

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 108 OF 2026

Sushila Laxman Sonavane (Dhor) & ors. ..Appellants
Versus
Pavitrabai Dagadu Sonavane
Since Decd. through LR ...Respondent

WITH
INTERIM APPLICATION NO. 1489 OF 2026
IN
SECOND APPEAL NO. 108 OF 2026

Mr. Sagar A Joshi, for the Appellants/Applicants.
Mr. Rahul S Kate, for the Respondent.

CORAM : N. J. JAMADAR, J.

DATE : 22nd APRIL 2026

Order :

1. Heard the learned Counsel for the parties.
2. This Second Appeal is directed against a judgment and decree dated 15th October, 2025 passed by the learned District Judge in Regular Civil Appeal No. 214/2012 whereby the appeal preferred by the respondent-original plaintiff against a judgment and decree dated 11th September, 2012 passed by the trial Court in Regular Civil Suit No. 205/2003, came to be allowed by setting aside the said judgment and decree and the suit came to be decreed thereby declaring that, the plaintiff has ½ share and

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the defendants jointly have ½ share in the properties described in Paragraphs No. 1(a) to 1(d) of the plaint ('the suit properties').

3. The deceased - respondent instituted the suit for partition of the suit properties asserting *inter alia* that, Joti Rama Sonawane was the common ancestor. Joti passed away in the year 1940 leaving behind his widow Ramabai and two sons Dagadu and Laxman. Ramabai passed away in the year 1990. The marriage of plaintiff was solemnized with Dagadu in the year, 1942. Dagadu passed away on 23rd July, 1945.

4. Laxman, the brother of Dagadu, did not maintain the plaintiff. Thus, she was constrained to take shelter in the house of her brother. Taking undue advantage of the situation, Laxman got his name mutated to the record of rights of the suit properties, though plaintiff had ½ share in the suit properties. As Laxman was in the process of alienating joint family properties, the plaintiff instituted the suit for partition and separate possession of her ½ share in the suit properties.

5. The trial Court dismissed the suit by a judgment and decree dated 11th September, 2012. Smt. Pavitrabai/original plaintiff preferred an appeal being RCA No. 214/2012. During the pendency of the appeal Smt. Pavitrabai passed away. Manik

Prakash Shinde, professed to prosecute the appeal asserting that, late Pavitrabai had executed a registered Will dated 02nd December, 2010, bequeathing her properties to him. By an order dated 14th November, 2016, the learned District Judge allowed the application for impleadment of Manik Shinde as the legal representative of late Pavitrabai.

6. Eventually, by a judgment and order dated 16th November, 2019, the learned District Judge dismissed the appeal on the ground that, Manik Shinde had no *locus standi* to prosecute the appeal.

7. In Second Appeal No. 388/2020, by an order dated 01st February, 2023, this Court set aside the judgment and decree passed by the learned District Judge and restored RCA No. 214/2012 to the file of the learned District Judge for afresh decision, in accordance with law.

8. Thereupon, by the impugned judgment and decree dated 15th October, 2025, the learned District Judge was persuaded to allow the appeal holding that, the respondent/plaintiff was entitled to ½ share in the suit properties.

9. Mr. Sagar Joshi, the learned Counsel for the appellants, canvassed principally one ground to entertain the Second Appeal. It was submitted that, Manik Shinde, the purported legatee of late Pavitrabai, had no right to continue the appeal as probate in respect of the purported registered Will of late Pavitrabai was not obtained.

10. Amplifying the submissions, Mr. Joshi would urge that, the probate in respect of the purported Will dated 02nd December, 2010 of late Pavitrabai was granted by the learned Civil Judge on 05th January 2026, after passing of the impugned judgment and decree dated 15th October 2025, by the learned District Judge. Therefore, the appeal at the instance Manik Shinde in the capacity of the legal representative/legatee of late Pavitrabai, could not have been prosecuted, much less, allowed by the learned District Judge. It was submitted that, no effort was made by Manik Shinde to prove the purported Will of late Pavitrabai before the District Court.

