



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

SECOND APPEAL NO.417 OF 2017

APPELLANT
(Ori. Plaintiff)

:- Pradip Dattulal Agrawal,
Aged about 55 years, Occ: Business, R/o.
Po: & Taluka Raver, District Jalgaon.

..VERSUS..

RESPONDENTS
(Ori. Defts.)

- 1) Jitendra Dattulal Agrawal,
Aged about 75 years, Occ: Business, R/o.
New Prakash Book Depot, Washim Stand
Road, Akola, District Akola.
- 2) Smt. Kiran Ravindra Agrawal,
Aged about 57 years, Occ: Nil,
R/o. Yatnashil Apartment, Near Bhagwat
Plot, Aloka, Dist. Akola.
- 3) Ku. Archana Dattu Agrawal,
Aged about 54 years, Occ: Business, R/o.
New Bhagwat Plot, Akola, Dist. Akola.
- 4) Maya Dattulal Agrawal,
Aged about 50 years, Occ: Business, R/o.
New Bhagwat Plot, Akola, Dist. Akola.
- 5) Smt. Kalpana Nandkishor Kakraniya Aged
about 60 years Occ: Nil, R/o. Kakraniya
Oil Centre, Amravati, Dist. Amravati.

- 6) Smt. Durgabai Wd/o. Datturam Agrawal (since dead) – died on 23.07.2004 during pendency of The First Appela. She is original Defendant no.1 and has been Deleted from the array of parties In the impugned judgment and Decree.

Mr. D. V Chauhan, Senior Adv. a/b Mr. A. Choudhari, Adv. for Appellant.
Mr S.A. Mohta, Advocate for the Respondent Nos.1 to 5.

CORAM : ROHIT W. JOSHI, J.

DATE OF RESERVING THE JUDGMENT: 24.09.2025

DATE OF PRONOUNCING THE JUDGMENT: 03.11.2025

1. Heard.

2. The present appeal is preferred by the original plaintiff in Special Civil Suit No.213 of 1992 in whose favour decree for partition and separate possession was passed by the learned Civil Judge Senior Division, Akola, vide judgment and decree dated 11.07.1997. The appellant/plaintiff is aggrieved by the judgment and decree dated 11.04.2017 passed by the learned District Judge-IV, Akola, allowing Regular Civil Appeal No.34 of 2012 (Old No.409 of 1997) preferred by the present respondent Nos.1/original defendant No.5.

3. The appellant is the original plaintiff, the respondent No.1 is the original defendant No.5. The respondent Nos.2 to 4 are defendant Nos.2 to 4. The respondent Nos.6 is the defendant No.7. Respondent No.7 is mother of other parties to the appeal. Respondent No.6 has expired on 23.07.2004 during the pendency of the first appeal. Parties will be hereinafter referred to as “plaintiffs” and “defendants”.

4. The plaintiffs and defendant Nos.1 to 6 are children of defendant No.7. The controversy in the matter pertains to properties owned by their father late Dattulal Agrawal who has expired on 03.09.1991. The controversy pertains to Will executed by the Dattulal in favour of his wife/defendant No.7 on 30.08.1990. It will be pertinent to mention here that, it is not in dispute that the suit property i.e. are self-acquired properties of the deceased Dattulal. Thus, although dispute revolves around the Will, the authority to bequeath the properties is not in issue.

5. The appeal came to be admitted vide order dated 13.06.2018, on the following substantial questions of law :-

“Whether the Appellate Court was legally correct in holding that the Will at Exhibit 76 has been duly proved in accordance with law or whether the said conclusion has been arrived at merely by taking another view of the matter ?”

6. As stated above, the plaintiff filed a suit for partition and separate possession with respect to the suit properties being Special Civil Suit No.213 of 1992. The plaintiff has narrated the *inter se* relationship between the parties and description of the properties in initial paragraphs of the plaint. He has stated that all the suit properties were self acquired properties of his father deceased Dattulal. The plaintiff makes a reference to a case for issuance of succession certificate, being M.J.C.No.154 of 1991 which was decided on 26.03.1992, by which succession certificate pertaining to the bank accounts and other deposits of deceased father Dattulal was issued in the name of defendant No.2. The plaintiff has stated that he had repeatedly made a request for partition and separate possession with respect to the suit properties, however, the said request was not acceded. The plaintiff has stated that he was constrained to issue notice for partition and separate possession on 24.07.1992 which was duly served on all the defendants, however, the defendants did not comply with the notice to partition the properties.

