

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 35 of 2004

1. Mohammed Jaseemuddin S/o Late Sahabuddin, aged about 50 years,
2. Mohammed Kutubuddin, S/o Late Sahabuddin aged about 48 years,
Both are R/o Sadar Road, Ambikapur, P.S. & Tahsil Ambikapur, Distt. Surguja (C.G.)

---- Appellants

Versus

1. Jarina Begam, wife of Mohammed Kasim, D/o Late Sahabuddin, aged about 40 years, R/o Bhilaitanga P.O., P.S. & Tahsil Patthalgaon, Distt. Jashpur (C.G.)
2. Aslam, S/o Mohammed Zaheer, aged about 22 years,
3. Rehana, D/o Mohammed Zaheer, aged about 25 years,
4. State of Chhattisgarh, through Collector Surguja, Distt. Surguja (C.G.).
Respondent No. 2 to 3 are R/o Sadar Road, Ambikapur, P.S. & Tahsil Ambikapur, Distt. Surguja (C.G.)

---- Respondents

For Appellants – Mr. Ashok Shukla, Advocate.
For Respondent No.1 – Mr. Sushil Dubey, Advocate.
For Respondent No. 4 – Ms. Sangeeta Mishra, Panel Lawyer.
For Respondent No. 2 and 3 – None, though represented.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order On Board

30/03/2015

1. By this first appeal under Section 96 of the Code of Civil Procedure, 1908 (for short 'the CPC'), the appellants have challenged the legality and propriety of the judgment and decree dated 24-12-2003 passed by the First Additional District Judge, Ambikapur, Surguja (C.G.) in Civil Suit No.19A/2003 whereby and whereunder the learned Court below allowed the suit filed by the plaintiff/respondent No.1 Jarina Begam and decreed the suit with cost against appellants Mohammed Jaseemuddin (A-1) and Mohammed Kutubuddin (A-2) , and respondents Aslam (R-2), Rehana (R-3) and held that the plaintiff/respondent No.1 Jarina Begam is entitled to get a share in Schedule A

and B according to Mulla's Muslim Law, Section 63, TABLE OF SHARES—Sunni Law, the trial Court also declared share of respondent No.1 in Schedule A and B as mentioned above as per Section 63 sharers.

2. Brief facts of the civil suit filed before the trial Court are as follows:-

The parties of the suit are near relatives. Their family tree shown in the plaint. By filing the suit for partition and mesne profit respondent No.1 Jarina Begam prayed that $\frac{1}{4}$ part of the immovable property be given to her after possession of the same. The respondent No.1/plaintiff also prayed for mean profit till receiving the possession of the suit land as in Schedule A and B, Rs.875/- per annum, from the date of presentation of suit and also the cost of the suit. As the property belongs to Sahabuddin and being daughter and legal heir plaintiff is entitled for $\frac{1}{4}$ share of Schedule A and B and also share in suit house.

3. the appellants by filing their return statement before the trial Court denied the pleadings of plaintiff and submitted that during the lifetime of father of the plaintiff, the plaintiff had taken Rs.1 lac cash in lieu of her share from her father and the appellants and also relinquished the right and ownership in the suit land. It is also stated that Sakeena Khatun is a necessary party. It is submitted by the appellants before the trial Court that the plaintiff is not entitled for any share on the basis of pleadings submitted in their written statement. Hence, it is prayed that the plaintiff's suit be dismissed with cost.

4. Before the trial Court respondents 2 and 3 remained ex-parte.

5. The trial Court framed the issues and provided opportunity to the parties present for adducing their evidence. After providing opportunity of hearing to the parties, the learned trial Court allowed the suit with cost and passed the decree as aforementioned.

6. The appellants challenged the legality and propriety of the judgment and decree passed by the trial Court and had taken grounds in the memorandum of appeal as, there are material anomalies and illegality in passing the judgment

and decree, for several material grounds the trial Court had not framed proper issues, issue No. 1, 2 and 3 were decided over and above wrong conclusion. Further ground is taken that in Mohhammeden Laws the married daughters are not entitled to get share of $\frac{1}{4}$ of their father's property in Sunni Law. There was no properly valuation of the suit and proper court fees was not paid despite the objection. The suit was not joinder of necessary parties. Hence, on the basis of the grounds taken by the appellants, it is submitted that the judgment and decree dated 24-12-2003 be set aside and the suit of respondent No.1 be dismissed with cost.

7. I have heard learned counsel for the parties and perused the evidence available on record.

8. Learned counsel appearing on behalf of the appellants supported the grounds taken in the memorandum of appeal and submitted that on the basis of the grounds taken, the appeal may be allowed and the judgment and decree of the trial Court be set aside.

9. Learned counsel appearing for respondent No.1 opposed the argument and grounds taken in the appeal and submitted that the trial Court rightly passed the judgment and decree, hence, there is no scope for interference and the appeal may be dismissed.

10. Learned counsel for respondent No.4/State supported the judgment and decree passed by the trial Court.

11. In order to appreciate the arguments advanced on behalf of the parties, I have perused the issues framed by the trial Court and also the evidence adduced on behalf of the parties.

12. On close scrutiny, it reveals that the trial Court has framed issue No.2 whether the plaintiff is entitled to get $\frac{1}{4}$ share in the suit land Schedule A and B. While deciding this issue the trial Court held that the plaintiff is not entitled to $\frac{1}{4}$ share, but she is entitled to a share mentioned vide Section 63, table of Sunni Law. The trial Court also vide point 2 of para 26 of the judgment held

that the plaintiff is entitled to her share in Schedule A and B on the basis of Mulla's Muslim Law, Section 63, TABLE OF SHARES–Sunni Law, by this the trial Court declared the share of the plaintiff in Schedule A and B, but the Court failed to declare what shall be the share of plaintiff in suit property. As per the judgment of the Court, the Court has to declare what share shall be the share. Though the trial Court at para 23 of the judgment mentioned that the plaintiff admitted that in case of Sunni Muslim, sisters are entitled for 1/6 share, but this fact is an admission of the plaintiff in the evidence. It was lawful for the Court to declare the share on the basis of the law applicable for the purpose. If the trial Court not decides the specific share, it will be left unending dispute and by leaving this law point to all concerned, everybody may hold this issue differently. If the a party approaches to Court, Court has to assess and hold the exact share so that the parties have no confusion, ambiguity as to what share she is to get. In view of this Court, by not specifically deciding this issue regarding the specific share, the trial Court has committed illegality. For this alone, the judgment of the trial Court requires interference and reconsideration regarding the declaration of specific share so that the parties concerned may assail or support the judgment and decree. It would be appropriate to direct the trial Court to decide the issue No.2 and concerned part of the judgment with specific finding as to what share the plaintiff is entitled for. I am declined to consider other merits of the appeal for the moment as the above vague finding should be decided as afresh.

13. Without commenting to any other grounds of the appeal, the judgment and decree passed by the trial Court requires dismissal and to pass a judgment and decree afresh for the point as to what shall be the exact share of the plaintiff in the suit land Schedule A and B.

14. Consequently, the judgment and decree passed by the trial Court is hereby set aside under Order 41 Rule 23(a) of the CPC. The trial Court is directed to pass judgment and decree afresh after declaring specific share of

the plaintiff. The trial Court is directed to pass a judgment afresh after hearing both the parties as early as possible preferably within 4 months from the receipt of record and copy of this order. The parties are directed to remain present either in person or through their counsel before the trial Court for further hearing on 23-04-2015.

15. The appeal allowed in part as indicated above.

16. No order as to cost.

Sd/-

(C.B.Bajpai)
JUDGE

