R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF APRIL, 2025

BEFORE

THE HON'BLE MR JUSTICE HANCHATE SANJEEVKUMAR

REGULAR FIRST APPEAL NO.935 OF 2020 (PAR)
C/W
RFA CROSS OBJECTION NO.33 OF 2023

IN RFA NO.935 OF 2020:

BETWEEN:

1 . SRI. SAMIULLA KHAN
AGED ABOUT 73 YEARS,

2. SRI. NOORULLA KHAN
AGED ABOUT 67 YEARS,

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Location: HIGH COURT OF KARNATAKA

2a. SYED UNNISA
AGED ABOUT 54 YEARS

2b. NAWAZ KHAN
AGED ABOUT 40 YEARS,

2c. AYESHA BEGUM
AGED ABOUT 39 YEARS,

2d. RAQEEB ULLA KHAN
AGED ABOUT 37 YEARS,

3. SMT. RAHATH JAN
AGED ABOUT 58 YEARS,

...APPELLANTS

(BY SRI. IRSHAD AHMED, K FOR A1, A3 & LRS OF DECEASED A2 (A-C))

AND:

SRI. SIRAJUDDIN MACCI
AGED ABOUT 73 YEARS,
HUSBAND OF SMT. SHAHNAZ BEGUM (DECEASED)
D/O LATE ABDUL BASHEER KHAN

……RESPONDENT

(BY SRI: MOHAMED SAYEED, ADVOCATE)

THIS RFA IS FILED UNDER SEC.96 OF ORDER XLI RULE 1 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 12.11.2019 PASSED IN OS NO.25162/2019 ON THE FILE OF THE LXXII ADDL. CITY CIVIL AND SESSIONS JUDGE AT MAYO

HALL BENGALURU (CCH-73) PARTLY DECREEING THE SUIT FOR PARTITION.

IN RFA.CROB NO.33 OF 2023:

BETWEEN:

SRI. SIRAJUDDIN MACCI
AGED ABOUT 73 YEARS,
HUSBAND OF SMT. SHAHNAZ BEGUM (DECEASED)
D/O LATE ABDUL BASHEER KHAN

...CROSS OBJECTOR

(BY SRI. MOHAMED SAYEED, ADVOCATE)

AND:

1. SRI. SAMIULLA KHAN
   AGED ABOUT 73 YEARS,
   S/O LATE ABDUL BASHEER KHAN

2. SRI. NOORULLA KHAN
   AGED ABOUT 67 YEARS,
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2a. SMT. SYED UNNISA
   AGED ABOUT 54 YEARS

2b. SRI. NAWAZ KHAN
AGED ABOUT 40 YEARS,

2c. SMT. AYESHA BEGUM
AGED ABOUT 39 YEARS,

2d. SRI. RAQEEB ULLA KHAN
AGED ABOUT 37 YEARS,

3. SMT. RAHATH JAN
AGED ABOUT 58 YEARS,

……RESPONDENTS

(BY SRI. IRSHAD AHMED, K FOR A1, A3 & LRS OF DECEASED A2 (A-C))

THIS RFA CROB IN RFA NO.935/2020 IS FILED UNDER ORDER 41 RULE 22 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 12.11.2019 PASSED IN OS NO.25162/2019 ON THE FILE OF LXXII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE, PARTLY DECREEING THE SUIT FOR PARTITION.

THIS APPEAL AND RFA CROB HAVING BEEN HEARD AND RESERVED FOR JUDGMENT AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, THE COURT DELIVERED THE FOLLOWING:

CORAM: THE HON'BLE MR JUSTICE HANCHATE SANJEEVKUMAR

CAV JUDGMENT

RFA No.935/2020 is filed by the appellants/plaintiffs challenging the judgment and decree dated 12.11.2019 passed in O.S.No.25162/2019 on the file of LXXII Additional City Civil and Sessions Judge at Mayo Hall, Bengaluru (hereinafter referred as 'the Trial Court'), so far as lesser share granted in the suit schedule 'B' properties.

2. RFA Crob.No.33/2023 is filed by the cross objector/defendant challenging the judgment and decree dated 12.11.2019 passed in O.S.No.25162/2019 on the file of LXXII Additional City Civil and Sessions Judge at Mayo Hall, Bengaluru, thereby, challenging granting share of property in favour of appellants/plaintiffs and contended that the appellants/plaintiffs are not entitled any share in the suit schedule 'A' and 'B' properties. Therefore, against decreeing the suit the cross objector/defendant has preferred the above cross objection.

