

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO.264 OF 2018
WITH
CA/4573/2018 IN SA/264/2018**

- 1 Abdul Aziz s/o Abdul Bari,
Age Major, Occ. Business,
R/o Masjid Gayaskhan Nabina,
Kotwalpura, Aurangabad,
Tq. & Dist. Aurangabad.
- 2 Abdul Kayyum s/o Abdul Bari,
Age Major, Occ. Business,
R/o Masjid Gayaskhan Nabina,
Kotwalpura, Aurangabad,
Tq. & Dist. Aurangabad.
- 3 Abdul Rauf s/o Abdul Bari,
Age Major, Occ. Business,
R/o Masjid Gayaskhan Nabina,
Kotwalpura, Aurangabad,
Tq. & Dist. Aurangabad.

... Appellants.

... **Versus** ...

- 1 Sayed Aleemuddin @ Saber Pasha
s/o Syed Ahsanuddin,
Age 61 yrs., Occ. Business,
R/o Electrical Contractor,
Karim Colony, Aurangabad,
Tq. & Dist. Aurangabad.
- 2 Hamidunissa Begum w/o Syed
Ahsanuddin (died).

- 3 Syeda Snis Ahmadi Begum w/o
Mohammad Rafiuddin,
Age 57 yrs., Occ. Household,
R/o Rengtipura, Aurangabad.
- 4 Syeda Asmat Parveen Begum d/o
Syed Ahsanuddin,
Age 38 yrs., Occ. Household,
R/o Karim Colony, Aurangabad.
- 5 Mahmooda Begum w/o Nawab
Syed Sultanuddin (died)
- 6 Syed Akbaruddin s/o Syed
Sultanuddin (died)
- 7 Syed Hurrunissa Begum w/o
Din Mohammad,
Age 59 yrs., Occ. Household,
R/o Mustafa Pasha,
House No.22-1-601, Noorkhan Bazar,
Hyderabad (A.P)
- 8 Syed Azimuddin s/o Syed
Sultanuddin (died)
- 9 Syeda Shahanoor Begum w/o
Sardar Baig,
Age 57 yrs., Occ. Private Service in company,
R/o Mustafa Pasha House No.22-1-601,
Noorkhan Bazar, Hyderabad (A.P).
- 10 Asmatunissa Begum w/o Syed
Salhauddin (died).
- 11 Syed Rahimunissa Begum w/o Mohd.
Shafiuddin (died)

- 12 Shaed Badrunissa Begum
d/o Syed Salhauddin,
Age 53 yrs., Occ. Private Service in
Company, R/o Mustafa Pasha
House No.22-1-601, Noorkhan Bazar,
Hyderabad (A.P)
- 13 Sk. Naseer s/o Sk. Ibrahim,
Age 53 yrs., Occ. Business,
R/o Kohinoor Colony, Kotwalpura,
Aurangabad.
- 14 Smt. Khaja Parvin w/o Sk. Hussain,
Age 46 yrs., Occ. Household,
R/o Kohinoor colony, Kotwalpura,
Aurangabad.
- 15 M. Saleemuddin s/o Jan Mohammad,
Age 58 yrs., Occ. Business,
R/o Kohinoor Colony, Kotwalpura,
Aurangabad.
- 16 Bombay Mercantile Co-operative Bank
Ltd., Juna Bazar, Aurangabad,
Through its Manager.
- 17 Khurshida Begum w/o Nawab Syed
Sultanuddin (died).

... **Respondents.**

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Mr. S.S. Kazi, Advocate h/f Mr. PN. Kalani, Advocate for the appellants

Mrs. Shaikh Afreen Fatima, Advocate for the respondent No.1

Mrs. Shaikh Mobin H., Advocate for the respondent Nos.7 and 9

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CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 22th MARCH, 2019

PRONOUNCED ON : 30th APRIL, 2019

J U D G M E N T :

