


MHWR010006202018 	Presented on : 04-04-2018 Registered on : 07-04-2018 Decided on : 07-05-2026 Duration : 8 years, 1 months, 3 days
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IN THE COURT OF DISTRICT JUDGE-1, WARDHA.

(Presided over by Shri S.A.S.M. Ali)

Regular Civil Appeal No.38/2018**Exh.**

1. Kishor S/o. Ganpatrao Adkine,
Age 55 years, Occp.: Cultivation,
R/o. Shivnagar, Tah.Seloo, Dist.Wardha.
2. Prashil S/o. Kishor Adkine,
Age 30 years, Occp.: Private Service,
R/o. Opp. Namdev Math, Malgujaripura,
Wardha, Tah. & Dist. Wardha.

.. **Appellants**
(Ori. Defts)

..V/s..

Sanjay Ganpatrao Adkine,
Aged about 50 years, Occp.: Service,
R/o. Opp. Namdev Math, Malgujaripura,
Wardha, Tah. & Dist. Wardha.


.. **Respondent**
(Ori. Plff.)**APPEAL UNDER SECTION 96 OF THE CODE OF CIVIL PROCEDURE,
1908.**

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APPEARANCES:

Smt. A.R. Khare, Advocate for Appellants,
Shri V.T. Gurnule, Advocate for Respondent.

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MHWR010007082018 	Presented on : 21-04-2018 Registered on : 11-06-2018 Decided on : 07-05-2026 Duration : 8 years, 0 months, 16 days
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Regular Civil Appeal No.59/2018**Exh.**

Kishor S/o. Ganpatrao Adkine,
Age 56 years, Occp.: Cultivation,
R/o. Shiv Nagar, Post:Hamdapur,
Tah.Seloo, Dist.Wardha.
At present R/o Malgujaripura, Wardha,
Tah. & Dist.Wardha.

.. **Appellants**
(Ori. Plff. No.1)

..V/s..

- 1] Sanjay S/o. Ganpatrao Adkine,
Aged about 44 years, Occp.: Service,
R/o. Near Namdev Math,
Malgujaripura, Wardha,
Tah. & Dist.Wardha.
- 2] Sheela W/o. Vijayrao Somalkar,
Aged about 54 years, Occp.: Household,
R/o. Near Primary Health Centre,
Koregaon, Tah.Kurkheda, Dist.Gadchiroli.
- 3] Kalpana W/o. Babarao Hiwanj,
Aged about 51 years, Occp.: Household,
R/o. Seloo(Kate), Tah. & Dist.Wardha.
- 4] Savita W/o. Marotrao Shende,
Aged about 48 years, Occp.: Household,
R/o. Mhasala, Tah. & Dist.Wardha.
- 5] Jyoti W/o. Vinayak Bhomle,
Aged about 46 years, Occp.: Household,
R/o. Ajanti, Tah.Hinganghat & Dist.Wardha.

- 6] Mamta W/o. Anilrao Balsaraf,
Aged about 46 years, Occp.: Household,
R/o. Goras Bhandar Colony,
Pratap Nagar, Wardha,
Tah. & Dist.Wardha.
- 7] Madhuri Manish Kawle,
Aged about 41 years, Occp.: Household,
R/o. Near Tukdoji School, Munot Layout,
Pratap Nagar, Wardha, Tah. & Dist.Wardha.
- 8] Yogita Pravinrao Karmore,
Aged about 42 years, Occp.: Household,
R/o. C-20, Neha Apartments, Airoli,
New Bombay (Navi Mumbai).
- 9] Pratiksha W/o. Rajeshrao Wele,
Aged about 39 years, Occp.: Household,
R/o. S.R.P. Camp, Hingna Road, Nagpur,
Tah. & Dist. Nagpur.
- 10] Bhaleraoji Morbaji Kokate (Dead) .. **Respondents**
(Ori. Defts.)

**APPEAL UNDER SECTION 96 OF THE CODE OF CIVIL PROCEDURE,
1908.**

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APPEARANCES:

Smt. A.R. Khare, Advocate for Appellants,
Shri V.T. Gurnule, Advocate for Respondent No.1,
Shri Chetan Sayam, Advocate for Respondents No.2, 8 and 9,
Respondents No.3 to 7 - Exparte.

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COMMON JUDGMENT IN R.CA. NO.38/2018 AND R.C.A. NO.59/2018
(Delivered on this 7th day of May, 2026)

- 1] The present two Regular Civil Appeal No.38/2018 and Regular Civil Appeal No.59/2018 are filed arising out of the common judgment

and decree dated 22.03.2018 passed in Regular Civil Suit No.376/2012 and Special Civil Suit No.71/2012. Therefore the appeals are being decided by this common judgment. (The parties will be referred as per their nomenclature in the suit).

