



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

SECOND APPEAL NO.321 OF 2025

APPELLANTS

On R.A.

1. Smt. Anusaya W/o Ashok Walde, Through Power of Attorney, Shri Sudhakar S/o Ashok Walde, Aged about 79 years, Occ.: Labour, R/o Quarter No.86, Chaks Colony, Kamptee Road, Nagpur-440014.

(Ori. Defendant No.3)

2. Smt. Shantabai W/o Bhaurao Tembhone, Through Power of Attorney, Shri Anesh S/o Bhaurao Tembhone, Aged about 66 years, Occu.: Labour, R/o Line No.10, Indora Zopda, near Mahatma Fule Primary School, New Indora, Nagpur.

(Ori. Defendant No.4)

..VERSUS..

RESPONDENTS

On R.A.

1. Devidas S/o Narayan Lavatre, Aged about 77 years, Occu.: Business, R/o Lavatre Bhawan, Dr. Ambedkar Road, Indora, Nagpur.

(Ori. Plaintiff in Special Civil Suit No.291/2005)

2. Kekdas S/o Narayan Lavatre, Aged about 90 years, Occu.: Service, R/o Lavatre Bhawan, House No.81, Indora, Nagpur.

(Ori. Plaintiff in Special Civil Suit No.370/2004)

3. Harish S/o Narayan Lavatre, Aged about 72 years, Occu.: Service, R/o Lavatre Bhawan, House No.81,

Indora, Nagpur.

(Ori. Plaintiff in Special Civil Suit No.370/2004)

4. Smt. Rekha W/o Ranjit Shahare, (D/o Damyantibai Ramkrishna Ambade) Aged about 51 years, Occu.: household, R/o Teka Naka, Indora, Nagpur. (Ori. Defendant No.5)

5. Bakshatmal S/o Pohumal Waswani (Dead) (Exh.25) Through his Legal Representatives

5(i) Raju S/o Bakshmal Waswani, Age : Adult, Occu.: Business,

5(ii) Ashok S/o Bakshmal Waswani, Age : Adult, Occu. Business,

5(iii) Harish S/o Bakshmal Waswani, Age : Adult, Occu.: Business,

5(iv) Smt. Sushilabai Wd/o Bakshmal Waswani, Age : Adult,

All 5(i) to 5(iv) are R/o Plot No.245, "Haranand", Near Dharamshala, Jaripatka, Nagpur.

(Ori. Defendant No.8)

Mr. N. D. Thombre, Advocate for Appellants.

Mr. J. J. Chandurkar, Advocate for the Respondent No.1(i, iii, iv)

CORAM : ROHIT W. JOSHI, J.

DATE : 29.01.2026

J U D G M E N T :

- 1) Heard finally by consent of learned advocates for the respective parties.

2) The dispute in the present Second Appeal pertains to the Will dated 13.01.2004, stated to be executed by late Narayan Lavatre in favour of his son, Devidas Lavatre (respondent No.1). Deceased Narayan has expired on 20.02.2004, leaving behind three sons and three daughters. After his demise, the present respondent No.2 (Kekdas Lavatre) filed a suit for declaration, partition and separate possession. Respondent No.1 set up a defence in the said suit on the basis of registered Will dated 13.01.2004 executed in his favour by his father deceased Narayan. The said Will is at Exhibit-77.

3) It will be pertinent to mention that respondent No.1 (Devidas) had also filed a separate suit, being Special Civil Suit No.291 of 2005 for declaration, partition and separate possession. In the said suit, Devidas challenged Will dated 07.02.2004 executed by Narayandas in his favour and other son, Harish Lavatre (respondent No.3).

4) The learned Trial Court decreed Special Civil Suit No.370 of 2004, granting 1/6th share each in the properties left behind by deceased Narayan, to his six children. The

learned Trial Court held that the Wills dated 13.01.2004 (Exhibit-77) and 07.02.2004 (Exhibit-78) are not genuine documents. It needs to be stated that both these Wills are registered documents.

5) The original defendant No.1 (Devidas) filed two appeals being Regular Civil Appeal Nos.593 of 2015 and 592 of 2015 challenging the common judgment and decree dated 18.07.2009 passed by the learned Trial Court in the aforesaid two suits. Both these appeals came to be decided by common judgment dated 31.07.2024 by the learned First Appellate Court. The learned First Appellate Court has allowed both the appeals. The learned First Appellate Court has arrived at conclusion that Will dated 13.01.2004 (Exhibit-77) in favour of respondent No.1(Devidas) is genuine and has discarded the other Will dated 07.02.2004 (Exhibit-78) executed in favour of respondent No.3 (Harish). Accordingly, the learned First Appellate Court has passed a decree for distribution of properties of deceased Narayan in accordance with Will dated 13.01.2004.