1 Present appeal has been filed by original defendant Nos.13 to 15. Present respondent Nos.1 to 4 are the original plaintiffs, who had filed suit i.e. Special Civil Suit No.249/1990 before 4th Joint Civil Judge Senior Division, Aurangabad for partition and separate possession of their 1/3rd share in two lands i.e. Sy.No.98 admeasuring 02 A 34 G and Sy.No.99 admeasuring 00 A 19 G situated at Kotwalpura, Aurangabad, for declaring plaintiff No.1 as Mutwali of a Masjid, for declaration that sale deed executed by one Sayyad Sultanuddin in favour of Kohinoor Housing Society is not binding on the plaintiffs, so also for declaration that the Will executed by Sultanuddin in favour of one Khurshida Begum is null, void and not binding on plaintiffs. Plaintiffs had contended that the two lands were grouped under CTS No.220/1-R and they have been shown as total area admeasuring 5893.4 sq.mtrs.. There is one mosque by name 'Masjid Gayashkan Nabina' in the said land and there are about 10 rooms constructed in the said premises. One Syed Gayasuddin was the common ancestor of plaintiffs and defendant

Nos.1 to 9. He had constructed the said mosque. After his death, the property has gone to his sole successor Syed Zainulabidin. Said Zainulabidin is now the common ancestor of plaintiffs and defendant Nos.1 to 9. He died on or before 1940. He was survived by three sons by name Syed Sultanuddin, who expired on 13.06.1989, Syed Salahuddin, who expired on 06.01.1984 and Syed Ehsanuddin, who expired on 16.07.1986. According to the plaintiffs, they are from the branch of Syed Ehsanuddin, who had $\frac{1}{3}^{\text{rd}}$ share in the property. Syed. Sultanuddin was their uncle and he was maintaining the mosque as Mutwalli. He was collecting the rent of the leased rooms and spending the amount towards the maintenance of mosque. One Mahemooda Begum was the first wife of Syed Sultanuddin. She had two sons and two daughters from him. They are defendant Nos.3 to 6. They were residing at Hyderabad, however, Sultanuddin was residing at Aurangabad with his second wife Khurshida Begum i.e. defendant No.1. It is stated that defendant No.1 was in a position to dominate Sultanuddin and taking disadvantage of this fact defendant No.1 got registered Will executed in her favour from Sultanuddin in respect of the suit property. It is stated that the Will has been got executed under pressure and duress. Further, he was not legally entitled to execute Will in respect of the entire property. He was the owner to the extent of $\frac{1}{3}^{\text{rd}}$ share in the suit property only. The

ancestral property was not partitioned between Sultanuddin and his two brothers. Sultanuddin was seriously ill a week before his death and he was not even taking food or water due to cancer. He ultimately expired on 13.06.1989. On the basis of said Will, defendant No.1 sold open plot admeasuring 41.9 mtrs. X 16.14 mtrs. to defendant Nos.10 to 12 without consent of plaintiffs and therefore, plaintiffs have sought declaration in respect of said transaction also. It is also stated that defendant Nos.13 to 15 are the sons of defendant No.1 from her first husband Syed Abdul Bari. They are not the sons of Syed Sultanuddin, therefore, defendant Nos.13 to 15 have no right, title or interest in the suit land. They have been arrayed as a party since they occupied the suit property. It is also stated that Syed Sultanuddin has unauthorizedly sold open plot to Kohinoor Housing Society for Rs.5,00,000/-. He had deposited the sale proceeds in Bombay Mercantile Co-operative Bank, Juna Bazaar, Aurangabad i.e. defendant No.16 and therefore, the plaintiffs are claiming $1/3^{\text{rd}}$ share in the said sale proceed also. Plaintiffs demanded their share to be separated, however, it was refused. Hence suit.

2 Defendant Nos.1, 13 to 15 have filed written statement. They denied that the suit properties are ancestral property of Syed Gayasuddin and then it had come to Syed Sultanuddin for want of knowledge. They have

also denied that the suit properties were jointly owned and possessed by plaintiffs and defendant Nos.1 to 9. Sultanuddin had executed legal Will in favour of defendant No.1, when he was in sound mental condition. She has become owner of the suit property after death of Sultanuddin. It is also denied that Sultanuddin had wife by name Mahemooda Begum and had children from Sultanuddin.

3 Defendant Nos.2, 4, 6, 7, 8 and 9 have filed written statement. They admitted the pedigree given in the plaint and they have also admitted the claim of the plaintiffs by stating that they have 1/3rd share in the suit property. They claimed declaration to that effect.

4 Defendant Nos.10, 11 and 12 are the purchasers from defendant No.1. It is stated that they have purchased the property for value under registered sale deed and since then they are in occupation. They have also obtained building permission to develop the suit properties.