Brief facts of Regular Civil Appeal No.38/2018 arising out of Regular Civil Suit No.376/2012:

2] The plaintiff in this suit is the younger brother of Defendant No.1, while Defendant No.2 is the son of Defendant No.1 and nephew of the plaintiff. The subject matter of this suit is room on the first floor along with bathroom and toilet of a residential house alleged to be owned and possessed by the plaintiff situated at mouza Wardha within the limits of Nazul and Municipal Council, Wardha, bearing Sheet No.67 and Plot No.1689, admeasuring 50 x 60 square meters (hereinafter referred to as the "suit premises").

3] The plaintiff claims ownership of the suit premises by virtue of a Will dated 22.09.2009 executed by his mother of the plaintiff and Defendant No.1. It is further the case of the plaintiff that during the lifetime of their mother, and at the request of both the defendants, suit premises was permitted to be used by Defendant No.2 for his education. It was agreed that the said room would be vacated and handed over to the plaintiff whenever required by him.

4] It is further the case of the plaintiff that his son and daughter now require separate rooms for pursuing their higher education after completion of 10th and 12th standards. Therefore, the plaintiff requested the defendants to vacate the room situated on the first floor of the suit house in terms of the earlier understanding between the parties.

However, despite repeated oral request, the defendants failed to vacate the said room. After exchange of notices suit is filed for possession of suit premises and declaration that the defendants are trespassers.

5] Defendant Nos.1 and 2 resisted the claim of the plaintiff by filing their written statement on record. It is their contention that the suit property is a joint family property belonging to both the plaintiff and the defendants, and that Defendant No.2 is occupying the suit premises in the capacity of a co-owner. According to them, there was no necessity of obtaining any permission from the plaintiff for use and occupation of the said room.

6] It is further contended that the suit house originally belonged to the father of the plaintiff and Defendant No.1, and after his death, the property continued to remain joint between them. The defendants have also alleged that the Will relied upon by the plaintiff is forged, fabricated, and bogus, and has been created with an intention to grab the suit property. On these grounds, the defendants prayed for dismissal of the suit.

Brief facts of Regular Civil Appeal No.59/2018 arising out of Special Civil Suit No.71/2012:

7] The plaintiff in this suit were defendants in Regular Civil Suit No.376/2012 and Plaintiff No.2 to 5 are the sisters plaintiff No.1 and defendant No.1. Plaintiffs have filed this suit for partition and separate possession of their respective shares in the suit property which consists of agricultural lands bearing Survey No.522 admeasuring 2.46 H.R., Survey No.527 admeasuring 1.92 H.R., and Survey No.531 admeasuring 1.61 H.R. So also house constructed on Nazul Sheet No.67, Plot

No.1689, Admeasuring 50 x 60 sq.mt. within jurisdiction of Municipal Council, Wardha.

8] According to the plaintiffs, they and the defendant are the sons and daughters of deceased Ganpatrao Adkine, who was serving as a Peon in Punjab National Bank. During his lifetime, he owned ancestral agricultural lands and had also purchased a residential house from one Batra by a registered sale deed dated 28.06.1976 from out of his service income. The said house remained in his possession and enjoyment till his death. Ganpatrao Adkine expired on 17.06.1983. After his death, Plaintiff Nos.1 to 5, the defendant, and their mother Kasabai Ganpatrao Adkine succeeded to his estate as his legal heirs. According to the plaintiffs, after the death of Ganpatrao Adkine, the plaintiffs, the defendant, and their mother became joint owners and co-sharers of the said properties, each having an undivided 1/6th share therein.

9] It is further the case of the plaintiffs that on 26.12.2008, an oral partition took place between plaintiff No.1, the defendant, and their mother Kasabai in respect of the aforesaid agricultural lands. Under the said oral partition, Plaintiff No.1 and the defendant were allotted six acres of agricultural land each. It was further agreed that out of the share allotted to Plaintiff No.1, an area of two acres would remain in possession of their mother Kasabai during her lifetime, and after her death, the said two acres would revert to Plaintiff No.1. According to the plaintiffs, after the death of Kasabai, Plaintiff No.1 and the defendant have been cultivating their respective shares of six acres each separately.

