

Court No. - 21**Case :-** SECOND APPEAL No. - 823 of 1981**Appellant :-** Habib Ahmad And Oters**Respondent :-** Smt. Rasool And Others**Counsel for Appellant :-** S.M.Nasir,Lakshmi Kant Tripathi,Shyam Mohan Pradhan**Counsel for Respondent :-** Z.Zilani,Adnan Ahmad,Mohd. Waris Farooqui

And

Case :- SECOND APPEAL No. - 25 of 1982**Appellant :-** Allah Bux And Another**Respondent :-** Ali Hasan And Othres**Counsel for Appellant :-** Z. Zilani**Counsel for Respondent :-** Mohd. Waris Farooqui,Adnan Ahmad,Raziuddin Ahmad Siddiqui**Hon'ble Jaspreet Singh,J.**

1. Heard Sri Shyam Mohan Pradhan, learned counsel for the appellants and Sri Adnan Ahmad, learned counsel for the respondents. None has put in appearance on behalf of the other contesting respondents nor on behalf of the appellants in the connected appeal.

2. This is defendants second appeal under Section 100 C.P.C assailing the judgment and decree dated 05.08.1981 passed by the 2nd Additional District Judge, Gonda wherein the first appeal was partly allowed and the suit of the plaintiffs for recovery of possession of disputed premises which was dismissed by the trial court was decreed with cost by the District Appellate Court.

3. The instant second appeal was admitted by means of the order dated 20.10.1981 but no substantial question of law was framed.

4. Later on, four substantial question of law were framed by the Court vide order dated 13.05.2024 which reads as under:-

“(A) Whether the District Appellate Court was justified in granting the benefit of presumption in terms Section 90-A of the Indian Evidence Act, in so far as the Will is concerned, and if so, its effect.

(B) Whether as per the personal law governing the parties whether the testator of the willed the said property and if so whether the said Will was proved in accordance with law.

(C) Whether the District Appellate Court could have granted the benefit of Section 90-A of the Evidence Act relating to a rent deed, specially with the aforesaid document was not otherwise proved in accordance with law.

(D) Whether the findings recorded by the District Appellate Court is perverse being contravene to the pleadings as well as applicable law.”

5. Sri Shyam Mohan Pradhan learned counsel for the appellants while attacking the judgment of reversal passed by the District Appellate Court submits that the District Appellate Court had committed a manifest error of law in granting the benefit of Section 90-A as amended by the U.P. amendment in the Indian Evidence Act and extended it to the Will-in-question ignoring the State amendment in Section 90-A.

6. It is submitted that in Section 90-A of the Indian Evidence Act amended in the State of U.P. there is a clear embargo that the aforesaid presumption under the said Section is not applicable to a Will or to a document which is the basis of title of either the plaintiff or the defendant. It is, thus, submitted that the District Appellate Court decreed the suit by treating the Will claimed by the plaintiff as having been proved even though none of the attesting witnesses were examined and merely on the ground that the Will was more than 30 years old and coming from the natural custody of a person with whom the said Will ought to have been hence, a finding has been recorded that the Will stood proved which is clearly erroneous and against the settled legal principles.

7. Learned counsel for the appellant has further submitted that since the parties to the suit professed the faith of Islam and as per the Personal law, the testator could not have willed the entire property. It is submitted that as per the Personal law, a Muslim testator can only Will 1/3 of his property and in case, if the testator wished to will the entire estate then he must obtain the consent of all his legal heirs.

8. In the instant case, there was no evidence on record to indicate whether the testator had the consent of all his legal heirs and in such circumstances, the Will for the entire estate was also hit by the principles of Muslim Law relating to a Will, hence, this aspect has been ignored by the District Appellate Court resulting in miscarriage of justice.

9. Learned counsel further submits that the plaintiffs had claimed their rights on a twin platform. One was based on the Will said to have been executed by Habibullah (maternal uncle) in favour of the mother of the plaintiff and the other related to a rent deed.