5 The suit has proceeded ex parte against defendant Nos.3, 5 and without written statement against defendant No.16.

6 Taking into consideration the rival contentions, issues came to be

framed. Parties have led oral as well as documentary evidence on record. Taking into consideration the evidence, the learned Trial Court has partly decreed the suit on 17.01.2000. The decree is not granted to the extent of constructed portion of Masjid or Dargah, as it cannot be partitioned. Further, the prayer of appointing of plaintiff No.1 as Mutwalli was also rejected.

7 Original defendant Nos.13 to 15 challenged the said Judgment and Decree before District Court, Aurangabad. The said appeal bearing R.C.A. No.272/2012 was heard by learned District Judge-1, Aurangabad and the same was dismissed on 26.02.2018. Hence, this Second Appeal.

8 Heard learned Advocate Mr. S.S. Kazi holding for Advocate Mr. P.N. Kalani for appellants, learned Advocate Mrs. Shaikh Afreen Fatima for respondent No.1 and Mr. Shaikh Mobin H. for respondent Nos.7 and 9. Others are served.

9 It has been vehemently submitted on behalf of the appellants that both the Courts below have not considered a fact that there is no such concept as ancestral land in Mohammedan Law. On the day the ancestor expires; since a fixed share is prescribed in law, the parties would get that share. Here in this case, according to the plaintiffs, Zainulabidin expired in

1940 and therefore, it was expected that his sons Sultanuddin, Salhauddin and Ehsanuddin ought to have brought suit for partition immediately. Therefore, the suit for partition now brought by heirs of Ehsanuddin was hopelessly time barred. The property was in the enjoyment and possession of Sultanuddin and therefore, he had every right to dispose it of. He executed Will and bequeathed the suit properties to defendant No.1. Plaintiffs have no right to challenge the said Will. It was not at all necessary for the defendant No.1 or present appellants to prove the said Will. Plaintiff had not cared to file suit, even immediately after Ehsanuddin expired on 16.07.1986. On that ground also the suit is barred by limitation. The appellants had submitted written arguments before the learned First Appellate Court, however, those points for submission were not at all considered by the learned First Appellate Court. On that ground also a prayer has been made that the matter deserves to be remanded to the First Appellate Court for a fresh consideration. A specific issue was raised regarding suit valuation, but no specific issue was framed by the Trial Court. That fact was also not considered by the First Appellate Court in proper perspective. The copy of the memorandum of appeal before the First Appellate Court specifically point out that the ground was taken in respect of improper valuation. It is stated that the value of the property was around Rs. One Crore and when the

plaintiffs were demanding 1/3rd share the suit ought to have been valued around Rs. 33 lacs. Court fee to that effect was not paid and therefore, the plaint ought to have been rejected by the learned Trial Court. It was also not considered that the Kohinoor Housing Society was not made a party to the suit, to which Sultanuddin himself had sold portion of the suit land. Though there is a concurrent finding, still Second Appeal under Section 100 of CPC would lie and for this proposition he relied on the decision in **Hafazat Hussain s/o Mubarak Hussain vs. Abdul Majeed s/o Wali Mohd. Alias Sheikh Ballan and others, (2001) 7 SCC 189**, wherein it has been held that

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“Rule of non-interference in, held, is not an absolute rule of universal application. Therefore, in cases of mechanical refusal by second appellate Court to interfere matter may be relegated to such court to deal objectively with the claims of parties keeping in view of parameters of consideration for interference under Section 100 of CPC.”

It was observed that when the High Court found that Judgments of both the Courts were vitiated due to perversity of reasoning and due to surmises and misreading of materials on record, having (i) ignored evidence on record regarding original owner's other income; (ii) misdirected

themselves in the matter of legal principles governing a valid and complete gift; and (iii) wrongly cast burden on plaintiff-respondents as to proof of the manner and nature of acquisition of the disputed property. It was held that High Court rightly allowed plaintiff-respondents' second appeal.

