

**THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

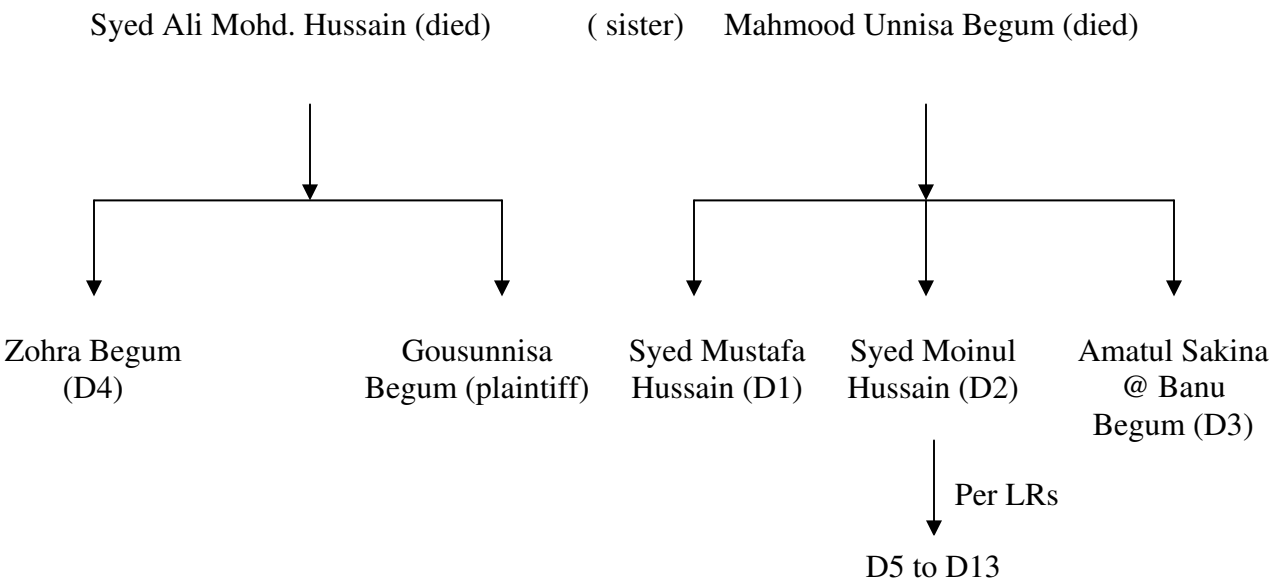
**C.C.C.A.No.123 OF 1994**

**JUDGMENT:**

The present appeal is preferred by defendant Nos.1 and 3 in O.S.No.239 of 1993 on the file of Additional Chief Judge, City Civil Court, Hyderabad, assailing the judgment and decree, dated 27.06.1994, rendered in the said Suit, whereby and whereunder, the Suit was decreed for partitioning the properties mentioned in 'B' schedule and allotting 1/8<sup>th</sup> share to the plaintiff.

2. The facts that are absolutely relevant for the purpose of disposal of the present appeal are that one Syed Ali Mohammed Hussain was the original owner of plaint 'B' schedule properties, which consist of houses and mulgies located in Troop Bazar and Mozamjahi Market, Hyderabad. He has two wives. The first wife is Zohara Begum, arrayed as defendant No.4 in the Suit, and the second wife is Gousunnisa Begum, who is the plaintiff in the regular Suit and sought partition of the properties, and succeeded partly. The said Syed Ali Mohammed Hussain's sister, by name Mohd. Unnisa Begum, has two sons and a daughter, namely, Syed Mustafa Hussain, Syed Moinul Hussain and Amatul Sakina alias Banu Begum, arrayed as defendant Nos.1 to 3, respectively, in the Suit.

3. For convenience sake, the Genealogy submitted by the learned counsel for appellants is projected thus:



4. The Suit was originally instituted in the year 1985 and later renumbered as O.S.No.239 of 1993. During pendency of the Suit proceedings, defendant No.2 died and his legal representatives are brought on record as defendant Nos.5 to 13 in the year 1987.

