

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**SECOND APPEAL NO.793 OF 2019**  
**WITH**  
**CIVIL APPLICATION NO. 1606 OF 2019**

Shamrao Ganpati Koli (deceased, through ... Appellants  
 heirs and L.R. Smt. Shalan Shamrao Koli  
 and Ors.

V/s.

Shri. Adinath Ganpati Koli and Ors. ... Respondents

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Mr. Umesh Hanmantrao Pawar for the appellants/applicants.

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**CORAM : SMT. SADHANA S. JADHAV, J**

**DATED : 12<sup>th</sup> December, 2019.**

**P.C. :**

. Heard the learned counsel for the appellants.

2. The appellant herein happened to be the original plaintiff in Regular Civil Suit No. 18 of 2000 which was decreed by the Judgment and order dated 1<sup>st</sup> April 2011. Defendant had filed Regular Civil Appeal No. 144 of 2011 challenging the said judgment. The appellant herein impugns the Judgment and Order dated 23<sup>rd</sup> January 2019 passed by the learned District Judge No.5, Kolhapur. The appellant had challenged the Will purportedly executed by his father in favour of the Defendant No.1 who happens to be the son begotten from the 3<sup>rd</sup> wife of his father. The step sisters have also been made parties to the Second Appeal. The Trial Court had held that the contents of the Will have not been proved. Moreover, the attesting

witnesses were not consistent in their substantive evidence and therefore, could not prove contents of the Will. The Will is at Exhibit-141. The Appellate Court has set aside the said Judgment and Order on the ground the Will was recorded in the year 1993 and that the witnesses have deposed in 2009 and by passage of time their memory had faded and therefore, there is inconsistency in evidence. The appellant herein had filed cross objections which are allowed by the Appellant Court.

3. A case is made out by the appellant for admission of Second Appeal.

4. In view of this, parties to maintain status quo till the next date.

5. It is made clear that the defendants shall not create 3<sup>rd</sup> party interest during the pendency of the appeal.

6. Issue notice to the respondents, returnable on 13<sup>th</sup> February 2020. The learned counsel for the appellants shall furnish spare copies within two weeks from today. Upon failure, the interim relief shall stand vacated without further reference to the Court. In addition, Private Service is permitted.

**(SMT. SADHANA S. JADHAV, J)**