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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.642 OF 2011

1. Parvatibai w/o Tukaram Sirsat
APPELLANTS
Age – 50 years, Occ – Household,
R/o Telgaon (Bk), Taluka – Wadwani,
District – Beed
2. Tukaram s/o Shrirang Sirsat,
Age – 55 years, Occ – Agriculture
R/o As above
3. Priyanka d/o Fulchand Sirsat
Since Minor
4. Nikita d/o Fulchand Sirsath,
Since Minor

Both the appellants nos. 3 and 4
under guardian of their
grandmother Parvati w/o Tukaram Sirsat
i.e. appellant No.1

VERSUS

- | | |
|---|--------------------|
| <ol style="list-style-type: none">1. Dwarka Fulchand Sirsat
Age – 35 years, Occ – Household
R/o Telgaon, Taluka – Majalgaon
District – Beed2. Branch Manager,
Life Insurance Corporation,
Branch Office, Majalgaon
District – Beed3. Branch Manager,
State Bank of Hyderabad,
Branch Office, Majalgaon
District – Beed4. Branch Manager, | <p>RESPONDENTS</p> |
|---|--------------------|

State Bank of India,
Branch Office, Majalgaon
District – Beed

5. Dnyaneshwar s/o Fulchand Sirsat,
Minor
Under guardianship of real mother
respondent No.1. Dwarkabai Fulchand Sirsat

.....
Mr. S. S. Thombre, Advocate for the appellants
Mr. B. S. Kudale, Advocate for respondents No.1 and 6
.....

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 23rd NOVEMBER, 2016

ORAL JUDGMENT :

1. Heard learned advocates for the appearing parties finally with consent.

2. Mr. Thombre, learned advocate appearing for the appellants contends that with the severance of ties of relationship of husband and wife, the entitlement to the sums as referred to in the plaint, left behind by estranged husband would not be amenable for any sharing by the estranged wife. He submits that it has emerged on record that divorce between the plaintiff and Fulchand, her husband, had taken under a written document and the document has been duly proved. In the circumstances, both the courts have committed grave error in

holding the plaintiff to have *locus standi* to claim share in the amounts belonging to and / or coming to or left behind by deceased Fulchand – estranged husband. He further refers to that the plaintiff had earlier on tried to institute proceedings for partition of the properties of Fulchand, however, said attempt had not been successful. In the circumstances, subsequent present *lis* is not tenable. He further contends that defendant No.2 being nominee, the amount under the policies would go to her and not to any other person.

2. Mr. Kudale, learned advocate appearing for original – plaintiff and defendant No.6 contends that the two courts have concurrently found that the purported written deed of divorce to be spurious and suspicious one. Evidence in this regard had been sufficiently discussed by the trial as well as appellate court and finding of fact has been reached that the same being spurious and suspicious. He submits that this finding of fact is not liable to be faulted with on any count. Nor the appellants are in a position to show that the appreciation on findings recorded is perverse and once the document is held to be not legally acceptable, rights flowing from relationship would be undeniable to the plaintiff as well defendant No.6. He submits that although it is sought to be submitted on behalf of the appellants that the

mother being nominee of Life Insurance Corporation's policies, the amount would not liable to be shared, is not sustainable in the face of legal position as would be emerging under the judgments which have been cited on behalf of the plaintiffs before the courts hitherto.

3. Perusal of the judgments and orders passed by the two courts show that there has been elaborate consideration and appreciation of matter in controversy and the evidence adduced on behalf of the parties. The courts have held that the document pressed into service as a divorce deed is not legally sustainable and such an appreciation being not perverse, at the second appellate stage before this court, said finding is not liable to be disturbed. In such a case, the contention with regard to estrangement of relationship between the plaintiff and her husband – Fulchand stands razed to the ground and consequently the plaintiff would be entitled to share in accordance with law, in the property left behind by her husband, as claimed in the plaint. Submission that nominee would alone be entitled is not tenable and such an argument is no longer *res integra*. The trial as well as appellate court do not appear to have committed any error as such, while deciding the suit and the appeal.

4. Second appeal thus does not give rise to any substantial question of law and stands dismissed.

5. In view of dismissal of the second appeal, civil application does not survive and stands disposed of.

[SUNIL P. DESHMUKH, J.]

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