7. The defendants filed their written statement opposing the suit. The defendants admitted the *inter se* relationship between the parties and also the issuance of succession certificate in the name of defendant No.2. The defendants stated that the deceased father Dattulal, did not approve of the manner in which the plaintiff used to conduct himself. The defendants stated that deceased Dattulal had executed a Will on 30.08.1990 in the presence of his brothers Narayanrao and Kunjilal and a friend namely Shridhar Bapat in favour of his wife, the defendant No.7. The defendants have made elaborate avernements in the written statement that the plaintiff did not enjoy the confidence of his father.

8. Based on rival pleadings, the learned trial Court framed issues, on which both the parties led their evidence. The plaintiff examined himself and one Prem Kumar Vyas as his witness. As against this, the defendants examined defendant No.4-Maya, defendant No.2-Kiran, Narayan and Kunjilal (brother of the testator) and Shridhar Bapat (the friend of of testator as their witness). According to the defendants, the Will is written by Narayan, Kunjilal and Shridhar Bapat, have attested the execution of the Will.

9. The learned Trial Court partly decreed the suit, holding that the plaintiffs had proved his entitlement to 1/7th share in the suit properties, except for the suit property at Serial No.1(a)(i) i.e. the shop running under the name of 'Prakash Book Depo' at Akola. The learned trial Court has held that the defendants had failed to prove the Will dated 30.08.1990.

10. The learned trial Court has observed that prior to filing of the suit a proceeding for issuance of succession certificate was filed vide MJC N.154 of 1991 which was decided on 29.03.1992. The learned trial Court has observed that there was no reason for not disclosing the Will, while the said proceeding was filed. It is also observed that, the testator used to sign documents normally in English as against which, the Will was purportedly signed by him in Devnagari. The learned trial Court has also found some inconsistency in deposition of Narayan, Kunjilal and Shridhar Bapat with respect to time of execution of alleged Will.

11. The learned First Appellate Court has reversed the findings of the learned trial Court. The learned First Appellate Court has referred the evidence of the attesting witnesses and as

held that the signature of the testator was not disputed during the cross-examination of the said witnesses. The learned First Appellate Court has referred to the evidence of daughter to hold that the testator used to sign in English as well as in Devnagari. The learned First Appellate Court has referred to the cross-examination of the attesting witnesses and has found that signature of the testator on the Will, were not disputed.

12. Apart from this, the learned First Appellate Court has also accepted the explanation offered by the defendants and the attesting witnesses that disclosure of Will was not made on the demise of the testator on his instructions that the Will should not be disclosed unless there is a dispute in the family. The fact that, the Will was executed in the presence of two brothers and a close friend of the testator has also weighed with the learned First Appellate Court in holding that the Will was duly executed.

13. In light of the above, the following substantial question of law needs to be decided :-

“Whether the Appellate Court was legally correct in holding that the Will at Exhibit-76 has been duly proved in accordance with law or whether the said conclusion has been arrived at merely by taking another view of the matter ?”

14. The learned First Appellate Court has re-appreciated the evidence and on such re-appreciation, it has reversed the finding of the learned the learned trial Court that the Will was not proved. It is well settled that the First Appellate Court is the final Court of facts and as such, a duty bound to re-appreciate the evidence in order to arrive at appropriate findings of fact. It is, however, equally true that the First Appellate Court is also an Appellate Court. It has to judge the correctness or otherwise of the judgment and decree passed by the learned Trial Court. Therefore, the First Appellate Court must deal with the judgment passed by the learned Trial Court while dealing with the appeal. The First Appellate Court must re-appreciate the evidence and consider the findings recorded by the learned trial Court in the light of the said evidence.

