

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR**

**BEFORE**

**HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL**

**ON THE 16<sup>th</sup> OF JUNE, 2025**

**SECOND APPEAL No.1118 of 1999**

***INAYAT MOHD. (DEAD) THROUGH LRS FAIYAD KHAN AND  
OTHERS***

*Versus*

***LAL MOHD. AND OTHERS***

.....  
**Appearance:**

***Shri Utkarsh Kumar Sonkar, Advocate for appellants.***

***None for the respondents.***

.....  
**ORDER**

This second appeal has been preferred by the plaintiff/appellant Inayat Mohd. (now dead, through LRs) challenging the judgment and decree dtd. 06.07.1999 passed by 2<sup>nd</sup> Additional District Judge, Sehore in Civil Appeal No.1-A/99 reversing/modifying the judgment and decree dtd. 05.09.1994 passed by 4<sup>th</sup> Civil Judge Class-II, Sehore in Civil Suit No.18A/1993 whereby trial Court dismissed plaintiff's suit for declaration of title and permanent injunction filed in respect of the lands shown in Schedule A & B annexed to the plaint, which has been partly decreed by first appellate Court only in respect of Schedule 'A'.

2. In short the facts are that 16 acres land, which is shown in Schedule 'A', was owned and possessed by plaintiff's father Abdul Gani (died in the year 1982), who had two wives namely Moti Bi and Basiran Bi. The plaintiff-Inayat Mohd. was born out of wedlock of Abdul Gani and Moti Bi and defendant 2-Sardar Mohd. was born out of wedlock of Abdul Gani and Basiran Bi (who died in the year 1979). The defendant 1-Lal Mohd is son of defendant 2-Sardar Mohd. Undisputedly, the land 14 acres (5.375 hectare) shown in Schedule 'B' was received by Basiran Bi from his previous husband Nawaj Ali, as such she was exclusive owner of it and after her death, the land was mutated in the name of her son Sardar Mohd. (defendant 2). It is also a fact on record that Abdul Gani before his death executed a registered Will on 18.05.1982 (Ex.D/1) in favour of defendant 1-Lal Mohd. son of Sardar Mohd in respect of 8 acres land, which is shown in Schedule 'A' and on that basis name of defendant 1-Lal Mohd. was mutated in the revenue record. The plaintiff also took a plea that there was a family arrangement, according to which 16 acres land shown in Schedule 'A' fell in the share of plaintiff and 14 acres land, which was received by defendant 2 from Basiran Bi, came in his share.

3. After holding trial, trial Court dismissed the suit in its entirety and recorded finding that the family arrangement allegedly took place is not proved on record and found that the Will dtd. 18.05.1982 (Ex.D/1) is a

proven document, according to which the defendant 1 received 8 acres land as shown in Schedule 'A'. Trial Court also held that as per Muslim Law Abdul Gani would receive  $\frac{1}{4}$ <sup>th</sup> share in the land left by Basiran Bi, but denied the relief on the ground of limitation and that the defendants were in possession over the land. Upon filing appeal by the plaintiff, first appellate Court affirmed the finding in respect of family arrangement and held that the Will allegedly executed by Abdul Gani in favour of defendant 1-Lal Mohd. on 18.05.1982, is not a proven document. At the same time, it was also held that plaintiff and defendant 2-Sardar Mohd. are sons of Abdul Gani, therefore, defendant 2-Sardar Mohd. would get  $\frac{1}{2}$  share in the property left by Abdul Gani i.e. 8 acres out of 16 acres and resultantly partly allowed the appeal and decreed the suit in respect of 8 acres land left by Abdul Gani as shown in Schedule 'A'.

4. Learned counsel for the appellants submits that from the oral evidence adduced by the plaintiff, the family arrangement is clearly proved, as such the plaintiff is entitled for decree in respect of entire 16 acres left by Abdul Gani. He submits that even after recording negative finding in respect of Will dtd. 18.05.1982 there was no reason to grant decree in favour of defendant 2-Sardar Mohd. in respect of 8 acres, which was not claimed by him by filing any counter claim or otherwise. He further submits that although after death of Basiran Bi in the year 1979,

1/4<sup>th</sup> share was not claimed by Abdul Gani till his death in the year 1982, but by operation of law, 1/4<sup>th</sup> share of Basiran Bai would go to Abdul Gani and then to the plaintiff-Inayat Mohd. and as such the plaintiff would be entitled for decree in respect of 1/4<sup>th</sup> share in the property left by Basiran Bi through Abdul Gani and Court below has committed illegality in holding the suit to be barred by limitation. He also submits that in absence of any finding of limitation by first appellate Court, the plaintiff is entitled for decree at least in respect of 1/4<sup>th</sup> share in the property left by Basiran Bi. With these submissions, he prays for admission of the second appeal.

5. Heard learned counsel for the appellants and perused the record.

6. Undisputedly the land 16 acres shown in Schedule 'A' was held by Abdul Gani and the plaintiff-Inayat Mohd. and defendant 2-Sardar Mohd. being sons of Abdul Gani, first appellate Court held both of them to be entitled for 1/2 share in absence of any oral family arrangement. Upon due consideration of the material available on record, this Court does not find any illegality in the findings recorded by Courts below regarding oral family arrangement, as such in absence of family arrangement, this Court does not find any illegality in the declaration of shares of plaintiff and defendant 2-Sardar Mohd. in the property left by Abdul Gani.

7. So far as the argument in respect of 1/4<sup>th</sup> share claimed by plaintiff in the property left by Basiran Bi is concerned, undisputedly, Basiran Bi died in the year 1979 i.e. prior to Abdul Gani, who died in the year 1982 and after death of Basiran Bi, name of her son Sardar Mohd. was mutated in the revenue record and till his death in the year 1982, Abdul Gani did not claim any share in the property left by Basiran Bi and even the plaintiff also did not claim any share originally in the said property by filing the suit in the year 1991.

8. Perusal of plaint shows that the relief in respect of 1/4<sup>th</sup> share in the property left by Basiran Bi, has been claimed by way of filing amendment application. As such, the claim of 1/4<sup>th</sup> share in respect of property left by Basiran Bi clearly appears to be barred by limitation, as was rightly held by trial Court.

9. It is pertinent to mention here that in respect of finding recorded by first appellate Court regarding execution of Will dtd. 18.05.1982 (Ex.D/1), another Second Appeal No. 1101/1999 was filed by defendants 1-2, which has already been dismissed on 05.08.2014 for want of prosecution and till now no application for restoration of second appeal has been filed.

10. In view of aforesaid discussion, this Court does not find any illegality in the impugned judgment and decree.

11. Resultantly, in absence of any substantial question of law, this second appeal fails and is hereby **dismissed**.
12. Miscellaneous application(s), pending if any, shall stand closed.

**(DWARKA DHISH BANSAL)**  
**JUDGE**

KPS