



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

SECOND APPEAL NO.331 OF 2023

Appellant

(On R/A Original
Defendant No.1.)

: Bimbisar s/o Shriram Ganvir,
Age : 61 Years, Occupation : Retired,
R/o. Plot No.97, Bhushan Nagar, New Yerkheda,
Kamptee, Dist. Nagpur.

– Versus –

Respondents

(On R/A Original Plaintiff)

: 1. Manoj s/o Shriram Ganvir,
Aged : 55 Years, Occupation : Retired,
R/o Plot No.A-1/1, Twinkle Apartment,
Haribhau Pawae Road, Gaondevi Nagar, Kalyan East,
Thane, District Thane, Mumbai.

(Original Defendant No.2)

2. Satyafula w/o Bhojraj Bhasarkar,
Aged about : 73 Years, Occupation : Housewife,
R/o Jawahar Nagar, Kanhan, Tahsil : Parseoni,
District Nagpur.

(Original Defendant No.3)

3. Nirmala wd/o Jagdish Nagdeve,
Aged about : 64 Years, Occupation : Housewife,
R/o Near Amit Jewelers, Ganesh Nagar, Kanhan,
Tahsil : Parseoni, Dist. Nagpur.

(Original Defendant No.4)

4. Mala w/o Sakharam Mandpe,
Aged about : 62 Years, Occupation : Retired,
R/o N.I.T.-Plot No.9, Nagsen Nagar, Bhim Chowk,
Nara Road, Jaripatka, Nagpur.

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Dr. R.I. Agrawal a/w Mr. S.S. Chauhan, Advocates for the Appellants.
Mr. N.A. Jachak, Advocate for Respondent No.1.
Mr. S.K. Hatwar, Advocate for Respondent Nos.2 to 4.

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CORAM

:

ROHIT W. JOSHI, J.

RESERVED ON

:

20th SEPTEMBER, 2025.

PRONOUNCED ON

:

1st OCTOBER, 2025.

JUDGMENT :

01. Heard finally with the consent of the learned Advocates for the parties.

02. The appellant and respondents are related to each other as brothers and sisters. Respondent No.1 had filed a suit for partition and separate possession with respect to two properties i.e. land bearing Plot No.97, admeasuring around 1500 sq.ft., situated at Bhushan Nagar, Ranala, Kamptee (*hereinafter referred to as 'suit property' for brevity*) and house property bearing House No.L/24, situated at Bhimnagar, Kamptee

03. The present appellant is defendant No.1 and respondent Nos.2 to 4 are arrayed as defendant Nos.2 to 4 in the said suit. The parties will be hereinafter referred to as plaintiff and defendants.

04. The plaintiff came up with a case that both the aforesaid properties were owned by Late Shriram Ganvir, father of the parties, who expired on 16/11/2015. It is stated that the mother had predeceased the father on 09/06/2006. The plaintiff claimed 1/5th share in the suit property. The plaintiff has averred that defendant No.1 had fabricated a will dated 06/11/2015 and on that basis, was claiming exclusive ownership over the suit property. It is alleged that the father had been ailing for a period of around five years prior to his demise and also had

suffered a paralytic attack, as a consequence of this, he was unable to see or hear and also to mark his signature. It is stated that he had also lost understanding. The plaintiff stated that the will was fabricated, acting in conspiracy with the attesting witnesses and the Notary.

05. Defendant Nos.2 to 4-sisters have filed a common written statement. The signature of defendant No.4 on the will is admitted. However, it is contended that defendant No.1 had called defendant No.4 asking her to sign an affidavit as an attesting witness. It is further averred that on the representation of defendant No.1, defendant No.4 signed the will believing that she was signing an affidavit as an attesting witness. It is also sought to be contended that defendant No.4 has not signed the will in the presence of the testator and other attesting witnesses. It will be pertinent to note that the date on which defendant No.4 has signed the will is not mentioned in the written statement.