5. During pendency of the appeal, appellant No.2 i.e., defendant No.3 in the Suit, died. Her legal representatives are brought on record as appellant Nos.3 to 8. Since, the death of respondent No.1, who is the plaintiff, has also occurred during pendency of the appeal, the appellants and respondent Nos.4 to 12, who are already on record, are treated as her legal representatives. Since, respondent No.3, who is defendant No.4 in the Suit, being first wife of late Syed Ali Mohammed Hussain, also died, the appellants and respondent Nos.4 to 12 are treated as her legal representatives. Both the wives of late Syed Ali Mohammed Hussain did not beget any children, which fact is not in dispute between the parties right from the beginning. These facts, though, look normal events, but have consequence, the reason

being that respondent No.1 - plaintiff, who fought for her share and succeeded, could not retain the benefit of decree for the reason that there appears to be no other legal representatives to her, except the parties and their descendants. Thus, it appears that, virtually, there is no contest between the parties, as there are no resisting parties now on record. However, the appellants intend to pursue the present appeal for the main reason that the findings recorded by the Court below on issue Nos.2 and 3 adversely affect their rights, as per their stand, so long as the said findings remain on record and, in fact, no absolute right they own in the properties mentioned in the 'B' schedule to the extent of properties that are situated at Mozamjahi Market.

6. Thus, the above sequence of events would reflect that it is a typical case where solution is necessary touching the findings recorded by the Court below.

7. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the O.S. before the Court below.

8. The plaintiff described three schedules categorising them as 'A', 'B' and 'C'. The 'A' schedule properties are movables in the form of cash, furniture and crockery, valuing Rs.56,000/-.

9. 'B' Schedule properties are immovable properties, which are described thus:

“Houses and Mulgies situated at Troop Bazar, Hyderabad, bearing Municipal Nos.4-1-617, 4-1-618, 4-1-619, 4-1-620 and 4-1-621.

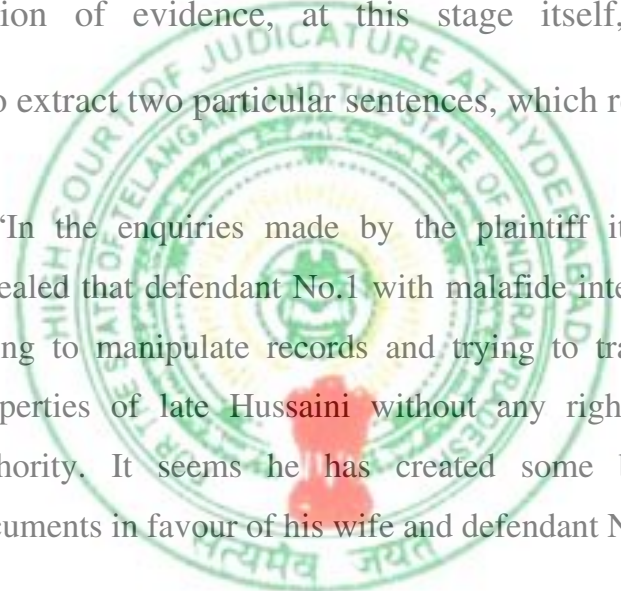
Houses and Mulgies situated at Mozamjahi Market, Hyderabad bearing Municipal Nos. 4-1-725, 4-1-726, 4-1-727, 4-1-728, 4-1-729, 4-1-730/1, 4-1-730, 4-1-731, 4-1-732, 4-1-733, 4-1-734”

10. ‘C’ Schedule properties are again movable properties in the form of Gold and Jewellery.

11. Since the Court below did not accede to the request of the plaintiff to partition or to grant decree concerning the properties shown in ‘A’ and ‘C’ schedules of the value thereof in proportionate to her share and the appellants herein are not concerned with those properties, the ‘A’ and ‘C’ schedule properties can be kept outside the purview of discussion in resolving the request of the appellants herein.

12. Turning to the allegations of the plaintiff touching ‘B’ Schedule properties, she claims that she lived jointly with her husband till his death that took place in the year 1970 and continued her possession along with defendant Nos.1 and 2, since she was issueless, and defendant No.1 was managing the properties by collecting rents and giving her share of income, which according to her continued till August, 1982. She further claims that since September, 1982, defendant No.1 stopped payment of her share in the rents, and as such, she alleged to have demanded defendant No.1 to return her ornaments

shown in 'C' schedule. She alleges that having got suspicion, she made enquiries and found that defendant No.1, with *mala fide* intention, trying to manipulate the records and transfer the properties of her late husband without any right and authority, and expressed doubt that he was creating some bogus documents in favour of his wife and defendant No.3. This particular averment, since, gains significance in the context of deciding whether the findings recorded by the Court below on issue Nos.2 and 3 are well reasoned and based on appreciation of evidence, at this stage itself, it would be appropriate to extract two particular sentences, which read thus:



“In the enquiries made by the plaintiff it was revealed that defendant No.1 with malafide intention trying to manipulate records and trying to transfer properties of late Hussaini without any right and authority. It seems he has created some bogus documents in favour of his wife and defendant No.3.”