10 Per contra, the learned Advocate for respondent No.1 in his written notes of argument submitted that both the Courts below have given concurrent findings. They have appreciated the evidence and legal points properly. Again the history has been given in the written notes of arguments and it is also stated that after the decree was passed by the Trial Court, Special Darkhast No.39/2013 was filed by the original plaintiffs for execution. In the said execution proceedings Court had appointed Court Commissioner for the partition of 1/3rd share. Even original defendant Nos.4 and 6 had filed application for execution of separation of their share. However, the said proceedings are still pending. Defendant Nos.13 to 15 are enjoying illegal possession. Original defendant Nos.13 to 15 had filed first appeal challenging the Judgment and Decree passed in Special Civil Suit No.249/1990 in this Court on 17.04.2000. The said appeal was pending for 10 years on stamp. The registration was thereafter refused on 19.03.2002. But thereafter it appears that it was restored and then first appeal was

numbered as Appeal No. 24 of 2010. It was transferred due to the enhancement of jurisdiction of the District Court and it was numbered as R.C.A. No.272/2012. It was tried to be contended that 17 years have already been passed and the plaintiffs are unable to enjoy the fruits of the decree. It is stated that the defendant Nos.13 to 15 are the children of defendant No.1 from first husband. It has been also submitted that in another appeal which was filed by defendant No.1, in condonation of delay application she has stated that her husband was suffering from cancer and he was not in a position to speak or eat for last 8 days. He was bed ridden for about 10 to 15 days and expired on 13.06.1989. The Will was stated to have been executed on 08.06.1989, therefore, on the basis of pleadings of defendant No.1 before another Court, it can be said that deceased Sultanuddin was not in a fit state of mind to execute the Will. Further, as per Section 117 and 118 of Mohammedan Law from Mulla's Principles of Mohammedan Law 18th Edition, it can be said that a bequest to an heir is not valid unless the other heirs also consent to the bequest after the death of the testator. Section 118 imposes restriction by saying that, a Mohammedan cannot by will dispose of more than 1/3rd of the surplus of his estate after payment of funeral expenses and debts. Bequests in excess of the legal 1/3rd share cannot take effect, unless the heirs consent thereto after the death of the testator. That means,

there is a restriction on bequeathing the share on a Mohammedan person. He or she cannot bequeath property more than $1/3^{\text{rd}}$ of his share. On that ground also the said Will is invalid. He also submitted that though strictly the concept of ancestral property is not in existence in Mohammedan Law, however, the property which has devolved from the common ancestor has been addressed in rural parlance as ancestral property. Ehsanuddin expired on 16.07.1986 and the suit was filed on 13.08.1990 for partition and separate possession and therefore, the suit is definitely within limitation. As regards valuation of the property is concerned, it has been submitted that there was no attempt by these appellants before the Trial Court to raise and get the property valued, so also, to lead any evidence in that respect, therefore, when there are concurrent findings by both the Courts below, no substantial question of law is arising in this matter.

11 At the outset the ratio laid down in **Hafazat Hussain's** case (supra) cannot be denied. Rule of non-interference in concurrent findings of Lower Courts cannot be an absolute rule of universal application, but then it is also required to be considered as to whether in the present case the Second Appellate Court i.e. the present Court has justifiable grounds to interfere with the concurrent findings. In other words, it is required to be seen as to

whether the present appellants have made out ground for formulation of substantial questions of law within parameters of consideration of interference under Section 100 of CPC.

12 The pedigree that has been given in para No.2 of the Judgment of the Trial Court is not disputed by defendant Nos.2 to 9, though it was disputed by defendant No.1, 13 to 15. If we peruse the cross-examination of plaintiffs' witness as well as the examination-in-chief of the witnesses examined on behalf of defendant Nos.1, 13 to 15, it can be seen that defence was taken by those defendants that deceased defendant No.1 Khurshida Begum (who died during the pendency of the suit) had no knowledge about Sultanuddin having first wife by name Mahemooda Begum and having children from her. Further, it can be seen from the record in the form of various documents produced by the plaintiff viz. Exh.125, 126 that the property was initially belonging to Syed Gayasoddin and thereafter it devolved on his three sons. This fact was admitted by Syed Sultanuddin also, in the proceedings which he had instituted i.e. R.C.S. No.157/1966. There was a proceeding taken up by Syed Sultanuddin in I.A. No.979 of 1965 before Additional District Judge, City Civil Court, Hyderabad and the record from that proceeding also showed that Sultanuddin could not succeed as he

had not arrayed Salhauddin and Ehsanuddin, the co-owners as well as successors. The admission in the form of deposition of Syed Sultanuddin in R.C.S. No.157/1966 is at Exh.121. All these pieces of evidence clearly show that the suit properties were inherited by Sultanuddin and his two brothers Salhauddin and Ehsanuddin from their father.

