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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO.75 OF 2014

Tukaram Narayan Bhumkar and Anr. ...Appellants
Versus
Shantanu @ Bharat Shamrao Londhe and Anr. ...Respondents

Mr. Nitin P. Deshpande, for the Appellants.
Mr. Rahul S. Kadam, for the Respondent Nos.1 and 2.

**CORAM : MADHAV J. JAMDAR, J.
DATED : 30th JANUARY 2023**

P.C. :

1. Heard Mr. Nitin Deshpande, learned counsel appearing for the Appellants and Mr. Rahul Kadam, learned counsel appearing for the Respondents.

2. Mr. Deshpande submitted that the following substantial question of law is involved in the Second Appeal:

“Whether the finding of the learned Trial Court and the learned First Appellate Court that the Will dated 25th October 2000 executed by the deceased Dnyaneshwar is proved in accordance with the provisions of law is proper, legal and valid?”

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3. Mr. Deshpande, learned counsel for the Appellants submitted that there are various suspicious circumstances and one of the suspicious circumstance is that in the Will, some of the properties mentioned are not the properties of the Testator.

4. The learned Trial Court and the learned First Appellate Court, after analyzing the evidence on record, came to the conclusion that the Will has been proved as per section 68 of the Evidence Act. It has come on record that the defendants have adduced evidence of D.W. 2-Dilip Farande who is the attesting witness. By appreciating his evidence and the evidence of D.W. 3 - Advocate Nanaware, both the Courts have held that execution of the Will is proved. Both the Courts have considered the evidence of D.W.2 – Dilip Farande who has *inter-alia* deposed that before going to Sub-Registrar's office, Testator Dnyaneshwar went to Dr. Lodha. Dr. Lodha examined him and then issued certificate.

5. There is nothing on record to indicate that the findings arrived at by both the Courts regarding execution of Will are not in accordance with the evidence on record.

6. The only suspicious circumstance, according to the Appellant, is that in the Will, few properties which are not the properties of the

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Testator Dnyaneshwar were also mentioned. However, it is settled legal position that while considering the genuineness of the Will, the factor that the properties which are subject matter of the Will are not belonging to the Testator is not relevant. The genuineness of Will and the title to the properties which are subject matter of will are separate aspects.

7. Therefore, there is no substantial question of law involved in the Second Appeal. Second Appeal is dismissed. However, there will be no order as to costs.

[MADHAV J. JAMDAR, J.]