10] It is further contended that, out of the suit properties, the residential house is being jointly used by Plaintiff No.1 and the defendant for residential purposes. The son of Plaintiff No.1 is residing

on the upper floor of the house, whereas the defendant is residing on the ground floor. The bathroom and toilet facilities are common, and there exists a common water connection and meter, though a separate sub-meter has been installed for Plaintiff No.1 and his son. According to the plaintiffs, Plaintiff Nos.2 to 5 also have equal undivided shares in the agricultural lands as well as in the house property; however, they have permitted Plaintiff No.1, the defendant, and their respective family members to use and occupy their undivided shares in the suit properties.

11] It is the case of the plaintiffs that, since the last few months, the defendant has started harassing Plaintiff No.1 and his son and has even disconnected the water supply to their portion of the house. Consequently, Plaintiff No.1 approached the Municipal Council for obtaining a separate water connection. At that time, he came to know that the house property forming part of the suit properties had been mutated in the name of the defendant in the records of the Municipal Council and Nazul Department.

12] Upon further inquiry, the plaintiffs learnt that the defendant had allegedly got the entire house property transferred in his name on the basis of a false and fabricated Will. In view of the said conduct of the defendant, the plaintiffs no longer desired to continue as joint owners with him. Accordingly, Plaintiff Nos.1, 3, 4, and 5 issued a legal notice dated 30.05.2012 calling upon the defendant to effect partition of the joint properties and to hand over separate possession of their respective shares.

13] The defendant replied to the said notice on 05.06.2012, wherein, according to the plaintiffs, it was disclosed that the defendant was relying upon an alleged Will said to have been executed by their

deceased father. The plaintiffs contended that the said Wills allegedly executed by deceased Ganpatrao and Kasabai are false, fabricated, and bogus documents. Hence, the plaintiffs have filed the suit seeking declaration that Wills alleged to be executed by Ganpatrao Adkine and Kasabai are null and void and further sought partition of the suit properties and separate possession of their respective shares.

14] Defendant No.1 resisted the claim of the plaintiffs by filing his written statement on record. According to him, some of the agricultural lands are ancestral in nature, whereas certain properties were purchased by deceased Ganpatrao Adkine from out of his service income. It is specifically contended that the house property forming part of the suit properties was purchased by deceased Ganpatrao Adkine from his self-earned income and, therefore, the same constituted his self-acquired property.

15] According to the defendant, deceased Ganpatrao Adkine had full right and authority to dispose of the said property in accordance with his own wishes. During his lifetime, he executed a Will bequeathing the house property in favour of his wife Kasabai, thereby making her the absolute owner thereof. Consequently, Kasabai acquired absolute right, title, and authority to deal with and dispose of the said property as per her wishes. It is further contended that deceased Kasabai, by executing a subsequent Will, bequeathed the said house property in favour of Defendant Sanjay Adkine, thereby making him the absolute owner in possession thereof.

16] It is further contended by Defendant No.1 that during the lifetime of deceased Kasabai, Plaintiff No.1 requested both Kasabai and the defendant to permit him to temporarily occupy the room situated on

the first floor of the house, assuring them that he would vacate the same whenever required by the defendant. Acting upon the said assurance, the defendant permitted Plaintiff No.1 to occupy the said portion of the house.

17] According to the defendant, thereafter he requested Plaintiff No.1 to vacate the said premises and also issued a legal notice to that effect; however, Plaintiff No.1 failed to hand over vacant possession thereof. It is further contended that none of the legal heirs of deceased Ganpatrao or Kasabai have any right, title, or interest in the house property forming part of the suit properties, as the same exclusively belongs to Defendant No.1 by virtue of the Wills executed in his favour by Kasabai. On these grounds, the defendant has prayed for dismissal of the suit.

18] It is specifically contended by the defendant that he requested Plaintiff No.1 to vacate the said premises and also issued a legal notice to that effect; however, Plaintiff No.1 failed to hand over vacant possession thereof. It is further contended that none of the legal heirs of deceased Ganpatrao or Kasabai have any right, title, or interest in the house property forming part of the suit properties, as the same exclusively belongs to Defendant No.1 by virtue of the Wills executed in his favour. On these grounds, the defendant has prayed for dismissal of the suit.

19] Defendant Nos.2 and 3 admitted the claim of the plaintiffs, and a pursis to that effect came to be filed on record at Exhibit 52. During the pendency of the proceedings, Defendant No.4 expired, and his legal representatives were brought on record in accordance with law.

20] On the basis of the rival pleadings of the parties, the learned Trial Court framed separate issues in both the suits, and thereafter the parties proceeded to trial. Since both the suits involved common questions of fact and law, the learned Trial Court passed an order two decided the suits jointly, and accordingly the parties led their respective common oral and documentary evidence.

