



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

SECOND APPEAL NO.216 OF 2021

APPELLANT
(Ori. Defendant)

: **Shri. Sanjay Somaji Kale,**
Aged about 35 years, Occu: Cultivator,
R/o. Shidwadi, Tq. Tiosa, District –
Amravati.

..VERSUS..

RESPONDENTS
(Ori. Plaintiffs)

- : 1. **Kamlabai wd/o. Domaji Kale,**
Aged about 74 years, Occupation :
Labourer, R/o. Shidwadi, Tq. Tiosa,
District – Amravati.
At present : R/o. Hyderabad, Tq. & Dist.
Hyderabad (A. P.)
R. No.1 is deleted as per Court's order dated
21.09.2022.
2. **Jija wd/o Prakash Kale,**
Aged about 42 years, Occup. Labourer,
R/o. Shidwadi, Tq. Tiosa, Dist. – Amravati.
At present : R/o. Arvi, Tq. Arvi, District –
Wardha.
3. **Suwarna Giridhar Patil,**
Aged about 24 years, Occupation :
Labourer, R/o. Chistur, Tq. Ashti, District
– Wardha.
4. **Narendra S/o. Prakash Kale,**
Aged about 19 years, Occupation :
Student, R/o. Arvi, Tq. Arvi, District –
Wardha.

Mr S. N. Nandeshwar, Advocate for Appellant.
Ms P. S. Kaware, Advocate for Respondents.

CORAM

: **M. W. CHANDWANI, J.**

DATE

: **12th AUGUST, 2025.**

ORAL JUDGMENT

1. Heard. With the consent of both the parties, the matter is taken up for final hearing at the admission stage.

2. The judgment and decree dated 14.12.2010 passed by the Civil Judge Junior Division, Tiosa in Regular Civil Suit No.97 of 2008, confirmed by the District Judge, Amravati in Regular Civil Appeal No.114 of 2011 is under challenge in this appeal.

3. Brief presumes of the facts are as under :

The respondents (original plaintiffs) filed a suit against the appellant (original defendant) *inter-alia* alleging that the will-deed dated 28.06.2000 allegedly executed by Doma Kale is a false and fabricated document. Deceased Kamlabai – respondent No.1 (original plaintiff No.1) claimed that she was the legally wedded wife of Doma Kale and deceased Prakash Kale was their son. Respondent Nos.2 to 4 (original plaintiff Nos.2 to 4) are the legal heirs of deceased Prakash Kale who died on 02.04.2006. The appellant who is the nephew of Doma Kale prepared a forged and fabricated will-deed allegedly executed by Doma Kale which is not binding on the respondents. Therefore, they filed a suit for

declaration that the will-deed dated 28.06.2000 allegedly executed by Doma Kale in favour of the appellant is a forged one and sought possession of the suit property which according to them, fell in their share. The appellant appeared with a defence that Doma Kale was unmarried and died a bachelor. The Trial Court decreed the suit by the impugned judgment. The appellant made an unsuccessful attempt before the District Judge, Amravati. Feeling aggrieved with the dismissal of the regular civil appeal by the District Judge, Amravati, the present appeal came to be filed.

4. By order dated 14.10.2021, the following substantial questions of law were framed :

“(a) Whether both the Courts below erred in appreciating the evidence on behalf of the plaintiffs about the marriage of plaintiff No.1 Kamlabai to deceased – Domaji Kale ?

(b) Whether both the Courts below erred in rejecting the evidence adduced by the defendant on the point of execution of Will ?

(c) Whether both the Courts below committed wrong in accepting the suspicious circumstances pointed out by the plaintiffs ?”

5. Mr. Nandeshwar, learned counsel appearing on behalf of the appellant submitted that Doma Kale, who was the uncle of the appellant, did not marry and died a bachelor. The appellant who is the nephew of Doma Kale took complete care of deceased Doma.

Therefore, out of love and affection, deceased Doma by a registered will-deed dated 28.06.2000 bequeathed the suit property to the appellant. It is submitted that the Trial Court as well as the First Appellate Court wrongly concluded that deceased Kamlabai – original plaintiff No.1 was the wife of Doma Kale and deceased Prakash was their son. According to him, no document showing that Kamlabai was the wife of Doma Kale has been placed on record. The Trial Court as well as the First Appellate Court on conjecture and surmises, observed that deceased Kamlabai was the wife of deceased Doma Kale. According to him, the will-deed is a registered document. The appellant examined himself and one of the attesting witnesses to the Will to prove the Will. However, the Trial Court as well as the First Appellate Court erred in discarding the registered Will on the ground that it is surrounded by suspicious circumstances. Therefore, according to him, the findings of the Trial Court as well as the First Appellate Court do not sustain being contrary to the settled principles of law. It is also contended that no birth certificate was placed on record.

