

Court No. - 1

Case :- SECOND APPEAL No. - 1130 of 1998

Appellant :- Islamuddin

Respondent :- Smt. Vilikis Begum And Others

Counsel for Appellant :- Kr. R.C.Singh, Pramod Kumar
Srivastava, Wahaj Ahmad Siddiqui

Counsel for Respondent :- Nasiruddin, Ayub Khan, Dinesh
Pathak, Nasiruzzaman

Hon'ble Jayant Banerji, J.

1. Heard Mr. Wahaj Ahmad Siddiqui, learned counsel for the appellant/applicant.

Civil Misc. Delay Condonation Application No.231935 of 2017.

Civil Misc. Restoration Application No.231936 of 2017.

2. The aforesaid delay condonation application and restoration application have been filed in this non-admitted second appeal that was dismissed for non-prosecution on 20.5.2014.

3. The cause for non-appearance is sufficiently explained in the affidavit of the sole defendant-appellant. Accordingly, the delay is condoned and the appeal is restored to its original number.

Order on appeal under Order 41 Rule 11 CPC.

4. This appeal has been filed by the defendant-appellant against the judgment and decree dated 20.4.1998 passed by the IVth Additional District Judge, Meerut in Civil Appeal No. 249 of 1997 (Islamduddin Vs. Vilgis and others) arising out of preliminary decree and judgment dated 18.10.1997 passed by VII Additional Civil Judge (Senior Division), Meerut in Original Suit No.671 of 1991 between Smt Vilgis Begum Vs. Islamuddin and others.

5. A perusal of the judgment of the trial court reflects that the suit was filed by the plaintiff-respondent seeking a decree of partition of the estate (House) of her late husband namely Abdul Shakoore in which she claimed 1/8th part for herself, with defendant No.1 having 7/12 part, defendant No.2 (Smt. Meena) and the defendant No.3 (Kr. Najma) each getting 7/48 part.

6. The defendant No.1 stated that Abdul Shakoor had died on 19.11.1987 but denied any share in the property of either the plaintiff or the defendant Nos. 2 and 3. Possession of the plaintiff was also denied. It is stated that over the past 28 to 30 years, the plaintiff was married to Shri Khusnood and prior to that she had obtained divorce from Abdul Shakoor and, as such, she has no right as successor of Abdul Shakoor.

7. On the basis of the pleadings the trial court framed four issues. Issue No.1, which was the main issue, was whether the plaintiff is the owner of 1/8th part of the house in dispute and is entitled to relief. While deciding the issue, the trial court relied upon the duly proved passport and other proved documents filed on behalf of the plaintiff as well as the testimony recorded of the plaintiff as PW- 1, which testimony was buttressed by the testimony of PW- 2. After exhaustive discussion on evidence filed by the plaintiff and after taking into account certain documents filed on behalf of the defendant No.1 which were found not to have been proved, the trial court held that till the death of Abdul Shakoor, the plaintiff Vilkis Begum was his wife and Abdul Shakoor had not divorced her. Further the trial court looked into the age of the defendant Nos. 2 and 3 and found that their births took place before the death of Abdul Shakoor and it was, accordingly, held that the plaintiff is entitled to a part of the house in dispute. Similarly, the defendant No.1 was found entitled to 7/12 part and defendant Nos. 2 and 3 were found entitled to 7/48 part each of the property in dispute. Accordingly, the suit was decreed.

8. In the appeal filed by the defendant No.1, the first appellate court framed a point for determination which was whether the plaintiff, Smt. Vilkis Begum is the married wife of Khusnood or was she the married wife of the deceased Abdul Sakoor. After analyzing the pleadings and the evidence *de novo*, and after careful analysis of the evidence on record, it was held that the defendant-appellant has not been able to prove that Smt. Meena is the daughter of Intezar and Km. Najma is the daughter of Khusnood and the plaintiff Smt. Vilkis is the wife of Khusnood. It was found that the defendant-appellant had failed to prove his case. Accordingly, it was held that Smt. Vilkis Begum is the married wife of Abdul Sakoor and the defendant Nos. 2 and 3 are the daughters of Abdul Sakoor and they are entitled to a portion each of the suit property. Accordingly, the judgment of the trial court was upheld and the appeal was dismissed.

9. Learned counsel for the petitioner has stated that the trial court and the appellate court had not considered evidence on record regarding the property and had incorrectly discarded oral and documentary evidence filed on behalf of the the defendant-

appellant and has misconstrued the evidence on record to reach an incorrect conclusion. However, despite being repeatedly asked, learned counsel for the appellant has failed to demonstrate the existence of the so-called incorrect conclusions in the judgments passed by the trial court and appellate court. As a matter of fact, I have perused the two judgments and I find that they are based upon cogent evidence and are reasonable under the facts and circumstances of the case.

10. No substantial question of law arises in the present appeal. It is, accordingly, **dismissed**.

Order Date :- 27.10.2023

K.K.Tiwari

(Jayant Banerji, J.)