21] In Regular Civil Suit No.376/2012, the plaintiff examined himself and also adduced the evidence of attesting witnesses namely Naresh Zade and Ravi Deshmukh. The plaintiff further relied upon documentary evidence including the Will deed, legal notice and reply notice, tax bills, and relinquishment deed. Thereafter, the plaintiff closed his evidence by filing pursis at Exhibit 58.

22] On the other hand, Defendant No.1 examined himself at Exhibit 13 in Special Civil Suit No.71/2012 and relied upon documentary evidence such as mutation entries (Ferfar), legal notices and reply notices, 7/12 extracts, Village Form No.8-A, and property card extracts.

23] Defendant No.1 had filed the affidavit evidence of her sister, namely Shila Vijayrao Somankar, however, she failed to turn up before the Court for giving evidence, hence defendant closed his evidence.

24] The learned Trial Court, after appreciating the oral and documentary evidence on record and after hearing the submissions advanced by the parties, passed a common judgment. The Trial Court arrived at the conclusion that Defendant No.1 had proved that, by virtue of the Wills executed by deceased Ganpatrao and Kasabai, he had become the exclusive owner of the suit premises. The Trial Court further held that the possession of Defendant Kishor over the room situated on

the first floor was merely permissive in nature and that, upon failure to vacate the premises despite demand, he had become an unauthorized occupant and trespasser. Similarly, the suit filed by the plaintiffs in Special Civil Suit No.71/2012 claiming 1/5th share in the suit properties, including the suit house, came to be rejected, on the ground that the defendant No.1 became the exclusive owner of the suit property by virtue of the Wills executed by deceased Ganpatrao and Kasabai, which according to the Trial Court were legal, valid, and duly proved in accordance with law. It was further held that the suit challenging the said Wills was barred by limitation and also bad for non-joinder of necessary parties.

25] Accordingly, the Trial Court decreed Regular Civil Suit No.376/2012 and directed defendant Kishor to hand over vacant possession of the room situated on the first floor of the suit premises to the plaintiff. Simultaneously, Special Civil Suit No.71/2012 challenging the validity of the Wills came to be dismissed. Being aggrieved by the said common judgment and decree, the original plaintiffs in Special Civil Suit No.71/2012, as well as the defendant in Regular Civil Suit No.376/2012, have preferred the present separate appeals.

26] According to the appellants, the original plaintiff failed to prove the Wills allegedly executed by deceased Ganpatrao and thereafter by Kasabai by examining proper and reliable attesting witnesses as required under law. It is contended that the evidence adduced for proving the Wills is fragile, inconsistent, and insufficient, and that the learned Trial Court committed a grave error in holding that both the Wills were duly proved.

27] It is further contended that the Trial Court erred in holding that

the suit was barred by limitation. According to the appellants, the settled position of law is that a suit for partition and separate possession can be instituted within twelve years from the date when the cause of action first arises. In the present case, according to them, the cause of action arose only in the year 2012 when the demand for partition was refused by the defendant and, therefore, the suit was well within the prescribed period of limitation.

28] It is also further urged that the Trial Court committed a serious error in holding that the suit suffered from non-joinder of necessary parties. According to the appellants, it is an admitted position on record that the sisters were later on joined as the parties therefore the question of dismissing the suit on this ground does not arise.

29] So far as Regular Civil Appeal No.38/2018 is concerned, it is contended that the learned Trial Court erred in holding that the Wills were duly proved, as the evidence of the attesting witnesses was casual and unreliable. It is further contended that the evidence on record clearly establishes that the suit property was ancestral property of deceased Ganpatrao. According to the appellants, once the Wills were not proved in accordance with law, the question of defendant No.2 being treated as a trespasser does not arise.

30] It is also contended that Defendant No.2 was occupying the room situated on the first floor not as a permissive occupant, but in the capacity of a co-owner of the property. Therefore, according to the appellants, the declaration granted by the learned Trial Court treating him as a trespasser is erroneous and unsustainable in law.