15. The First Appellate Court cannot function as a Court of first instance. The duty to deal with the findings recorded by the Trial Court is to be followed more scrupulously while writing a reversing judgment. The reasons recorded by the learned First Appellate Court must deal with the findings recorded by the learned Trial Court and elaborate why does not agree with the same. The legal position in this regard is well settled. Ready reference for the

said proposition can be had to the judgments of the Hon'ble Supreme Court in the matters of *Jagdish Singh ..vs.. Madhuri Devi*, reported in **(2008) 10 SCC 497**, (Paragraphs 36 to 38) and *Santosh Hazari ..vs.. Purushottam Tiwari (Deceased) by LRs.*, reported in **(2001) 3 SCC 179**.

16. In the present case, the learned trial Court has held that defendants had failed to prove the Will. In holding so, the learned trial Court has recorded elaborate reasons such as; delay in disclosure of the Will; the signature of testator on the Will being in Devnagari; as against other signatures in English; inconsistencies in the deposition of witnesses; the witnesses being interested witnesses etc.

17. The learned trial Court has observed that the testator has expired on 03.09.1991, that there was no disclosure of the Will immediately after his demise, although the scribe and one of the attesting witnesses to the Will are real brothers of the testator and other witness is close friend. The learned trial Court has held that there were reasons to believe that the will was ante dated and was prepared after the demise of the testator, when notice for partition

was sent by the plaintiff to the defendants. The learned trial Court has also held that admittedly the testator used to sign in English and the Will in question disclosed his signature in Devanagari. The fact that one of the brothers of the testator, apart from the scribe and attesting witness, was not present at the time of the execution of the Will is also treated as a circumstance for not accepting the Will. The learned trial Court has also observed that, after the demise of testator, succession certificate case was filed, in which also disclosure of Will was not made. Likewise, inconsistencies were found in the testimony of the defendant witnesses regarding the time when the testator, his two brothers and friend who were the attesting witnesses and the scribe reached the testator's shop for executing the Will. According to the learned trial Court, all the circumstances were sufficient to arrive at a conclusion that, the Will was not duly proved and suspicious circumstances were not adequately dispelled by the defendants. In view of the above, suit for partition and separate possession was allowed by the learned trial Court.

18. *Per contra*, the learned First Appellate Court has referred to the evidence of the daughter of the testator, who deposed that their father used to sign documents in English and also in

Devnagari. The learned First Appellate Court has referred to a letter written by the testator, which was signed by him in Devnagari. The learned First Appellate Court has also elaborately dealt with the evidence of the scribe and attesting witnesses. As regards delay in making disclosure of the Will, the learned First Appellate Court has accepted the explanation offered by the defendant that the testator had asked his brothers and friends who were attesting witnesses and scribe, not to disclose the Will to the family members unless a dispute ensues. The learned First Appellate Court has held that there was no dispute in the family when the succession certificate was obtained and that succession certificate was obtained in the name of one of the daughters of the testator, to which the other children and the widow of the testator did not object. The learned First Appellate Court has thus, accepted the Will and reversed the decree passed by the learned Trial Court thereby dismissing the suit.

19. Perusal of the judgment passed by the learned First Appellate Court demonstrates that the learned First Appellate Court has not dealt with the reasons recorded by the learned Trial Court in its judgment while reversing the said judgment and decree. The learned First Appellate Court has committed this error in deciding

the appeal. The findings of fact recorded by the learned Trial Court are reversed without dealing with the reasons recorded by the learned Trial Court. Accordingly, I pass the following order :-

- i) Appeal is **partly allowed**.
- ii) The judgment and decree dated 11.04.2017 passed by the District and Sessions Judge, Court No.4, Alola, in Regular Civil Appeal No.34 of 2012, is hereby quashed and set aside.
- iii) Regular Civil Appeal No.34 of 2012 is remanded to the learned First Appellate Court with directions to decide the appeal afresh.
- iv) Parties are directed to appear before the learned First Appellate Court on **01.12.2025** for which the separate notice will not be issued.
- v) No order as to costs.

(ROHIT W. JOSHI, J.)

C.L. Dhakate