

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 108 OF 2015

SUBHASH SHIVNATH CHODANKAR AND
ANR.,

... Appellants

Versus

SATISH SHIVNATH CHODANKAR AND 20
ORS.,

... Respondents

Mr. Anthony Joe D'Silva, Advocate for the appellants.

Coram:- F. M. REIS, J.

Date:- 28th April, 2016

P.C.

Heard Mr. A. D'Silva, learned counsel appearing for the appellants.

2. The above appeal challenges the judgments passed by the Courts below whereby the suit filed by the appellants on the ground that the subject Will was obtained by undue influence and impersonation came to be dismissed.

3. Mr. A. D'Silva, learned counsel appearing for the appellants points out that the findings arrived at by the Courts below to the effect that the appellants have failed to establish their claim that the disputed Will was executed by undue influence and impersonation are perverse and call for interference of this Court. The learned counsel has taken me through the judgments passed by the Courts

below to point out that both the Courts have misappreciated the evidence on record to come to such conclusion. The learned counsel however points out that irrespective of the dismissal of the suit, it does not preclude the appellants to raise the ground of validity of the Will in the Inventory Proceedings which are pending before the appropriate Court. In support of the said contention, the learned counsel has relied upon the judgment of this Court reported in 2014(6) Bom.C.R. 423 in the case of Nirmala Vasant Dessai & Ors V/s Tulsi Sadananda Dessai.

4. I have considered the submissions of the learned counsel and with the assistance of the learned counsel, I have gone through the records. Both the Courts below have concurrently found that the appellants have failed to establish their claim that the disputed Will executed by the deceased was obtained by undue influence and impersonation. These concurrent findings of fact arrived at by the Courts below based on appreciation of evidence on record cannot be reappreciated by this Court unless perversity is found in such findings. The appellants have not shown any perversity in the findings arrived at by the Courts below on the basis that there was misreading of evidence or non consideration of any material on record produced by the appellants. The contention of the learned counsel appearing for the appellants would essentially entail reappreciation of evidence which exercise cannot be carried out in Second Appeal under Section 100 of the Civil Procedure Code. As

such, I find no perversity in the concurrent findings arrived at by the Courts below on that count.

5. In view of the judgments passed by the Courts below, the execution of the Will cannot be challenged but however, it does not preclude the appellants if they so entitled to raise their contention with regard to the validity of the Will in the Inventory Proceedings which are stated to be pending before the appropriate Court. Taking note of the observations of this Court in the case of Nirmala Dessai (*supra*), all contentions of the respondents on that count are left open to be examined by the Inventory Court on its own merits in accordance with law.

6. Subject to the above, I find no merits in the above appeal which stands accordingly dismissed.

F. M. REIS, J.

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