11. Thus, the thrust of the submission of Mr. Joshi was that, a substantial question of law as to whether, the District Court erred in holding that, Manik Shinde had right to continue the appeal without obtaining the probate, arises for consideration.

Reliance was sought to be placed on the judgments of the Supreme Court in the cases of *Leela & ors. Vs. Muruganantham & ors.*¹, and *Meena Pradhan & ors. Vs. Kamla Pradhan & anr*².

12. Suffice to note that, the decisions in the cases of *Leela Vs. Muruganantham (supra)* and *Meena Pradhan Vs. Kamla Pradhan (supra)*, deal with proof of will. These decision have no bearing on the controversy, sought to be raised, and the substantial question of law, sought to be formulated by Mr. Joshi.

13. The submission of Mr. Joshi that, without obtaining a probate Manik Shinde – the respondent, could not have continued the appeal, does not appear to be in consonance with law. The submission seems to be premised on the provisions contained in Section 213 of the Indian Succession Act, 1925 ('the Succession Act'). The very applicability of the provisions of Section 213 of the Succession Act, to the facts of the case, is required to be examined, in the light of the situation of the suit properties and the status of late Pavitrabai. A conjoint reading of the provisions contained in Sections 57 and 213 of the Succession Act, would indicate that, a probate was not required

1 (2025) 4 SCC 289

2 (2023) 9 SCC 734

to be obtained in respect of a Will made by a Hindu, beyond the territories falling under Section 57(a) i.e. the territories formerly subject to the Lieutenant Governor of Bengal or within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay or relating to the immovable properties situated outside those territories.

14. In the case of *Clarence Pais & ors. Vs. Union of India*³, wherein the constitutional validity of Section 213 of the Succession Act, was challenged, the Supreme Court enunciated the law as regards the applicability of the provisions of Section 213 of the Succession Act as under:-

6.

“The effect of Section 213(2) of the Act is that the requirement of probate or other representation mentioned in sub-section (1) for the purpose of establishing the right as an executor or legatee in a court is made inapplicable in case of a will made by Muhammadans and in the case of wills coming under Section 57(c) of the Act. Section 57(c) of the Act applies to all wills and codicils made by any Hindu, Buddhist, Sikh or Jain, on or after the first day of January, 1927 which does not relate to immovable property situate within the territory formerly subject to the Lieutenant-Governor of Bengal or within the local limits of the ordinary civil jurisdiction of the High Courts of

3 AIR 2001 SC 1151

Judicature at Madras and Bombay, or in respect of property within those territories. No probate is necessary in the case of wills by Muhammadans. Now by the Indian Succession [Amendment] Act, 1962, the section has been made applicable to wills made by Parsi dying after the commencement of the 1962 Act. A combined reading of Section 213 and 57 of the Act would show that where the parties to the will are Hindus or the properties in dispute are not in territories falling under Section 57(a) and (b), sub-section (2) of Section 213 of the Act applies and sub-section (1) has no application. As a consequence, a probate will not be required to be obtained by a Hindu in respect of a will made outside those territories or regarding the immovable properties situate outside those territories. The result is that the contention put forth on behalf of the Petitioners that Section 213(1) of the Act is applicable only to Christians and not to any other religion is not correct.”

(emphasis supplied)

15. Following the aforesaid pronouncement in the case of *Kanta Yadav Vs. Om Prakash Yadav*⁴, the Supreme Court reiterated the legal position as under :-

“12. The statutory provisions are clear that the Act is applicable to Wills and codicils made by any Hindu, Buddhist, Sikh or Jain, who were subject to the jurisdiction of the Lieutenant-Governor of Bengal or within the local limits of the ordinary original civil

4 AIR 2019 SC 5556

jurisdiction of the High Courts of Madras or Bombay - {clause (a) of Section 57 of the Act}. Secondly, it is applicable to all Wills and codicils made outside those territories and limits so far as relates to immovable property within the territories aforementioned - Clause (b) of Section 57. The clause (c) of Section 57 of the Act relates to the Wills and codicils made by any Hindu, Buddhist, Sikh or Jain on or after the first day of January, 1927, to which provisions are not applied by clauses (a) and (b). However, sub-section (2) of Section 213 of the Act applies only to Wills made by Hindu, Buddhist, Sikh or Jain where such Wills are of the classes specified in clauses (a) or (b) of Section 57. Thus, clause (c) is not applicable in view of Section 213(2) of the Act.”

