IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.488 OF 2016
WITH
CIVIL APPLICATION NO.1654 OF 2015

Mr. Ramesh J. Kagade and Anr. … Appellants
Vs
Vithal S. Deokar and Ors. ... Respondents

…

Mr. B.A.Lavate for the Appellants.
Ms. Gauri Joshi i/by S.K.Legal Associates for the Respondent No.1.

CORAM : SANDEEP K. SHINDE J.
DATE : 4 JANUARY, 2019

P.C. :

Vide registered will dated 24th June, 1994, Rama Pandurang Sarade bequeathed subject suit property to his grand-son Vithal Sopan Deokar. Respondent Nos.2 to 11 who are Class-I legal heirs of Rama Pandurang Sarade filed civil suit in the Court of Second Joint Civil Judge Junior Division, Malshiras in September, 2004 seeking a declaration that will dated 24th June, 1994 executed by Rama Pandurang Sarade was a product of fraud and on this count, they sought decree to declare that the said will was null and void.

2 The learned Trial Judge decreed the suit and held that will executed by Rama Pandurang Sarade in favour of Vithal Sopan Deokar was null and void.

3 Aggrieved by the decree passed by the Trial Court, Vithal Sopan Deokar filed an appeal in the Court of District Judge-1, Malshiras, District: Solapur in September, 2007.

4 Pending the Civil Appeal No.34 of 2007, the plaintiffs sold the suit property by two sale deeds; one dated 3rd July, 2010 and another dated 21st July, 2011. Vide first sale deed dated 3rd July, 2010, plaintiffs sold the property to the present appellants. These appellants on the strength of the said sale deed impleaded and joined themselves as party respondents in the Civil Appeal No.34 of 2007.

5 The first appellate Court after appreciating the evidence recorded the finding of fact that there was no evidence to hold that the subject will was false and fabricated one. Finding has been recorded that there was no single suspicious fact or circumstance to disbelieve the genuineness of will at Exhibit 72, i.e., subject will.

6 I have gone through the notes of evidence tendered across the bar by the learned counsel for the Appellants. Evidence on record indicates not only the attesting witness but the stamp vendor was also examined to substantiate the factum of execution of the will. More so, will was registered and, therefore, the appellate Court found that there was sufficient evidence to hold that the will was executed in accordance with law. Though it is pleaded by the plaintiffs that the will was obtained by fraud but no evidence on this aspect was led by the plaintiffs.

7 Be that as it may, the fact remains that plaintiffs had not filed an appeal against the judgment and decree passed in Civil

Appeal No.34 of 2007. These findings in relation to execution and genuineness of the will cannot be assailed by the subsequent purchasers, who were not parties in the trial Court. Thus, taking into consideration facts of the case, in my view, no substantial question of law arises in this Appeal. The Second Appeal is, accordingly, dismissed. The Civil Application is disposed of.

(SANDEEP K. SHINDE, J.)