3. For the sake of convenience and easy reference, the parties are referred to as per their rankings before the Trial Court.

4. The appellants/plaintiffs have filed suit for partition in the property left by their sister Smt. Shahnaz Begum by metes and bounds. It is the case of the appellants/plaintiffs that plaintiff Nos.1 and 2 are brothers and plaintiff No.3 is sister and defendant is husband of Shahnaz Begum. It is the case of the appellants/plaintiffs that the suit schedule properties belonging to one Smt. Shahnaz Begum (wife of defendant) as she has purchased the suit schedule 'A' property by virtue of registered sale deed dated 03.12.1987 and suit schedule 'B' properties through registered sale deed dated 09.02.2010. The said Shahnaz Begum died on 06.01.2014 leaving behind her husband/defendant, brothers/plaintiff Nos.1 and 2 and sister/plaintiff No.3 to succeed her estate. After death of Shahnaz Begum, the appellants/plaintiffs got issued legal notice calling upon the defendant to make partition and to

allot 50% of share in her estate left by Shahnaz Begum, but the cross objector/defendant denied the same. Therefore, the appellants/plaintiffs have filed suit for partition and separate possession by metes and bounds.

5. The cross objector/defendant has appeared through his counsel and filed written statement and denied all the averments made in the plaint. The cross objector/defendant has admitted the relationship of the appellants/plaintiffs with deceased Shahnaz Begum also with him. Further, admitted that the suit schedule properties were standing in the name of his wife (Shahnaz Begum) till her lifetime and contended that the said properties are purchased by him in the name of Shahnaz Begum out of his love and affection. Further contended that the suit schedule properties have not come to his wife from her parental side therefore, the appellants/plaintiffs are not entitled to have share in the said properties. The cross objector/defendant has constructed the building over the suit schedule 'A' property and he is receiving the rents

during lifetime of his wife therefore, the cross objector/defendant is absolute owner of the property and the appellants/plaintiffs do not have any share by making claim of partition.

6. Further the cross objector/defendant has taken contention that the suit is barred by limitation as his wife (Shahnaz Begum) died on 06.01.2014, the suit is filed after five years. Therefore, the suit is barred by limitation.

7. On the basis of pleadings of the parties, the Trial Court has framed the following issues:

1. *Whether the plaintiffs prove that their sister Shahnaz Begum is the absolute owner of the suit schedule 'A' and 'B' properties, as contended by them in Paragraph Nos.1 and 2 of their suit plaint?*

2. *Whether the defendant proves that he and his wife Shahnaz Begum have jointly purchased the said property and put up the building standing thereon, jointly, as contended by him in Paragraph No.4 of his written statement?*

3. *Whether the plaintiffs have properly valued the suit plaint and have paid the necessary Court fees?*

4. *Whether the plaintiffs are entitled for the relief of partition and possession to the extent of 2/5th share, 2/5th share and 1/5th share respectively in 50% share in the suit schedule property as prayed by them in the suit plaint?*

5. *Whether the suit of the plaintiffs is barred by law of limitation as contended by defendant in Paragraph No.12 of his written statement?*

6. *What order or decree?*

8. The appellants/plaintiffs in order to prove their case, plaintiff No.1 has examined as PW-1 and got marked 10 documentary evidence as Exs.P-1 to P-10. On the other hand, the cross objector/defendant has examined as DW-1 and got marked 16 documentary evidence as Exs.D-1 to D-16.

9. The Trial Court has decreed the suit in part and declared that plaintiff Nos.1 and 2 are entitled to have 1/10th share each in the suit schedule 'A' property and 1/5th share each in the suit schedule 'B' property. Plaintiff No.3 is entitled to have 1/20th in the suit schedule 'A' property and 1/10th share in the suit schedule 'B' property. Further it is decreed that the defendant is entitled to have

3/4th share in the suit schedule 'A' property and half share in the suit schedule 'B' property. Accordingly, decree is passed.

10. The plaintiffs being aggrieved by giving lesser share in the decree has preferred RFA.No.935/2020. The ground urged by the appellants/plaintiffs in RFA.No.935/2020 is that the suit schedule 'A' and 'B' properties are self acquired properties of the deceased Shahnaz Begum. Therefore, in both suit schedule 'A' and 'B' properties, the plaintiffs are entitled to 50% and the defendant is entitled to 50%. Therefore, contended that giving 1/10th share to plaintiffs/appellant Nos.1 and 2 and 3/4th share to the defendant is not correct. Therefore, insofar as the same in respect of suit schedule 'A' property granting lesser quantity of share, the plaintiffs have preferred the appeal.

