



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

SECOND APPEAL NO. 04 OF 2026

(Bhaurao S/o Sitaram Dhurve and another vs. Smt. Nirmala Ramdas Atram and others)

*Office Notes, Office Memorandum of Coram,
appearances, Court's orders or the directions,
and Registrar's orders.*

Court's or Judge's order

Mr. V.A.Patait, Advocate for appellants.
Ms. Kirti Satute, Advocate for respondent No.1.
Mr. Anshul Kurul, Advocate for respondent Nos.2 and 3.

CORAM : ROHIT W. JOSHI, J.
JANUARY 27, 2026

1) The present appeal is filed by the original defendant Nos.1 and 2. The respondent No.1 filed a suit for partition and separate possession with respect to two agricultural lands bearing Survey No.37 admeasuring 5.66 HR and Survey No.59 admeasuring 0.72 HR, situated at village Mangrul Rith, Tahsil – Chimur, District – Chandrapur. The said properties are hereinafter referred to as 'suit properties'.

2) It is the case of the plaintiff that the suit properties are ancestral properties and the plaintiff and defendant Nos.1 to 4 who are related to each other as brothers and sisters, are entitled to 1/5th share each therein. The defendant Nos.1 and 2 who are the brothers opposed the suit placing reliance on two documents i.e. 'Partition Deed' dated 07/08/2008 (Exh.66) and 'Will' dated 25/08/2008(Exh.67). As per the Partition Deed dated 07/08/2008 father Sitaram gave 2.76 HR land in suit property bearing Survey No.37 each, to his sons the defendant Nos.1 and 2 and retained the suit property bearing Survey No.59 for himself. This Partition Deed dated 07/08/2008 is not a registered document. It is scribed on a stamp paper of Rs.100/-.

The date of purchase of stamp paper is mentioned as 06/09/2008. In view of the fact that the Partition Deed is dated 07/08/2008 and is written on a stamp paper purchased on 06/09/2008, the learned Courts have disbelieved the said Partition Deed. This Court is fully in agreement with the findings recorded by the learned Courts in disregarding the said Partition Deed on the ground that it is dated 07/08/2008 and the stamp paper on which it is written, was purchased subsequently on 06/09/2008. This is a clear indication of the document being an ante dated document. The document is also not registered and not adequately stamped.

- 3) As regards the Will, it must be stated that the original Will has not come on record. However, permission was granted to lead secondary evidence with respect to the same. The attesting witness of the Will (DW-2) could not identify the signature of the testator on the Will. As per the defendant Nos.1 and 2, the Will is executed after execution of the Partition Deed. If the case of the defendant Nos.1 and 2 with respect to Partition Deed is accepted, then the father who is the testator had no right to execute the Will on 25/08/2008, since according to the defendant Nos.1 and 2 he had already given suit property bearing Survey No.37 to his sons, defendant Nos.1 and 2 in the Partition Deed dated 07/08/2008. Thus, he had no title over Survey No.37 as on 25/08/2008 i.e. alleged date of execution of Will. The Will was marked exhibit only because it was referred to the plaintiff's witness in the cross-examination. Since the attesting witness (DW-2) could not identify the signature of scribe on the Will, due execution and attestation of the Will is not proved. Both the Courts have properly appreciated oral and documentary evidence in this regard.

- 4) In view of the aforesaid, no substantial question of law arises for consideration in the Second Appeal. The Second Appeal, therefore, dismissed with no order as to costs.

(ROHIT W. JOSHI, J.)