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SA-437-91
(sr. no.204/F.H. board)
Friday,9Jan,2015

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 437 OF 1991

Balkrishna Baburao Angir and Ors.

.....Appellants

: V/S :

Kamlabai Baburao Angir & Ors.

.....Respondents

* * * * *

Mr. T.D. Deshmukh, Advocate for the appellants.

Mr. Ashok Tajane, Advocate for respondents no.1A and 2A to 2D.

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Coram :- Smt. R.P. SondurBaldota, J.

9th January, 2015.

P.C. :-

1). This Second Appeal is directed against the concurrent findings of the Courts below. It was admitted for consideration of the following questions of law.

“(3). Whether the suit property was the self-acquired property of deceased Baburao Angir ?

(4). Whether the plaintiffs have proved that the suit property was purchased by the deceased Baburao Angir only out of his alleged personal income ?

(5). Whether the deceased Baburao Angir had purchased the suit property from out of the joint family funds which he received in a partition between him and his brother Ramanna on 24.6.1947 in which a substantial cash was received by deceased Baburao and thereafter the suit property was purchased in or about October, 1947 ?”

2). Mr. Deshmukh, the learned Advocate appearing for the appellants, in fairness concedes that, the three questions are in fact questions of fact and not questions of law, much less substantial questions of law. He, however, submits that the Courts below have failed to correctly appreciate Section 90 of the Evidence Act by resorting to which the gift-deed was allowed to be produced. Mr. Deshmukh, argues that even though Section 90 helps a person in establishing existence of an ancient document and existence of contents therein, it is necessary for the party to produce evidence to establish truth or correctness of contents of the ancient document. Mr. Deshmukh, relies upon the decision of the Apex Court in the case of **Gangamma and Others Versus. Shivalingaiah, reported in (2005) 9 SCC page 359**. He places specific reliance upon para-8 of the judgment which reads as follows :-

“8. Section 90 of the Indian Evidence Act nowhere provides that in terms thereof the authenticity of the recitals contained in any document is presumed to be correct. The High Court, therefore, committed a manifest error of law in interpreting the provision of Section 90 of the Indian Evidence Act and, thus, fell into an error in formulating the substantial question of law. As the purported substantial question of law was formulated on a wrong reading of Section 90 of the Indian Evidence Act, the impugned judgment cannot be sustained. We may furthermore notice that even if a formal execution of a document is proved, the same by itself cannot lead to a presumption that the recitals contained therein are also correct. The mere execution of a document, in other words, does not lead to the conclusion that the recitals made therein are correct and subject to the statutory provisions contained in Sections 91 and 92 of the Evidence Act, it is open to the parties to raise a

plea contra thereto.”

3). There can be no dispute about the proposition canvassed by Mr. Deshmukh. However, the argument is not available to the appellants in the facts of the present case. The Courts below have noted that, the registered gift-deed at Exhibit-61 is not even disputed by the appellants in their pleadings. The only objection raised by them was that, the father had no right to gift the property, the same being ancestral. Therefore, the case of the appellants can stand or fall on only one consideration i.e. about the nature of the property gifted, whether it was ancestral or personal property of the father.

4). According to the appellants, the property in question was purchased by the father out of the nucleus of ancestral property received by him from his father. Mr. Deshmukh points out that, there is hardly any time gap between partition of the property amongst the brothers and purchase of the property by the father, which property has been gifted to the respondents. Mr. Tajane, the learned Advocate appearing for the respondent, points out that the Courts below have held that the appellants have failed to establish existence of sufficient nucleus of the ancestral property with the help of which the father could have purchased the property in question. This finding is supported by the evidence on record. Therefore, this concurrent finding of fact recorded by the Courts below cannot be disturbed. Hence, the Second Appeal is

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dismissed.

5). Mr. Deshmukh, requests for continuation of the interim relief. Considering the fact that, the respondents have been waiting for enjoying the fruits of the decree since the year 1986, the request is rejected.

(SMT. R.P. SONDURBALDOTA, J)