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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 471 OF 2015
WITH
CIVIL APPLICATION NO. 1004 OF 2015
IN
SECOND APPEAL NO. 471 OF 2015

Shri Atmaram Balku Sawant … Appellant/Applicant
vs.
Shri Raghunath Ramchandra Kaingade … Respondent

Mr. Shriniwas S. Patwardhan, for the Appellant/Applicant
Mr. Ranjeet H. Patil for Respondent No.1.

CORAM : GAURI GODSE, J.
DATED : 19th AUGUST, 2023

P.C. :-

1. This Appeal is preferred by the original defendant for challenging the judgment and decree passed by the First Appellate Court, thereby allowing the appeal preferred by the plaintiff. The First Appellate Court has decreed the suit filed by the respondents and granted declaration that the Will dated 8th June 1971, executed by Ramu Hari Kaingade in favour of the present appellant is null and void. The First Appellate Court has also granted injunction restraining the appellant/defendant from obstructing the respondent/plaintiff's possession over the suit property.

2. The suit was filed for challenging the will executed in favour of the appellant and for permanent injunction restraining the appellant from obstructing and interfering with the possession of the respondents over the suit property. The Trial Court had partly decreed the suit by accepting the Will to be valid and had granted decree thereby permanently restraining the appellant from interfering with the plaintiff's possession without following due process of law. The said decree was accepted by the appellant. However, the respondents-plaintiffs had preferred an appeal before the District Court which is allowed as stated above. The present Second Appeal is therefore filed by the defendant for challenging the decree passed by the First Appellate Court.

3. The learned counsel for the appellant submitted that the Trial Court had accepted the validity of the Will, however, the First Appellate Court has reversed that finding on the ground that the Will is of the year 1971, and that the burden lies upon the appellant to prove the validity of the Will. The learned counsel for the appellant submitted that the attesting witnesses of the Will had expired. The appellant had examined the witness who had identified Ramu at the time of execution of the Will. He submitted that the Will was a registered Will and hence, the First Appellate Court ought to have accepted the validity of the Will. Learned counsel thus, submitted that the Second Appeal requires consideration on the point of acceptance of the validity of the Will, the same being a

registered Will and was proved by the evidence of the witness who was examined by the appellant.

4. The learned counsel for the respondents opposed the Second Appeal on the ground that the Will was not duly proved by producing cogent evidence. He submitted that the suit property belongs to their father -Ramchandra Kaingade and on his death respondents-plaintiffs have inherited the same. He submitted that there was no reason that plaintiff's father would execute a Will in favour of the Appellant. He submitted that no question of law is involved in the Second Appeal and the same be dismissed.

5. I have perused the record of the Second Appeal and considered the submissions made by both parties. It is not disputed that, the Will is dated 8th June 1971; Ramu expired on 10th July 1971; 32(M) certificate under the Bombay Tenancy and Agricultural Lands Act, 1948 (**"BT & AL Act"**) was issued on 25th November 1976 in the name of Balaku(father of defendant) and Ramu (Ramchandra-predecessor of plaintiffs). It is further not disputed that at the time of issuance of certificate under section 32(M) of BT & AL Act, the appellant did not raise any objection with respect to issuance of certificate in the name of Balaku and deceased-Ramu. The appellant never attempted to claim any right with respect to the suit property on the basis of the said Will.

6. The First Appellate Court, after examining the evidence on record

has recorded the findings with respect to validity of the Will. Though the will is a registered will, no steps have been taken by the appellant to claim right on the basis of the Will after the death of Ramu. After the death of Ramu, the names of plaintiffs are entered in the revenue record in respect of the suit property as heirs and legal representative of deceased-Ramu. So far as 32(M) certificate is concerned, the same is also not challenged.

7. Considering the aforesaid facts and the findings recorded by the First Appellate Court by properly appreciating the evidence on record, I do not find any infirmity in the reasons recorded by the First Appellate Court on validity of the Will.

8. The submissions made by the learned counsel for the appellate with respect to the evidence on the validity of the Will, calls for re-appreciation of the facts and evidence on record, which is not permissible under Section 100 of the Civil Procedure Code.

9. Second Appeal does not raise any substantial question of law. Hence, the Second Appeal is dismissed.

10. In view of the dismissal of the Second Appeal, nothing survives in the pending civil application and same is dismissed as infructuous.

(GAURI GODSE, J.)

Signed by: Varsha V. Rajguru
Designation: PA To Honourable Judge
Date: 25/08/2023 19:02:21