6) The present appeal is preferred by defendant Nos.3 and 4 in Regular Civil Suit No.370 of 2004. The contention of Mr. Thombre, learned Advocate for the appellants is that the learned First Appellate Court has erred in reversing a reasoned judgment delivered by the learned Trial Court whereby the learned Trial Court has disbelieved the Will dated 13.01.2004 (Exhibit-77). He contends that the deceased testator was around 95 years old on the date of execution of the alleged Will and that independent medical evidence is not brought on record in order to establish his mental and physical capability to execute the Will in question. The learned Advocate further contends that the testator has expired on 20.02.2004, shortly after execution of the alleged Will dated 13.01.2004. He further contends that under the Will dated 13.01.2004 (Exhibit-77) the distribution of properties of deceased testator is not done equitably for no ascertainable reason, which creates suspicion with respect to genuineness of the Will. The learned advocate further contends that deceased testator was suffering from paralysis and was not in a fit mental and physical state to

execute the Will in question.

7) Perusal of the judgment passed by the learned Trial Court will indicate that the learned Trial Court has discarded the Will at Exhibit-77 on the ground that deceased testator had distributed his properties inequitably granting more share to beneficiary/respondent No.1(Devidas) for no reason. This according to the learned Trial Court is a suspicious circumstance. The learned Trial Court has referred to nomination form dated 14.06.2002 (Exhibit 167) with respect to his fix deposit with Vidharbha Premier Society whereby the testator had made nomination with respect to the said deposit in favour of his three sons. The learned Trial Court has referred to the said document to hold that the nomination form indicated that the father had equal love and affection for all the three sons and therefore it is unnatural that he distributed the property unequally in the Will at Exhibit-77. The Will is discarded in view of the reasons recorded above.

8) As stated above, the original defendant no.1 in RCS No.370 of 2004, who is beneficiary of the Will at Exhibit-77

preferred appeal being Regular Civil Appeal No.593 of 2015 challenging the said decree passed by the learned Trial Court.

9) The learned First Appellate Court has re-appreciated the evidence and has held that Will dated 13.01.2004 executed in favour of respondent No.1 (Devidas) was proved and that the subsequent Will in favour of respondent No.3 (Harish) was not proved. The Will in favour of respondent No.1 (Devidas) is dated 13.01.2004. A few days prior to execution of the Will, i.e. on 13.12.2003, the testator had visited the office of Sub-registrar for the purpose of execution and registration of a lease deed with respect to the suit property. This is an indicator of the mental and physical state of the testator as on 31.12.2003, i.e. 12 days prior to the date of execution of Will dated 13.01.2004. The Will dated 13.01.2004 is also a registered document. The testator had been to the office of Sub-registrar for registration of Will. A map is appended to the Will, which, according to respondent No.1 (Devidas) was got prepared by the testator from an architect who was also examined as a witness. The said architect was examined as a witness by respondent No.1

(Devidas) and he stated that the map was prepared at the behest of testator. It has come in the evidence that respondent No.1 (Devidas) was looking after the testator, his father, after demise of mother. The testator had also executed power of attorney in favour of respondent No.1 (Devidas) for contesting litigation against tenants in the suit property.

10) The aforesaid evidence is an indicator towards mental and physical condition of the testator as on 13.01.2004. Although the testator was around 95 years of age on the date of execution of Will, having regard to the aforesaid circumstances of renewal of lease on 30.12.2003 and getting the map prepared from architect, it cannot be said that he was not in a sound state of mind in order to execute Will.

11) It is also important to state that respondent No.3 (Harish), who has set up a counter Will, has admitted execution of Will dated 13.01.2004 in favour of respondent No.1 (Devidas).

12) The testator fell down on 15.01.2004 and suffered injuries due to the same. He was paralyzed due to the said

incident. This incident had occurred on 15.01.2004 i.e. after execution of Will dated 13.01.2004. The learned First Appellate Court has properly taken into consideration all these aspects to hold that Will dated 13.01.2004 was proved and was a reliable document.

13) As against this, the learned Trial Court has not taken into consideration the fact that 12 days before execution of Will dated 13.01.2014, the testator had been to the office of Sub-registrar for renewal of lease deed. He had got map of the suit property prepared shortly before execution of Will on 13.01.2004. One of the reasons for disbelieving the Will recorded by the learned Trial Court is that distribution of property is not equitable and that there is no reason for unequal distribution of property. This by itself cannot be a ground for disbelieving the Will. Moreover, the learned Trial Court ought to have appreciated that respondent No.3 (Harish) who had set up a rival Will in his favour also accepted the Will in favour of respondent No.1 (Devidas).

14) In view of the aforesaid, the learned First Appellate Court has held that the Will at Exhibit-77 is duly proved.

15) The findings recorded by the learned First Appellate Court are findings of fact based upon appreciation of evidence. This Court cannot re-appreciate the evidence in order to disturb the said findings. As a final Court of facts, the learned First Appellate court is within its jurisdiction to arrive independent findings of facts upon the re-appreciation of evidence.

16) The learned Advocate for the appellants has not been able to point out that any material piece of evidence is not taken into consideration by the learned First Appellate Court or that the appreciation of evidence is perverse. No substantial question of law therefore arises for consideration. Second Appeal is dismissed with no order as to costs.

(ROHIT W. JOSHI, J.)

Tanmay..