



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

SECOND APPEAL NO. 173 OF 2025

Devanand Sahebrao Dharpawar,
Age : 39 Years, Occu. : Labour,
R/o. Nalwada, Tq. Daryapur,
Dist. Amravati.

.... Appellant

VERSUS

Nitin Sudamrao Dharpawar,
Age : 42 Years, Occu. : Service,
R/o. Ghanshyam Nagar,
Saturna, Amravati,
Tq. & Dist. Amravati.

.... Respondent

....
Advocate for Appellant : Mr. R.D. Bhuibhar
Advocate for Respondent : Mr. Harish P. Jain
....

CORAM : ROHIT W. JOSHI, J.

Dated : 04th September 2025

JUDGMENT :

1. The present appellant takes an exception to the judgment dated 02.01.2025, passed by learned Ad-hoc District Judge-2, Achalpur, in Regular Civil Appeal No.45 of 2019, whereby judgment and decree dated 11.04.2019, passed by learned Civil Judge Senior Division, Daryapur, in Regular Civil Suit No.31 of 2016, is set-aside.

2. Notice in the present appeal was issued on substantial questions of law framed vide order dated 18th July 2025, which read as under :

“i) Whether the First Appellate Court while overturning the view of the Trial Court that Will is genuine document whereas, the sale-deed is sham and bogus following the principles of law laid down by the Hon’ble Supreme Court in the case of Santosh Hajare Vs. Purushottam, AIR 2001 SC 965 ?

ii) Whether the sale-deed executed by deceased Ganpat Khushal Dharpawar is hit by Section 70 of the Indian Succession Act, 1925 ?”

3. Learned Advocate for the appellant/original plaintiff states that the suit property was bequeathed by the grandfather of the plaintiff in his favour vide registered Will Deed dated 23.06.2014. Learned Advocate draws attention to the findings recorded by the learned Trial Court holding that the Will Deed was duly proved. Learned Advocate contends that the suit property is also allegedly sold by the grandfather of the respondent/original defendant vide sale-deed dated 26.11.2014. He points out that there a recital in the sale-deed regarding cancellation of the Will Deed dated 23.06.2014. Learned Advocate places reliance on Section 70 of the Indian Succession Act to contend that since the Will is revoked by the sale-deed, the sale-deed was required to be proved in accordance with

Section 63 of the Indian Evidence Act, in the same manner as a Will is required to be proved having regard to mandate of Section 63 and Section 68 of the Indian Evidence Act.

4. These submissions are in sum and substance in respect to second substantial question of law. As regards the first substantial question of law, the contention of the learned Advocate is that the learned Trial Court by giving detailed reasons held that the Will Deed was duly proved and has placed reliance on the Will Deed. It is his contention that without dealing with the said findings, learned Appellate Court ought not to have reversed the findings with respect to the proof of Will Deed.

5. Per contra, learned Advocate for the respondent submits that both the substantial questions of law do not arise for consideration as the grandfather has sold the property to the defendant during his lifetime on 26.11.2014 and therefore, on his demise, the suit property was not available for inheritance.

6. Having heard rival submissions as aforesaid, in my considered opinion, the submission of the learned Advocate for the respondent is correct. It cannot be disputed that a Will Deed comes

into effect only on the demise of the testator. The testator in the present case has expired on 18.01.2025 i.e. after the execution of the sale-deed dated 26.11.2014. On execution of the sale-deed dated 26.11.2014, the suit property stood transferred and vested with the defendant. Therefore, on 18.01.2015 i.e. the date of demise, the testator was not the owner of the suit property and consequently, even if it is assumed that the Will Deed was duly proved and also not revoked, the property was not available for testamentary succession.

7. In that view of the matter, the substantial questions of law framed vide order dated 18th July 2025, even if they are answered in favour of the appellant will not have the effect of reversing the decree in favour of the appellant. The second appeal is, therefore, dismissed.

8. No order as to costs.

[ROHIT W. JOSHI]
JUDGE

asd