

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SECOND APPEAL NO. 153 of 2019

With

CIVIL APPLICATION (FOR STAY) NO. 1 of 2019

In

R/SECOND APPEAL NO. 153 of 2019

=====

JAYESHBHAI CHANDRAKANTBHAI PATEL ...APPELLANT

Versus

PRITIBEN D/O CHANDRAKANT BULAKHIDAS
& WD/O VRAJESHKUMAR RAJNIKANT PATEL
AND ANR. ...RESPONDENTS

=====

Appearance:

MR SHALIN MEHTA, SENIOR ADVOCATE with
MR SP MAJMUDAR, ADVOCATE for the Appellant

MR SHUSHIL R SHUKLA, ADVOCATE for the Respondents

=====

CORAM: HONOURABLE MR.JUSTICE PARESH UPADHYAY

Date : 17/07/2019

CAV ORDER

1. This second appeal is filed by the original defendant No.2 and is directed against the concurrent findings of both the Courts below. The Trial Court (the 12th Additional Civil Judge, Vadodara) allowed the Regular Civil Suit No.390 of 2011 vide judgment and decree dated 05.07.2018, which is confirmed by the 6th Additional District Judge, Vadodara vide judgment and

decree dated 30.01.2019 in Regular Civil Appeal No.259 of 2018. This is under challenge in this second appeal.

2.1 Mr. Shalin Mehta, learned senior advocate with Mr. S.P.Majmudar, learned advocate for the appellant – original defendant No.2 has submitted that, the Courts below fell in error inasmuch as the Will dated 03.07.2003 (Exh.46) claimed to have been executed by the mother of the appellant, was not legally proved. It is submitted that only one of the witnesses to the Will was examined and from his deposition also, it is not clear as to whether the Will was signed by the mother of the present appellant in presence of the witnesses or not. It is therefore submitted that the Will could not be said to have been proved in the trial.

2.2 Without prejudice to the above, it is alternatively submitted that the suit property is a bungalow consisting ground floor and the first floor. Even if the Will is accepted to be legally proved, according to learned senior advocate for the appellant, the said Will would cover only the ground floor of the bungalow and not the first floor. It is submitted that the appellant therefore would have right over the first floor of the said bungalow, which he is occupying.

2.3 It is submitted that the Courts should be very cautious while accepting some document, as a Will, when there is serious dispute between the parties and when one of the family members is deprived of his right from the property.

2.4 Reliance is placed on the following decisions.

- (i) (2003) 2 SCC 91 – Janki Narayan Bhoir versus Narayan Namdeo Kadam
- (ii) (2006) 13 SCC 433 – Niranjana Umeshchandra Joshi versus Mrudula Jyoti Rao
- (iii) (2009) 4 SCC 780 – Yumnam Ongbi Tampha Ibema Devi versus Yumnam Joykumar Singh
- (iv) (2013) 7 SCC 490 – M.B. Ramesh versus K.M. Veeraje URS

2.5 It is noted that during the course of hearing, learned senior advocate for the appellant had extensively taken this Court through the material on record, so also the contents of the written statement of the appellant before the Trial Court, including the document annexed with the said written statement. It is noted that there was reference in the said written statement to the complaint dated 21.08.2003 given by the mother of the present appellant to the Police Commissioner, Vadodara. The said document is placed on record by the appellant along with his affidavit dated 10.07.2019.

2.6 Learned senior advocate for the appellant has submitted that, substantial questions of law arise for consideration of this Court and this second appeal be entertained.

