

SHRI SHIVAJI EDUCATION SOCIETY,
AMRAVATI THROUGH ITS PRESIDENT

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v.

OMPRAKASH S/O DINKAR DESHMUKH & ORS.

(Civil Appeal No. 6981 of 2021)

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NOVEMBER 22, 2021

[HEMANT GUPTA AND V. RAMASUBRAMANIAN, JJ.]

Wills – Bequest made under the Will – Nature of – Testator executed Will (in respect of property) in favour of his wife (plaintiff no.1) who in turn gifted the property in question to appellant (plaintiff no. 2) – Contention of defendants that the gift deed executed by plaintiff no.1 was null and void in view of a limited life estate conferred upon her under the Will – Held: While the trial Court took the view that under the Will, the testator's wife was given only a limited right of enjoyment for life, the First Appellate Court held that what was bequeathed was full rights of enjoyment, including the right to transfer – High Court did not overturn the finding of fact recorded by the First Appellate Court – Instead, the High Court wrongly proceeded to analyse sub-sections (1) and (2) of s.14 of the Hindu Succession Act, to come to the conclusion that the limited estate did not get enlarged into full ownership – The question of fact whether what was conveyed under the Will, was only a limited right of enjoyment or full ownership, was settled by the First Appellate Court in favour of the plaintiffs – This finding was not held by the High Court to be perverse – Though the High Court thought that one of the substantial questions of law arising for consideration was whether testator's wife was full owner or limited owner, the High Court chose to answer this question not on the basis of the recitals contained in the Will but on the basis of the wrong understanding of an inapplicable Judgment of this Court – High Court overlooked the fact that in a civil dispute, the First Appellate Court is a final Court of fact and law and the High Court's interference u/s.100 is only on a substantial question of law – Once the First Appellate Court had found that the recitals contained in the Will clearly conveyed full ownership, there was no occasion for the High Court to go into s.14 of the Hindu Succession Act at all – Further, the First Appellate Court was concerned with two regular

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- A *first appeals, one filed by the defendants (R.C.A No. 408 of 1986) and another filed by the appellant / plaintiff no.1 (R.C.A No. 416 of 1986) – First Appellate Court dismissed R.C.A No.408 of 1986 and allowed R.C.A No. 416 of 1986 – The defendants chose to file only one second appeal and that was against the decree in RCA No. 408 of 1986 – Decree in R.C.A No. 416 of 1986 was allowed to attain finality – Even on this ground, the High Court ought to have dismissed the second appeal – Judgment of High Court set aside – Hindu Succession Act, 1956 – s.14 – Code of Civil Procedure, 1908 – s.108.*
- B *Sadhu Singh v. Gurudwara Sahib Narike and Ors. (2006) 8 SCC 75 : [2006] 5 Suppl. SCR 799 – held inapplicable.*

Case Law Reference

[2006] 5 Suppl. SCR 799 held inapplicable Para 11

- D CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6981 of 2021.

From the Judgment and Order dated 14.10.2014 of the High Court of Judicature at Bombay, Bench at Nagpur in Second Appeal No.154 of 1992.

- E Satyajit A. Desai, Gaurav Chaudhary, Siddharth Gautam, Ms. Anagha S. Desai, Advs. for the Appellant.

Rahul Chitnis, Aaditya A. Pande, Chander Shekhar Ashri, Advs. for the Respondents.

- F The following Order of the Court was passed :

O R D E R

- 1. Leave granted.
- 2. Aggrieved by the Judgment and decree dated 14.10.2014 passed by the High Court of Judicature at Bombay, Nagpur Bench, allowing a second appeal and reversing the Judgment of the First Appellate Court, which itself was a reversing Judgment, plaintiff No. 1 in a suit for recovery of possession and for past and future mesne profits, has come up with the above appeal.

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3. We have heard Mr. Gaurav Chaudhary, learned counsel for the appellant and Mr. Rahul Chitnis, learned counsel appearing for respondent Nos. 1 and 4. A

4. The suit property is a house, which originally belonged to one Shri Kashirao Sampatrao Deshmukh. The said Kashirao Sampatrao Deshmukh died on 1.05.1977, leaving behind him surviving, his wife Smt. Shevantabai. B

5. Contending that after the death of her husband, Shevantabai gifted the suit property to the appellant herein under a registered Gift Deed dated 9.04.1981 and that the defendants who came into the house under the pretext of helping Smt. Shevantabai and her husband in their old age, slowly took complete control of the suit property and drove Smt. Shevantabai out, the appellant herein and Smt. Shevantabai joined together to file a civil suit in Regular C.S No. 24 of 1982 in the Court of the Civil Judge (J.D.), Akot. The suit was for recovery of possession. The defendants in their written statement, set up a Will allegedly executed by Shri Kashirao Sampatrao Deshmukh on 4.05.1976. It was the contention of the defendants that under the said Will, Smt. Shevantabai was granted only a life estate and that after her lifetime, the property was to devolve upon the first defendant. The defendants claimed that the gift deed executed by Shevantabai was null and void in view of a limited life estate conferred upon her under the Will. C