13 It has been tried to be contended that since Zainulabidin - father of Sultanuddin, Salhauddin and Ehsanuddin expired in 1940, those co-sharers or tenants-in-common ought to have filed the suit in 1940 onwards and the present suit is therefore time barred. Second contention is also stated that after death of Ehsanuddin on 16.07.1986 the plaintiffs ought to have filed the suit and on that ground also the suit is time barred. It will not be out of place to mention here that the suit was filed on 13.08.1990. Para 41 of Mulla's Principles of Mohammedan Law 22nd Edition, 2017 deals with devolution of inheritance. There is a separate para for limitation of suit by an heir for recovery of his share. It has been observed that as stated above, the heirs succeed to the estate as tenants-in-common in specific shares. When the heirs continue to hold the estate as tenants-in-common without dividing it and one of them subsequently brings a suit for recovery of his share, the period of limitation for the suit does not run against him from the date of the

death of the deceased, but from the date of express ouster or denial of title; in other words, it is Article 144 of Schedule I to the Limitation Act, 1908 that applies, and not Article 123. This has also been held in Bai Jivi vs. Bai Bibanboo, (1929) 31 Bombay Law Reporter, 199 : AIR 1929 Bom. 56. In Mohammedally Tyebally vs. Safibai, AIR 1940 Privy Council, 215 it has been held that a suit for administration of the estate of a Mohammedan is governed as regards immovable property by Article 144 and as regards movables by Article 120. Thus, one of the co-sharers can possess the property for others who are tenants-in-common and unless the others are expressly ousted by the co-sharer for possession it cannot be stated that the period of limitation to file a suit for partition would run. Here in this case, the defendant No.1, 13 to 15 have not averred as well as proved that since 1940 till the filing of the suit, Sultanuddin had ever tried to oust Salhauddin and Ehsanuddin or their heirs from the suit properties. The alleged Will is also executed on 08.06.1989 and Sultanuddin expired on 13.06.1989. Therefore, as regards defendant Nos.1, 13 to 15 also there was no question of them ousting the plaintiffs and defendant Nos.2 to 9 from the suit premises. As regards the sale of portion of the land by Sultanuddin in favour of Kohinoor Society, what the plaintiffs are claiming share is in the consideration. Under such circumstance, that society is not a necessary party

to the suit. Even if we consider that sale transaction, it will not amount to ouster for Salhauddin and Ehsanuddin or their heirs by Syed Sultanuddin. Therefore, there is no substance in the say by the appellants that the suit is barred by limitation. It will not be out of place to mention here that no specific contention was raised in the written statement by defendant Nos.1, 13 to 15. They have only stated that “even if it is presumed that somebody had any right in the suit property, it has become time barred as no one had claimed it in any Court in last more than 30 years period”. This does not clarify that they intended to contend ouster of the plaintiffs and defendant Nos.2 to 9. There was no attempt made by them before the learned Trial Court to have a specific issue framed in respect of whether the suit is time barred. No such attempt was also made before the First Appellate Court. Now, only at the Second Appeal stage this argument has been advanced. The issue of limitation is not always a pure question of law. In fact, in general parlance it is a mixed question of fact as well as law. Therefore, the fact will have to be pleaded then only the issue can be framed and it can be answered. Here, in the Second Appeal, within the parameters of Section 100 of CPC, we are required to consider what is the substantial question of law and definitely on the facts before this Court when the question of limitation was dependent on the pleadings, proof and the law. The pleading and proof are absent,

therefore, there is no question of formulation of substantial question of law on this point.

14 The second ground on which the defendant Nos.13 to 15 are harping upon is the Will that was executed by deceased Sultanuddin in favour of defendant No.1. As per the said Will dated 08.06.1089 which was just five days before the death of executant, defendant No. 1 had claimed exclusive ownership after Sultanuddin. The same has been challenged by plaintiffs on two grounds. One is that Sultanuddin had no authority to bequest more than $1/3^{\text{rd}}$ and secondly on the day of Will mental and physical condition of Sultanuddin was not proper and therefore, it cannot be said to be a valid Will. As regards first i.e. the authority of Sultanuddin to execute the Will, Para No.39 of Chapter V Succession and Administration of Mulla's Principles of Mohammedan Law, 22nd Edition it is stated that the estate of a deceased Mohammedan is to be applied successively in payment of (1) his funeral expenses and death-bed charges; (2) expenses of obtaining probate, letters of administration, or succession certificate; (3) wages due for service rendered to the deceased within three months next preceding his death by any labourer, artisan or domestic servant; (4) other debts of the deceased according to their respective priorities (if any); and (5) **legacies not**

