

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL (STAMP) NO.12614 OF 2018
ALONG WITH
CIVIL APPLICATION NO.1035 OF 2018

Shantaram Kanha Mange (Since Deceased),
Through LRs.:-

Umesh Shantaram Mange and Ors.

.... Appellants-Applicants

V/s.

Sitabai Chander Gaiker

.... Respondent

Mr. Sanjay S. Patil for the Appellants-Applicants.

None for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 14TH AUGUST, 2018.

P.C. :

1. Heard Mr. Patil, learned counsel for the Appellants-Applicants.
2. This Second Appeal is preferred against the concurrent finding of the fact recorded by both the Courts below. By the said finding, the Suit filed by the Appellants for declaration that, the 'Will Deed' executed by Sonubai is a forged and bogus document, came to be dismissed and for declaration that, Respondent has no concern with the suit lands.
3. As per the case of the Appellants, Respondent is the daughter-in-

law of deceased Sonubai from her first husband; whereas, Original Appellant is the son of deceased Sonubai. According to him, by the said 'Will Deed', Sonubai has gifted the suit properties to her daughter-in-law i.e. the Respondent herein, namely, Sitabai. Both the Courts below have concurrently held that, the Original Appellant has failed to prove that the 'Will Deed' was got executed by the Respondent by practicing fraud upon Sonubai. In this respect, both the Courts below have appreciated the oral evidence and other documentary evidence on record in its proper perspective and, therefore, this Court cannot enter into re-appreciation of evidence.

4. The only contention, which is advanced by learned counsel for the Appellants to submit that this Second Appeal involves substantial question of law, is that, Sonubai being the second wife of Kanha and that marriage having taken place after the year 1955, she cannot be the legally wedded wife of Kana and her marriage was null and void. Therefore, she had no right to transfer or to gift or to bequeath the suit properties owned by Kanha. However, in this respect, both the Courts below have rightly held that, there is absolutely no pleading to that effect. The entire plaint is silent. Nowhere it is stated that, Sonubai was the second wife of Kana and, therefore, she has no right or interest in the property. In such situation, without any pleadings on record, whatever evidence is produced, has to be ignored. It is pertinent to note that,

despite the finding of the fact to that effect recorded by the Trial Court, the Appellant has not amended the plaint.

5. In view thereof, both the Courts below have rightly dismissed the Original Appellant's Suit. In Second Appeal, no substantial question of law is raised; therefore, the Second Appeal stands dismissed.

6. In view of dismissal of the Second Appeal, Civil Application No.1035 of 2018 pending therein does not survive and the same stands disposed off as infructuous.

[DR. SHALINI PHANSALKAR-JOSHI, J.]