The plaintiff, then pleads that she got issued a legal notice, dated 09.01.1984, which was answered by defendant Nos.1 to 3 by reply notice, dated 19.01.1984, through their Advocate, but according to her, defendant Nos.1 to 3 have given a false reply. She disowns the allegation in the reply notice that late Syed Ali Mohammed Hussain divorced her. She pleads that since her demand for partition was not acceded to by defendant No.1, she laid the Suit claiming the following reliefs:

“b) A decree for partition and separate possession of plaintiff’s 1/8<sup>th</sup> share in plaint schedule A and B properties after division by metes and bounds and in case the properties or any one of them are found incapable of partition, sale of same and division of sale proceeds amount be given to the plaintiff and defendants as per their share.

c) Direct defendant No.1 to 4 to render an account of management of the properties by them specially by defendant No.1 and to pay the share of the plaintiff her share from it.

d) A decree of recovery of possession of articles mentioned in schedule ‘C’ against 1<sup>st</sup> defendant.

e) A decree of recovery of Maher of Rs.500/- and Iddath maintenance of Rs.500/- plaintiff against defendants.”

13. Defendant Nos.1 and 3 resisted the claim made by the plaintiff and denied giving any share in the rents to the plaintiff, as alleged, or retaining the ornaments of the plaintiff. According to them, such an allegation was levelled by the plaintiff with a motive to give colour of reality to her story and to extract some money from them by harassing them.

14. Concerning ‘B’ schedule properties, the stand of defendant Nos.1 and 3 has been that late Syed Ali Mohammed Hussain along with defendant No.4 sold the double storied building called ‘Mustafa Manzil’ bearing municipal No.4-1-730, mulgies bearing municipal Nos.4-1-725 to 4-1-729 and a motor garage bearing municipal No.4-1-731 situated at Mozamjahi Market in favour of defendant

No.1 under a registered Sale Deed, dated 26.03.1964, for a total consideration of Rs.15,000/-, out of which, Rs.5,000/- was paid on the date of execution of the said Sale Deed and the balance amount was paid on the date of its registration.

15. It is also their case that late Syed Ali Mohammed Hussain sold the property bearing H.No.4-1-732 admeasuring 234 Square Yards situated at Tuljaguda, opposite Mozamjahi Market, to defendant No.3 for a total consideration of Rs.2,000/- under a registered Sale Deed, dated 24.06.1966, in favour of defendant No.3 and half of the consideration amount was paid on the date of execution of the Deed and the balance half on the date of registration. They did not claim any right over the properties situated in Troop Bazar, since, in the reply notice, dated 19.01.1984, marked as Ex.A2, they did specifically mention that the Troop Bazar properties were sold by late Syed Ali Mohammed Hussain in favour his first wife, who is defendant No.4 in the Suit, for consideration. Thus, they sought to dismiss the Suit on the ground that none of the properties are available for partition, besides, yet another main ground that the plaintiff was a divorcee and cannot lay a claim for partitioning the properties.

16. Defendant No.4 also strongly resisted the claim of the plaintiff. She has pleaded that late Syed Ali Mohammed Hussain divorced the plaintiff in his lifetime and, thus, she ceased to be the

wife of late Syed Ali Mohammed Hussain. She alleges that the claim for maintenance during Iddath period is barred by limitation and the claim for 'C' schedule properties on the ground that they were given to the plaintiff by her parents was totally incorrect.

17. She has set out her case under "Further Pleas" that her husband during his lifetime sold the houses bearing Municipal Nos.4-1-617 to 4-1-621 situated at Troop Bazar to her under a registered Sale Deed, dated 21.04.1964. She, in turn, sold the said property to Mohd. Faizullah under registered Sale Deed, dated 17.01.1966. The said Mohd. Faizullah sold the said property to Sudershan Enterprises by way of registered Sale Deed, dated 29.09.1977. The said Sudershan Enterprises, in turn, sold the property to Sarojini Enterprises under registered Sale Deed, dated 10.03.1978 and the said Sarojini Enterprises, in turn, sold the said property to one T.V. Murthy and others under Sale Deed, dated 18.09.1981. Thus, defendant No.4 has specifically mentioned the alienations that took place from one to another. The reason behind mentioning these sales, particularly, is when the issues were settled for trial, the Court below, though, touched the sales in favour of defendant Nos.1 and 3, somehow, on the same lines did not settle any issue touching these sales. Whether or not such an issue would arise and whether there was any occasion for the Court below to settle issue Nos.2 and 3 would be adverted to at a later stage.

