



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

SECOND APPEAL NO.475 OF 2023

APPELLANTS : 1 **Sau. Tanebai Wd/o. Bhaurao Thakare,**
(Ori. Defs.) Aged about 80 Years, Occu. : Agriculturist.
(On R. A.)

2 **Pramod S/o Bhaurao Thakare,**
Aged about 52 years, Occu: Agriculturist

3 **Manik S/o. Bhaurao Thakare,**
Aged about 49 years, Occu: Agriculturist.
All applicant nos.1 to 3 are R/o. Khatera,
Tq. Zari-Jamani, Dist. Yavatmal.

..VERSUS..

RESPONDENT : **Sau. Vimal W/o. Mohan Vaidya,**
(Ori. Plaintiff) Aged about 70 years, Occu: Household,
(On R.A.) R/o. Kamai, Post Akoli, Mandal – Jainnat,
Dist. Adilabad (Telangana).
Presently at Near Zilla Parishad School,
Adilabad, Tah. and Dist. Adilabad
(Telangana).

Mrs S. W. Deshpande, Advocate for Appellants.
Mr R. D. Bhuibhar, Advocate for Respondent.

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

RESERVED ON : **9th MAY, 2025.**

PRONOUNCED ON **8th AUGUST, 2025.**

JUDGMENT

1. The findings recorded by the learned Civil Judge Junior Division, Zari-Jamni in its judgment and decree dated 22.03.2013 in Regular Civil Suit No.74 of 2008 (Old RCS No.35 of 2008) which were confirmed by the learned District Judge in its judgment

and decree dated 05.09.2023 in Regular Civil Appeal No.16 of 2013 have been challenged in this appeal whereby, the suit for declaration, partition and separate possession of the suit property filed by the respondent (original plaintiff) came to be decreed.

2. The thumbnail sketch of facts is as follows :

Vimal, the respondent (original plaintiff) filed a suit bearing Regular Civil Suit No.74 of 2008 for declaration, partition and separate possession of the suit property seeking a declaration that the Will dated 28.10.1988 is null and void. The plaint depicts that one Gangaram Bute had two sons namely Vithu Bute and Shamrao Bute. Shamrao Bute died issueless. After the death of Gangaram Bute, the suit property fell into the share of his elder son Vithu Bute. Vithu Bute died on 09.07.1976. Sons of Vithu Bute namely Shriram and Tanba died issueless. Whereas, his daughter Sugandhabai pre-deceased Vithu Bute. After the death of Vithu Bute, his widow Savitribai, daughter Tanebai (original defendant) grand-daughter Vimal - the respondent (the daughter of pre-deceased daughter Sugandhabai) became the only legal heirs of Vithu Bute. It is claimed by Vimal that on 23.10.1987, Savitribai relinquished her share in the suit property and therefore, Vimal and

Tanebai became the owners of the suit property being the only legal heirs of deceased Vithu Bute. Therefore, the Will dated 28.10.1988 allegedly executed by Savitribai in favour of the appellant nos. 2 and 3 (the sons of Tanebai) is invalid, since she had already relinquished her share in the suit property and was no longer the owner of the suit property.

3. The defendants appeared and objected to the suit claiming that Vithu Bute had only two surviving heirs namely – Savitribai and Tanebai who is their mother. Savitribai had executed a Will in favour defendant Nos.2 and 3 (appellant Nos.2 and 3 herein) who are the sons of Tanebai and therefore, they became the owners of the undivided share of Savitribai in the suit property. Defendant Nos.1 to 3 (present appellants) mutually partitioned the suit property amongst themselves. According to them, the plaintiff cannot be a co-sharer in the suit property and sought dismissal of the appeal.

4. Since, the Trial Court decreed the suit, the appellants (original defendants) filed Regular Civil Appeal before the First Appellate Court which also came to be dismissed. Feeling aggrieved, this appeal came to be filed.

5. By order dated 19.12.2023, the following substantial questions of law were framed :

“i) Whether both the Courts below are justified in holding that, the plaintiff/respondent proved registered relinquishment deed dated 23.10.1987, particularly when the same is not placed on record, exhibited or proved in evidence or by secondary evidence ?

ii) Whether both the Courts below are justified in holding that, the plaintiff/respondent filed the suit in limitation ?

iii) Whether both the Courts below are justified in relying upon 7/12 extract at Exh. 42, 43, 44 and 45 to derive the title of the plaintiff, particularly when it is settled position in law that no title can be derived on the basis of 7/12 extract ?