10. It is stated that the District Appellate Court also held the rent deed to be proved merely on the basis of Section 90 of the Indian Evidence Act holding that since it was a document more than 30 years old, consequently the documents stood proved. It is in the aforesaid backdrop that the District Appellate Court shifted the burden of proving the said documents on the defendants which is erroneous, inasmuch as, it is the plaintiff who has establish his case, first. The plaintiff is required to stand of his own legs and unless and until the initial burden is discharged the onus would not shift on the defendant. However, this aspect has not been properly considered by the District Appellate Court which has vitiated the judgment.

11. It has also been urged that in terms of Section 107 of the Transfer of Property Act, 1882 any lease which is beyond a period of one year is required to be registered and in the instant case admittedly the period of lease was more than one year and it was not registered. For the said reason, neither the said document was admissible nor it could give any benefit to the plaintiff for claiming rights over the property-in-question. Thus, by ignoring the aforesaid facets of law as applicable to the facts of the instant case, the findings recorded by the lower Appellate Court are patently perverse and as such the judgment and decree passed by the District Appellate Court dated 05.08.1981 deserves to be set aside.

12. This Court before adverting to the submissions deems appropriate to take a glance at the facts giving rise to the instant appeal.

13. Sri Allah Bux and Mohd Bux (original plaintiffs) instituted a suit for declaration and possession in respect of the disputed property which has been delineated in the site plan forming part of the plaint in suit by letters ABCDEFGH. The suit was filed initially against Shubрати, Bahadur, Aktar Ahmad @ Chhotu, Ali Hasan and by a subsequent amendment Ahmad (was impleaded).

14. It was the case of the plaintiffs that the property-in-question belonged to Sri Habibullah (the maternal uncle of the plaintiffs and it was pleaded that Sri Habibullah had willed the property to his sister namely Azima (mother of the plaintiffs). Upon the death of Smt. Azima the plaintiffs being legal heirs and sons of Azima became the owner in possession of the property-in- question. It was further pleaded that the defendants were said to be the tenants. The original defendant nos.1 to 3 is said to have sublet that tenanted portion to defendant no.4 Ali

Hasan and for the aforesaid reason, it was stated that since their act were contrary to the rights of the tenants and it also raised cloud over the title of the plaintiffs hence the suit for declaration and possession came to be filed.

15. The record further indicates that after the defendant nos.1 to 3 filed their written statement wherein they too raised a plea that Rahima was also the real sister of Habibullah and he had gifted the property (Hiba) to his other sister i.e. Rahima by virtue thereof the defendants were the owners of the property who later had sold the same to Sri Ali Hasan who is the defendant no.4.

16. In the aforesaid circumstances, the plaintiff took the liberty and amended the plaint on the ground that in case, if the Will in favour of the plaintiffs was not proved and for any reason alleged gift of the defendants is also not proved even then since admittedly, the property belonged to Sri Habibullah then after his death, the property would then devolve on his two sisters namely Azima and Rahima and in this context, the plaintiff being heirs of Azima would have half share in the said property, consequently, a relief for partition was also claimed in the alternate.

17. The defendant nos.1 to 3 filed their separate written statement denying the plaint allegations. It was stated that Sri Habibullah had executed a gift (Hiba) in favour of the Smt.Rahima and thereafter, the defendants got the rights in the property. They had executed a deed in favour of Ali Hasan and as such the rights of the defendants was not that of a tenant as claimed by the plaintiffs. Consequently, the suit deserves to be dismissed.

18. Sri Ali Hasan, defendant no.4 also filed his separate written statement wherein he took a plea that the property belonged to Habibullah who had gifted it to Smt.Rahima and she acquired rights in the said property being the tenant and as such for the aforesaid reasons, the plaintiff who were not the owner nor in possession could seek the ouster of the defendant no.4. Accordingly, the suit filed by the plaintiffs was liable to be dismissed.

19. Upon the exchange of pleadings, the trial court framed six issues. However, the important issues which related to the controversy in question are as under:-

- (1) Whether the plaintiffs are the exclusive owner-in-possession of the disputed property.
- (2) Whether the defendant nos.1 to 3 are the tenants of the property as claimed by the plaintiffs and if so its effect.
- (3) Whether the defendant nos.1 to 3 are the owners of the disputed property to the exclusion of the plaintiffs.

