

SUPREME COURT OF INDIA

Vishwanath Dadu Gurav

Vs.

Dattatray Ganapati Gurav

C.A.No. 9190-9191 of 2015

(Dipak Misra and Prafulla C.Pant,JJ.,)

16.11.2015

JUDGMENT

Prafulla C. Pant, J.,

1. These appeals are directed against order dated 14.3.2012 whereby the High Court of Judicature at Bombay has dismissed the Writ Petition No. 2576 of 2003, affirming the order dated 17.10.1997, passed by the Third Additional District Judge, Kolhapur, in Regular Civil Appeal No. 124 of 1991. Appellants have further challenged order dated 7.1.2014 passed by the High Court whereby Review Petition Stamp No. 33147 of 2012 (in Writ Petition No. 2576 of 2003) is dismissed.

2. We have heard learned counsel for the parties and perused the papers on record.

3. Briefly stated, one Chandrabai, issueless widow, resident of Khochi, Taluka Hatkanangale, District Kolhapur, died on 2.12.1984. She was owner of certain properties in the Village. An application was moved under Section 276 of Indian Succession Act, 1925 before Civil Judge, Senior Division, Kolhapur, by appellant Vishwanath Dadu Gurav who sought probate of Will dated 11.9.1984, said to have been executed by Chandrabai. In said application, which was registered as Civil Application No. 20 of 1989, the appellant pleaded that Chandrabai, widow of Annappa Gurav was his cousin aunt, and she used to live with him. Chandrabai and her husband, being issueless, were maintained by the appellant till their death. It is also pleaded that a Will dated 11.9.1984 was executed in a sound condition of mind by Chandrabai in the appellant's favour in respect of properties mentioned in the application in presence of Dr. B.A. Herwade (PW-2), and two witnesses, namely, Mahadev Ramngiri Gosavi (PW-4) and Dinkar Shripati Patil. The deed was written by one Sayed. Out of the two attesting witnesses Dinkar Shripati Patil died on 24.5.1985. On the basis of Will, the appellant got his name entered in the revenue record in respect of property in question, vide mutation entry No. 1637 dated 25.1.1985, but on the objection of respondent the entry was cancelled. Therefore, the petition for probate was filed by the appellant.

4. Respondent Dattatray Ganapati Gurav opposed the probate application, and claimed that it was he who was looking after the deceased till her death. He denied that the deceased executed any Will in favour of the appellant Vishwanath Dadu Gurav. The respondent further pleaded that he is in possession of the property of the deceased.

5. The trial court, on the basis of the pleadings of the parties, framed following issues: -

“Whether the deceased testator Chandrabai Annappa Gurav was owner of the property in question? Whether the Will is valid and duly executed by testator in his favour? Whether the applicant entitled to the probate or letter of administration as prayed? To what order, if any, the applicant is entitled? The parties filed their documentary evidence in support of their cases, and also led oral evidence. The trial court, after hearing the parties, decided all the issues in favour of the applicant and directed issuance of probate in the name of Vishwanath Dadu Gurav in respect of Will dated 11.9.1984, executed by Chandrabai Annappa Gurav. Aggrieved by said judgment and order dated 15.3.1991, passed on Miscellaneous Civil Application No. 20 of 1989, original opponent Dattatray Ganapati Gurav filed Regular Civil Appeal No. 124 of 1991 before the District Judge, Kolhapur, which was allowed on 17.10.1997, after hearing the parties, and the probate granted was set aside. Thereafter writ petition No. 2576 of 2003 appears to have been filed on behalf of the original applicant on the ground that the appeal was not maintainable before the District Judge/Additional District Judge (Kolhapur). The High Court dismissed the writ petition on the ground that in view of law laid down in *Manohar Bapurao Sapre v. Bhaurao Tukaramji Shirbhate and Another*¹, as the valuation of the property was only Rs.25,000/- as such the district court had appellate jurisdiction. Hence this appeal through special leave. However, the original applicant Vishwanath Dadu Gurav and original opponent Dattatray Ganapati Gurav have died and their legal representatives are prosecuting the matter.

6. Learned counsel for the appellants argued that the High Court should have decided the writ petition on merits, and it erred in dismissing the writ petition only on the ground that the District Judge/Additional District Judge had the jurisdiction to decide the appeal.

7. On the other hand, learned counsel for the respondents contended that since the order passed by the appellate court was challenged only on the ground of maintainability of appeal, as such, the High Court was not required to look into the merits of the case.

8. Undisputedly, the Will (Ex.-38) in question was unregistered, but evidence was led to prove it on record by the attesting witness. It is also not disputed that the respondents were not related to Chandrabai (deceased). As against said fact there is specific plea that Chandrabai (deceased) was cousin aunt of the original applicant Vishwanath Dadu Gurav, and she used to live with him. PW 2 Dr. Herwade, who used to visit the deceased when she was ill before her death, was got examined on behalf of original applicant to corroborate the

fact that Chandrabai used to live with Vishwanath Dadu Gurav. Though trial court recorded finding in favour of the applicant, but the appellate court reversed the same.

9. The writ petition filed on behalf of the original applicant was dismissed by the High Court holding that there was no infirmity in the jurisdiction of the appellate court. Consequently, a Review Petition No. 33147 of 2012 appears to have been moved before the High Court seeking review of the impugned order dated 14.3.2012 passed in Writ Petition No. 2576 of 2003. In the review petition it was pointed out by the writ petitioner (present appellant) that initially civil revision application No. 1187 of 1997 was moved challenging the merits of the order passed by the appellate court, but the same was dismissed, vide order dated 2.12.2002, by the High Court as not maintainable in the light of the amended provisions of Code of Civil Procedure. As such, the writ petition was filed by the appellant before the High Court challenging the maintainability of the appeal before the District Judge, and inadvertently the grounds on merits could not be mentioned. Raising the grounds on merits against the order of the appellate court, the order passed in the writ petition was sought to be reviewed.

10. No doubt, when there existed no ground of challenge on merits in the writ petition, High Court could not have adverted to it. We are also conscious of the fact that if a party is allowed to seek amendment in the grounds of appeal or writ petition after its disposal, it can lead to abuse of process of law, and the parties would not let the proceedings come to an end. As such, we are not inclined to allow the appellants to add grounds in writ petition by way of amendment, after its disposal. However, considering the peculiar facts and circumstances of the present case, we are of the view that to do complete justice between the parties, the matter needs to be remitted to the appellate court, as the reasons given by said court reversing the findings of the trial court, are not sufficient, and do not answer properly the issues raised in the appeals.

11. Therefore, without expressing any opinion as to final merits of the case, we direct the appellate court (Additional District Judge, Kolhapur) to decide the appeals afresh after re-appreciating the evidence on record.

12. Accordingly, the present appeals stand disposed of.

[1] 1995 (2) Mh.L.J. 336