6. Heard Mrs. S. W. Deshpande, learned counsel for the appellants and Mr. R. D. Bhuibhar, learned counsel for the respondent. I have gone through the impugned judgments of the Trial Court and the First Appellate Court and the record and proceedings.

7. The relationship between the parties has not been disputed. The respondent herein was the niece of the original defendant Tanebai. Vithu Bute left behind him, his wife Savitribai and daughter Tanebai whereas, Sugandhabai the mother of Vimal – pre-deceased her father Vithu. At the time of his death, Vithu Bute

had interest in the suit property. As per Section 8 of the Hindu Succession Act, 1956, after the death of Vithu Bute, his wife Savitribai, daughter Tanebai and Vimal, the daughter of pre-deceased daughter Sugandhabai inherited the property and accordingly, respondent Vimal filed a suit for partition claiming that Savitribai had relinquished her share in the suit property on 23.10.1987. Therefore, Vimal and Tanebai inherited the suit property equally. Whereas, Tanebai and her sons came up with a case that on 28.10.1988, Savitribai had executed a Will bequeathing her share in the suit property to Pramod and Manik i.e. appellant Nos.2 and 3 (original defendant Nos.2 and 3).

8. Undoubtedly, the relinquishment deed has not been placed on record. Relying on the admissions of Tanebai in her cross-examination that Savitribai had executed a relinquishment deed on 23.10.1987 and thereby relinquished her share, the Trial Court held that Savitribai did not have any interest in the suit property and therefore, the will-deed allegedly executed by her in favour of Pramod and Manik is not valid. The First Appellate Court also endorsed the said findings. Thus, the Trial Court as well as the First Appellate Court on the admissions made by Tanebai in her cross-

examination, held that the Will subsequently executed by Savitribai is not valid and the respondent – original plaintiff and defendant No.1 have equal share in the suit property alongwith Savitribai.

9. On perusal of the record, it appears that the Trial Court as well as the First Appellate Court have not considered the aspect that the appellants in their written statement had specifically denied the execution of the relinquishment deed by Savitribai. Instead, both the Courts relied solely on the cross-examination of appellant No.1 regarding the execution of the relinquishment deed. Without the said relinquishment deed, which according to the respondent is a registered one being placed on record, the Courts below observed that the respondent – original plaintiff had proved that deceased Savitribai relinquished her share from the suit property. It is a settled principle of law that admissions are not conclusive proof of the facts admitted, they can be used as an estoppel against the maker thereof. Section 91 of the Indian Evidence Act, 1872 states that when the disposition of the property has been reduced to the form of a document, no evidence shall be given in proof of the terms of such disposition of the property except the document itself or secondary evidence

of its contents in cases where secondary evidence is admissible. Oral evidence cannot substitute documentary evidence. Oral admissions as to the contents of the documents are excluded under Section 22 of the Indian Evidence Act, which reads as under :

“22. When oral admissions as to contents of documents are relevant .- Oral admissions as to the contents of a document are not relevant unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained, or unless the genuineness of a document produced is in question.”

10. Thus, as per Section 22 of the Indian Evidence Act, oral evidence as to the contents of the documents would be admissible only in cases where the parties are entitled to give secondary evidence to the contents of such documents or where the genuineness of a document produced is in question. Admittedly, in the present case, the relinquishment deed which is registered has not been produced. So, it was obligatory on the part of the respondent to make out a case for leading secondary evidence. Nowhere is it the case of the respondent that the original relinquishment deed is lost or is in possession of the

opposite party and therefore, she is entitled to lead secondary evidence. In absence of this, the admissions of appellant No.1 in respect of the relinquishment deed of her share by Savitribai cannot be considered when deceased Tanebai as well as other appellants in categorical terms have denied the execution of the relinquishment deed in their written statement.

11. So far as the 7/12 extract is concerned, it is a settled law that entries in the 7/12 extract are made for fiscal purposes and cannot act as proof of title in the suit property. It cannot be considered as proof of execution of relinquishment of the share by deceased Savitribai when it is the specific case of the respondent that she relinquished her share by a registered relinquishment deed and the same has not been produced on record.