18. Suffice to hold that defendant Nos.1, 3 and 4 did strongly resist the claim of the plaintiff on two main grounds. First, that late Syed Ali Mohammed Hussain divorced the plaintiff during his lifetime and, therefore, treating her as a heir to lay a claim in the suit properties does not arise. Second, that the suit schedule properties are not available for partition at all, more particularly, when the plaintiff has not shown the existence of the suit properties. Therefore, neither joint possession nor constructive possession with defendant Nos.1, 2 and 4 arises.

19. The Court below, to adjudicate upon the controversy, settled the following five issues:

“1) Whether the plaintiff was divorced by late Syed Ali Mohd. Hussain?

2) Whether the Schedule ‘B’ Malgis Nos.4-1-725 to 731 were sold by late Syed Ali Mohd. Hussain to D-1 for consideration?

3) Whether Schedule ‘B’ House No.4-1-732 was sold to Defendant No.3 by late Syed Ali Mohd. Hussain?

4) Whether the claim of the Plaintiff for dower and Iddath maintenance is time barred?

5) Whether Schedule ‘C’ Properties are with D-1?”

20. The plaintiff, to substantiate her case, examined herself as PW.1 and marked Exs.A1 and A2, which are office copy of the notice, dated 09.01.1984, and reply given by defendant Nos.1 to 3 through their Advocate, respectively. On the other hand, the defendants

examined one Mohd. Hyder Siddique as DW.1, who is the son of the sister of defendant No.4, and defendant No.3 herself stepped into the witness box and examined as DW.2, and marked Exs.B1 to B7.

21. It is clear from the evidence on record, both, oral and documentary, let in by both sides that no evidence is let in so far as the Troop Bazar properties are concerned, which constitute part of 'B' Schedule properties. Perhaps the reason being that no issue was settled by the Court below regarding Troop Bazar properties on the lines of issue Nos.2 and 3 settled by it.

22. The Court below, on issue No.1, holding that defendant Nos.1 and 4 have not chosen to examine themselves as witnesses to speak about the divorce, and DW.1 did not whisper anywhere in his evidence about the intention with which late Syed Ali Mohammed Hussain divorced the plaintiff, and that the defendants, on whom the burden lies to prove the said issue, have failed to substantiate the same by letting in legally acceptable evidence, recorded a finding in favour of the plaintiff.

23. On issue Nos.2 and 3, the Court below, holding that, firstly, the written statement filed by defendant Nos.1 and 3 does not refer to the mulgies bearing Nos.4-1-733 and 4-1-734 being sold in favour of defendant No.3, and the alienation in favour of Mohd. Faizullah was not spoken to by DW.1, younger brother of Mohd. Faizullah, in whose favour defendant No.4 said to have sold the properties at Troop Bazar

under a registered Sale Deed, dated 17.01.1966, second, that the name of defendant No.3 is not described in Ex.B1 as 'Amatul Sakina alias Banu Begum, W/o. Syed Kaleemullah Hussain', but on the other hand, vendee's name is shown as 'Smt. Banu Begum, D/o. Syed Ali Hussain Saheb', third, that the mulgies bearing Nos.4-1-733 and 4-1-734 do not find place in Ex.B1, despite the stand taken by defendant Nos.1 to 3 in their reply notice that they were also purchased by defendant No.3 and thereby, holding that Ex.A2 recitals would straightaway belie the theory of defendant No.3, which inconsistency throws any amount of cloud of suspicion on the transaction covered by Ex.B1, fourth, omission to file the original Sale Deed of Ex.B2, besides, defendant No.1, not choosing to step into the witness box to prove the sale transaction covered by Ex.B2, more particularly, when DW.1 himself categorically admitted in his cross-examination that he does not know the consideration amount otherwise paid thereunder, fifth, failure to file even a single municipal tax receipt to substantiate that defendant Nos.1 and 3 have been in possession and enjoyment of the properties covered by Exs.B1 and B2, sixth, that there was absolutely no necessity at all for late Syed Ali Mohammed Hussain to sell the properties as he was not under any financial constraint, opined that the cumulative effect of all these factors was that the transactions under Exs.B1 and B2 were nothing but spurious transactions and as such, recorded findings on both the issues against defendant Nos.1 and 3.

