

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 849 OF 2018**

Mr. Jagdeep Yeshwantrao Chowgule,
S/o. late Yeshwantrao Dattaji Chowgule,
64 years old, businessman, divorcee,
Residing at Chowgule House No.273,
Airport Road, Chicalim, Goa.

... Petitioner

V e r s u s

1. Mr. Jagdish Yeshwantrao Chowgule,
S/o. late Yeshwantrao Dattaji Chowgule,
64 years old, businessman, married.

2. Mrs. Victoria J. Chowgule,
major, wife of Mr. Jagdish Y. Chowgule,
both residing at Chowgule House No.273,
Airport Road, Chicalim – Goa.

..... Respondents

Mr. Vilas P. Thali, Advocate for the Petitioner.

Mr. Rohit Bras De Sa, Advocate with Ms. V. Shet, Advocate for Respondent no.2.

Coram:- C. V. BHADANG, J.

Date:- 22nd January 2019.

Oral Order:

The challenge in this petition at the instance of the petitioner, who is the defendant no.1 is to the order dated 7/8/2018 passed by the learned trial court below Exhibit D-65, by which the application filed by the petitioner for recasting issue nos.3 and 6 has been dismissed.

2. Shri Thali, the learned counsel for the petitioner in all fairness, on instructions, states that he is not pressing for recasting of issue no.6. In other words, the claim at this stage is only limited to refusal to recast the issue no.3, which reads thus :

“3. Whether the defendants proves that Smt. Sulekhabhai Y. Chowgule was in perfect senses although she was suffering from cancer and she was mentally sound to discern right and wrong?

3. On hearing Shri Thali, the learned counsel for the petitioner and Shri De Sa, the learned counsel for the respondent, I do not find that any case for interference is made out.

4. The suit filed by the respondents/plaintiffs is challenging the Will dated 19/1/2012 executed by now deceased, Smt. Sulekhabai Y. Chowgule on the ground that the said Will is tainted by undue influence and coercion amounting to fraud and the Will is illegal, null and void ab initio. The petitioner on the contrary is resisting the suit on the ground that the Will is valid, as Smt. Sulekhabai Y. Chowgule was in perfect senses and was mentally sound to effect the disposition. It is in these circumstances that the trial court has inter alia framed issue nos. 1 and 3. By issue no.1, the burden is cast on the respondents/plaintiffs to prove that the Will is tainted by undue

influence and coercion, while as per the issue no.3, the burden is cast on the petitioner to prove that Smt. Sulekhabai Chowgule was in her perfect senses.

5. It is difficult to see as to how the issue no.3 can be modified or deleted when it is the specific case of the petitioner that Smt. Sulekhabhai Chowgule was in disposing state of mind as she was in perfect senses. In that view of the matter, no case for interference is made out. The petition is dismissed with no order as to costs.

C. V. BHADANG, J.

ap/-