31] I have heard the learned Advocates appearing for the respective

parties and have carefully perused the entire record and proceedings as well as the impugned judgment and decree. In order to avoid repetition and overlapping of discussion, and for the sake of convenience, I have framed the common points for my determination. My findings thereon are recorded as under for the reasons stated hereinafter:

Sr. No.	Points	Findings
1]	Whether the plaintiff in Regular Civil Suit No.376/2012 proves that he became owner of the suit property by virtue of the Will executed by deceased Kasabai?	No.
2]	Whether the plaintiffs in Special Civil Suit No.71/2012 prove that the Will dated 22.09.2009 allegedly executed by Kasabai and the Will executed by Ganpatrao Adkine are not genuine?	Yes.
3]	Whether the plaintiff in Regular Civil Suit No.376/2012 proves that the defendant was a permissive occupier of the suit premises?	No.
4]	Whether the plaintiff in Regular Civil Suit No.376/2012 is entitled to a declaration that the defendant is a trespasser?	No.
5]	Whether the plaintiffs in Special Civil Suit No.71/2012 prove that they have 1/5th share in the suit properties, including the suit house?	Only in suit house.
6]	Whether the suit is filed within limitation?	Yes.
7]	Whether the suit is bad for non-joinder of necessary parties?	No.

8]	Whether the judgment and decree passed by the learned Trial Court needs interference?	Yes.
9]	What order?	Regular Civil Appeal No.38/2018 is allowed and Regular Civil Appeal No.59/2018 is partly allowed.

REASONS

As to Points No.1, 2 and 4:

32] In the present case, the core issue revolves around the Wills allegedly executed, firstly by deceased Ganpatrao Adkine, the father of the plaintiff and Defendant No.1, and thereafter by their mother Kasabai. According to the plaintiff in Regular Civil Suit No.376/2012, namely Sanjay Adkine, deceased Ganpatrao had executed a Will in favour of his wife Kasabai, and after the death of Ganpatrao, Kasabai became the exclusive owner of the suit house and other suit properties. It is further his case that prior to her death, Kasabai executed another Will in his favour, thereby bequeathing the entire suit property exclusively to him.

33] On the other hand, it is the specific contention of the defendants that no such Wills were ever executed either by deceased Ganpatrao or by Kasabai. It is specifically pleaded that plaintiff Sanjay Adkine has created and fabricated the alleged Wills, therefore, the defendants have sought a declaration that the said Wills are null, void, and not binding upon them, by filing Special Civil Suit No.71/2012.

34] In order to prove both the alleged Wills, the plaintiff has examined himself as well as one attesting witness. Before adverting to

the evidence led by the parties in respect of the said Wills, it is necessary to consider the legal position governing proof and admissibility of a Will in the light of the settled principles laid down by the Hon'ble Supreme Court.

35] The settled legal position in respect of the will deed is way back considered by the Hon'ble Supreme Court. In the landmark case of **H. Venkatachala Iyengar V/s B. N. Thimmajamma & others (AIR 1959 SC 443)** where it is held that;

“requirement of the proof of execution of a Will is the same as in case of certain other documents, for example Gift or Mortgage. The law requires that the proof of execution of a Will has to be attested at least by two witnesses. At least one attesting witness has to be examined to prove execution and attestation of the Will. Further, it is to be proved that the executant had signed and/or given his thumb impression in presence of at least two attesting witnesses and the attesting witnesses had put their signatures in presence of the executant”.

36] A useful reference in the context can be made to a judgment of the Hon'ble Supreme Court in case of **Surependra Pal and others Versus Dr. (Mrs.) Saraswati Arora and another (1974) 2 SCC 600** wherein the nature and extent of burden of proof on the propounder, the suspicious circumstances and the onus to dispel the same where expounded, in the following words.

“The propounder has to show that the will was signed by the testator and that he was at the relevant time in a sound disposing state of mind. That he understood the nature and effect of the dispositions, that he put his signature the testament of his own free will and that he has signed it in the presence of the two witnesses who attested in his presence and in the presence of each

other. Once these elements are established, onus which rests on the propounder is discharged. But there may be cases in which the execution of the will itself is surrounded by the suspicious circumstances. Such as were the signature is doubtful, the testator is of feeble mind or is overawed by powerful minds interested in getting his property or where in the light of relevant circumstances the dispositions appear to be a natural improbable and unfair”.

37] In view of the aforesaid settled legal position, it is clear that attestation of a Will is a mandatory requirement and the same means due testimony regarding the signature or mark of the executant. Such attestation is not a mere formality. A Will can be said to have been validly executed only when it is attested by two or more witnesses in the manner contemplated by law.

38] The propounder of the Will is required to prove not only that the testator had signed or affixed his mark on the Will, but also that each of the attesting witnesses had signed the Will in the presence of the testator. Thus, due execution and proper attestation of the Will must be affirmatively established by cogent and reliable evidence.