6. The trial Court, by a Judgment and decree dated 17.12.1986 held D

(i) that the Will set up by the defendants was proved; *(ii)* that Shevantabai who was plaintiff No. 2 was bequeathed only a right of enjoyment during her life time and *(iii)* that therefore, the Gift Deed executed by Smt. Shevantabai in favour of the appellant herein who was the plaintiff No.1 was not valid and binding on the defendants. Accordingly, the trial Court dismissed the claim of the appellant herein, but granted a decree in favour of plaintiff No. 2, as she was alive at that time and admittedly she was entitled to possession and enjoyment of the suit property during her lifetime. F

7. Aggrieved by the decree of possession granted in favour of Smt. Shevantabai (plaintiff No. 2), the defendants filed a regular first appeal in R.C.A No. 408 of 1986. Aggrieved by the findings regarding the nature of the bequest under the Will and the validity of the Gift Deed, G

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- A the appellant herein (plaintiff No. 1) filed an independent first appeal in R.C.A No. 416 of 1986.

8. The Additional District Judge, Akola, by a Judgment and decree dated 22.01.1992 dismissed the appeal filed by the defendants and allowed the appeal filed by the appellant herein, holding that the Will set up by the

- B defendants clearly gave Shevantabai all rights of enjoyment including the right to dispose of the same and that, therefore, she was the full owner of the suit property entitled to gift it to the appellant herein.

9. Though the Judgment of the First Appellate Court was a common Judgment in two first appeals, *namely*, RCA Nos. 408 and 416

- C of 1986, the defendants filed only one second appeal in SA No. 154 of 1992, on the file of the High Court of Judicature at Bombay, Nagpur Bench. The said appeal was allowed by the High Court by a Judgment and decree dated 14.10.2014, holding that what was granted in favour of Shevantabai was only a life estate and that her estate could not have enlarged under Section 14(1) of the Hindu Succession Act, 1956. It is against the said Judgment of the High Court that the appellant herein who was plaintiff No. 1 has come up with the above appeal.

10. Before we proceed further, we must take note of the fact that the plaintiff No. 2 Smt. Shevantabai died on 20.08.2005. Admittedly, Shevantabai did not leave behind any legal heir to succeed. The first

- E defendant was also not a legal heir, but was described in the Will set up by him, as the nephew of the testator.

10. Keeping the above facts in mind, let us now come to the core issue on hand. All the three Courts proceeded on the basis that the execution of the Will dated 4.05.1976 by Shri Kashirao Sampatrao

- F Deshmukh stood proved. It is only on the question of the nature of the bequest made under the Will that each of the three Courts took different views. While the trial Court took the view that under the Will, the testator's wife (plaintiff No. 2) was given only a limited right of enjoyment for life, the First Appellate Court held that what was bequeathed was full rights

- G of enjoyment, including the right to transfer. The First Appellate Court highlighted the most important recital in the Will to the effect "*as my wife Smt. Shevantabai Kashirao Sampatrao Deshmukh has no other legal heirs, after her death whatever property remains that property shall go to my near nephew.....*". The words "***after her death whatever***

property remains" were clearly indicative of the fact that the bequest A
was not of a life estate but was complete.

11. Interestingly, the High Court did not overturn the finding of fact recorded by the First Appellate Court. Instead, the High Court wrongly proceeded to analyse Sub-Sections (1) and (2) of Section 14 of the Hindu Succession Act, to come to the conclusion that the limited estate did not get enlarged into full ownership. The question of fact whether what was conveyed under the Will, was only a limited right of enjoyment or full ownership, was settled by the First Appellate Court in favour of the plaintiffs. This finding was not held by the High Court to be perverse. Though the High Court thought that one of the substantial questions of law arising for consideration was whether Smt. Shevantabai was full owner or limited owner, the High Court chose to answer this question not on the basis of the recitals contained in the Will but on the basis of the wrong understanding of an inapplicable Judgment of this Court in *Sadhu Singh vs. Gurudwara Sahib Narike and Ors.*¹ The High Court overlooked the fact that in a civil dispute, the First Appellate Court is a final Court of fact and law and the High Court's interference under Section 100 is only on a substantial question of law. Once the First Appellate Court had found that the recitals contained in the Will clearly conveyed full ownership, there was no occasion for the High Court to go into Section 14 of the Hindu Succession Act at all. Therefore, the Judgment and decree of the High Court are clearly erroneous and liable to be set aside.

12. There is also one more reason why the High Court could not have interfered with the Judgment of the First Appellate Court. As we have pointed out earlier, the First Appellate Court was concerned with two regular first appeals, one filed by the defendants and another filed by the appellant herein who was plaintiff No. 1. The First Appellate Court dismissed R.C.A No. 408 of 1986 filed by the defendants and allowed R.C.A No. 416 of 1986 filed by the appellant herein. The defendants chose to file only one second appeal and that was against the decree in RCA No. 408 of 1986. The decree in R.C.A No. 416 of 1986 has been allowed to attain finality. Even on this ground, the High Court ought to have dismissed the second appeal.

¹ (2006) 8 SCC 75

A 13. In view of the above, the appeal is allowed, the impugned Judgment and decree of the High Court are set aside. The suit filed by the appellant along with Smt. Shevantabai will stand decreed as prayed for, as decided by the First Appellate Court in its Judgment dated 22.01.1992. There will be no order as to costs.

Bibhuti Bhushan Bose

Appeal allowed.