12. In view of the above, the findings of the Trial Court and the First Appellate Court that Vimal has proved that Savitribai relinquished her share does not sustain. Since, the relationship between the parties has not been disputed, Vimal after the death of her maternal grandfather Vithu Bute, being the daughter of a pre-deceased daughter, inherited the suit property

alongwith Savitribai and original defendant No.1 Tanebai. They will inherit the suit property equally i.e. $1/3^{\text{rd}}$ each.

13. Indisputably, the Trial Court as well as the First Appellate Court have given concurrent findings that deceased Savitribai has executed a Will in favour of defendant Nos.2 and 3 bequeathing her share in the suit property and defendant Nos.2 and 3 have proved that the Will was executed by deceased Savitribai. However, due to the observation that the defendants proved that Savitribai had relinquished her share in the suit property, the Courts below held the will-deed as invalid. However, in wake of the observation made by this Court that the respondent failed to prove that Savitribai had relinquished her share in the suit property, she could very well have validly executed the Will to the extent of her share in the suit property. Therefore, bequeathing the suit property to the extent of her share can be held valid. Savitribai was not the full-fledged owner of the suit property. Therefore, she could not have bequeathed the entire suit property to the present appellants who claimed that the entire suit property by virtue of the Will executed by

Savitribai as Vimal has $1/3^{\text{rd}}$ share in the suit property. At the most, Savitribai could have bequeathed her share in the suit property which was to the extent of $1/3^{\text{rd}}$ share in the suit property.

14. Thus, Vimal is entitled to $1/3^{\text{rd}}$ share in the suit property. The $1/3^{\text{rd}}$ share in the suit property which belonged to Savitribai would be inherited by the present appellants by virtue of the Will executed by Savitribai in their favour. In addition to this, the appellants had inherited the interest of their mother (appellant No.1) in the suit property who died during the pendency of the appeal to the extent of $1/3^{\text{rd}}$ share in the suit property. Therefore, the appellant nos. 2 and 3 would get $2/3^{\text{rd}}$ each share in the suit property.

15. On the point of limitation, both the Courts below have answered in favour of the respondent. In this regard, it is submitted by the learned counsel for the appellants that the alleged Will is dated 28.10.1988 whereas, she sought declaration with regard to the will-deed in the year 2008 almost after twenty years and therefore, the suit is barred by limitation. Initially, the

suit came to be filed for partition. The respondent issued a notice Exhibit – 40 to the original defendant No.1 to seek partition but defendant No.1 did not give her any share in the suit property. Needless to mention that, a suit for partition has to be filed within twelve years as per Article 110 from the date of exclusion known to him. It is a matter of record that during the pendency of the suit, the respondent amended the plaint and sought a declaration that the will-deed is false and is invalid. The appellants failed to bring on record that the respondent knew about the will-deed executed by Savitribai. The respondent has come up with a case that she came to know about the will-deed for the first time after the written statement was filed by the original defendant No.1. Indisputably, the respondent is a resident of Andhra Pradesh and did not reside in the village where the suit property is situated. In absence of any positive evidence from the defendants that the Will was known to the respondent prior to more than three years from the date of filing of the suit, it cannot be said that the suit is filed beyond the period of limitation. The Trial Court as well as the First Appellate Court very well answered the issue of limitation by assigning

cogent reasons. No interference is required with the findings with regard to the point of limitation.

16. In view of the above, the appeal is partly allowed. The findings of the Trial Court as well as the First Appellate Court with regard to the relinquishment deed as well as the validity of the will-deed are set aside. The appeal succeeds to that extent. The will-deed dated 28.10.1988 executed by Savitribai in favour of appellant Nos.2 and 3 in excess of 1/3rd undivided share in the suit property is held to be invalid. The respondent and appellant Nos.2 and 3 are entitled to 1/3rd share each in the suit property. Accordingly, the judgment and decree passed by the Trial Court and confirmed by the First Appellate Court is modified to that extent.

17. On the request of the learned counsel for the appellants, the interim order granted by this Court *vide* order dated 19.12.2023 shall remain in force until a further period of six weeks.

(M. W. CHANDWANI, J.)