

Regular civil suit No. 88 of 2017
Dattatray Vs. Mangal & ors.

Order below Exhibit No.59
(Pass on 23rd November, 2022)

This is an application filed by defendant No.1 for de-exhibiting the “Will Deed” (Exhibit No.57).

2. By this application, defendant No. 1 contended that the plaintiff has filed present suit for possession of the suit property. She appeared in the suit and resisted it. The defendant No. 2 and 3 have started their evidence. They examined one Ramchandra Maruti Danawale at Exhibit 54. In fact, they cannot adduce any evidence in respect of the “Will Deed”, allegedly executed by deceased Maruti Rama Garde. He did not execute any of such “Will” during his lifetime. No such issue was framed by the Court. Said Will Deed is not the subject matter of suit. Still, defendant No. 2 and 3 filed affidavit of examination in chief of Shri Ramachandra Maruti Danawale. During the evidence of said witness, the “Will” has been exhibited.

3. She further submitted that, in fact, no such evidence can be led in respect of said “Will”, as it is not concerned with the present suit. Still, defendant No. 2 and 3 malafidely led the evidence to that effect by misusing the Court proceeding. Said “Will Deed” is fabricated and bogus. The defendant No. 2 and 3 filed Probate Application No. 21 of 2021 before the Hon’ble Civil Judge Senior Division, Satara in respect of the said “Will”. The said proceeding is

still going on. In fact, it should have been filed in that proceeding and evidence could have been led to that effect. Therefore, the defendant No.1 prayed for de-exhibition of the "Will" (Exhibit No. 57). Further, she also prayed for cancellation / discarding the evidence on affidavit of Shri Ramchandra Maruti Danawale.

4. Defendant No. 2 and 3 filed their reply at Exhibit 61 and resisted the contention of defendant No.1. They submitted that the present application has been filed only to prolong the matter. In fact, defendant No.1 in collusion with the plaintiff teased Maruti Garde. The defendant No.1, many times filed affidavits in support of the plaintiff. The present suit has been filed by the plaintiff in collusion with defendant No.1. Therefore, she did not cross-examine the plaintiff. As the Will Deed, executed by Maruti Garde has been duly proved, the suit is adversely affected. By filing the present application, defendant No.1 is trying to affect the evidence led by defendant No. 2 and 3. Deceased Maruti Garde, during his lifetime, made statements about the said "Will". He filed his written statement in the present suit at Exhibit 15. Paragraph No. 11 of it clearly shows the nature of his relationship with defendant No.1 Mangal.

5. It has been further submitted by defendant No. 2 and 3 that defendant No.1 is having apprehension that if the "Will" is properly proved, it will bring her malafied activities on record. They did not suppress the fact of filing probate application by them before the Hon'ble Civil Judge Senior Division, Satara. In fact, after the

evidence in this proceeding, they need the original "Will Deed" in that proceeding, as well. Defendant No.1 Mangal has been added in the present suit vide amendment dated 6th April 2021. She has also filed her written statement. However, she did not adduce any evidence. Thus, defendant No.1 by her act helps the plaintiff. Ultimately, they prayed to reject the application by imposing compensatory cost of ₹ 10,000/-. At the same time, they prayed for ₹ 10,000/- towards cost of the present application, separately.

6. The plaintiff also filed say to the present application. He submitted to pass the appropriate order.

7. Heard Ld. Advocate Mr. U.H. Sanas for defendant No.1 and Learned Advocate Mr. A.K. Shinde for defendant No. 2 and 3. I also heard Ld. Advocate Mr. S.B. Chavan for the plaintiff. Mr. Sanas argued that this is a simplicitor suit for possession and defendant No. 2 and 3 are nowhere concerned with the prayer in it. They have been brought on record afterwards. Already, the issue of title has been decided in appeal and order of the Hon'ble First Appellate Court is final, as it has not been challenged. Deceased Maruti Garde filed Special Civil Suit No. 40 of 2017 against defendant No.2 & 3. The defendant No. 2 and 3 suppressed the fact of pendency of probate application filed by them. Said application was filed in the year 2021 and the issues were amended in the present suit on 18th January 2022. Therefore, the provisions of section 10 of the Code of Civil Procedure are applicable to the present suit and it has to be stayed. Unless and until, the probate application is decided, no evidence can be permitted to adduce in respect of the "Will" deed in

question. The scope of present suit is very limited. Further, he argued that the "Will" was exhibited in evidence of witness brought by defendant No. 2 and 3. Therefore, it has to be de-exhibited. He also submitted that the evidence of said witness is also required to be discarded and cancelled.