06. Defendant No.1, who is the contesting defendant and being beneficiary of the will, contested the suit by filing a written statement. The defendant No.1 contended that the will was executed by the father out of his free will and the suit property was bequeathed in his favour due to natural love and affection coupled with the fact that deceased-father was staying with defendant No.1, who had taken due care of his father during

his old age. He has stated that the plaintiff, who is the other son, was well settled at Mumbai and was having his own house there, which was also a consideration for bequeathing the suit property in favour of defendant No.1 alone.

07. Defendant No.4-Mala Mandpe, who is sister of the parties, is one of the attesting witnesses to the will. The other attesting witness is Tarabai Bansod. The will is a notarized document.

08. After framing the issues and recording the evidence, the learned trial Court has decreed the suit with respect to the house property bearing No.L/24, which is not a subject matter of will and with respect to which there was no dispute between the parties. However, the suit is dismissed with respect to the suit property. The learned trial Court has held that defendant No.1 had duly proved the will and, therefore, the plaintiff and other defendants were not entitled to any share in the suit property.

09. Aggrieved by the dismissal of the suit with respect to the suit property, the plaintiff preferred appeal being R.C.A. No.443/2018. The learned First Appellate Court has allowed the appeal vide judgment and decree dated 31/07/2023.

10. The present second appeal is filed by the original defendant No.1 challenging the said decree by the learned First Appellate Court. Initially on 04/10/2023, notice was issued in the present appeal by framing three substantial questions of law. Another substantial question of law was framed vide order dated 09/10/2024. Thereafter, one more substantial question of law came to be framed vide order dated 25/06/2025. Perusal of the order dated 09/10/2024 and 25/06/2025 will demonstrate that the appeal was to be listed for final disposal at the admission stage. In view of above, the second appeal was taken up for hearing with the consent of the learned Advocates on the following substantial questions of law, which were framed earlier:

- (i) Whether the Lower Appellate Court was justified in reversing the judgment of the Trial Court based on sound reasoning?*
- (ii) Whether the Lower Appellate Court was justified in disbelieving the Will Deed dated 06/11/2015, on the ground that Notary was not examined and the suit property House No.L-24 was not mentioned by the testator Shriram Ganvir, in the Will Deed?*
- (iii) Whether the Lower Appellate Court is right in disbelieving the Will on the ground that the suit plot No.97 was bequeathed only to defendant No.1?*
- (iv) Whether the First Appellate Court was right in discarding the Will in view of the fact that evidence of one of the attesting*

witnesses have alleged to be not signed in the presence of testator?

- (v) *Whether the Lower Appellate Court committed error by reversing the findings of facts of trial Court based on oral evidence which has occasion to actually see deposing from witness box, to note their demeanor, giving of credence to the oral testimony regarding validity of Will Deed executed?*

Substantial Questions of Law (i) and (iv)

- (i) *Whether the Lower Appellate Court was justified in reversing the judgment of the Trial Court based on sound reasoning?*
- (iv) *Whether the First Appellate Court was right in discarding the Will in view of the fact that evidence of one of the attesting witnesses have alleged to be not signed in the presence of testator?*

11. During the course of hearing of the appeal, the learned Advocate for the plaintiff contended that the principal issue in the appeal was that attestation of the will as per Section 63 of the Indian Succession Act, 1925 was not proved. The learned Advocate contended that the appeal deserves to be dismissed on this ground. The substantial question of law No.(iv) was framed in this regard vide order dated 09/10/2024. It is the case of the plaintiff that defendant No.1 has failed to prove that both the attesting witnesses had signed the will in the presence of the testator,

which is a mandatory requirement for valid attestation. He has drawn attention to the deposition of defendant No.4-Mala Mandpe to contend that the said witness had specifically deposed that she had not signed the will as an attesting witness on 06/11/2015 in the presence of the testator. According to this witness, she had signed the will believing it to be an affidavit on 07/11/2015 and that too in the absence of the testator.