24. On issue No.4, touching recovery of Meher amount and maintenance amount for the Iddat period, the Court below has declined to grant the same on the ground that the claim was barred by limitation.

25. On issue No.5, the Court below, on the ground that the plaintiff maintained silence in giving descriptive particulars of each ornament and acquisition thereof, decided it against the plaintiff. The result is, the Court below granted preliminary decree for partition of 'B' schedule properties into eight equal shares and for allotment of one such share to the plaintiff.

26. Aggrieved over the said preliminary decree, the present appeal is preferred raising several grounds, but, during the course of arguments, the learned counsel for appellants has given up the challenge to the finding recorded on issue No.1 and part of the findings touching allotment of 1/8<sup>th</sup> share in Troop Bazar properties, and, of-course, the finding in regard to granting of costs to the plaintiff, for the reason that defendant Nos.1 and 3, who are the appellants, have been claiming exclusive rights over Mozamjahi Market properties alone based on Exs.B1 and B2.

27. Thus, the relevant grounds that require adjudication in the present appeal are ground Nos.8 to 20, touching which, findings have been recorded by the Court below on issue Nos.2 and 3.

28. Learned counsel for the appellants would submit that the Court below was not justified in recording findings on issue Nos.2 and 3 against the appellants, more particularly, the observation made by the Court below that the transactions covered by Exs.B1 and B2 are spurious transactions. Learned counsel would submit that, though, there was absolutely no necessity at all to settle these issues and the plaintiff, nowhere, in the plaint did attack the transactions covered by Exs.B1 and B2 in favour of defendant Nos.1 and 3, despite the fact that in the reply notice got issued by defendant Nos.1 to 3, the dates of transaction by way of execution of registered Sale Deeds by late Syed Ali Mohammed Hussain for consideration were specifically mentioned, still, the Court below settled the issues. It is, therefore, his submission that not only the settlement of issue Nos.2 and 3 were not called for, but the very approach of the Court below in appreciating the evidence on record is totally in deviation of the evidentiary rule. Therefore, he sought to set aside the judgment and decree so far as the Mozamjahi Market properties are concerned, which are covered by Exs.B1 and B2.

29. Further, learned counsel for the appellants would fairly submit that the appellants are not concerned with the Troop Bazar properties, though, of course, they have pointed out that there has been series of sale transactions changing hands right from purchase of the said properties by defendant No.4 from her husband to various

intended purchasers, at least half-a-dozen in number. It is so canvassed for the reason that the properties mentioned in 'B' schedule are not at all available for partition, and perhaps, the Court below did not take appropriate note of the same.

30. Now advertng to the discussion on issue Nos.2 and 3, the factors that prompted the Court below to record findings in favour of plaintiff and against defendant Nos.1 and 3 have been narrated in the above. An intrinsic examination of the said factors, basing on which the findings are tendered, would show that they do not stand to reason and are not in accordance with the principles governing appreciation of evidence.

31. There is no specific averment made by the plaintiff touching Exs.B1 and B2. What all she got averred in the plaint had already been extracted in the above. At the cost of repetition, for more emphasis, since it needs advertence again, I would like to mention that the plaintiff what all says in paragraph No.4 of her plaint is that in her local enquiries, she found that defendant No.1 with a *mala fide* intention trying to manipulate records and transfer the properties of late Syed Ali Mohammed Hussain without any right and authority and it seems that he has created some bogus documents in favour of his wife and defendant No.3. Thus, the averments are not specific to view that they are subject of attack of the transactions covered by Exs.B1 and B2. On the other hand, they are very vague, attributing *mala fide*

intention only to defendant No.1. In the light of these particular averments, the findings recorded by the Court below construing sale transactions under Exs.B1 and B2 as spurious in nature requires examination.

32. When the notice was got issued by the plaintiff on 09.01.1984, she did mention the movable and immovable properties, which later, she described them as 'A', 'B' and 'C' schedule properties. Stating that she has been in joint possession and enjoyment of the properties and that even rents collected by defendant No.1 were shared till August, 1982, she finally attempted to make out a cause of action for the ensuing Suit.

