

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL (STAMP) NO.17881 OF 2019

WITH

CIVIL APPLICATION NO.916 OF 2019

Janabai Kushaba Salgar & Ors.

...Appellants

vs.

Nandabai Kushaba Salgar & Ors.

...Respondents

....

Mr. Atul Damle, a/w. Mr. Prasad P. Kulkarni, for the Appellants.

Mr. A.B. Tajane, for Respondent No.1.

.....

CORAM : S.C. GUPTE, J.

DATE: 27 NOVEMBER 2019

P.C.:

. Heard learned Counsel for the parties.

2. This second appeal challenges concurrent judgments and decrees passed by the courts below in a suit for partition filed by Respondent No.1 (original plaintiff). It is not in dispute that the partition ordered by the courts is in accordance with the rules applicable to the deceased common ancestor by way of intestate succession. The bone of contention between the parties was whether the deceased had executed a will bequeathing the suit property only to the Appellants (original defendant nos. 1 to 3). Both courts below disbelieved the defendants' case of execution and genuineness of the alleged will set up by them. The courts were of the view that there were suspicious

circumstances surrounding the execution of the alleged will which were not explained by the defendants who propounded the will.

3. It is an admitted position that on the day the will was purportedly executed, the deceased testator was not only admitted in a hospital, but was in ICU. The deceased was admitted to the hospital on 25 December 2012. The purported will is claimed to have been executed by the deceased on 26 December 2012, on which day he was shifted to the ICU. Blood was being given to the deceased on that day. The deceased died in about a little over a fortnight of the date of execution of his will. It was brought out in the plaintiff's evidence that defendant nos. 1 to 3, who were the alleged legatees under the last will and testament of the deceased, were in the ICU, when the will was purportedly executed. The courts observed that the only attesting witness, who was examined before the trial court, was related to the propounder of the will, namely, defendant no.3. All these were clearly suspicious circumstances and had to be adequately explained before the will could be said to be proved. Learned Counsel for the Appellants submits that the doctor, who was involved in the treatment of the deceased, was examined in the trial; he deposed to the soundness of the deceased's mental condition. On the other hand, it has been brought out in his cross-examination that there was no permission on the part of the hospital authorities to anyone to visit the ICU for the purpose of execution of a will. Considering the circumstances referred to above, both courts were of the view that due execution and genuineness of the will were not proved. This is clearly a possible conclusion. It is supported by some evidence on record and cannot be termed as a

finding without evidence. All material and germane materials and circumstances appear to have been duly considered and no irrelevant or germane material or circumstance can be said to be considered by the courts below whilst arriving at the impugned findings.

4. The impugned judgments and orders are within jurisdiction of the courts and cannot be termed as perverse. No substantial question of law arises for the consideration of this Court in the present second appeal. The second appeal is, in the premises, dismissed.

5. In view of the dismissal of the second appeal, the civil application taken out therein does not survive and is dismissed.

6. At the request of learned Counsel for the Appellants, the interim relief granted in this second appeal on 5 July 2019 is continued for a further period of four weeks from today.

(S.C.GUPTE, J.)