12. The hearing of the appeal predominantly revolved around the substantial question of law relating to the due attestation of the will in accordance with Section 63 of the Indian Succession Act. In view of this, it is necessary to deal with the depositions of two attesting witnessing defendant No.4 and Tarabai Bansod.

13. Defendant No.4 has stated in her examination-in-chief that the suit property was a self-acquired property of her father, who expired on 16/11/2015. She has stated that around 10 to 11 years prior to his demise, her father had suffered a brain haemorrhage. She has stated that the understanding of her father was seriously compromised due to the same. She has also stated that, for a period of around 12 to 18 months prior to his demise, he was not even able to recognize people. She has alleged that the father was not in a fit state of mind to execute a will. As regards her signature as attesting witness on the will, she has not disputed

the signature. She has stated that her signature was obtained in the chamber of Advocates/Bar Room in the court premises on 07/11/2015. She has stated that she has not signed the will in the presence of her father/testator. She has explained the circumstances in which she signed the will by stating that her brother defendant No.1 had called her on 07/11/2015 informing her that her signature was required on an affidavit and, accordingly, acting on the representation of her brother/defendant No.1, she went to the Advocates Chamber/Bar Room in the court premises in the afternoon on 07/11/2015 and put her signature on the will believing it to be an affidavit. It will be pertinent to state that defendant No.4 was working as Tahsil Agriculture Officer at Tahsil Office, Kamptee at the relevant time. The said fact is apparent from her examination-in-chief.

14. During the course of her cross-examination, the will in question was confronted to her. She has admitted her signature on the will. She has admitted that she had carried a copy of her Aadhar Card and photographs and provided the same at the time of signing the will. Although, the name of the person to whom a copy of the Aadhar Card and photographs were given is not specifically stated, it appears from the reading of the cross-examination as a whole that the said documents were given to Advocate Bagde. The witness has admitted her signature on copy of her Aadhar card as well. She has further admitted that she had also

signed the notarial register maintained by Advocate Bagde. She has further admitted that while she was signing the document, Advocate Bagde did not represent to her that her signature was being taken on an affidavit. She has further stated that she did not put her signature under any pressure exerted by defendant No.1. She further admitted that the document on which she had put her signature was duly typed and that she did not sign any blank paper. She has, however, denied the suggestion that she has signed the will after reading the contents thereof.

15. It needs to be mentioned that during her cross-examination, the statement in the examination-in-chief, that she did not sign the document in the presence of her father/testator, is not specifically challenged.

16. In this context, the evidence of Tarabai, the other attesting witness needs to be seen. The said witness has fully supported the case of defendant No.1. She has stated in her examination-in-chief that she had signed the will at Exh.70 as an attesting witness. She has stated that the testator had signed the will in her presence. She has also stated that other attesting witness-Mala Mandpe had also signed the will in her presence. The relevant portion of her examination-in-chief is as under :

“I had received witness summons. Will at Exh.70 shown to me, it bears my signature. It’s contents are true and correct. The will is executed by Shriram Ganvir in favour of his son Bimbisar. I am neighbour of Bimbisar. Shriram Ganvir, Mala Mandpe and Advocate Bagde signed in my presence. I read the will and put my signature on it. Extract of register of notary is shown to me. It bears my signature and signatures of Mala Mandpe, Shriram Ganvir and Advocate Bagde. The contents of extract of register are true and correct. The extract of register is marked as Exh.82.”

17. It can thus be inferred from the examination-in-chief of this witness, that the testator signed the will in presence of both the attesting witnesses and both the attesting witnesses signed the will in the presence of the testator.

18. It will be pertinent to mention that no question is put to this witness during her cross-examination that Mala Mandpe was not present on 06/11/2015 when the will was executed and she had signed the same as an attesting witness.

