
(2002) 06 BOM CK 0047
In the Bombay High Court
Case No : First Appeal No. 249 of 1984

Baban Rambhau Jagdale

APPELLANT

Vs

Hanmant Rambhau Jagdale

RESPONDENT

Date of Decision : 04-06-2002

Acts Referred:

Succession Act, 1925 — Section 222, 276(2)

Citation : (2003) 1 ALLMR 145 : (2003) 1 MhLj 113

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : A.V. Anturkar, for the Appellant; B.H. Thakar, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Khanwilkar, J.—This First Appeal is directed against the judgment and order dated 11-10-1983 passed by the second Joint Civil Judge, Senior Division, Pune in Misc. Application No. 469 of 1981. The said application was preferred by the respondent u/s 276 of the Indian Succession Act applying for probate in respect of a Will dated 8-7-1968, executed by his father Ramu Parshuram Jagadale, who died on 17-8-1969, whereunder property bearing No. 404/B, Shivajinagar, Pune has been bequeathed in his favour. It is not in dispute that the said property was purchased by Ramu Parshuram Jagadale in the year 1938 by a registered Sale Deed. The said application was resisted by the appellant. Though other heirs of Ramu Parshuram Jagadale were impleaded in the said proceedings, no say was filed by the opponents Nos. 2, 5, 6 and 7, whereas say was filed by opponents Nos. 1, 3 and 4. The appellant was opponent No. 1 in the said proceeding. In his reply, opposing the said application, the appellant, inter alia, contended that the said Ramu Parshuram Jagadale had no authority to bequeath the subject property as the same was not of his absolute ownership. The appellant further contended that the Will has been obtained by the respondent fraudulently from the deceased Ramu Parshuram Jagadale who was bed-ridden and was incapable of understanding and taking just decisions. The appellant further alleged that the

respondent has influenced in the making of the Will, being the elder son of deceased Ramu Jagadale. On the basis of pleadings filed before the lower Court, the trial Court framed the following issue:--

"Does the applicant prove that the deceased Ramu Parshuram Jagadale executed the Will dated 8th July 1968 of his free Will?"

The trial Court answered the said issue in favour of the respondent and allowed the application filed by him. The trial Court ordered issuance of Probate with copy of the Will annexed in favour of the respondent on payment of requisite Court fees stamp. This decision is challenged by way of present First Appeal. It is relevant to note that though seven opponents were impleaded in the proceedings before the trial Court, in the present appeal, the appellant has joined only the applicant-respondent herein. It appears that the appellant had subsequently filed an application being Civil Application No. 9409 of 1999 for impleading the remaining opponents as party to the present appeal. However, the said application has been dismissed for non-prosecution. Be that as it may, the learned counsel for the appellant mainly raised following four contentions :--

i) Having regard to the pleadings of the parties, the trial Court was obliged to frame the issue that deceased Ramu Jagadale had no authority to make Will in respect of the subject property as he was not the absolute owner thereof. Having failed to do so, the judgment is vitiated inasmuch as the said issue goes to the root of the matter.

ii) That the Civil Judge at Pune had no jurisdiction to entertain the proceedings since the Will was executed at Kurundwad and that the deceased Ramu Jagadale was staying and eventually died at Kurundwad.

iii) The Will is not genuine and that there are circumstances which would lead to the conclusion that the same is a suspicious document.

iv) That the title of the document is "Vyavasthapatrak" and as such the trial Court was in error in issuing Probate but at best could have issued only Letters of Administration in favour of the respondent.

2. Though the respondent has been served and is represented by his Advocate, none appeared when the matter was called out.

3. Having considered the abovesaid submissions made by the learned counsel for the appellant and after going through the record of the case with the assistance of the Counsel for the appellant, following points would arise for my consideration :--

i) Whether the trial Court was obliged to frame issue regarding authority of the testator to make Will in respect of the subject property and the consequence for failure to do so?

ii) Whether the Pune Court had jurisdiction?

iii) Whether the subject Will can be held to be a suspicious or a genuine document?

iv) Whether the Court ought to have issued only Letters of Administration instead of the Probate?

