

Mahadev Tukaram Vetale and Others

Vs

Smt. Sugandha and Another

Civil Appeal No. 1907(N) of 1971

(K. S. Hegde, P. Jagmohan Reddy, G. K. Mitter JJ)

14.03.1972

JUDGMENT

HEGDE, J. -

1. This appeal by special leave is directed against the decision of the High Court of Bombay summarily dismissing the appellants' first appeal without assigning any reason.
2. The facts of the case are as follows. Dadu and Tukaram were brothers. The appellant Mahadev is the son of Tukaram. The first plaintiff Sugandha is the daughter of Kisabai. Kisabai claims to be the wife of Dadu. Dadu died at a ripe old age of over 80 years, on October 26, 1968. It is said that on July 24, 1968, he had executed a will in favour of the plaintiffs bequeathing his interest in his family properties. On the strength of that will the plaintiffs have brought the present suit for partition as well as other incidental reliefs. The suit was resisted mainly by the first defendant on the ground that the will put forward is not a genuine will and the deceased Dadu's mental condition, on the date he is said to have executed the will, was such that he could not have been in a sound disposing state of mind. Further plea of the first defendant was that Kisabai was not the wife of Dadu and Sugandha was not his daughter.
3. The Trial Court rejected the contention of the first defendant. It first examined the genuineness of the will. It came to the conclusion that the will in question was a genuine will and thereafter partly relying on the recitals in the will and partly on other evidence came to the conclusion that Kisabai was the wife of Dadu and Sugandha was his daughter. Aggrieved by the decision of the Trial Court the first defendant went up in appeal to the High Court of Bombay. The High Court summarily dismissed the appeal with one word "dismissed". The question for decision is whether the appeal raised by any triable issue. If the appeal did raise any triable issue then the High Court was not justified in summarily dismissing the appeal.
4. We have heard arguments from the counsel for the parties. In our opinion the appeal did raise triable issues. It may be noted that Dadu was literate but the will does not bear his signature. It purports to bear only his thumb-impression. The reason given for not signing the will was that Dadu on the date he executed the will was quite old and therefore his hands were shaking and consequently he could not sign the document. As Dadu is not proved to have put his thumb-impression for any other document it was difficult for the first defendant to prove that the thumb-impression in question was not his thumb-impression. On the date the will was executed Dadu was admittedly more than 80 years old. Six witnesses are said to have attested the will. Out of them only two have been examined. One of the witnesses is Dr. Vaze. We have gone through his evidence. After going through his evidence, as well as examining the other circumstances of the case we think

this is a case which the High Court should not have dismissed summarily. We will not be justified in deciding any of the contentions urged at the bar at this stage. They have to be gone into by the appellate court.

5. In the result this appeal is allowed. The order of the High Court is set aside and the High Court will now re-admit the appeal and dispose of the same according to law. No costs.

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