8. Learned Advocate Mr. S.B. Chavan for the plaintiff argued that the proceeding of present suit should not be stopped because of pendency of the probate application. Said probate application will necessarily take certain time to get finally decided.

9. Learned Advocate Mr A.K. Shinde argued that the plaintiff is maternal uncle of defendant No.1. The defendant No. 2 and 3 are cousins of defendant No.1. The defendant No. 2 and 3 are in possession of the suit property since 1962. There is no interruption to their possession. The Special Civil Suit No. 40 of 2017 has been abated due to the death of Mr. Maruti Garde. Thereafter, the probate application was filed. The defendant No.1 did not adduce any evidence. Therefore, her evidence side was closed. Thereafter, defendant No. 2 and 3 led their evidence. This conduct of defendant No.1 should be taken on record. Further, he argued that defendant No.1 and plaintiff are in collusion. Defendant No.1 does not require the suit property. In fact, she is not in its possession. The defendant No.2 and 3 are legal representatives of deceased Maruti by virtue of the "Will" (Exh.57) executed by him in their favour. The defendant No.1 has no right to file the present application, as she did not lead any evidence in support of her defence. The probate application filed by defendant No.2 and 3 is

only for the certification and it was not necessary for them to file it. He also submitted that the “Will” is generally produced and tendered in evidence in many civil suits and it is proved by the proper evidence. In the present matter, it has been duly proved in accordance with the provisions under Section 68 of the Indian Evidence Act. The present application has been filed only to harass defendant No.2 and 3 and to prolong the matter. Therefore, it be rejected.

10. Perused the record and say filed by defendant No.2 and 3 as well as the plaintiff. I also perused the entire record. It appears that defendant No.2 and 3 led their evidence by examining three witnesses, in all. They have examined one Ramchandra Maruti Danawale at Exh.54, who is an attested witness to the “Will” dated 16/05/2008 allegedly executed by deceased Maruti Garde. The perusal of record shows that he has specifically deposed that the contents of the “Will” were stated by deceased Maruti in his presence. He also deposed that another witness namely Ramdas Mansingh Shinde was also present at the time of its execution and it bears their signatures. He further deposed that it bears the signature of deceased Maruti, as well. On the basis of said evidence the “Will” was exhibited as Exh.No.57.

11. The prime objection raised by defendant No.1 for exhibition of the “Will” is that during pendency of the probate application in respect of the said “Will”, it cannot be tendered and exhibited during evidence in the present suit. However, in this regard it is pertinent to mention that the original “Will” has been

duly produced on record. It is a registered document. Mere pendency of probate application in respect of it, does not bar its production in the present suit. The defendant No.2 & 3 have been added in the present suit by virtue of said "Will". They are claiming their possession over the suit property and an issue has been framed to that effect in the suit, as well. Therefore, it was obvious for them to file it on record. It is pertinent to mention in respect of the objection raised regarding provisions under section 10 of the Code of Civil Procedure that, it has no applicability to the present suit as it speaks about the previously instituted suit.

12. Another objection raised by defendant No.1 is that the present suit is for simplicitor possession and it is not concerned with the ownership or title, because the said issue has already been decided by the competent Court in another civil proceeding. However, as discussed in earlier paragraph of this order, the defendant No.2 & 3 are not only claiming to be owner of the suit property, but they are also claiming their possession in the suit property on the basis of said "Will". An issue regarding their possession has also been framed. Therefore, filing of the "Will" by them and attempts for getting it proved during evidence of an attesting witness is not at all any irregularity or illegality.

13. Thus, in view of the above discussion, the "Will" (Exh.57) can not be de-exhibited. It is a registered and original document. An attesting witness has been examined to prove its contents and execution. In such circumstances, the present application is liable to be rejected. Hence, the following order.

ORDER

1. The application (Exh.59) is hereby rejected.
2. Cost in main cause.

[Dictated & pronounced in open Court.]

Wai.

Date : 23.11.2022.

(R.M. Bhende)
Jt. Civil Judge Junior Division,
Wai, District Satara.

CERTIFICATE

“ I certify that this Order uploaded is a true and correct copy of original signed Order”.

Order dictated on : 23.11.2022.

Order checked and signed on : 23.11.2022.

Uploaded by : S. S. Kumbhar.

Stenographer (Grade-III)

Uploaded on : 29.11.2022.