19. Thus, both the attesting witnesses have made contrary statements as regards the presence of defendant No.4 at the time of execution of the will. Whereas, defendant No.4 has stated that she did not sign the will on 06/11/2015 in the presence of the testator, the other attesting witness has stated that defendant No.4- has signed the will on

06/11/2015 in the presence of the testator and also in her presence. Both of these statements cannot be reconciled. Only one of the two statements can be true. It also needs to be mentioned that the statements made by both these witnesses in their examination-in-chief regarding the presence or absence of defendant No.4 on 06/11/2015 are not challenged by the other side during the course of their cross-examination.

20. The normal rule of appreciation of evidence is that whenever a statement made by the witness in his or her examination-in-chief is not challenged during the course of cross-examination, it must be held that the party conducting the cross-examination accepts the correctness of the statement made in the examination-in-chief. However, the said rule cannot be applied in the present case since both the witnesses have made divergent statements and a specific suggestion disputing the correctness of the same was not put to either witness during the course of her cross-examination.

21. It is, therefore, necessary to consider pleadings of defendant No.4 and other evidence on record. It is well settled that, the burden of proving a will is on the propounder and the propounder is also required to clear the air around suspicious circumstances surrounding the will. However, in the case of specific allegations such as fraud, fabrication etc.,

22. A scanned image of page No.4 of the will is reproduced herein below :

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कटिहत्ती नी अजात्या राजीमुशीने पुढेसमजुतीने होवयावा कळाल्याची प्रकाशनी
बहाणापी न करता बुवाव्याही दयावाता बाकी न पडता आज दिनांक ०६/११/२०१५, रोजी
आलीत साबादार यावे समसत हा लेपुर्ण हनुपुत्राया लेख बाहुन पैअन ह हनुपुत्र तिहुल ठेवता
अशे बाबर आपली सही / मि. अंबटा येला आहे. द ह लेख कळत प माहारा इतर इस्टेट पारलान्त
लागु न बंधन वरकर अशे दहीता.
क. त. ०६/११/२०१५.

मृत्युपत्र लिखून देवणार
३३२१८२७११
(श्री. श्रीराम रावराव रामजीर)

[illegible]

साक्षीवार : १८/०५/२०२०
१. श्री. राजेश कुमार शर्मा, जिला न्यायाधीश
जयपुर, जयपुर, जयपुर, जयपुर
श्री. राजेश कुमार शर्मा, जयपुर
जयपुर

८. गंगा परियोजना के बारे में
जल संधि, १९९६ - संशोधन
श्री नारायण गंगर

मृगयुपत्र लिखून देवणास

The document appeared before me and signed the document he admits the Contents herein and the execution here of to have been made by him voluntarily the signature of the decedent is attested to is: testified by STEVEN L. BARNETT I, Barnett L. Barnett do hereby know by my personally being satisfied about voluntary execution that deed is here by authenticated on this 6th day of Nov, 2015

Y. Z. BASSP
NOTARY
KNOTT TALKA
DIST. NADP/NR (A.B.) BODS

23. Perusal of the will at Exh.70 will demonstrate that the said document runs into four pages. The signature of defendant No.4 appears as witness No.2 at page No.4 of the will. She has signed the will only at Page No.4.

24. Perusal of page No.4 of the will shows that it bears thumb impressions and signatures of the testator at two places. First thumb impression and signature appear at the upper right hand side portion after the concluding paragraph of the will. After the concluding paragraph and the first signature and thumb impression, the declaration of attestation is typed. This declaration of attestation runs into four lines. Thereafter, second signature and thumb impression of the testator appear on the right-hand side middle portion of the page. The signatures of two attesting witnesses appear on left hand side of the middle portion. The name of witness No.1-Tarabai appears first followed by witness No.2-Mala i.e. defendant No.4. As noted above, it is not the contention of defendant No.4 that her signature was obtained on any blank paper.