20. The parties led oral as well as documentary evidence and the trial court while dealing with the issue relating to the title of the plaintiff found that though in the initial pleadings, the plaintiff had stated that their mother had received the gift, however, in effect the document which was placed on record was a Will. The trial court further noticed that the plaintiff did not lead any evidence to prove the Will as required in terms of Section 68 of the Indian Evidence Act read with Section 63 of the Indian Succession Act, 1925. Consequently, the Will could not be proved.

21. It further noticed that even though the alleged witnesses of the Will had expired but what reflected from the record was the

fact that the plaintiff in his cross examination had clearly stated that he did not know who were the attesting witnesses of the Will. He did not even know what was the alleged date of the death of the said witnesses, accordingly, not knowing the aforesaid facts, it could not be stated by the plaintiffs that the attesting witnesses were dead especially when he knew nothing about the witnesses. This was an adverse circumstances which was noticed by the trial court inter alia amongst other material to decline the relief claimed. The trial court also noticed that insofar as the rent deeds were concerned, they were also not adequately proved. Moreover, the document contained certain overwriting and the handwriting of the executants on the said rent deed was also doubtful and in absence of any proper evidence to connect as well as to prove the said lease deed, the said document could not be treated in law to be proved in accordance with law, hence, the contention that the defendants were not the lessee was also not proved.

22. The trial court further noticed that insofar as the defendants are concerned, even they could not establish their case regarding the gift being executed by Habibullah in favour of his sister Rahima (matter of the defendant nos.1 to 3).

23. With the aforesaid findings the trial court by means of the judgment and decree dated 22.09.1980 dismissed the suit. The plaintiffs escalated the matter and filed a civil appeal under Section 96 CPC before District Judge, Gonda which came to be registered as Civil Appeal no.254 of 1980.

24. The appeal came to be allowed partly by the District Appellate Court by means of the judgment dated 05.08.1981 and while doing so, the District Appellate Court gave the benefit to the plaintiffs of Section 90 of the Indian Evidence Act holding that since the document i.e the Will as well as the lease were

over 30 years, hence, the presumption stood attracted and the document were proved and the findings recorded by the trial court were reversed and the suit was partly decreed.

25. It is in the aforesaid backdrop that the defendants of the suit filed the instant second appeal bearing no.823 of 1981 whereas another second appeal was filed by the plaintiffs of the suit namely Allah Bux and Mohd. Bux bearing no.25 of 1982 which is connected.

26. This second appeal bearing no.25 of 1982 preferred by the plaintiffs was also admitted by means of order dated 21.01.1982 and it was directed to be connected along with second appeal no.823 of 1981. It is in this context that the instant two second appeals came to be connected.

27. At this stage, it will be relevant to mention that in Second Appeal no.823 of 1981, Allah Bux and Mohd. Bux were impleaded as respondent nos.1 and 2.

28. During the pendency of the second appeal, they had expired and the appellants moved an application for substitution which was allowed and their legal heirs were brought on record.

29. Even though the second appeal no.25 of 1982 was also connected but none appeared on behalf of the appellants. The record indicates that card notice was also issued to the appellants and by office report dated 18.09.2023, it was reported that Allah Bux and Mohd Bux both were dead and yet none came forward to either move an application for substitution to bring on record the heirs of the deceased appellants even though they had been substituted in Second Appeal no.823 of 2021 but as noticed above none appeared on their behalf in both the second appeals to prosecute and put forward their case.

30. This Court had noticed that none was appearing on behalf of the appellants in the connected appeal and in case, if none appeared on the next date appropriate orders would be passed. Since Second Appeal no.25 of 1982 is not being prosecuted, moreso, when the appellants had died, no application for substitution was moved and as a matter of fact, the appellants Allah Bux and Mohd Bux both are the respondent nos.1 and 2 in Second Appeal no.823 of 1981 where their heirs have been substituted, hence, even in case as none appeared to contest, yet this Court having no option directs the said appeal no.25 of 1982 to be dismissed as abated or in default as per Order 41 Rule 17 CPC.

31. Now, the only second appeal which survives is 823 of 1981 wherein the substantial question of law have been framed and the Court has heard the counsel for the appellants.