6. On the other hand, Ms. P. Kaware, learned counsel appearing on behalf of the respondents supported the judgments

impugned. According to her, there is sufficient material on record to show that deceased Kamlabai - respondent No.1 was the wife of Doma Kale and deceased Prakash was their son. According to her, the fact that the Will mentions that Doma Kale was unmarried itself raises suspicion about voluntary execution of the Will by deceased Doma. Therefore, she prayed for dismissal of the present appeal.

7. Heard the learned counsels appearing on behalf of the respective parties. Having gone through the judgments impugned and the record and proceedings of both the Courts below, it transpires that the Trial Court relied on the land acquisition award dated 07.07.2005, legal heir certificate issued by Grampanchayat Kaudanyapur, Taluka Tiosa, death certificate of deceased Prakash – son of deceased Doma, mutation entry in the 7/12 extract of the land acquired by the Government as well as admission of the appellant in his cross-examination. The First Appellate Court endorsed the said findings for the same reason.

8. Deceased Kamlabai claimed that she was the legally wedded wife of deceased Doma. Perusal of the award (Exhibit-41)

passed by the Land Acquisition Officer, Amravati reveals that the land of Survey No.32/3 situated at Kaudanyapur, Taluka Tiosa owned by deceased Doma was acquired by the Government for Upper Wardha Project wherein, deceased Kamlabai and deceased Prakash have been shown as the wife and son of deceased Doma who received the compensation towards acquisition of the land acquired by the Government. That apart, the death certificate of deceased Prakash shows the name of his father as Domaji Kale. Moreover, Grampanchayat, Kaudanyapur had issued legal heir certificate in favour of Kamlabai and Prakash as legal heirs of Domaji. The fact that the respondents received the compensation towards acquisition of land situated at Kaudanyapur was known to the appellant is reflected from his cross-examination wherein, he has admitted that Kamlabai and Prakash were awarded the compensation towards acquisition of land of deceased Doma. Nothing has been brought on record by the appellant to show that the award has been challenged by the appellant who claimed in his proceedings that deceased Doma died a bachelor. Had this been the truth, certainly he or his father being the brother of deceased Doma would have claimed the compensation towards acquisition

of Doma's land. That apart, the death certificate and the certificate of legal heirs support the case of deceased Kamlabai that she was the legally wedded wife of deceased Doma and Prakash was their son.

9. The Trial Court as well as the First Appellate Court who are fact finding Courts concurrently held that respondent No.1 - deceased Kamlabai was the wife of deceased Doma and deceased Prakash was their son. No perversity is shown and therefore, no interference is required in the concurrent findings of the Trial Court as well as the First Appellate Court.

10. This takes me to the will-deed dated 28.06.2000, by virtue of which, the appellant claimed himself to be the legatee under the Will. No doubt, the Will is a registered one and the appellant has examined one attesting witness to prove the will-deed. But the fact remains that in the Will itself, it has been claimed that deceased Doma was a bachelor and died issueless which is incorrect. It raises suspicion around the fact that Doma had voluntarily executed the Will. If he had executed the Will voluntarily, he would not have mentioned this fact. This raises a strong suspicion, more particularly when the appellant who is the

propounder of the Will has also taken an active part in preparing the will. A Will is to be given effect after the death of the testator and therefore, it is the duty of the propounder of the Will to remove all suspicious circumstances. The Trial Court as well as the First Appellate Court proceeded to hold that, though the Will was scribed at Chandur, it was executed at Amravati. No explanation has been given by the appellant as to why deceased Doma had done it. That apart, the Will prepared by the scribe at Chandur has also not been examined to remove this suspicion, more particularly when deceased Doma was in advanced age. Therefore, in my view, the Trial Court as well as the First Appellate Court rightly appreciated the facts in proper perspective and arrived at the conclusion that the Will is surrounded by suspicious circumstances even on the ground of non inclusion of the legal heirs of deceased Doma. No interference is required in the fact finding/enquiry done by the Trial Court as well as the First Appellate Court. The appeal is devoid of merits and hence, it is **dismissed**.

(M. W. CHANDWANI, J.)