHI, J.
DATE : 01.12.2025

1. Heard.
2. This is an appeal filed by the original plaintiff who had filed a suit for declaration of ownership based on the Will dated 13.6.2002, being Regular Civil Suit No.202/2008. The said suit came to be dismissed by the learned 6th Joint Civil Judge Junior Division, Nagpur, vide its judgment and decree dated 15.4.2014, which was in turn confirmed by the learned District Judge-7, Nagpur, vide its judgment and decree dated 20.12.2024 passed in Regular Civil Appeal No.97/2021.
3. Notice in the appeal was served on the following substantial questions of law vide order dated 02.07.2025:

*i) Whether just having correction about date on the will
can be considered a circumstance to hold the will
invalid in light of Section 63 of the Indian Succession*

Act, even though the evidence of PW 2 and 3 establish the validity and execution of the will?

ii) Whether the learned Appellate Court and learned Trial Court was right in giving importance to irrelevant circumstances which are not contemplated in Section 63 of the Indian Succession Act while determining the validity of will?

iii) Whether the learned Appellate Court has committed an error in law by expecting the scribe of the will and attesting witness to know the nature of property mentioned in the will?

4. The learned courts disbelieved the Will having regard to inconsistencies in the dates mentioned in the said Will. At one place it is stated that the Will is executed on 9.6.2002 and at certain other places it is mentioned that the Will is executed on 13.6.2002. The learned Courts have found that this inconsistency is not properly explained by the plaintiff who is propounder of the Will. Apart from this, the learned Appellate Court has also found that after demise of the testator, the said property was mutated in the names of all the legal heirs. The learned First Appellate Court had expressed that the plaintiff who is propounder should have objected to the mutation of names of all the legal heirs if the property had devolved on him by virtue of Will in question. It is

seen that the date on which the plaintiff got knowledge of the Will allegedly executed in his favour is also not clarified by the plaintiff. This fact assumes significance since the property was earlier mutated in the names of all legal heirs, including the plaintiff. It is inconceivable that names of all legal heirs were mutated inspite of the Will in favour of the plaintiff. If the plaintiff was not aware about the Will at the time of mutation, it was necessary for the plaintiff to prove by cogent evidence that he was not aware about the Will initially when the mutation entry was recorded in the names of all legal heirs and as to when and how he got knowledge about the Will.

5. In view of the above, this Court finds no reason to interfere with the concurrent findings of fact recorded by both the learned Courts that the plaintiff, as the propounder of the Will has failed to prove the Will and remove suspicious circumstances surrounding it.

6. The substantial questions of law framed while issuing the notice vide order dated 2nd July, 2025 are answered against the appellant-plaintiff. Second Appeal stands dismissed.

(ROHIT W. JOSHI, J.)