32. It will also be relevant to notice that Sri Adnan Ahmad learned counsel has appeared on behalf of the respondent no.3 who also died during the pendency of the appeal and his legal heirs are also on record. Another fact to be noticed is that the decree passed by the trial court was primarily between the plaintiffs and the defendant nos.1 to 3 even while the suit was dismissed the regular civil appeal was filed only by the plaintiffs and upon part decree of the suit by the District Appellate Court. It is only the present appellants who are the heirs of defendant nos.1 to 3 who are before this Court agitating their cause. Since the respondent no.4 did not participate nor has filed an appeal hence his presence in the instant appeal is only formal in nature. In the aforesaid backdrop, it is Sri Shyam Mohan Pradhan learned counsel for the appellants who has made his submissions which have been noticed hereinafter.

33. Having considered submissions of learned counsel for the appellants and from the perusal of the material on record, this Court proposes to deal with the substantial questions of law as noticed in the preceedings paragraphs as under:-

A. The primary contention of the learned counsel of the appellants is that the District Appellate Court had committed an error in treating the Will as having been proved by giving benefit of Section 90 of the Indian Evidence Act.

34. The plaintiffs had claimed their rights based on having succeeded to the share of their mother in whose favour, Sri Habibullah, is said to have executed a Will. In terms of Section 68 of the Indian Evidence Act, which provides that any document which requires attestation as per law be proved by examining at least one of the attesting witness and in case, if the attesting witnesses are not available then such other person who otherwise had knowledge and can prove the signatures of the attesting witness be examined. For the sake of convenience Section 68 of the Evidence Act is being reproduced hereinafter:-

“68. Proof of execution of document required by law to be attested.—If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence :

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (XVI of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.”

35. Section 63 of the Indian Succession Act lays down the mode, as required, for a proof of a Will. Admittedly in the instant case, none of the attesting witness of the Will were examined. The plaintiff who entered into the witness box was

specifically cross examined wherein he stated that he did not know who the attesting witness of the said Will were. He did not recognize them and he had never seen them. His statement that the attesting witness had expired did not find favour with the trial court for the reason that if the said witnesses were not known to the plaintiff who could not recognize them obviously, then he could not depose that the said attesting witnesses were dead.

36. Even otherwise, no attempt was made on behalf of the plaintiffs to have examine any person who was acquainted with the signatures of the said attesting witness. Thus, the basic ingredient as required to prove the Will in terms of Section 63 of the Indian Succession Act read with Section 68 of the Indian Evidence Act were not complied with. To this extent, the finding recorded by the trial court cannot be said to be erroneous.

37. Now, the issue arises as to whether the District Appellate Court was justified in granting the benefit of Section 90 Indian Evidence Act holding that the said Will was more than 30 years old hence, presumption of its due attestation and execution will be drawn.

38. Before proceeding further, it will be worthwhile to notice the aforesaid provisions which reads as under:-

“90. Presumption as to documents thirty years old.—
Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Explanation.—Documents are said to be in proper custody if they are in the place in which, and under the

care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

This explanation applies also to Section 81.

Uttar Pradesh.—*In its application to the State of Uttar Pradesh, the existing section shall be renumbered as Section 90(1), and*

(a) For the words ‘thirty years’ the words ‘twenty years’ shall be substituted, and

(b) The following shall be inserted thereafter as a new sub-section (2):

‘(2) Where any such document as is referred to in sub-section (1) was registered in accordance with the law relating to registration of documents and a duly certified copy thereof is produced, the Court may presume that the signature and every other part of such document which purports to be in the handwriting of any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was duly executed by the person by whom it purports to have been executed or attested.’ [Vide U.P. Act 24 of 1954].”

39. Having taken a note of the aforesaid Section 90-A of the Evidence Act, it will also be pertinent to note that in the State of U.P., Section 90-A stands amended and the amended Section 90-A as applicable in the State of U.P. reads as under:-

“Uttar Pradesh.—*In its application to the State of Uttar Pradesh, after Section 90, add the following as a new Section 90-A:*

90-A. (1) Where any registered document or a duly certified copy thereof or any certified copy of a document which is part of the record of a court of justice, is produced from any custody which the court in the particular case considers proper, the court may presume that the original was executed by the person by whom it purports to have been executed.