3. On the other hand, Mr. Shushil Shukla, learned advocate for the respondents – original plaintiffs (sisters) and the original defendant No.1 (father) has submitted that, both the Courts below have, on the basis of the evidence led before it, arrived at the conclusion that, the Will of the mother is duly proved and by the said Will, the mother has, in no uncertain

terms, excluded the son from any share in the suit property and there were good reasons for doing so. It is submitted that the appellant – son was beating his parents and the mother did not wish any share in her property being given to the said son. It is submitted that the contemporaneous material on record confirms this aspect. It is submitted that, if the complaint of the mother dated 21.08.2003 written to the Police Commissioner, Vadodara, which is relied by the appellant himself is seen, vis-a-vis the Will dated 03.07.2003, there is no inconsistency. It is submitted that any person of ordinary prudence would have adopted the same course. Reliance is placed on the decision of Supreme Court of India in the case of Mahesh Kumar versus Vinod Kumar reported in 2012 (4) SCC 387. Learned advocate for the respondent has also relied on the decision of the Supreme Court of India in the case of Leela Rajagopal versus Kamala Menon Cocharan reported in 2014 (15) SCC 570. It is submitted that no question of law arises for consideration of this Court and this appeal be dismissed.

4. Having heard learned advocates for the respective parties and having considered the material on record, this Court finds as under.

4.1 The suit property is one residential bungalow at Vadodara. The dispute is between father and his two daughters on one side and the only son on the other side. The bungalow consists of the ground floor and the first floor. It was acquired by registered sale deed by Smt. Madhukantaben, wife of Chandrakant Patel, who is the mother of these three children. The husband of the lady - who was the owner of the property (father of these children) is alive, and he is party to the

proceedings.

4.2 Said Smt. Madhukantaben died on 21.03.2004. She had executed her Will on 03.07.2003. In the said Will, she had stated that, after her death, the bungalow would be jointly owned by her two daughters only. By the said Will, the mother did not give anything to her son.

4.3 After the death of the mother, both the daughters moved the Civil Court seeking possession of the first floor of the bungalow from her brothers. This is contested by the brother on various counts, including that the Will is not genuine.

4.4 The contention that the Will was not legally proved, is not sustainable. This Court has considered the reasons recorded by both the Courts below and finds that no error is committed by the Courts below in that regard.

4.5 So far the argument that the Will dealt with only the ground floor of the bungalow and not the first floor, is also unsustainable. The bungalow is one property. This Court has considered the description of the said bungalow in the Will and there is nothing to indicate that Smt. Madhukantaben had desired to deal with only the ground floor of the bungalow by the Will and the first floor thereof was left either to be claimed by the son or to be contested in the Courts by the aged husband and married daughters against their son / brother, who was beating her.

4.6 There is material on record to indicate that, it was the grievance of the mother that her son (the present appellant)

was beating her and her husband i.e. the father and mother, both. The father (Chandrakant Patel) is still alive, he is party to the proceedings (as original defendant No.1) and his version before the Courts below was also on this line. As noted above, during the course of hearing of this appeal, reliance was placed on behalf of the appellant on the contents of his written statement before the Trial Court, including the document annexed with the said written statement. The said material included a complaint given by the mother of the present appellant to the Police Commissioner, Vadodara dated 21.08.2003. The said document is placed on record by the appellant along with his affidavit dated 10.07.2019. As per the said complaint, the mother was screaming before the police authorities that she and her husband be protected from the beating of their son (the present appellant). In the said complaint itself, there is specific reference of the residential property (the suit property) as well and the issues connected therewith. The said complaint is dated 21.08.2003 and the Will is dated 03.07.2003. The conjoint reading thereof makes it clear that the mother was aggrieved by her son, she had reasons for being so aggrieved and according to her, she did not wish to give anything from her property to her ungrateful son. This Court finds that, as observed by the Supreme Court of India in the case of Mahesh Kumar (supra) and Leela Rajgopal (supra), any person of ordinary prudence would have acted this way only. The decisions relied by learned senior advocate for the appellant would not take the case of the appellant any further in the facts noted above.

5. Considering the totality this Court finds that, no question of law, much less any substantial question of law arises in this

case worth being gone into by this Court in exercise of appellate jurisdiction under Section 100 of the Code of Civil Procedure, 1908. The findings of facts recorded by the Courts below do not suffer from any perversity, there is no non-reading or misreading of evidence on record. This Second Appeal therefore needs to be dismissed.

6. For the reasons recorded above, this appeal is dismissed. Civil Application would not survive and is disposed of accordingly.

(PARESH UPADHYAY, J)

M.H. DAVE/2