33. For the said notice, defendant Nos.1 to 3 got issued a reply on 19.01.1984. The transactions covered by Exs.B1 and B2 and also the sale transaction in favour of defendant No.4, by her husband during his lifetime, with particularity, have been mentioned and the same need no advertence since they were referred to in the above, while dealing with the averments made by defendant Nos.1, 3 and 4 in their written statements. Thus, when the particulars of documents, Exs.B1 and B2, with all relevant details have been mentioned in Ex.A2, received by the plaintiff, there was no reason to come forward and put forth the afore-extracted averments, stating that she made local enquiries and found that defendant No.1 was trying to manipulate the records and transfer the properties with a *mala fide*

intention and even created some bogus documents. When fraud is sought to be pleaded to attack registered documents, under which, rights were got conveyed, more particularly, when the relevant details were forthcoming in the reply notice received by the plaintiff, such vague pleas cannot occur in the plaint and that itself shows that a feeble attempt is made to attack the sale transactions covered by Exs.B1 and B2. Defendant Nos.1 and 3, in their common written statement, reiterated the sales in their favour with relevant details as they did while giving reply notice, but the Court below, somehow, embarked upon settlement of issue Nos.2 and 3, throwing entire burden on defendant Nos.1 and 3, which was incorrect. When there is no plea at all touching, more so, specifically, the details of transactions, in case, fraud is sought to be pleaded, certainly, these two issues ought not to have been settled for trial. Thus, there appears to be inherent defect in framing the issues by the Court below.

34. When looked at the approach in appreciating the evidence on record, certainly, the approach is not proper in recording reasons in tendering the findings and arriving at the logical conclusion. Turning to the factors mentioned in the above, which weighed with the Court below in answering issue Nos.2 and 3, the Court below, suspect the sale transactions merely on the ground that defendant Nos.1 and 3 in their common written statement did not mention about the sale of mulgies bearing Nos.4-1-733 and 4-1-734, coupled with the omission by DW.1 to assert about the purchase by his younger brother, the

Troop Bazar properties from defendant No.4. It is no doubt true, defendant Nos.1 and 3 did not mention about the said two mulgies in their written statement and DW.1 did not assert about the purchase of Troop Bazar properties by his younger brother from defendant No.4, but, basing on the same, the Court below could not have reached to the conclusion that the transactions under Exs.B1 and B2 are suspicious in nature. When the very registered Deeds are marked as Exs.B1 and B2, the Court below ought not to have arrived at such suspicion, more particularly, when one of them i.e., Ex.B1 was the original document itself. Even otherwise, mere absence of reference to both the mulgies in the written statement, though, they do occur in the reply notice, is not a ground to view the transactions under Exs.B1 and B2 as spurious in nature, as to the inference drawn by the Court below.

35. There is one more reason in arriving at such conclusion in commenting the finding recorded by the Court below on these two issues. It is not so that late Syed Ali Mohammed Hussain alone sold the properties under Ex.B2, since his first wife, who is defendant No.4, also joined as an executant while selling double storied building bearing H.No.4-1-730 and mulgies bearing Nos.4-1-725 to 729 and motor garage bearing No.4-1-731 for a consideration of Rs.15,000/-, which facts were adverted to in the above. When no fraud is pleaded and no relief at all is claimed by the plaintiff that Exs.B1 and B2 are got up documents to defeat her rights and declare them as null and

void, the very framing of issue Nos.2 and 3 was not called for, besides, throwing entire burden on defendant Nos.1 and 3.

36. When general Rules of inheritance under Mohammedan Law are referred to, unless it is shown that all the members of the family live in commensality and are in joint possession of the family properties, throwing burden on the opposite party, in a case of this nature, to prove the sale deeds executed in their favour, concerning part of the properties in the plaint schedule, does not arise.

