

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Second Appeal No82. of 2021

Mohammad Shabbir S/o Sheikhji (Died) through its legal heirs
Smt. Kamrunnisa Wd/o Mohd. Shabbir and others

Versus

Smt. Meharoonissa W/o Sayyad Majid Shaikh

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Amit Balpande, Advocate h/f Shri S. Raisuddin, Advocate for the
Appellants/Original Defendants

Shri D.T. Shinde, Advocate for the Respondent/Original Plaintiff

CORAM : ANIL S. KILOR, J.

DATED : 28th OCTOBER, 2021

The original defendants in Regular Civil Suit No.71/2012, for partition, separate possession and permanent injunction filed by the respondent/original plaintiff, has approached to this Court by way of present appeal, challenging the judgment and decree dated 15/06/2020 passed by the District Judge-3, Wardha, in Regular Civil Appeal No.183/2014, partly allowing the appeal and reversing the judgment and decree passed by the 2nd Jt. Civil Judge Junior Division, Arvi in Regular Civil Suit No.71/2012, dated 01/08/2014.

2. The brief facts of the present case are as follows. (parties are referred as per their status before the trial Court)

3. The respondent/original plaintiff filed the suit claiming that she is the daughter of Sheikhji Shaikhbana begotten from his second wife Bhaganbee, whereas all the defendants are heirs of Sheikhji begotten from his remaining three wives. It is the case of the plaintiff that Sheikhji died in the year 1980, leaving behind him an agricultural field bearing Survey No.22, admeasuring about 4.80 H.R., situated at Goiwada and one house at Zadipura, Arvi. According to the plaintiff the suit field and suit house are the ancestral properties of her father Sheikhji and accordingly, she being his daughter has equal legal share in the same along with the defendants.

4. It is further the case of the plaintiff that after the death of Sheikhji, the defendants recorded their names in the Record of Rights relating to suit property and the same were challenged before the Sub Divisional Officer, Arvi and on 06/03/1999, wherein she succeeded. However, subsequently the defendants again on 20/12/2003 illegally managed to erase the name of the plaintiff from the Record of Rights of the suit field. The said illegality was challenged before the Collector, Wardha. In the said back drop, she filed a suit which was dismissed by the trial Court after considering the oral as well as documentary evidence as the learned trial Court did not find documentary evidence produced by the plaintiff, sufficient to hold that Sheikhji was the father of the plaintiff.

5. Feeling aggrieved by the judgment and decree passed by the 2nd Joint Civil Judge Junior Division, Arvi, in Regular Civil Suit No.71/2012, dated 01/08/2014, the plaintiff preferred an appeal before the District Judge-3, Wardha vide Regular Civil Appeal No.183/2014, which came to be partly allowed vide judgment and decree dated 15/06/2020 and which was the subject matter of challenge in the Second Appeal (St) No.17901/2016 wherein by order dated 01/03/2017, on a concession given by the respondent therein, the matter was remanded for a decision afresh in accordance with law. The appellants were permitted to carry out the necessary amendment in the appeal memo. Accordingly, after remand, additional evidence was led by the plaintiff in support of her case that Sheikhji is her father.

6. The learned Appellate Court, after considering the oral as well as documentary evidence, including the additional evidence led by the plaintiff held that the plaintiff is a daughter born from Sheikhji and Bhaganbee vide judgment and decree dated 15/06/2020, which is impugned in the present appeal.

7. I have heard the learned counsel for the respective parties.

8. This Court on 29/06/2021 has framed following substantial question of law :

“Whether the school leaving certificate can be considered as best evidence of paternity?”

9. The learned counsel for the appellants submits that as per the text of the Chapter XVII of Mohmeden law, Para-339 provides that the paternity of a child can only be established by marriage between its parents. The marriage may be valid or irregular but it must not be void. Marriage may be established by direct proof. If there is no direct proof, it may be established by indirect proof. It is submitted that the plaintiff has failed to produce any direct proof or indirect proof to establish marriage between her parents and therefore, the impugned judgment and decree is illegal and bad in law. He has placed reliance upon the judgment in the case of *C. G. Amanulla Khan and others Vs. Anwar Khan*¹.

10. He further submits that the documents which are produced at the time of leading additional evidence, those documents do not fulfill the conditions of Para-339 of the Mohomedan Law and therefore, those documents also cannot be considered as indirect evidence of marriage between the parents of the plaintiff.