39] Now coming to the evidence led by the plaintiff in this regard, plaintiff Sanjay Ganpatrao Adkine has stated that by virtue of the Will dated 22.09.2009 allegedly executed by Kasabai in his favour, he became the owner of the suit property. Surprisingly in his entire examination-in-chief at Exh.21, he has not given any details about the execution of the alleged Will except a sweeping statement that he became the owner of the suit premises by virtue Will dated 22.09.2009, there is nothing on record. Even he has not stated in his examination-in-chief, who were the attesting witnesses and the physical and mental condition of the executant of the Will. However, in support of the said

Will, he examined PW2 Naresh Zade as an attesting witness, who stated in his examination-in-chief itself that although he knew Sanjay, the plaintiff, Kishor, Defendant No.1, and Prashil, Defendant No.2, he did not know the mother of Defendant No.1, namely Kasabai. When the alleged Will deed was shown to him, he merely identified his signature appearing as Attesting Witness No.1. He further admitted in his examination-in-chief that he had signed the document only after completion of all formalities before the Registrar. He also admitted that he did not know whether the lady concerned had affixed her thumb impression on the document or not.

40] The cross-examination of this witness completely demolishes the case of the plaintiff Sanjay Adkine. At the very outset of his cross-examination, the witness admitted that he had signed the document at the instance of plaintiff Sanjay Adkine in the office of the Registrar. He further admitted that he did not know whether, at the time when he affixed his signature, the document already contained the signature or thumb impression of any person. Lastly, he admitted that till the date of his deposition, he neither knew the contents of the document nor had he ever read the same.

41] The plaintiff Sanjay Adkine further examined Ravi Ramchandra Deshmukh, who is alleged to be an attesting witness to the Will purportedly executed by deceased Ganpatrao Adkine, the father of the plaintiff and Defendant No.1. However, this witness also, in his examination-in-chief itself, stated that he did not know Ganpatrao Adkine and was not even aware that Ganpatrao had been serving in Punjab National Bank. He further stated that Ganpatrao had never executed any Will in his presence.

42] The witness merely identified his signature on the document when the alleged Will was shown to him. However, he admitted that he did not even know on how many pages he had signed. Lastly, he admitted that he did not know the nature or contents of the document on which he had affixed his signature. The cross-examination of this witness is even more significant. He admitted that the alleged Will deed had been brought to him by plaintiff Sanjay Adkine at his shop and that, at the relevant time, except himself and plaintiff Sanjay Adkine, no other person was present there.

43] This is the entirety of the evidence adduced by the plaintiff for proving the alleged Will. Needless to state that the mandatory requirements for proving a Will, as laid down by the Hon'ble Supreme Court in the judgments referred to hereinabove, are not at all satisfied in the present case. On the contrary, the evidence on record gives rise to serious and grave suspicious circumstances surrounding the execution of the alleged Will.

44] Section 68 of the Indian Evidence Act requires at least one attesting witnesses to prove its execution in terms of Section 66 of the Indian Succession Act, but it is clear that neither witness Naresh Damduji Zade nor Ravi Ramchandra Deshmukh passed the test satisfying the requirement of Will. In consequence Section 71 of the Evidence Act had a role to play in the matter as one of the attesting witness even admitted that he signed when he was present in his shop. While the other attesting witness did not establish its execution in terms of the legal mandate. It was therefore incumbent upon the plaintiff Sanjay Adkine to lead other evidence to prove the execution of the Will by Kasabai. However, neither the scribe of the Will nor any one from

the Registrar Office were examined to prove its execution.

45] Secondly, it is also evident from the record that the beneficiary under the alleged Will, namely the plaintiff himself, had taken an active part in the execution and registration of the document. Such active participation by the beneficiary constitutes another suspicious circumstance attached to the Will. The plaintiff has failed to satisfactorily explain or dispel these suspicious circumstances by leading cogent and convincing evidence.

46] It is relevant to note that one of the attesting witness Ravi Deshmukh has admitted that when he was present in his shop, plaintiff Sanjay Adkine brought a document where he has signed it and at that time, except him and Sanjay no one was present. This clearly shows that the propounder of the Will had taken a prominent part in execution of the Will, which is a suspicious circumstance. In this regard, the observation of the Hon'ble Supreme Court in case of Gurdial Singh (Dead) Through L.R .V/s. Jagir Kaur (Dead) and Ors., reported in MANU/SC/0932/2025 are very much relevant wherein it is held that, *Apart from the suspicious circumstances to which we have just referred, in some cases the wills propounded disclose another infirmity. Propounders themselves take a prominent part in the execution of the wills which confer on them substantial benefits. If it is shown that the propounder has taken a prominent part in the execution of the will and has received substantial benefit under it, that itself is generally treated as a suspicious circumstance attending the execution of the will and the propounder is required to remove the said suspicion by clear and satisfactory evidence.*

47] From the bare perusal of the evidence discussed hereinabove, it

is abundantly clear that the attesting witnesses have failed to prove the due execution and attestation of the alleged Wills in accordance with law. Even their presence at the time of execution of the alleged Wills appears to be doubtful.