25. It is also necessary to state that although the names of witnesses are not typed on the will, the word "witness" is typed and below that Sr. Nos.1 and 2 are typed one below the other. Therefore, while defendant No.4 signed the document in normal circumstances, it is obvious

that she would notice that she was signing the document as a witness. The word “witness” is at a distance of around two inches above the place, where the signature of defendant No.4 appears.

26. The signature of the testator shows that his full name is written in Devnagari. The signature of the testator after declaration of attestation appears besides the signature of defendant No.4. It will also be pertinent to mention that the name of the testator is typed on the will. The name of the testator appears besides the place where defendant No.4 has marked her signature as an attesting witness. It is hard to believe that defendant No.4 did not notice the name of her father appearing as testator on the will.

27. Defendant Nos.2 to 4 have stated in the written statement that defendant No.4 signed the will under the impression that she was signing the same as an attesting witness to an affidavit. It is stated that defendant No.1 asked defendant No.4 to sign some affidavit as an attesting witness. The pleadings and evidence of defendant No.4 does not disclose as to whether she had enquired from the defendant no.1 about the person who was to swear the affidavit or the purpose for swearing the affidavit. Assuming that defendant No.4 relied on the version of her brother-defendant no.1 that the document which was being signed by her as an

attesting witness, was an affidavit and not a will, yet defendant No.4 shall have enquired with defendant No.1 as regards the purpose for which the affidavit of the father was being taken.

28. Most importantly it is the case of defendant No.4 that she had signed the will on 07/11/2015 and not on 06/11/2015. However, such a case set up for the first time in the evidence, the written statement does not state that the defendant No.4 had signed the document on 07/11/2015 i.e. one day after execution of the will. This fact assumes significance because the date of will as 06/11/2015 is mentioned in the plaint itself. The evidence is apparently an improvement over the pleadings.

29. It must also be stated that this witness has admitted her signature on the notarial register. Perusal of the extract of the notarial register at Exh.82 will demonstrate that the entry with respect to the will is taken at Sr. No.2743 on 06/11/2015. This document corroborates with the version of the propounder/defendant No.1 that the will was executed on 06/11/2015 and the same was attested by both the attesting witnesses on the same day i.e. on 06/11/2015. As stated above, only concluding paragraph and declaration of attestation are typed on page No.4, which is signed by defendant No.4. It is obvious from reading of page No.4 that no prudent person, much less a government servant who had at the relevant

time put in 33 years of service, would sign Page No.4 believing it to be an affidavit. It must also be stated that page No.4 of the will is a plain paper and not a stamp paper. It needs to be stated that the other three pages of the will bear signature of the testator on it's top and the foot. The witness has not stated that page No.4 alone was presented to her for signing.

30. It must be stated that the case of defendant No.4 is one of fraud. It is well settled that in order to make out a case of fraud, the party who alleges the fraud, has to prove the same by leading cogent evidence. The evidence must be strictly in accordance with the pleadings. The pleadings must disclose all the material facts with material particulars regarding the alleged fraud. As stated above, the written statement does not state that the will and register of Notary were signed by defendant No.4 on 07/11/2015 and not on 06/11/2015 i.e. the date of execution of will.

31. It must also be stated that since the burden of proving the fraud is always upon the person, who alleges fraud, in the considered opinion of this Court, it was necessary for defendant No.4 to state as to whether the signatures and thumb impressions of the father/testator were appearing on the document, particularly on page No.4 thereof, while she put her signature on the said page. Perusal of the evidence of defendant

No.4 will show that she is completely silent on this aspect. This fact assumes significance, because if the will was already signed by the testator before defendant No.4 had put her signature on the said document, then it is obvious that she would have realized that she was signing a document as a witness, which was executed by her father. It will be pertinent to mention there that although the signatures of the testator/father on the will are disputed, nonetheless, the signatures mention the name of the testator in Devnagri script. It must also be stated that the other attesting witness has categorically stated that she had signed the will on 06/11/2015. There is no suggestion to this witness that she did not sign the document on the said date, which implies that when defendant No.4 signed the document allegedly on 07/11/2015, the signature of her father and other attesting witness were already appearing on the document. The same applies to the register of Notary as well, wherein also the signature of defendant No.4 appears below the signature of her father and other attesting witnesses.