16. In the case at hand, neither late Pavitrabai has made the Will in the territories formerly within the jurisdiction of the Lieutenant-Governor of Bengal or within the local limits of the ordinary original civil jurisdiction of the High Courts of Madras and Bombay. Nor the Will pertains to the properties situated within the aforementioned territories.

17. Secondly, for the purpose of representation of the estate, in contradistinction to establishing right over the estate of the deceased, even otherwise, probate is not necessary. Under Section 211 of the Succession Act, the executor or administrator, as the case may be of the deceased person, is his legal

representative for all purposes, and all the properties of the deceased person, vest in him as such. Thus, the property vests in the executor by virtue of the Will and not by virtue of the probate.

18. A profitable reference in this context can be made to a judgment of the Supreme Court in the case of *Commissioner Jalandhar Division & ors. Vs. Mohan Krishan Abrol & anr.*⁵, wherein comparing and contrasting the provisions contained in Sections 211 and 213 of the Succession Act, the Supreme Court enunciated that the property vests in the executor under Section 211 of the Succession Act, and Section 213 acts as bar to the establishment of rights under the Will, by an executor or legatee and that bar comes into play only when a right as an executor or legatee under Will, is sought to be established. The following observations are instructive and hence extracted below:-

“10. A bare reading of section 211 shows that the property vests in the executors by virtue of the Will and not by virtue of the probate. Will gives property to the executor; the grant of probate is only a method by which the law provides for establishing the Will. In the case of *Kulwanta Bewa v. Karam Chand Soni (AIR 1938 Cal 714 : 43 CWN 5)*, it has been held that Section 211 provides

5 (2004) 7 SCC 505

that the estate of the deceased vests in the executor; that the vesting is not of the beneficial interest in the property; but only for the purposes of representation. In the case of *Meyappa Chetty v. Supramanian Chetty* [(1916) 43 IA 113 : AIR 1916 PC 202], the Privy Council has held that an executor derives his title from the Will and not from probate. The personal property of the testator (including right of action) vests in the executor(s) on the death of the testator. For purposes of deciding this matter, Section 336 of the Act is also relevant as it provides for assent of the executor to the legacy after the death of the testator. It provides that an executor gets divested of his interest as an executor from the death of the testator when he assents to a specific legacy. Section 213 acts as a bar to the establishment of rights under the Will by an executor or a legatee unless probate or letters of administration have been obtained. This bar comes into play only when a right as an executor or a legatee under Will is sought to be established. However, an unprobated Will can be admitted in evidence for collateral purposes in any other proceedings apart from a probate proceedings (See *Cherichi v. Ittianam* [AIR 2001 Ker 184 : (2001) 1 Ker LT 415]).”

(emphasis supplied)

19. The aforesaid being the position in law, reverting to the facts of the case, it seems, the provisions of Section 213 of the Succession Act, were not at all attracted. And, even otherwise, since the vesting of the property of the testatrix in the executor

took place by virtue of the Will, no sooner the testatrix passed away, the submission sought to be canvassed by Mr. Joshi that, Manik Shinde could not have continued to prosecute the appeal sans probate does not merit countenance.

20. Resultantly, no substantial question of law arises for consideration.

21. Hence, the following order :-

:: O R D E R ::

The Second Appeal stands dismissed.

In view of the dismissal of the Second Appeal, the Interim Application stands disposed.

At this stage, Mr. Joshi submitted that, the appellants intend to file an application for revocation of the probate and it may thus be clarified that, the dismissal of this appeal would not bear upon the prayer for revocation of the probate.

Needless to clarify that, in this appeal this Court has considered the aspect as to whether Manik Shinde could have continued to prosecute the appeal on the strength of the Will of late Pavitrabai. This Court has not delved into

the legality and validity of the Will and the consequent grant of probate. In the event the application for revocation of the probate is filed, the same be decided on its own merits and in accordance with law.

[N. J. JAMADAR, J.]