

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL APPLICATION (CAS) NO. 884 OF 2019
IN SECOND APPEAL NO. 461 OF 2005

(Mohd. Illiyas Ahmed Khan Mohd. Suleman Khan & Ors. vs. Kalandar Khan Anwar Khan
(since deceased) Mukib Manwar Ali Khan Kalandar Khan & Ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri S.S. Sarda, Advocate h/f Shri R.M. Bhangde,
Advocate for the appellants.

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CORAM : PUSHPA V. GANEDIWALA, J.
NOVEMBER 04, 2019.

Heard Shri S.S. Sarda, Advocate h/f Shri
R.M. Bhangde, learned counsel for the appellants.
None for the respondent Nos. 2 to 5, though served.

Perused the memo of appeal and the
impugned judgment of the first appellate court. This
Court while admitting the Second Appeal vide order
dated 09.04.2007 has framed the following two
questions being substantial questions of law :

“(1) Whether the appellate Court was justified
in reversing the finding of the trial Court to the effect
that the estoppel would apply only against the

appellant no. 1, without considering the fact that the appellant nos. 2 and 3 had not attested the sale deed Exh. 34 dated 6/12/1980?

(2) Whether the provisions of Section 60 of the Easements Act could be applied to the facts of the case in the absence of any pleadings?”

By this application, the appellants sought six more proposed questions to be considered in the Second Appeal being further substantial questions of law. A perusal of impugned judgment would reflect that the first appellate Court mainly relied on the signature of defendant No. 5 as an attesting witness to the sale deed in favour of Jamila Begum, presuming that the attesting witness supposes to know the contents of the documents while he signs the documents as an attesting witness. In this view of the matter, the proposed question No. 1 - whether appellant No. 1 is to be estopped from challenging the said sale deed having attested by appellant No. 1, needs to be framed. The other proposed question Nos. 2, 5 & 6 being connected to first proposed question also needs to be framed. As regards proposed question Nos. 3 & 4, in view of the discussions in the impugned judgment in para Nos. 26 & 30 respectively, for deciding Second Appeal, these questions also need consideration.

In view of the above, present civil application is allowed and the following additional substantial questions of law are framed to be considered while deciding the Second Appeal finally:

“(i) Whether the lower appellate court is justified in holding that appellant no. 1 – Mohd. Ilyasis estopped from challenging the sale deed (Exh. 34) having attested the sale deed dated 06.10.1980 (Exh. 34) executed by respondent No. 5 – Mohd. Mushtaque in favour of Jamila Begum?

(ii) Whether the learned Lower Appellate Court erred in holding that burden of proving the fact that the attesting witness Mohd. Ilyas was not aware of the contents of the sale deed is upon Mohd. Illiyas himself?

(iii) Whether the learned lower appellate court was justified in holding that the irrevocable license created in favour of respondent No. 5 is transferable?

(iv) Whether the Lower Appellate Court was justified in construing the decree passed by the lower court as a decree of partition and then holding that since plaintiffs no. 2 and 3 had not prayed for the partition of the property, the lower court could not

have passed a decree of partition in the garb of part decree for handing over possession?

(v) *Whether the learned lower appellate court was justified in applying the principle applicable to an executant of a deed, that if a person signs any document it must be presumed that he signed it on knowing the contents, to attesting witness appellant No. 1?*

(vi) *Whether the lower appellate court was justified in holding that an attesting witness signs a document not only to identify the person but for the execution of the deed knowing the contents of the deed?"*

JUDGE

*GS.