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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

***SECOND APPEAL NO. 545 OF 2015
with
CIVIL APPLICATION NO. 1201 OF 2015***

Mrs. Chandrabai Narayan Patil & Ors. ... Appellants/Applicants.

V/s.

Mrs. Alka Shivaji Mangutkar & Ors. ... Respondents.

Mr. Umesh Mankapure for the Appellants/Applicants.

Mr. G.N. Salunke for the Respondents 1 to 3.

CORAM : N.M. Jamdar, J.

11 August, 2016.

Oral Order :-

The Appellants challenges the concurrent Judgments and Orders passed by the learned Civil Judge, Junior Division, Ajara, District Kolhapur dated 2 December 2013 and dated 20 March 2015 passed by the District Judge, Kolhapur.

2. The Respondents filed a suit for partition, injunction and a declaration that the sale deed relied upon by the Appellants is

not binding on their share. It was the case of the Respondent – Plaintiff that Appa Babaji Kharade was father of Appellant No.1 and Plaintiff, and after his death, the properties should be partitioned and shares be allotted. The Appellant No.2 is the husband of Appellant No.1. The Appellants contested the suit on the ground that the suit properties were self-acquired properties of Appa and by a registered Will, the properties were given to the Appellant No.1. The suit was initially decreed by judgment and order dated 26 July 2007. Thereafter, the proceedings reached this Court in Appeal from Order No. 312 of 2012 and the suit was remanded for reconsideration in respect of the additional property bearing Gat No.181. Upon remand the impugned orders have been passed.

3. The learned Counsel for the Appellants firstly submitted that the validity of the Will was not questioned in the plaint and there is no prayer that the Will is void. He submitted that no circumstances are pointed out by the Respondents as to why the Will should not be held valid. He also submitted that both the Courts have needlessly gone into issue as to whether the properties are joint family properties or self-acquired properties and there is no issue framed in the trial court in respect of the same. He submitted that the Will is registered and is duly proved and the circumstances narrated in the Will are natural and there is nothing suspicious about the same.

4. As regard the contention regarding the properties being self-acquired properties or the joint family properties, a statement has been made in the plaint that they are joint family property. It is the contention of the learned Counsel for the Appellants that that assertion is not enough but must be stated that it is an ancestral property. Though the learned Civil Judge has not framed a specific issue, there is a discussion in respect of the same. If the evidence led by both the parties and the cross-examination is considered, it can be seen that the parties were fully aware that the status of the properties as ancestral or self-acquired was clearly put into issue. The learned District Judge has considered the evidence on record in this regard. The learned District Judge has noted that Appa, at the time of purchase of the property of Gat No. 181, was 25 years old. It is the case of the Appellant that deceased Appa purchased the property from his income. Once the other properties and nucleus existed, the burden had shifted upon the Appellants to demonstrate that the property was purchased by Appa from his own funds, which the Appellants failed to discharge. Therefore, the findings rendered by both the Courts cannot be stated to be perverse.

5. As regard the Will is concerned, the burden was upon the Appellants to demonstrate that the Will was valid, being the propounders of the Will. Both the Courts have taken note of the

fact that deceased Appa did not provide anything for the wife as well as two minor daughters. Why the two minor daughters were completely disinherited is not explained at all. It has been rightly considered is one of the suspicious circumstances. Both the Appellants, husband and wife, took active role at the time of execution of the sale deed and the Appellant No.1 is the sole beneficiary. In the cross-examination the Appellant No.1 she has admitted that the contents were dictated and the Appellant No.2 – husband was present. Even the attesting witnesses are relatives of Appellant No.2. The learned Counsel for the Respondents pointed out that the reasons stated in the Will that this arrangement was necessary that the Appellant No.2 would cultivate the land and look after deceased Appa, would not survive after Appa's death. It is also come on record that deceased Appa was having health problems prior to his death. No evidence is placed on record by examination of any doctor regarding Appa's state of mind and health. It is not the position of the law that moment the Will is registered and proved, the enquiry as to whether it is suspicious or not, is shut out. The conclusion drawn by both the Courts that circumstances were highly suspicious wherein only one daughter and her husband is given properties, while leaving nothing to the minor daughters, cannot be stated to be an impossible view or perverse view. It is not possible to re-appreciate the evidence to arrive at an another factual finding.

6. No question of law arises. The Second Appeal is dismissed. Civil Application stands disposed of accordingly.

(N.M. Jamdar, J.)