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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 1825 OF 2017
IN
SECOND APPEAL NO. 31 OF 2018

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Dr. Jagdish Shantaram Mantri and Anr ... Applicants/Appellants

vs.

Smt. Ushan Laxmanrao Pinge and Ors ... Respondents

Mr. T.D. Deshmukh for Applicants/Appellants

Mr. P.B. Gujar for Respondent.

CORAM : GAURI GODSE, J.

DATED : 20th JANUARY 2025

ORDER:

1. Heard learned counsel for the appellants. This appeal is preferred by the original plaintiffs to challenge the decree passed by the first appellate court. The trial court had decreed the suit accepting the Will in favour of the plaintiffs. Based on the Will executed by Yashwant, the trial court had granted declaration of ownership in favour of the plaintiffs. The trial court further directed defendant nos. 3 to 7 and 9 to hand over the suit property to the plaintiffs. Defendant no.1 is the daughter of deceased Yashwant. The other defendants are tenants of deceased Yashwant. This decree passed by the trial court is reversed by the first appellate

court in the appeal preferred by the defendants.

2. Learned counsel for the appellants submits that the dispute between the deceased Yashwant and his tenants was compromised between defendant no.1 as heir of deceased Yashwant and other defendants and his tenants. He submits that the compromise was entered into by the parties in the Hon'ble Supreme Court on 10th September 1996 i.e. during the pendency of the suit filed on 9th February 1995. He thus, submits that the consent terms filed in the Hon'ble Apex Court by the defendants would not affect the plaintiffs' title based on the Will executed by deceased Yashwant. He, thus, submits that the findings recorded by the first appellate court by relying upon the consent terms in which the plaintiff was not a party is a perverse finding.

3. Learned counsel for the appellants further submits that the first appellate court has recorded the findings that the Will was executed in suspicious circumstances, without any supporting pleadings. He submits that the first appellate court did not disturb the findings of the trial court on the valid execution of the Will. However, reversed the findings only on the suspicious circumstances which are not supported by any pleadings.

4. Learned counsel for the appellants thus, submits that the

second appeal would require consideration as the aforesaid grounds raise substantial questions of law.

5. I have perused both the judgments. The plaintiffs relied upon a Will dated 20th March 1978 executed by the deceased Yashwant. There is no dispute that in the partition the suit properties were allotted to Yashwant's share. The plaintiffs are grandsons of Yashwant's brother. Yashwant expired on 25th November 1992. The dispute between Yashwant and Yashwant's tenants was compromised between the tenants and defendant no.1 on 10th September 1996. Defendant no.1, is the daughter and sole heir of deceased Yashwant. There is no dispute that the compromise was recorded in the Hon'ble Apex Court, after the present suit was filed for declaration of title based on the Will executed by Yashwant. The first appellate court has referred to the compromise between the defendants. With regard to the suspicious circumstances that created doubt on the genuineness of the Will is discussed by the first appellate court.

6. A perusal of the plaint reveals that the suspicious circumstances accepted by the first appellate court are pleaded by defendant no.1. The first appellate court held that the plaintiffs agitated that the plaintiffs' father was a practicing advocate and the

plaintiffs were aware about the proceedings of Yashwant and his tenants. The first appellate court has recorded admissions on behalf of the plaintiffs, that Yashwant's tenants had filed an appeal in the Hon'ble Supreme Court. The first appellate court held that there was no ground pleaded to justify exclusion of the only heir and legal representative of Yashwant from the Will. The Will prepared at the behest of plaintiffs and prepared by plaintiffs' father who is a practicing advocate as pleaded by defendant no.1, is accepted by the first appellate court as an important suspicious circumstance. The reasons recorded by the first appellate court are based on the appreciation of the pleadings and evidence on record including the oral evidence and admission given by the plaintiffs. Thus, the Will is not accepted as a genuine Will as it is surrounded by suspicious circumstances. The first appellate court held that the plaintiffs failed to remove suspicious circumstances as pleaded by defendant no.1.

7. I do not find any illegality or perversity in the reasons recorded by the first appellate court on the findings recorded on the suspicious circumstances. The first appellate court being the first fact finding court has correctly examined the record. The arguments raised on behalf of the appellants would require re-appreciation of the evidence which is not permissible under Section 100 of The Civil Procedure Code.

8. The second appeal does not raise any substantial question of law. Hence, the second appeal is dismissed.

9. In view of dismissal of the second appeal, the pending application is disposed of as infructuous.

(GAURI GODSE, J.)