4. Reverting to the first point, I have no hesitation in observing that the same is devoid of merit. No doubt, the appellant in his say filed before the trial Court has taken the plea that the respondent had no authority to execute the Will in respect of the subject property as the property was not of his absolute ownership. It is well settled that it is not the duty of the probate Court to consider any issue as to the title of the testator to the property with which the Will propounded purports to deal. The only question which the Court is called upon to determine is whether the Will is true or not, and it is not the province of the Court to determine any question of title with reference to the property covered by the Will, The trial Court has not framed that issue on the premise that the question as to whether the testator had a right to bequeath the properties under the Will executed by him is wholly foreign to the proceedings for Probate or letters of Administration. The learned counsel is not in a position to counter this statement of law. As is seen from the record, the trial Court had framed only one issue which was the only issue to be considered in this proceedings. It is obvious that the parties understood the scope of the proceedings and accordingly proceeded with the trial. Though the appellant has raised this plea in the say filed before the trial Court, however, on wading through the evidence which has come on record, it is seen that no attempt has been made by the appellant to establish the fact alleged by him that deceased Ramu Jagadale was not the absolute owner of the subject property. On the other hand, the respondent has placed on record the Sale Deed which indicates that the suit property has been purchased in the name of his father in the year 1938. No evidence is brought on record to counter this position. It is, therefore, not possible to assume that Ramu Jagadale was not the owner of the subject property or for that matter had no right to bequeath the said property by a Will: These observations are made only for the limited purpose of examining the contention raised by the appellant that the matter be remanded to the trial Court for examination of this issue. Suffice it to mention that the appellant has not been able to dispel the legal position noted by the trial Court that the question as to whether the testator had right to bequeath the properties under the Will executed by him is wholly foreign to the proceedings of Probate or Letters of Administration. I find no fault with the trial Court for not framing the issue as contended. Accordingly I answer the first point against the appellant.

5. There is no substance even in the second point that arises for consideration. No doubt, the Will in question was executed at Kurundwad and the testator was staying at Kurundwad till his death. The fact remains that the property which is the subject matter of the present proceedings is situated at Shivaji Nagar, Pune. This was sufficient to empower the Pune Court to try and adjudicate the

proceedings between the parties. The learned counsel for the appellant, however, placed reliance on Section 371 of the Indian Succession Act, 1925 (hereinafter referred to as the "said Act"). Reliance on that provision is inapposite as it pertains to part X of the Act which governs the succession certificates. In the present proceedings we are concerned with Part DC of the Act relating to Probate proceedings. Section 276(2)(a) postulates that the application can be presented to the District Judge where the deceased at the time of his death had a fixed place of abode or had some property situated within the jurisdiction of the Judge. The latter part of this provision would enable the Pune Court to try, entertain and adjudicate the subject proceedings. Be that as it may, this objection is being raised for the first time in this appeal. Accordingly, to my mind, there is no substance in the objection regarding the jurisdiction of the Pune Court.