48] The above two suspicious circumstances are shrouded over the Will. Whenever suspicious circumstances exist in relation to the execution of a Will, it becomes the bounden duty of the propounder to remove all legitimate suspicions before the document can be accepted as the last testamentary disposition of the testator. In such circumstances, the initial burden cast upon the propounder becomes much heavier.

49] In the present case, the learned Advocate for the respondent has failed to offer any satisfactory explanation whatsoever regarding the suspicious circumstances discussed above. Therefore, I have no hesitation in holding that plaintiff Sanjay Adkine has failed to prove the due execution and attestation of the alleged Wills. Consequently, the said Wills are liable to be declared null and void. Accordingly, the plaintiffs in Special Civil Suit No.71/2012 are entitled to a declaration that the alleged Wills executed by deceased Ganpatrao Adkine and Kasabai are null and void. Hence, I answer Point Nos.1, 2 and 4 accordingly.

As to Point No.3:

50] It is the contention of plaintiff Sanjay Adkine that Defendant No.2, namely Prashil Adkine, was merely a permissive occupier of the room situated on the first floor of the suit house. However, once plaintiff Sanjay has failed to prove the alleged Wills on the basis of which he claimed exclusive ownership over the suit house, the question of

Defendant No.2 being treated as a permissive occupier does not arise.

51] It is an admitted position on record that the suit house was the self-acquired property of deceased Ganpatrao Adkine. Consequently, upon his death, the plaintiff and the defendants acquired equal rights and shares in the said property in accordance with law. In such circumstances, the contention of plaintiff Sanjay that the possession of Defendant No.2 over the suit house was merely permissive cannot be accepted and deserves to be rejected. Hence, I answer Point No.3 in the negative.

52] The learned Advocate for the respondent relied upon two rulings. One of the Hon'ble Bombay High Court namely **Ajay Mahasukhlal Shah .V/s. Chandrakant Babulal Shah & Ors.**, reported in **2024 (1) ALL MR 281** wherein it is held that *the grownup of the plaintiff should have enough a place and privacy to devote their time to studies without any disturbances therefore the need of landlord for additional accommodation is genuine, honest and conceal in good faith and thus reasonable and bonafide.*

53] The second ruling which is relied upon is **Kusum Lata Sharma .V/s. Arvind Singh**, reported in **(2023) SCCR 673** wherein it is held that *the bonafide requirement could not be confined to landlord alone and it include requirement of family members which would include appellants brother-in-law, his wife and children as well.*

54] I have gone through the above rulings and found it inapplicable in the present case for the reason that the dispute before the Hon'ble Supreme Court and the Hon'ble High Court was between landlord and tenant and the aspect of bonafide requirement of landlord was raised. In

the present case, the dispute is not that of landlord and tenant but the owner and co-owner. Therefore, the rulings are helpful for the plaintiff.

As to Point No.5:

55] During the course of cross-examination, plaintiff Kishor Adkine admitted that he had no grievance regarding the partition of the agricultural lands and that, in fact, partition of the agricultural fields had already taken place and the respective shares were allotted to the concerned co-sharers. Moreover, the relinquishment deed produced on record also establishes that the sisters had relinquished their respective shares in favour of the plaintiff and Defendant No.1.

56] Thus, so far as the agricultural lands are concerned, the plaintiffs are not entitled to claim any separate share therein. However, in respect of the suit house, the parties continue to have equal rights and interests, as the said house was the self-acquired property of deceased Ganpatrao Adkine and the alleged Wills have not been proved in accordance with law. Accordingly, I answer Point No.5 in the above terms.

As to Point No.6:

57] Defendant Sanjay Adkine in Special Civil Suit No.71/2012 challenged the suit filed by plaintiff Kishor on the ground of limitation. However, except a bare averment in the written statement that the suit was barred by limitation, no specific pleadings or explanation were furnished as to how the claim was beyond the prescribed period of limitation. Moreover, according to defendant Sanjay himself, the alleged Will was executed on 22.09.2009, whereas the suit came to be filed on 06.07.2012. Therefore the Will dated 22.09.2009 is within limitation. As

regards the Will executed on 28.04.1982. No evidence is led the plaintiff Kishor Adkine that he was made aware by his brother Sanjay about the alleged Will. It is his specific case that when he went to Municipal Council then he only came to know about the alleged Will. Even otherwise, no evidence is led by Sanjay Adkine that the plaintiff Kishor was having knowledge about the alleged Will. Therefore the limitation will commence from the knowledge of the alleged Will. Therefore, the suit was clearly instituted within the prescribed period of limitation. Hence, I answer Point No.6 in the affirmative.