11. He submits that in a School Leaving Certificate, though in a column of name of father, name Sheikh Ji was recorded, however, no evidence has been produced by the plaintiff to show that the person whose name was recorded as father of the plaintiff is the same

1 AIR 2004 KARNATAKA 22

who is the father of the defendants and therefore, the plaintiff has no right in the ancestral properties of the defendants.

12. The learned counsel for the appellants has pointed out certain discrepancies in the year of death of mother of the plaintiff by pointing out from the plaint that the year of death of mother of the plaintiff was mentioned as 1970, whereas, the death certificate produced at the time of leading additional evidence shows the year of the death of the mother of the plaintiff as 1944. He further points out certain discrepancies in the Nikahnama of the plaintiff and other documents produced by the plaintiff and prays for setting aside the impugned judgment and decree.

13. On the other hand, the learned counsel for the respondent/plaintiff supports the judgment and decree passed by the learned lower Appellate Court and submits that the learned lower Appellate Court has rightly relied upon the documents produced by the plaintiff, showing name of her father as Sheikhji.

14. It is further pointed out that the Collector in a Revenue Proceedings between the plaintiff and the defendants passed an order on 04/06/2015, under Section 247 of the Maharashtra Land Revenue Code, 1966, wherein the Collector has specifically recorded that Sheikh Shabbir who is the original defendant No.1, in the Appeal Memo before the Sub Divisional Officer, has admitted the relations between the plaintiff Meharoonissa as his step-sister. Thus, he submits that the impugned order is just and proper and needs no

interference. By arguing so, he prays for dismissal of the appeal, as according to him, there is no merit in the present appeal.

15. To consider the rival contentions of the parties, I have perused the record and gone through the judgment and decree of both the Courts-below.

16. There is no dispute about the law laid down in the case of *C. G. Amanulla* (supra). In fact, according to the law laid down in this case and Para-339 of the Mohomedan law, the requirement of law is that if there is no direct evidence available as regards the marriage of the parents while proving paternity, indirect evidence is permissible.

17. In the present matter, at the time of leading additional evidence the plaintiff had produced entry recorded in the Register of Jama Masjid, recording the Nikah of the plaintiff in the year 1965. The plaintiff has also filed marriage certificate issued by Jama Masjid and death certificate of her mother of the year of 1944. In all these documents, the name of father of the plaintiff was shown as Sheikhji.

18. Similarly, in the School Leaving Certificate, the name of father of the plaintiff was recorded as Sheikh Ji in the year 1950.

19. Thus, all these documents though cannot be considered as direct evidence of marriage of the plaintiff's parents but these can be considered as indirect evidence.

20. It is pertinent to note that the most important document is the order of the Collector dated 04/06/2015, which shows that Sheikh Shabbir, original defendant No.1 in his Appeal Memo before the Sub Divisional Officer has categorically mentioned that Meharoonissa, plaintiff is his step-sister. The said admission was recorded by the Collector in his order. It is to be noted that the said order was never challenged by the defendants or even the said finding was never disputed by the defendants. Even on a specific query put to learned counsel for the appellants that whether he is disputing the fact that in the Appeal Memo filed by Shabbir Sheikh, he has stated that Meharoonissa is his step-sister, he replied that he has no instructions about the same.

21. The learned lower Appellate Court has relied upon this order of the Collector, dated 04/06/2015 (Exh.17). As such, the Appellants were having knowledge of this fact when they contested the Appeal before the lower Appellate Court. However, the findings recorded by the Collector has not been disputed by the Appellants, before the lower Appellate Court or before this Court.

22. In that view of the matter, the admission of Sheikh Shabbir that Meharoonissa-plaintiff is his step-sister, in the Appeal Memo before the Sub Divisional Officer in Revenue Proceedings is sufficient to treat the same with other documentary evidence as indirect evidence about the marriage of the parents of the plaintiff. Moreover, the above referred admission removes the doubt whether

the father of plaintiff, Shaikh Ji is a same person who is a father of defendants.

23. In the instant matter, I have already observed that sufficient indirect evidence by way of order of the Collector and admission given by Sheikh Shabbir in the Appeal Memo has been produced by the plaintiff and therefore, the judgment cited by the learned counsel for the appellants in case of C. G. Amanulla (*Supra*) in fact supports the case of plaintiff.

24. In the circumstances, I do not find merit in the present appeal. The Appeal is accordingly **dismissed**. No order as to costs.

[ANIL S. KILOR, J.]