(2) This presumption shall not be made in respect of any document which is the basis of a suit or of a defence or is relied upon in the plaint or written statement.

The explanation to sub-section (1) of Section 90 will also apply to the section.” [Vide U.P. Act 24 of 1954].”

40. From a perusal of the amended provision, it would be clear that the presumption which is provided in the Act has been abridged by the amendment made in this state.

41. The language of Section 90-A as amended in this state is quite different than the one contained in the Principal Act. A Will or any other document which is said to be the basis of the claim or the basis of a defence does not automatically attract the presumption as provided in law. In this context, the District Appellate Court was not justified in attracting the provisions of Section 90-A ignoring the amendment which is applicable in the State of U.P. Thus, to the aforesaid extent, the submission of learned counsel for the appellants has substance.

B. Coming to the second limb of the argument as per the provisions contained in the Personal law of Muslims, it is true that in so far as a Sunni Muslim is concerned, he is not entitled to bequeath his properties by will exceeding 1/3rd. However, this is subject to one exception that only in case where all the legal heirs of the testator give their consent then the Will could be made for the entire estate. However, in the instant case at hand, there are neither any pleadings nor any issue was framed before the two courts below challenging the right of the testator to execute the Will for the entire estate. At this juncture, the relevant portion from the text of Mulla's Principles of Mahomedan Law in Para-118 of Chapter IX is quoted hereinunder:-

***"118. Limit of testamentary power-** A Mahomedan cannot by will dispose of more than a third of the surplus of his estate after payment of funeral expenses and debts. Bequests in excess of the legal third cannot take effect, unless the heirs consent thereto after the death of the testator"*

42. Suffice it to say that insofar as, the issue of Will is concerned, the trial Court did not find favour with it and in light

of the aforesaid discussion, this Court has already concluded that the Will was not duly proved nor the presumption could have been attracted to hold that the Will stood proved, hence, the finding of the District Appellate Court to the aforesaid extent does not find favour with this Court.

43. In view of the aforesaid, the question nos.A and B stand answered accordingly.

C. Coming to the next question of law as to whether the presumption of the lease deed been made more than 30 years old could treated to be proved by the District Appellate Court.

44. It will be worthwhile to examine this issue in light of the submission made by the learned counsel for the appellant.

45. Paramount contention advanced by the learned counsel for the appellants is that the lease deed was not registered, consequently, it could not have been taken note of by the Court. This submission is based primarily on Section 107 of the Transfer of Property Act which reads as under:-

"107. A lease of immovable property from year to year, or for term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument. All other leases of immovable property may be made either by a registered instrument or by lessee agreement accompanied by delivery of possession. Where a lease of immovable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee:

Provided that the State Government may, from time, to time by notification in the official Gazette, direct that leases of immovable property, other than leases from year to year, or for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession."

46. Having noted the aforesaid provision, it will be relevant to notice that unless and until the conditions as laid down in the said provision are established till then the said provision may not apply to the given document. In this context, the Court considered the document bearing paper no.A55, A56 and A57.

47. From a perusal of the aforesaid three documents, it would indicate that it is more in the nature of rent note than a lease. There is nothing in the said documents, which are termed as lease deeds by the learned counsel for the appellants, as to indicate the period of lease, the rate of rent payable, and the property to which it relates.

48. The District Appellate Court while considering the aforesaid documents had noticed that the same are in the nature of memorandum of lessee i.e to say that the lease stood granted and it was a document summarizing the transaction which had taken place. Apparently, the said documents are not documents creating lease per se nor by the said documents, the lease was created in presenti rather it was a document recording a transaction which had taken place in the past, hence as per the first appellate court, it was not hit by Section 107 of Transfer of Property Act.

49. Upon examining the aforesaid, the finding recorded by the District Appellate Court that the said document was a memorandum and as such did not require any registration, does not suffer from any error which may persuade this Court to interfere.