6. The next point regarding the suspicious circumstances for which no relief be granted to the respondent, it is seen that the respondent has not only examined himself but has also examined the doctor as well as the attesting witnesses who were present at the relevant time and in whose presence the Will was drawn as per the instructions of the testator and read over to him whence he had signed the same. No doubt, the learned counsel pointed out some discrepancies in the evidence of these witnesses relating to the sequence of events stated by them. However, one cannot be oblivious to the fact that the Will was executed on 8-7-1968, whereas the oral evidence of the witnesses was recorded in the year 1983. The distance of time was bound to make their impression about the sequence of events that took place somewhat blurred. There is nothing in their evidence to even suggest that their presence was doubtful or that they were deposing falsely. The fact remains that each of them have consistently deposed regarding the material events relating to the health condition and the state of mind of the testator and the fact that the Will was drawn on the basis of his instructions and after the document was prepared the same was read over to him and only thereafter it was signed by the testator and the two attesting witnesses in the presence of each other. There is nothing in the evidence to doubt this factual position of the matter. Analysing the entire evidence as a whole it is not possible to suggest that the alleged circumstances were such that it will arouse one's suspicion or create doubt about the genuineness of the subject document. The fact that the property has been given exclusively to the respondent by itself would not make the document suspicious. On close scrutiny of the evidence of the witnesses, it is obvious that they have deposed in natural manner and clearly reveal that the Will was executed by the deceased Ramu Jagdale out of his free Will and not under influence of any person. In the circumstances, I see no reason to doubt the genuineness of the Will merely because of some minor discrepancies between the deposition of the witnesses pointed out to this Court by the learned counsel. The discrepancies regarding the sequence of events, to my mind, cannot be said to be so palpable so as to take the view that it amounted to contradictions so as to disbelieve the said witnesses. Understood thus, I see no infirmity in the findings recorded by the

trial Court that the subject Will has been executed by Ramu Jagadale of his free Will.

7. The learned counsel, however, placed reliance on the decision of the Apex Court in *Gurdial Kaur and others Vs. Kartar Kaur and Others*, . Reliance was placed on paragraph-4 of this decision to contend that the law is well settled that the conscience of the Court must be satisfied that the Will in question was not only executed and attested in the manner required under the Indian Succession Act, 1925 but it should also be found that the said Will was the product of the free volition of the executant who had voluntarily executed the same after knowing and understanding the contents of the Will: Therefore, whenever there is any suspicious circumstance, the obligation is cast on the propounder of the Will to dispel the suspicious circumstance. There can be no two opinion with the proposition stated in this decision. However, as observed earlier, from the facts and circumstances on record of this case, it is not possible to even suggest that the subject Will was not executed and attested in the manner provided under the Act or for that matter it was not a product of free volition of the executant. On the other hand, the evidence of independent persons would obligate the Court to hold that the subject Will has been executed by Ramu Jagadale voluntarily after knowing and understanding the contents thereof. In this view of the matter, I see no reason to take a contrary view then the one taken by the trial Court. This point is, therefore, answered against the appellant.

8. The last point that arises for my consideration is whether the Court below was justified in issuing probate instead of issuing Letters of Administration. Though the argument advanced by the learned counsel for the appellant seems to be attractive - that the subject document was titled as "Vyavasthapatrak" and in that situation only the Letters of Administration could be issued. However, on perusal of the document as a whole it is seen that though it has been titled as "Vyavasthapatrak", the testator had intended to dispose the property in favour of the respondent after his death. It clearly mentions that the respondent would become absolute owner of the subject property after his demise. In that sense, his intention was clearly to bequeath the property in favour of the respondent. In such a situation, it is not possible to countenance the submission that the Court would still be obliged to issue the Letters of Administration and not Probate as has been done by the trial Court. In the circumstances, I find no substance in this grievance made by the appellant.

9. The learned counsel would next contend that the Will does not appoint any person as an Executor and, therefore, in such a situation no Probate could be issued. To buttress this contention, reliance is placed on Section-222 of the Act, which postulates that a Probate shall be granted only to an executor appointed by the Will. This argument, to my mind, is complete misunderstanding of the said provision. On the other hand, the said section only provides that Probate shall be granted only to an executor appointed by the Will. This is not to say that if the Will does not appoint any person as an executor, no Probate can be

granted. If this argument was to be accepted, it would amount to re-writing of that provision. No other express provision in the Act has been brought to my notice of this Court that if the Will does not appoint any person as an executor, the Court shall not issue Probate in respect of such a Will. Accordingly, I find no substance in this submission.

10. For the reasons aforesaid, the Appeal is devoid of merits and the same is, therefore, dismissed with costs all throughout.

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