

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 288 of 2006**

1. Abdul Qadir, Son of Abdul Sattar, Aged 60 years.

2. Zakiya Begum, Daughter of Abdul Sattar, Aged 45 years.

3. Safiya Begum, Daughter of Abdul Sattar, Aged 42 years.

All residents of Giri Chowk, Near Lakshman Hotel, Handipara, Raipur, Chhattisgarh.

----- Appellants/Defendants

Versus

Smt. Asgari Begum, Wife of Abbas Ali, Aged 40 years, Resident of Sanjay Nagar, Raipur, Chhattisgarh.

-----Respondent/Plaintiff

For Appellants	:	Ms. Anuja Sharma, Advocate
For Respondent	:	Mr. Manoj Paranjpe and Mr. Anurag Singh, Advocates

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

26.09.2019

1. The two substantial questions of law involved, formulated and to be answered in this second appeal preferred by appellants/defendants state as under :

"1. Whether the Courts below committed an error of law in declaring the plaintiff to be the joint owner of

the property to the extent of 1/5 share in it?

2. Whether the plaintiff being one of the daughters, along with a brother, of Sunni Muslim family will not succeed to the extent of 1/5 share in the property, left by her mother namely- Maqbool Bi?"

(For the sake of convenience, parties would be referred hereinafter as per their status and ranking shown in the suit before the trial Court.)

2. Plaintiff and defendants are brother and sisters and the dispute herein relates to the ancestral house owned and held by their mother namely Maqbool Bi, wife of Abdul Sattar, who died on 12/07/1989.

3. Plaintiff, being the daughter of Maqbool Bi, filed a civil suit for declaration of title and permanent injunction stating *inter alia* that she is entitled for 1/4th share in the suit house as it was owned and held by her mother i.e. Maqbool Bi, which was disputed by the defendants by way of filing their written statement and stating *inter alia* that plaintiff left the suit house even before the

death of her mother – Maqbool Bi and that too without entering into marriage and severing all her relationship with her family, therefore, she is not entitled for decree for declaration of title and permanent injunction as claimed by her.

4. Learned trial Court, upon consideration of oral and documentary evidence on record, vide its judgment and decree dated 19/12/2005, partly decreed the suit of the plaintiff holding that plaintiff is entitled for declaration of title but not entitled for permanent injunction and held that she is only entitled for 1/ 5th share in the suit house.

5. In first appeal preferred by the defendants, learned first appellate Court, vide its judgment and decree dated 28/04/2006 maintained the judgment and decree of the trial Court against which this second appeal under Section 100 of the CPC has been preferred by the defendants in which two substantial questions of law have been formulated on 27/07/2006 and are set out in the opening paragraph of this judgment.

6. Ms. Anuja Sharma, learned counsel for the appellants/defendants would submit that

according to the sunni law, defendant No. 1 being the son of Maqbool Bi and plaintiff along with defendants No. 2 and 3 being the daughters of Maqbool Bi would be the 'residuaries'. Therefore, defendant No. 1, being the son, would get double portion i.e. $2/3^{\text{rd}}$ share in the suit house and plaintiff and defendants No. 2 and 3 i.e. daughters of Maqbool Bi, being 'residuaries', would collectively get $1/3^{\text{rd}}$ share in the suit house, as such, plaintiff would be entitled for $1/9^{\text{th}}$ share in the suit house, therefore, first appellate Court has legally erred in holding that plaintiff is entitled for $1/5^{\text{th}}$ share in the suit house and the second appeal accordingly deserves to be allowed to that extent.

7. On the other hand, Mr. Manoj Paranjpe and Mr. Anurag Singh, learned counsel for the respondent/plaintiff would support the impugned judgment and decree and submit that the second appeal is liable to be dismissed.

8. I have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.

9. The parties herein are Sunni muslim and are governed by 'Hanifi Law of inheritance'. In the 'Hanifi Law of inheritance', heirs are divided into three classes which are extracted below from Chapter VII, page 64 of "**Principles of Mahomedan Law**" by Sir Dinshaw Fardunji Mulla (20th edition) :-

A. - THREE CLASSES OF HEIRS

61. Classes of heirs – There are three classes of heirs, namely, (1) Sharers, (2) Residuaries, and (3) Distant Kindred :

(1) "Sharers" are those who are entitled to a prescribed share of the inheritance;

(2) "Residuaries" are those who take no prescribed share, but succeed to the "residue" after the claims of the sharers are satisfied;

(3) "Distant Kindred" are all those relations by blood who are neither Sharers nor Residuaries.

10. Learned author has further stated that if there are no sharers, the residuaries will succeed to the whole inheritance. If there be neither sharers nor residuaries, the inheritance will be divided among such of the distant kindred as are entitled to succeed thereto.

11. "**Sharers**" as defined by learned author in Chapter VII, page 65 reads as under :-

B. - SHARERS

63. **Sharers** – After payment of funeral expenses, debts, and legacies, the first step in the distribution of the estate, of a deceased Mahomedan is to ascertain which of the surviving relations belong to the class of sharers, and which again of these are entitled to a share of the inheritance, and, after this is done, to proceed to assign their respective shares to such of the sharers as are, under the circumstances of the case, entitled to succeed to a share.

