

ITEM NO.17

COURT NO.12

SECTION IV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 2497-2498/2024

TARSEM

Appellant(s)

VERSUS

DHARMA . & ORS.

Respondent(s)

([FOR DIRECTIONS])

Date : 16-05-2024 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE C.T. RAVIKUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

For Appellant(s) Ms. Kheyali Singh, AOR
Mr. R K Kapoor, Adv.
Mr. Rajat Kapoor, Adv.
Ms. Krishna Joshi, Adv.

For Respondent(s) Mr. Manish Kumar Srivastava, Adv.
Mr. Hardik Vashisht, Adv.
Mr. Birendra Kumar Mishra, AOR
Mr. Moksh Arora, Adv.
Ms. Poonam Atey, Adv.
Mr. Santosh Ramdurg, Adv.
Mr. Yash Srivastava, Adv.
Mr. Akshit Gadhok, Adv.
Mr. Sirajuddin, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1. The arguments in the aforesaid appeals were heard and the judgment was reserved. Issue raised is pertaining to execution of the Will by late Hazi. The parties are governed by Mohammedan Law, which is not codified.

2. The suit was filed by respondent no. 1 and 2 claiming that late Hazi had executed a Will in favour of three of his sons namely Dharma, Gulzar and Karam Chand leaving the fourth son namely Tarsem. The Trial Court had decreed the suit. The First Appellant Court modified the judgment and decree of the Trial Court and directed that late Hazi could execute Will only to the extent of

1/3rd of his estate and the same was upheld to that extent. For the remaining 2/3rd estate all the legal heirs were to share the estate equally.

3. In further appeal to the High Court, the genuineness of the Will was upheld. The judgment and decree of the First Appellate Court was set aside and that of the Trial Court was restored.

4. During the course of argument various judgments of different High Courts were cited in terms of which a Mohammedan is not entitled to discriminate in bequeathing his estate amongst his legal heirs unless they consent for the same. Meaning thereby all legal heirs are to share the estate equally. On the other side, the testator is entitled to bequeath 1/3rd of his estate in favour of third party and the balance 2/3rd will go to the legal heirs in equal shares. This bar of 1/3rd will not be applicable in case the legal heirs consent for the same.

5. In one of the judgments of the Karnataka High Court in *Narunnisa v. Shek Abdul Hamid*¹ reference has been made to an earlier judgment holding that if a Mohammedan is survived by a son and a daughter and the daughter does not consent to the deposition by the testator of giving 3/4th of the property to the son and 1/4th to the daughter, she will be entitled to claim 1/3rd of the property as her share of inheritance and not 50%.

6. While going to the root of the issue, we came across "The Hedaya - Commentary on the Islamic Laws" translated by Charles Hamilton², "Mohammedan Law by Syed Ameer Ali" containing the law relating to 'Gifts, Wakfs, Wills, Pre-emption and Bailment'³, "Principles of Mohammedan Law by Mulla"⁴ and others.

7. The times have changed ever since the aforesaid views were expressed by the High Courts specially in view of the judgments of this Court in *Prakash and others v. Phulavati and others*⁵ and *Shayara Bano v. Union of India and others*⁶.

8. In our view the matter requires a deeper consideration on

1 AIR 1987 KANT 222

2 2nd Edition, 1870 (last reprinted in 1994)

3 4th Edition, 1985 (First published in 1912)

4 22nd Edition, 2019

5 (2016) 2 SCC 36

6 (2017) 9 SCC 1

the following issues:

i. Whether Muslim women have right to claim equality in succession in view of the mandate of Constitution of India under Articles 14 and 15 thereof in the light of Article 44.

ii. Whether a testator, who is governed by Mohammedan Law, is entitled to execute a Will of his entire estate left, according to his wish?

iii. Whether a testator, who is governed by Mohammedan Law, can execute a Will to the extent of 1/3rd of the estate left by him in favour of any or more of his legal heirs without the consent of other legal heirs?

9. Upon request, Mr. V. Giri, learned Senior Counsel has graciously accepted to assist in this matter as Amicus Curiae. Mr. Amit Krishnan, AOR (Mob. 9910062380) shall assist the learned Amicus Curiae in the matter. We also request the learned Attorney General for India to assist this Court in this matter as the issues have large ramifications and there is no direct judgment on the issue by this Court.

10. We may clarify that the issues noticed above may be reframed after hearing the learned Amicus Curiae and the learned Attorney General for India.

11. Learned counsel for the appellant submits that there is some typographical error in pages no.67 to 71 of the Civil Appeal paper book and sought permission to correct them. Permission sought for is granted.

12. The Registry is directed to supply the complete set of paper book of these appeals to Mr. Amit Krishnan, AOR, assisting the learned Amicus Curiae and the Office of the learned Attorney General for India along with a copy of this order, after incorporating the corrections in the paper book, as sought for by the appellant.

13. List on 25.07.2024.

(DR. NAVEEN RAWAL)
DY. REGISTRAR

(MATHEW ABRAHAM)
COURT MASTER (NSH)