32. It will also be pertinent to state that the plaintiff has averred in paragraph 9 of the plaint that prior to filing of the suit, he had obtained a certified copy of the same from the Office of Talathi, Yerkheda on 22/04/2016. Thus, the plaintiff had perused the will before filing the suit, however, the plaint averments are silent with respect to the signature of

defendant No.4 as attesting witness to the will. In the normal course, the plaintiff would have discussed the matter with defendant No.4, who is his real sister. The fact that the plaint averments are silent with respect to the case set up by defendant Nos.2 to 4 in their written statement is also a circumstance which goes against the plaintiff and defendant Nos.2 to 4.

33. Defendant No.4 is an educated government servant. In this context, it will be appropriate to refer to a judgment of the Hon'ble Supreme Court in the matter of *Grasim Industries Limited and another vs. Agarwal Steel - (2010) 1 SCC 83*, wherein it is held that when a person signs a document, there arises a presumption that the document is properly understood and then the signature is affixed. It is held that this presumption will apply with greater force to people like businessmen, who are generally considered to be careful people. It is further held that if such presumption is not drawn, then no signature on any document can ever be accepted. The ratio of said judgment will be fully applicable to the present case since the defendant No.4 is a government servant, who had put in around 30 years of service while she had signed the will as an attesting witness.

34. The learned trial Court has dealt with the deposition of both the attesting witnesses and disbelieved the version of defendant No.4.

While recording the findings in this regard, the learned trial Court has taken into consideration that defendant No.4 is an educated government servant; she has admitted her signature on the will; she had admitted that she had provided Aadhar Card and photographs to Advocate Bagde; she did not narrate the purpose for which her brother defendant No.1 allegedly asked her to sign the affidavit; and that the will was already typed when she had put her signature on it.

35. The learned First Appellate Court has taken into consideration Section 63 of the Indian Succession Act. Dealing with the said provision, the learned First Appellate Court has rightly held that both attesting witnesses must sign the will in the presence of the testator. The learned First Appellate Court has accepted the version of defendant No.4 that she did not sign the document in the presence of the testator. The learned First Appellate Court while reversing the judgment passed by the learned Trial Court ought to have taken into consideration the reasons that weighed with the learned Trial Court while recording findings on the issues involved in the suit. The learned First Appellate Court has erred in law in reversing findings of fact recorded by the learned Trial Court without adverting to the reasons recorded by the learned Trial Court. Perusal of the judgment by the learned First Appellate Court does not disclose reasons for differing with the learned Trial Court. The learned First Appellate Court has

committed error of law in reversing findings recorded by the learned Trial Court without dealing with the same.

36. The circumstances recorded by the learned Trial Court while discarding her evidence are not dealt with by the learned First Appellate Court. Apart from this, the other circumstances noticed above have also skipped the attention of the learned First Appellate Court. The learned First Appellate Court has also erred in not noticing that the defendant No.4 did not even come up with a case in her written statement that the document in question was signed by her on 07/11/2015 and not on 06/11/2015.

37. The learned First Appellate Court should have further appreciated that in the event, defendant No.1 intended to create a false document as will, he would not run the risk of asking defendant No.4, who is the sister and daughter of the testator to act as an attesting witness. This is also a circumstance, which goes against the version of the plaintiff and defendant Nos.2 to 4 regarding the will being fabricated or obtained fraudulently.

38. Having regard to the evidence that has come on record, in the considered opinion of this Court, defendant No.1 has discharged the initial burden of proving due execution and attestation of will. The plaintiff and

defendant Nos.2 to 4 have failed to prove the fraud. The evidence of defendant No.4 that she had signed the will on 07/11/2015 does not inspire confidence. The learned trial Court has recorded proper findings in this regard. The learned First Appellate Court should not have reversed the findings recorded by the learned Trial Court with respect to due attestation of the will.