12. The list of 'sharers' among the Sunni law has been indicated by learned author in Chapter VII page 66A, which is provided below:-

TABLE OF SHARES--Sunni Law

(1) Sharers	(2) Normal Share		(3) Conditions under which the normal share is inherited	(4) This column sets out-- (A) Shares of Sharers Nos. 3, 4, 5, 8 and 12 as varied by special circumstances; (B) Conditions under which Sharers Nos. 1, 2, 7, 8, 11 and 12 succeed as Residuaries.
	of one	of two or more collectively (b)		
1. xxx	xxx	xxx	xxx	xxx
2. xxx	xxx	xxx	xxx	xxx
3. xxx	xxx	xxx	xxx	xxx
4. xxx	xxx	xxx	xxx	xxx
5. xxx	xxx	xxx	xxx	xxx
6. xxx	xxx	xxx	xxx	xxx
7. DAUGHTER	$\frac{1}{2}$	2/3	When no son.	[With the son she becomes a residuary: see Tab. of Res., No. 1.]

13. In the instant case, since defendant No. 1 is the son of Makbool Bi, he would not come under class (1) i.e. 'sharers', and plaintiff being the daughter of Maqbool Bi would not be 'sharer' as deceased Maqbool Bi was having a son i.e. defendant No. 1 and therefore, in absence of son, plaintiff daughter would be residuary.

14. The next class of heirs is 'residuaries' which is defined by learned author in Chapter VII page 72, which is extracted below :-

C. - RESIDUARIES

65. Residuaries – If there are no Sharers, or if there are Sharers, but there is a residue left after satisfying their claims, the whole inheritance or the residue, as the case may be, devolves upon Residuaries in the order set forth in the annexed table (p. 74A). "

15. The rights of 'residuaries' are recognised by the Holy Quran (by implication) and by the traditions of the prophet (PBUH) in very specific terms according to the learned author, which are extracted below (page 73) :-

"The Holy Quran declares :

"from what is left by parents and near kindred, there is a share for men and a share for woman, whether the property be small or large-a

determinate share."

"To (benefit) every one, we have appointed shares and heirs to property left by parents and near relatives.."

"Allah directs you concerning your children (their inheritance), to the male a portion equal to that of two females.."

"They ask thee for a legal decision. Say: Allah directs (thus) about those who leave no descendants or ascendants as heir. If it is a man that dies, leaving a sister but no child, she shall have half the inheritance. If (such a deceased was) a woman who left no child, her brother takes her inheritance.. If they are brothers and sisters, (they share), the male having twice the share of the female." "

16. The residue remaining after satisfying the sharer(s) claim is indicated in the following illustration by the learned author :-

Illustrations

[Note. - The residue remaining after satisfying the sharers' claims is indicated in the following illustrations thus.]

No. 1. - Sons and Daughters

(a) Son	..	2/3	}	(as residuaries)
Daughter	..	1/3	}	

Note. - The daughter cannot inherit as a sharer when there is a son. But if the heirs be a daughter and a son's son, the daughter as a sharer will take $\frac{1}{2}$, and the son's son as a residuary will take the remaining $\frac{1}{2}$.

17. Listed below is the table of 'residuaries' in order of succession - Sunni Law as depicted by learned author in page 74A :-

**TABLE OF RESIDUARIES IN ORDER OF
SUCCESSION – Sunni Law**

I. - DESCENDANTS:

1. SON.

Daughter takes as a residuary with the son, the son taking a double portion.

18. Reverting to the facts of the present case in light of the share indicated aforesaid as per 'principles of Mohamedan Law' by learned author Sir Mulla (20th Edition), it is quite vivid that in the instant case Maqbool Bi has three daughters i.e. plaintiff and defendants No. 2 and 3 and only one son i.e. defendant No. 1, as such, plaintiff being daughter (sharer) in presence of son (defendant No.1) becomes residuary and all the four of them would fall within the category of "residuaries" and according to the 'Hanifi Law of inheritance', defendant No. 1, being the son of Maqbool Bi, would get $\frac{2}{3}$ rd share in the suit house as a residuary whereas, plaintiff and defendants No. 2 and 3, also falling within the category of residuaries being the daughters of Maqbool Bi, would collectively get $\frac{1}{3}$ rd share in the suit house and thereby, each one of the daughters will be entitled for $\frac{1}{3} \times \frac{1}{3} = \frac{1}{9}$ th share in the suit house. Therefore, as per 'Hanifi Law of inheritance' applicable to the parties herein, plaintiff

would be entitled for 1/9th share in the suit house and would not be entitled for 1/5th share as decreed by both the Courts below. Accordingly, the judgment and decree of the first appellate Court is modified to that extent and it is held that plaintiff would be entitled for 1/9th share in the suit house bearing No. 23/199, Ward No. 23, Handipara, Tahsil and District - Raipur, Chhattisgarh.

19. The second appeal is allowed to the extent indicated herein-above with no order as to cost(s).

20. Decree be drawn up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet