

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

915 SECOND APPEAL NO.619 OF 2021
WITH CA/13774/2021 IN SA/619/2021

SALAMTULLAH FARJAD ALI DECEASED THROUGH LRS.
AKHTARUNISA SALAMTULLA KIDWAI AND ORS.
VERSUS
SULTANA FARJAD ALI AND OTHERS

...
Advocate for Appellants : Mr. N.K. Kakade h/f. Mr. A.N. Kakade
AGP for Respondents : Mr. B.V. Virdhe
...

CORAM : MANGESH S. PATIL, J.

DATE : 11 JANUARY 2022

ORAL ORDER :

This is a second appeal filed by the legal representatives of original defendant no. 3 against the concurrent findings of the two courts below holding that the suit property was given by a common ancestor Farjad Ali to the mother of the respondents/plaintiffs as a Mehr and the original defendant no. 3 being her step son was not entitled to lay any claim to the property.

2. The learned Advocate Mr. Kakade would submit that both the courts below have not considered the fact that an opportunity of leading evidence ought to have been extended to the appellants. Only a certified copy of deposition of original defendant no. 3 - Salamtullah was allowed to be admitted and it was read in evidence. It would have been appropriate for the appellate court to have considered this aspect and should have remanded the matter, giving an opportunity to the appellants to lead the evidence. He submits that it has resulted in

failure of justice. A substantial question of law commensurate with the stand of the appellants regarding there being oral partition was not considered and allowed to be established.

3. I have carefully considered the judgments of both the courts.

4. As is mentioned earlier cursorily, the contesting respondents filed a suit with a specific stand that the suit property was owned by their father - Farjad Ali. It was given by him to their mother as a Mehr. There is no dispute, rather the facts stand admitted that the predecessor of the appellants - the original defendant no. 3 was the step son of the mother of the original plaintiffs - respondents. In the process, the trial court as also the first appellate court have considered the survey record of the year 1957, wherein, a statement of the original owner as also the mother of the respondents - plaintiffs was recorded before recording her name to the suit property evidencing such fact of the property having been given as a Mehr. Such long standing record certainly carries a heavy evidentiary value and has been rightly referred to and relied upon by both the courts below while concluding the source of the title of respondents - plaintiffs' mother to the suit property.

5. Bearing in mind the fact that the parties are Mohammedan, governed by Hanafi law, it would be a separate property of the mother of the respondents - plaintiffs and the original defendant no.3 i.e. the predecessor of the appellants being her step son, could not have laid

any claim. All these facts, circumstances and evidence has been rightly appreciated by the two courts below while drawing a plausible conclusion on facts.

6. This being an appeal under section 100 of the Code of Civil Procedure, there is very little room to cause any interference when such findings are clearly based on the available evidence.

7. Apart from the above state-of-affairs, though the two courts below have permitted the original defendant no. 3 to produce a certified copy of his testimony recorded in some other proceeding and has read it in evidence, without there being any opportunity to the respondent - plaintiff to cross-examine him, still, in the net result, that error though substantial, would not enure to the benefit of the appellants.

8. No substantial question of law arises in this second appeal. It is dismissed in limine.

9. Civil Application no. 13774 of 2021 is disposed of.

[MANGESH S. PATIL]
JUDGE

arp/