39. In view of the reasons recorded above, Substantial Questions of Law Nos.(i) and (iv) are answered in favour of the appellant and against the respondents.

Substantial Question of Law (ii)

(ii) Whether the Lower Appellate Court was justified in disbelieving the Will Deed dated 06/11/2015, on the ground that Notary was not examined and the suit property House No.L-24 was not mentioned by the testator Shriram Ganvir, in the Will Deed?

40. At the outset, there are no specific allegations against the Notary. There are no direct allegations against the Notary. As has been held by the Hon'ble Supreme Court in the matter of **Smt. Moumita Poddar Vs. Indian Oil Corporation Ltd. & another - 2010 (9) SCC 291**, a document duly notarized cannot be said to be fake in the absence of adequate

material to suggest the same. In the absence of any specific allegation against the Notary coupled with the fact that defendant No.4 has admitted that she has marked her signature on the register of the Notary, in the considered opinion of this Court, the learned First Appellate Court ought not to have disbelieved the will on the ground that the Notary was not examined. It is not in dispute that defendant No.4 has signed the register of Notary. Perusal of the said register will demonstrate that the signature of the testator also appears on the said register. The signature of the testator is followed by the signature of an attesting witness-Tarabai Bansod, which is followed by that of defendant No.4. Defendant No.4 has not said that the signature of the testator did not appear in the register while she had signed the same. The learned First Appellate Court has committed error of law in holding that it was necessary for the defendant No.1 to examine the Notary as his witness. Substantial Question of Law No.(ii) is answered in favour of the appellant and against the respondents.

Substantial Question of Law (iii)

(iii) Whether the Lower Appellate Court is right in disbelieving the Will on the ground that the suit plot No.97 was bequeathed only to defendant No.1?

41. It is well settled that merely because some legal heirs of the testator are excluded would not by itself be a suspicious circumstance. One

of the reasons for executing the will is also to alter the mode of succession as per the law, if the testator had died intestate. In the case at hand, it is not in dispute that the plaintiff has a residential apartment at Mumbai and defendant Nos.2 to 4, daughters of the testator are happily living their marital life. In such circumstances, only because the suit property i.e. a plot at Kamptee, is bequeathed by the testator/father in favour of his son defendant No.1 would not be a suspicious circumstance,, particularly when the other house property, bank account, deposits and other movable are left for being inherited by all the legal heirs. Substantial Question of Law No.(iii) is answered in favour of the appellant and against the respondents.

Substantial Question of Law (v)

(v) Whether the Lower Appellate Court committed error by reversing the findings of facts of trial Court based on oral evidence which has occasion to actually see deposing from witness box, to note their demeanor, giving of credence to the oral testimony regarding validity of Will Deed executed??

42. The learned Advocate for the appellant did not advance any specific submission on this substantial question of law.

43. It will also be pertinent to mention that both sides did not advance any submission as regards physical and mental condition of the testator during the course of hearing of the present appeal

44. In view of the above, Substantial Questions of Law Nos.(i), (iii), (iv) and (v) are answered in favour of the appellant/defendant No.1 and against the respondents i.e. plaintiff and defendant Nos.2 to 4. As regards Substantial Question of Law No.(ii) with respect to examination of the Notary, the learned First Appellate Court has clearly erred in law in disbelieving the will on the ground that the Notary was not examined.

45. In the result, the appeal is allowed in the following terms:

- i. The judgment and decree dated 31/07/2023 passed by the learned District Judge-3, Nagpur in R.C.A. No.443/2018 is hereby quashed and set aside.
- ii. The judgment and decree passed by the learned Civil Judge Junior Division, Kamptee in R.C.S. No.43/2016 is confirmed.
- iii. Parties to bear their own costs.

(Rohit W. Joshi, J.)