50. As a proposition which is argued by the learned counsel for the appellants that the lease must be registered, in case, if it relates to a property leased out for a period of more than one year can not be disputed. However, before applying the

aforesaid principles to the instant case and as noticed above, the said documents were not document of lease, hence, Section 107 had no applicability and to the aforesaid extent the submission of the learned counsel for the appellants is turned down.

51. Now, having come to the aforesaid conclusion and examining the fact that the said memorandum of lease was more than 30 years old, the presumption as provided under Section 90 of the Indian Evidence Act as amended in the State of U.P. could be attracted and having applied the aforesaid provision, it cannot be said that the District Appellate Court has committed an error in this regard.

D. In light of the aforesaid, the last question to be considered is whether the finding recorded by the District Appellate Court suffers from any perversity, if examined in light of the evidence available on record, this Court finds that the case set up by the plaintiffs claiming title and possession and in the alternate the plea of partition is based on the premise that the property belonged to Habibullah who executed a Will in favour of Azima, the mother of the plaintiffs and thereafter, the property has devolved on the plaintiffs.

52. In light of the fact that the plaintiffs could not prove their title on the basis of a Will consequently, even if at all the lease is taken into consideration at best it would only indicate that the defendant nos.1 to 3 were the tenants.

53. At this stage, it will also be relevant to notice that earlier the plaintiffs had filed a suit for ejectment of the defendant nos.1 to 3, however, in the said suit, the defendants had raised a question of title and in this view, the plaintiffs withdrew their suit and, thereafter, filed the instant suit for adjudication of their

title, needless to say that the title of the plaintiff could not be proved.

54. The defendants also claimed right over the property stating that Habibullah had executed a gift deed in favour of Rahima, however, this plea also could not be established and was turned down by the trial court. The defendants did not file any cross objection/cross appeal under Order 41 Rule 22 CPC before the District Appellate Court and, thus, this issue is not open to be examined by this Court in second appeal nor it was pressed.

55. The upshot is that both the plaintiffs as well as the defendants have been unable to prove their title to the property but nevertheless the possession of the respective parties is not disputed. Even though, the plaintiffs amended the plaint and sought an additional relief of partition but the necessary ingredients to establish the case of partition was not pleaded nor proved in evidence nor any issue was framed in this regard. No effort was made by the plaintiffs to get an additional issue framed even during the proceedings before the District Appellate Court.

56. The plaintiffs did not even appear before this Court to contest the aforesaid appeal. Without pleading and proving certain facts which are germane to consider the plea of partition which requires factual data and corresponding proof namely :-

(i) Admittedly the property belonged to Habibullah however, there is no clarity as to when Habibullah expired as the succession would open only at that point of time.

(ii) There is nothing on record to indicate that who were the heirs surviving, Sri Habibullah, at the time of his death and whether apart from this property-in-question, what other assests

were available with Sri Habibullah, which were open for inheritance in as per the mode of succession/inheritance as provided in the Muslim Law.

(iii) There is no clarity as who all were surviving heirs of Habibullah and in absence thereof whether the suit for partition could be maintained only with selective heirs and in respect of some part of the estate, as none of the parties have brought on record anything to substantiate the aforesaid.

57. In absence of the abovenamed facts and proof the relief of partition cannot be granted. The title of the plaintiffs has not been substantiated and for the aforesaid reason, the District Appellate Court was not justified in granting part relief to the plaintiffs by partly decreeing the suit.

58. For all the aforesaid reasons this Court is of the clear opinion that the decision rendered by the District Appellate Court dated 05.08.1981 passed by IInd Additional District Judge, Gonda passed in Regular Civil Appeal no.254 of 1980 is bad in eyes of law and cannot sustain judicial scrutiny.

59. In light of the aforesaid, this Court has no hesitation to hold the judgment and decree passed by the 2nd Additional District Judge, dated 05.08.1981 is erroneous and is set aside.

60. The judgment and decree passed by the trial Court dated 22.09.1980 passed in Regular Suit no.52 of 1977 is upheld, as a consequence, the second appeal is **allowed**. Costs are made easy.

61. The record of the lower court shall be remitted forthwith.

Order Date :- 15.5.2024

Harshita