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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 44 OF 2022
WITH
INTERIM APPLICATION NO. 386 OF 2022
IN
SECOND APPEAL NO. 44 OF 2022**

Ashok Janardan Bongale

.....Appellant

Vs.

Smt. Malati @ Shubhangi Vitthal
Shingaonkar

.....Respondent

Mr. Sandeep S. Koregave a/w Ms. Pallavi Karanjkar for the appellant
Mr. Drupad Patil for the respondent

**CORAM : GAURI GODSE, J.
DATE : 25th SEPTEMBER 2024**

ORDER:

1. Heard learned counsel for the parties. This second appeal is preferred by the original plaintiff to challenge the concurrent judgments and decrees dismissing his suit. The appellant had filed a suit for a declaration of title on the ground that though the suit property was purchased in the name of defendant's father, the amount of consideration was also paid by the plaintiff's father. Both the Courts have accepted the defendant's father's title based on the sale deed and also accepted valid execution of the Will in favour of the

defendant.

2. Learned counsel for the appellant submits that both the Courts have not properly appreciated the oral evidence on record which indicates that plaintiff's father had also contributed towards the consideration amount paid for purchasing the suit property in the name of defendant's father. To support his contentions, learned counsel relied upon the oral evidence of Raghunath Bongale, brother of the original owner. He submits that the said witness clearly stated that all the brothers had contributed for purchasing the suit property in the name of defendant's father. He thus submits that not appreciating vital oral evidence is required to be considered by this Court which raises a substantial question of law.

3. Learned counsel for the appellant further submits that both the Courts erred in accepting the execution of the Will as a valid Will without considering the suspicious circumstances indicated by the plaintiff. He submits that there was discrepancy in the timings written in the medical certificate regarding examining the testator. He further submits that the Will was only notarised and the same was not registered. He thus submits that both the Courts ignored the objections

raised on behalf of the plaintiff to point out that the Will was suspicious and thus could not have been accepted it as a valid Will. Learned counsel for the appellant thus submits that the second appeal requires consideration as both the aforesaid grounds raise substantial questions of law.

4. I have considered the submissions made on behalf of the appellant. Perused the impugned judgments as well as pleadings and oral evidence pointed out by the learned counsel for the appellant. Suit property was purchased by defendant's father on 15th March 1965. The Will is executed in favour of the defendant on 15th January 2007. The suit is filed in the year 2012. Admittedly before filing the suit, no objection was raised on the sale deed in favour of defendant's father. Plaintiff never claimed any right in respect of the suit property during the lifetime of defendant's father. The ground raised on behalf of the appellant regarding contribution towards the consideration amount is not supported by any evidence. Hence, on examining the oral evidence on record, both the Courts have recorded a finding of fact that plaintiff failed to prove his contention that he has contributed towards purchase of the property or construction of the suit property. I do not see any illegality or perversity in the reasons recorded by both

the Courts.

5. The second ground raised on the suspicion on the execution of the Will is also considered by both the Courts. The Trial Court has recorded a finding after examining the oral evidence of the attesting witness and the scribe. The Trial Court held that the oral evidence led by the defendant in support of the Will is not shattered in the cross-examination. The findings on facts recorded by the Trial Court are confirmed by the first Appellate Court after thoroughly re-examining the pleadings and evidence on record. Even on this aspect, I do not see any illegality or perversity in the reasons recorded by both the Courts. Thus, the grounds raised on behalf of the appellant would require re-appreciation of pleadings and evidence on record which is not permissible under section 100 of Code of Civil Procedure, 1908.

6. Second appeal does not raise any substantial questions of law. Hence, the second appeal is dismissed.

7. In view of the dismissal of the second appeal, Interim Application No. 386 of 2022 is dismissed as infructuous.

[GAURI GODSE, J.]