37. Turning to the factors again, on the basis of which the findings are tendered, the Court below on the mere premise that the description of defendant No.3 in Ex.B1 would not suit with the description in the plaint, thus, again viewed not only Ex.B1 but also Ex.B2, with suspicion. In fact, in the cause title of the plaint, the plaintiff herself described defendant No.3 as 'Amatul Sakina alias Banu Begum, W/o. Syed Kallemullah Hussain', but in Ex.B1 she was described as 'Smt. Banu Begum, D/o. Syed Ali Hussain Saheb'. The Sale Deed – Ex.B1 relates to the year 1966. The Court below has not made it clear whether by the date of execution of Ex.B1, defendant No.3 was married or not. When the cause title in the plaint would refer to the name of defendant No.3 as 'Amatul Sakina', though, her alias name is mentioned as 'Banu Begum', and when the plaintiff herself has not stated anywhere in the plaint that the vendee under Ex.B1 is not defendant No.3, deriving a probability favouring the

plaintiff is wholly incorrect. It is well settled now that probabilities can be derived from proved facts and can only be used in aid of the documentary evidence, but, not against the documentary evidence. Therefore, certainly, the Court below was not right in digging something, which was not there from a mere description in Ex.B1, and attempting to derive a probability against the contents in Ex.B1. Certainly, it has to be viewed that the very approach is incorrect and is against the basic norms of appreciation of evidence.

38. The third factor taken into consideration by the Court below was omission to file the original of Ex.B2- Sale Deed, observing that, though, defendant No.1 was capable of securing the original of Ex.B2 from the Rent Control Court, he has not secured the same and has failed to come into the witness box to give evidence, and that the evidence of DW.1 is also deficient in regard to proving the document Ex.B2, and thereby suspected the sale transactions under Exs.B1 and B2. Again this approach is not on correct lines for the reason that it is not as though no document at all was filed, but certified copy was filed and viewing the certified copy with suspicion is beyond any comprehension.

39. The fourth factor is that, at least, one municipal tax receipt is not filed to show the payment of tax and the enjoyment of the Mozamjahi Market properties by defendant Nos.1 and 3. Again, that observation recorded by the Court below appears to be incorrect for

the reason that the plaintiff never disputed the possession of defendant No.1 and her case has been that defendant No.1 was not giving share in the rents collected by him and even she asserted that she was not in possession of the properties on the date of presentation of the plaint. Non-examination of tenant by the defendants cannot be a circumstance to favour the plaintiff for partitioning the properties sought for by her. So, the factors projected by the Court below, basing on which the Court below recorded a definite finding that the transactions under Exs.B1 and B2 are spurious transactions, in fact, not based on any inference that can be drawn from proved facts. Therefore, they atmost can be construed as assumption, based on which, the Court below intended to record such findings, which ought to be out rightly set aside. Accordingly, the findings recorded on issue Nos.2 and 3 are hereby set aside. Thus, the initial burden itself was not discharged by the plaintiff showing her constructive possession or hitherto sharing the rents collected by defendant No.1, as pleaded by her.

40. Now, what remains to be seen, is whether the decree passed by the Court below concerning Troop Bazar properties, atleast, can be maintained.

41. Again the probabilities favour only the defendants, but not the plaintiff. Firstly, in the reply notice, the Sale Deed executed in favour of defendant No.4 by her late husband while he was alive was

specifically mentioned. Further, when defendant No.4 filed written statement, she gave the relevant details mentioning the sale in favour of her vendee with reference to the date of registered document and so on and so forth till it was purchased lastly by T.V.Murthy in the year 1981.

42. In the above, I have mentioned that hitherto constructive possession has to be established by the plaintiff touching the Troop Bazar properties also. The same principle would apply, more particularly, when the properties are not in the hands of defendant Nos.1 to 4. Admittedly, none of the vendees have been made as parties nor the transaction in favour of defendant No.4 under a registered instrument was challenged by the plaintiff when she filed the plaint. Therefore, in regard to the Troop Bazar properties also, as mentioned in the 'B' schedule, granting of preliminary decree for division and allotment of  $1/8^{\text{th}}$  share does not arise. Further, the frame of Suit appears to be incorrect. Plaintiff sought  $1/8^{\text{th}}$  share and it is her own case that she is the second wife of late Syed Ali Mohammed Hussain and defendant No.4 is the first wife. Since late Syed Ali Mohammed Hussain has only two wives, in view of the principles of inheritance, which govern the Mohammaden Law, the plaintiff and defendant No.4 together would be entitled to  $1/8^{\text{th}}$  only if the wives are limited to four in number. Thus, viewed from any angle, the Court below went wrong in recording the findings on issue Nos.2 and 3 and

decreeing the Suit of the plaintiff partly concerning 'B' schedule properties.

43. Hence, the appeal is allowed and the preliminary decree passed by the Court below is hereby set aside.

44. Miscellaneous Petitions, if any, pending in this appeal, shall stand closed. There shall be no order as to costs.

August 27, 2016.  
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**A. SHANKAR NARAYANA, J**

