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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY***

***CIVIL APPELLATE JURISDICTION***

***SECOND APPEAL NO.734 OF 2017  
WITH  
CIVIL APPLICATION NO.1444 OF 2017***

Ashok Sakharam Shinde ..Appellant.

V/s.

Smt. Janibai Sakharam Shinde ..Respondent.

Mr.Sachine S. Gite for the appellant.

None for the respondent.

***CORAM: NITIN W.SAMBRE, J.***

***DATE : DECEMBER 6, 2017***

**PC.:-**

Heard learned counsel for the appellant.

2. In a suit for partition, the present appellant was granted share against which no challenge was raised. However, one of the party to the partition decree died in 1998 bequeathed her share by a registered Will dated July 15, 1998 in favour of her son-in-law.

3. By application under Order 21 Rule 97 of the Civil Procedure Code, the present appellant, one of the decree-holder raised an objection to the Will before the Executing Court which was turned down by the Executing Court as well as the first Appellate Court. As such, this Second Appeal.

4. Learned counsel for the appellant trying to impress upon this Court claimed that said Yashodabai, one of the co-share was not in sound state of mind when she executed the Will dated July 15, 1998. According to him, to prove the said fact, he has sought examination of the doctor who was extending treatment to deceased Yashodabai. This request was turned down by the Court below. He tried to harp upon the said issue to prevail upon this Court to frame issue to that effect.

5. Considered the said submission. The fact remains that the original decree for partition was never questioned by the present appellant-co-sharer, who had also received appropriate share in the suit property. The dispute that is said to be canvassed in the present appeal is to the extent of his entitlement of share in

the share of one of the party to the decree, namely, Yashodabai. Yashodabai had bequeathed her share by a Will dated July 15, 1998 giving her entire share in favour of her son-in-law.

6. The said Will appears to be a registered document and the fact remains that Yashodabai was suffering from some ailment as is apparent from the observations made by both the Courts below viz. the Executing Court and the Appellate Court.

7. Once the appellant has come out with a case that deceased Yashodabai was not in a fit state of mind while executing the Will dated July 15, 1998, the burden is on the appellant to prove the same which he has failed to discharge. Except oral submission, no other evidence is brought on record by the appellant. In the aforesaid background, I hardly notice any illegality in the view expressed by both the Courts below which warrants interference in the second appellate jurisdiction. The appeal lacks merits and the same is dismissed. As a consequence, the civil application also stands dismissed.

*(NITIN W.SAMBRE, J.)*