



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

SECOND APPEAL NO.345 OF 2023

APPELLANTS

(Ori. Plffs)
on R.A.

- :-**
1. Suryakant Pralhad Deshmukh,
Aged about 55 Years
occ.: Cultivator/Service
 2. Harshal Suryakant Deshmukh,
Aged about 22 Years, Occ.: Student,
Both R/o Waigaon (Nipani), Ta. &
District Wardha

..VERSUS..

RESPONDENTS

(Ori. Defts.)
on R.A.

- :-**
- 1 Sau. Rekha w/o Babanrao Mahabudhe,
Aged about 62 years, Occ.: Household,
R/o Near Laxmi Kirana Stores, Behind
Yashwant College, Laxmi Nagar,
Wardha.
 - 2 Sau. Shobha w/o Subhashrao
Mendhule, Aged about 59 years,
Occ.:Household, R/o C/o Manish
Shrinathe, Near House of Sonal
Thakare, WardNo.7, Near Vikas
Vidyalaya, Gandhi Nagar, Wardha, Ta
& Dist. Wardha.
 - 3 Sau. Meena w/o Sharadrao Zade
Aged 53 years, Occ.: Household, R/o
Near B.D. College of Engineering,
Samudrapur Road, Sewagram, Ta &
Dist Wardha.
 - 4 Sau. Lata Shailendra Deshmukh, Aged
44 years, Occ.: Household, R/o
Wazurkar Layout, Swagat Colony, Karla
Road, Wardha, Ta & Dist. Wardha.

Mr.Abhijit Deshpande, Advocate for Appellants.
Mr V. N. Vyawahare and Mr. Nitin Vyawahare, Advocates for the
Respondent Nos. 1 to4.

CORAM : ROHIT W. JOSHI, J.

DATE : 06.11.2025

ORAL JUDGMENT :

1) Heard.

2) This is an appeal filed by the original plaintiffs who had filed a suit for declaration with respect to ownership over the suit property on the basis of a will alleged to be executed in their favour by late Pralhad Deshmukh (father of plaintiff no.1 and grand father of plaintiff no.2). The will in question is dated 27.01.2004. The testator has expired on 24.01.2009. It is not in dispute that the date on which the will was allegedly executed, the testator was hospitalized as indoor patient at Sawangi Meghe Hospital, Dist. Wardha. The will in question is a registered document.

3) The learned Trial Court has discarded the will observing that although the testator was admitted in hospital due to a brain injury, the scribe of the document had stated that the testator had come to the premises in Collector's office to provide instructions

to the scribe for drafting the will. The plaintiff No.1, who had entered the witness box, stated that instructions for drafting the will were provided by the father and he had written a draft of the will on the basis of which the scribe had finalized the draft.

4) The learned Trial Court has found that there is an inherent contradiction with respect to the mode and manner in which the instructions were provided to the scribe for drafting the will. The learned Trial Court has also found that although the testator was admittedly hospitalized due to some brain injury at the relevant time, the doctor was not examined to prove that the testator was in a fit physical and mental condition to execute the will. These are the principal reasons on the basis of which the learned Trial Court has dismissed the suit.

5) Aggrieved by the aforesaid judgment and decree the plaintiffs preferred appeal which is also dismissed. Perusal of the judgment by the learned First Appellate Court will demonstrate that it has reappreciated the evidence and has concurred with the findings recorded by the learned Trial Court.

6) Mr. Deshpande, learned Advocate for the appellants/original plaintiffs, contends that the initial burden of proving the will was discharged by the plaintiffs by examining an

attesting witness and also scribe of the will. He further contends that the will is a registered document which would give rise to a presumption of the document being genuine. Apart from this, he states that the testator has lived for a period of around 5 years after the date of execution of the will and, therefore, both the learned Courts were not justified in holding that the will was shrouded with suspicious circumstances. Mr. Deshpande further contends that the learned Trial Court has not framed any issue with respect to the so called suspicious circumstances and, therefore, severe prejudice is caused to the plaintiffs inasmuch as if such an issue was framed, appropriate evidence in that regard could have been adduced by the plaintiffs. Mr. Deshpande further contends that the so called suspicious circumstances do not find place in the written statement filed by the defendants.

7) Per contra, Mr. Vyawahare, learned counsel for the respondents, opposes the appeal contending that both the learned Courts have arrived at findings of fact upon appreciation of pleadings and the evidence on record. He further contends that it is not the case of the appellants that any material portion of the evidence has escaped the attention of both the Courts, or that the findings are perverse. He, therefore, contends that the appeal deserves to be dismissed since reappreciation of evidence is

beyond the scope of the jurisdiction of this Court while entertaining the Second Appeal under Section 100 of the Code of Civil Procedure.

8) With the able assistance of both the learned Advocates, this Court has perused the plaint, written statement and the oral evidence led by the rival parties. It is not in dispute that the testator was hospitalized due to some brain injury at the relevant time. In the considered opinion of this Court, it was obligatory for the plaintiffs to examine a doctor to prove that the testator was in a fit state of mind to execute the will. It is also not in dispute that medical certificate is not appended to the will. Apart from this, there is an inherent contradiction as regards the mode and manner in which the testator provided instructions to the scribe for drafting the will. This material contradiction in the evidence is properly taken into consideration and appreciated by both the learned Courts. The findings of fact recorded by both the learned Courts below do not call for any interference. Both the learned Courts have elaborately dealt with the evidence on record and have concurrently found that the plaintiffs had failed to discharge the burden of proving the will. On perusal of the entire material on record, this Court finds no reason to take a different view of the matter.

9) The contention regarding absence of pleadings in the written statement with respect to the suspicious circumstances, is also liable to be rejected since the fact that the testator was hospitalized due to brain injury when the will was allegedly executed and registered is not in dispute.

10) In view of the aforesaid, the Second Appeal stands **dismissed**, as it does not disclose any substantial question of law. Parties to bear their own costs.

(ROHIT W. JOSHI, J.)

Tanmay..