rrpillai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 150 OF 2024
WITH
INTERIM APPLICATION NO. 3206 OF 2019

Late Bhikaji Dattu Chougale … Appellants/Applicants
(since decd through LRs)
Smt. Anandi Bhikaji Chougale and Others
Vs.
Sou. Sonabai Kashinath Metil … Respondents
(since decd through LRs)
Kashinath Dnyanu Metil and Others

Mr. Prashant Bhavake for the Appellant/Applicant.

CORAM : GAURI GODSE, J.

DATE : 13th DECEMBER 2024

ORDER :

1. Heard learned counsel for the appellants. The second appeal is preferred by defendant nos. 1A to 1D to challenge the concurrent judgments and decrees granting partition and separate possession and a declaration that the will executed in favour of defendant nos. 1B and 1C is null and void.

2. Learned counsel for the appellants submits that the courts have recorded findings on signature of the testator without examining any expert witness. He submits that the attesting witness and the scribe of the will were examined to support the validity of the will. He submits that both the courts erred in not properly considering the evidence on record to support the validity of the will. He therefore submits that the second appeal would require consideration on the ground that the findings on the will are based on incorrect appreciation of the evidence on record.

3. To examine the submissions made on behalf of the appellants, I have carefully gone through the reasons recorded by both the courts. Defendants are relying upon a will executed by the original holder Dattu who expired on 5th December 2000. In the suit filed in the year 2006 the defendants for the first time relied upon will dated 11th April 1985 contending that Dattu executed the will and bequeathed all the suit properties to defendant nos. 1B and 1C. Hence, the plaintiffs challenged the validity of the will by amending the plaint. The First Appellate Court has examined the documentary as well as oral evidence and recorded findings on the execution of the will to be

suspicious.

4. A perusal of the reasons recorded by the First Appellate Court indicates that during the lifetime of Dattu mutation entry was recorded with regard to division of the properties and accordingly revenue records were created. The First Appellate Court held that by way of Mutation Entry No. 2321 dated 29th December 2001 the name of plaintiff and defendant no. 2 came to be recorded after demise of Dattu. The First Appellate Court has further referred to the other mutation entry pertaining to the suit lands after the execution of the will and during the life time of Dattu. The First Appellate Court has further recorded that evidence of the defendant which indicates that the will was executed at the behest of defendant no. 4 who was only 14 years of age at the time of execution of the will.

5. Considering the facts regarding the revenue entries effected during the life time of Dattu and the mutation entry effected after death of Dattu the First Appellate Court held that the execution of the will was suspicious. It is held that no satisfactory evidence was forthcoming with regard to the circumstances after the death of Dattu which did not indicate that there was any such will in existence. Hence both the

courts have held that the will appears to have been prepared after the death of Dattu.

6. Considering the evidence on record, both the courts have recorded concurrent findings of facts on the will relied upon by the defendant to be suspicious. Both the courts have also recorded findings by examining oral evidence of the attesting witness and the scribe. However, the courts have disbelieved their version in view of the events occurred after death of Dattu which nowhere indicates that there was any such will in existence. Thus, the reasons recorded by both the courts on disbelieving validity of the will is based on thorough examination of the oral evidence on record. In view of the findings of facts recorded by both the courts after correctly appreciating the entire evidence, the grounds raised on behalf of the appellants would not require any consideration by this court.

7. In view of the concurrent findings of facts recorded the grounds raised on behalf of the appellant would require reappreciation of the evidence on record which is not permissible under Section 100 of the Civil Procedure Code, 1908.

8. I do not find any illegality or perversity in the reasons recorded by both the courts. The second appeal does not raise any substantial question of law. Hence, the second appeal is dismissed.

9. In view of the dismissal of the second appeal, Interim Application is disposed of as infructuous.

[GAURI GODSE, J.]