As to Point No.7:

58] Although defendant Sanjay Adkine in Special Civil Suit No.71/2012 had initially taken a contention that the suit filed by the plaintiffs was bad for non-joinder of necessary parties, during the pendency of the suit the remaining co-sharers were subsequently impleaded as parties to the proceedings. In view thereof, the objection regarding non-joinder of necessary parties no longer survives and is not available to defendant Sanjay Adkine. Hence, I answer Point No.7 in the negative.

As to Point No.8:

59] I have carefully perused the judgment and decree passed by the learned Trial Court and find that the same suffers from various irregularities and misappreciation of the evidence on record. Firstly, so far as the alleged Wills are concerned, the learned Trial Court appears to have accepted the Wills merely on the basis that the shop of the executant of the Will was situated in front of the house of the attesting witness and that the attesting witness belonged to the same caste as that

of the executant. Such circumstances, by themselves, are wholly insufficient to prove due execution and attestation of a Will in accordance with law.

60] It is further surprising to note that despite recording an observation that the attesting witness had admitted that he did not know the contents of the Will deed, the learned Trial Court still proceeded to hold that the Will in question was duly proved and valid. Secondly, the learned Trial Court observed that there were no suspicious circumstances surrounding the execution of the Wills, despite the fact that the evidence on record clearly established that the attesting witnesses were unaware of the contents of the documents and that the propounder of the Wills had taken an active part in their execution. These circumstances, in fact, constituted material suspicious circumstances which required strict scrutiny and satisfactory explanation from the propounder.

61] It further appears from the judgment of the learned Trial Court that an erroneous approach has been adopted while holding that the suit was barred by limitation, despite the fact that the suit had admittedly been filed within three years from the date of execution of the alleged Will.

62] Moreover, there is absolutely no material brought on record to show that plaintiff Sanjay Adkine had ever disclosed or brought to the notice of defendant Kishor the alleged execution of the Will by Kasabai in his favour. In absence of such evidence, the findings recorded by the learned Trial Court regarding limitation are unsustainable. Therefore, the observations and findings recorded by the learned Trial Court are liable to be set aside. Accordingly, I answer Point No.8 in the affirmative.

Consequently, the impugned judgment and decree deserve to be quashed and set aside, and both the appeals deserve to be allowed in the aforesaid terms. Hence, the following order.

Order

A] Regular Civil Appeal No.38/2018 is allowed.

(i) The judgment and decree passed in Regular Civil Suit No.376/2012 is hereby quashed and set aside, and the said suit stands dismissed with costs.

(ii) Decree be drawn accordingly.

B] Regular Civil Appeal No.59/2018 is partly allowed.

(i) Special Civil Suit No.71/2012 is partly decreed.

(ii) It is hereby declared that Will dated 28.04.1982 and 22.09.2009 are null and void.

(iii) Plaintiff Nos.1 to 5 and the defendant are declared to be co-owners of the suit house, each having 1/6th share therein.

(iv) The partition decree in respect of the suit house shall be executed through the Collector, Wardha, after payment of the requisite court fees.

(v) The relief for partition and separate possession in respect of agricultural field is hereby rejected.

(vi) Decree be drawn accordingly.

(vii) The copy of judgment be sent to the office of the Joint Sub Registrar, Wardha.

(viii) A copy of the judgment passed in Regular Civil Appeal

No.38/2018 be kept on record of Regular Civil Appeal No.59/2018.

(ix) R & P be sent back to the learned Trial Court forthwith.

Judgment dictated and pronounced in open Court.

Date : 07-05-2026

(S.A.S.M Ali)
District Judge-1,
Wardha.

CERTIFICATE

I affirm that the contents of this P.D.F file are same word to word as per the original order.

Name of Stenographer	:	Madhav A. Chaudhari
Court Name	:	In the Court of District Court-1 and Additional Sessions Judge, Wardha.
Judgment delivered on	:	07-05-2026
Direct dictated on computer on	:	07-05-2026
Judgment checked and signed by Presiding Officer on	:	07-05-2026
Judgment Uploaded on	:	07-05-2026