exceeding one-third of what remains after all the above payments have been made. We must also read said provision No. 39 together with para No.40, which prescribes since a Mohammedan cannot dispose of by will more than one-third of what remains of his property after payment of his funeral expenses and debts, and since the remaining two-thirds must go to his heirs as on intestacy unless the heirs consent to the legacies exceeding the bequeathable third, the executor, when he has realized the estate, is a bare trustee for the heirs as to two-thirds, and an active trustee as to one-third for the purposes of the will; and of these trusts, one is created by the Act and the probate irrespective of the will, the other by the will established by the probate. Further, Para 117 in Chapter IX Wills, Bequests to heirs provides that the bequest in excess of one-third of an estate cannot take effect unless such bequest is consented to by the heirs after death of testator and further Para 118 in unequivocally puts limit on testamentary power. It provides, a Mohammedan 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. Therefore, the conjoint reading of these provisions would make it clear that Sultanuddin had no authority or right to bequest the entire property to anybody. He could have at the most bequeathed one-third

of the estate, but then it is required to be seen as to whether the said Will was proved by defendant Nos.1, 13 to 15 or not. Definitely they were the preponder of the Will and therefore, burden was on them to prove the same. The Will was produced at Exh.192. Here, it is also required to be considered that Sultanuddin had already sold property to Kohinoor Society. If it is calculated then that area comes to one-third. When he has already executed, his right to dispose of the one-third, there was no question of disposal of property by him to the extent of one-third again. However, since now the plaintiffs have not challenged that transaction and they are claiming only one-third share from the consideration amount the right of Sultanuddin to dispose of his one-third share by Will, will have to be considered, but in that respect who can challenge the Will is a question. The learned Trial Court has rightly held that plaintiffs were not entitled to challenge the execution of said Will on the ground of physical constraints, since they cannot be said to be the heirs of Sultanuddin. That could have been challenged by defendant Nos.2 to 9. In their written statement they have claimed declaration to that effect. Under the said circumstance, in the present case, it was for the defendants No. 1, 13 to 15 to prove that the said will was legal and validly executed. It is to be noted that what is not in dispute is that Sultanuddin was suffering from cancer. Medical certificate was produced by defendant No.1, wherein it

was stated that Sultanuddin died due to throat cancer. Further, DW 14 in his deposition admitted that Sultanuddin was not in a position to speak or eat for at least 8 days and he was bed ridden for about 10-15 days. If the calculation is made then definitely on the date of alleged execution of Will he was not in a position to speak. Then the question arises, who had narrated the contents of the Will. Therefore, validity of the Will was not proved or the suspicious circumstances surrounding the Will were not cleared by defendant Nos.1, 13 to 15. Under such circumstance, the shares allotted by the learned Trial Court are correct. Defendant Nos.13 to 15 are the sons of defendant No.1 from defendant No.1's first husband. They cannot be termed as "family members" of the family of plaintiff and defendant Nos.2 to 9. They are not entitled to get any share in the property.

15 One more point that has been tried to be canvassed regarding valuation of the suit. That point is rather much dependent on the facts, a specific issue was not framed by learned Trial Court, but there was an attempt to get the issue framed. Though in the appeal memo it has been contended that the suit was not properly valued, but then evidence has not been led as to what could have been the appropriate valuation. The testimony of witness examined on behalf of defendant Nos.13 to 15 is silent

on this point. Mere contention will not be sufficient but evidence in that respect ought to have been led. Therefore, taking into consideration all these aspects it cannot be stated that any case is made out for framing substantial question of law as contemplated under Section 100 of CPC. There is concurrent findings by both the Courts below, which has been arrived at by appropriate appreciation of evidence as well as law. Hence, the Second Appeal is disposed of as “**not admitted**”. Pending Civil Application stands disposed of.

(Smt. Vibha Kankanwadi, J.)

ORDER

1 Learned Advocate appearing for the appellants seeks stay to the order for six weeks. It is to be noted that both the Courts below have given concurrent findings, so also this Court has arrived at the conclusion that there are no substantial questions of law as contemplated under Section 100 of CPC. Under such circumstance, prayer is rejected.

(Smt. Vibha Kankanwadi, J.)