

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 69 OF 2016

SHRI. MANUEL MATEUS DE JESUS MARIA
HORTA RIBEIRO.

... Appellant

Versus

SMT. ELVIRA LAURENTINA DESOUZA AND
14 ORS.

... Respondents

Mr. J. Abreu Lobo, Advocate for the appellant.

Coram:- F. M. REIS, J.

Date:- 25th August, 2016

P.C.

Heard Mr. J. A. Lobo, learned counsel appearing for the appellant.

2. The above appeal challenges the judgments passed by the Courts below whereby the suit filed by the appellant to declare the order passed by the Mamlatdar declaring the respondents as mundkars be set aside on the ground that there was no valid power of attorney in favour of the original applicants to the application who are the respondents in the above appeal.

3. Mr. J. A. Lobo, learned counsel appearing for the appellant submits that the records reveal that one of the respondents who is a legal representative of the deceased Mundkar had claimed that he was the power of attorney of all the co-heirs. The learned counsel

further submits that the records however reveal that the respondent nos. 13 and 14 had filed their written statement inter-alia contending that they had not executed any power of attorney to the respondent no.1. The learned counsel further pointed out that the power of attorney produced by the respondent no.1 before the Mamlatdar is a forged document and as such the order passed by the Mamlatdar declaring the respondents as mundkars being obtained by fraud stands vitiated. The learned counsel thereafter has taken me through the judgments passed by the Courts below to point out that both the Courts below have misconstrued the material produced by the appellant to erroneously come to the conclusion that the appellant has failed to establish his case.

4. I have considered the submissions of the learned counsel and I have also gone through the records. Both the Courts below upon appreciating the evidence on record have come to the conclusion that the allegations of the appellant that the power of attorney was obtained by fraud has not been established. It is not disputed that the respondent nos. 13 and 14 who claimed that they had not executed the power of attorney did not enter the witness box to substantiate their contention. The appellant, if he so desires ought to have examined such respondents as their witnesses to establish his case. Considering that both the Courts below on the basis of appreciation of evidence on record have concurrently come to the conclusion that the appellant has failed to establish his contention

that the power of attorney was obtained by fraud, I find that there are no substantial questions of law which arise in the present case for consideration as there is no perversity in such findings. In any event, the fact that the appellant was a party to such proceedings has not been disputed and even assuming that the respondent nos. 13 and 14 have not executed the power of attorney, it would not affect the order as far as the other respondents are concerned. The records also reveal that the orders were assailed before the Tribunal without success by the appellant. The order as such has attained finality. Hence, there are no substantial questions of law which arise in the present appeal for consideration. The appeal stands accordingly rejected.

F. M. REIS, J.

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