11. The defendant has filed RFA.Crob.No.33/2020 by raising the ground that the defendant has purchased suit schedule 'A' & 'B' properties out of his own fund and

earning but with love and affection towards his wife Shahnaz Begum, purchased in the name of his deceased wife Shahnaz Begum. Therefore, the properties are self-acquired properties of the defendant. Hence, the plaintiffs are not entitled to any share. Therefore, the defendant in the cross-objection questioned grant of share to the plaintiffs. Therefore, it is the contention of the defendant that the suit ought to have been dismissed. Further the ground raised is that the deceased Shahnaz Begum has not been inherited any property from his father. Therefore, the plaintiffs are not entitled for any share. Thus, the suit ought to have been dismissed. Hence, prayed to dismiss the appeal and suit.

12. Heard the arguments from both sides and perused the materials on record in both the appeal and cross objection.

13. Upon hearing the arguments from both the parties, the following points for consideration arise for my consideration:

(i) Whether, the defendant/cross-objector made out sufficient ground for condonation of delay in preferring the cross objection?

(ii) Whether, under the facts and circumstances involved in the case, the defendant proves that he has purchased suit schedule 'A' & 'B' properties out of his self-earning, but in the name of his wife Shahnaz Begum, thus amounting to self-acquired properties of the defendant?

(iii) Whether, under the facts and circumstances involved in the case, the plaintiffs prove that the suit schedule 'A' & 'B' properties are purchased by the deceased Shahnaz Begum, thus the plaintiffs together are entitled to 50% and defendant is entitled to 50% of share?

(iv) Whether, under the facts and circumstances involved in the case, quantum of share allotted by the trial Court in the judgment and decree is correct, proper and justified?

REG. POINT (i):

14. The defendant has filed a cross-objection, but there is a delay of 614 days in filing the cross objection. The defendant/cross-objector has filed affidavit in respect of the application deposing that the defendant is 89 years senior citizen and he is facing financial hardship and he is

suffering from old age diseases. Therefore, he could not contact his Advocate in time instructing his Advocate to prefer the appeal/cross-objection. Hence in this regard, some delay has occurred, therefore prays to condone the delay.

15. The defendant is 89 years senior citizen, quite naturally, the defendant is suffering from old age diseases and he does not have any issues. Therefore, in old age, the defendant does not have support from children and as such, quite naturally some delay has occurred. Therefore, delay of 614 days in filing the cross appeal is condoned and also for the reason that matter requires consideration on merits regarding grant of quantum of share as per the Mahomedan Law in the background of facts and circumstances stated by the parties. Therefore, the case needs to be considered on merits. Hence, the delay in filing the cross- objections is hereby condoned. Accordingly, I answer point (i) in affirmative.

REG: POINTS (ii) AND (iii) ARE TAKEN UP TOGETHER FOR COMMON DISCUSSION ON THE FACTS AND CIRCUMSTANCES INVOLVED IN THE CASE:

16. The trial Court has awarded 1/10th share in suit schedule 'A' property and 1/5th share each in suit schedule 'B' property to plaintiff Nos.1 and 2. Plaintiff No.3 was given 1/20th share in suit schedule 'A' property and 1/10th share in suit schedule 'B' property. The defendant is entitled to 3/4th share in suit schedule 'A' property and half share in suit schedule 'B' property. The trial Court has assigned the reason that the suit schedule 'A' property was acquired prior to the retirement of defendant and suit schedule 'B' property was acquired subsequent to his retirement and at the time of acquisition of both the properties, the deceased Shahnaz Begum was serving and both defendant and deceased have no children. Therefore, the acquisition of suit schedule 'A' property made in the name of deceased Shahnaz Begum is to be considered as joint purchase. Hence, the deceased Shahnaz Begum is having half share and the defendant is having half share in

the suit schedule 'A' property. Accordingly, awarded share in the suit schedule 'A' property as above stated.

17. The reason assigned by the trial Court regarding allotment of share in the suit schedule 'B' property is concerned, the suit schedule 'B' property was acquired subsequent to the retirement of the defendant and at that time, Shahnaz Begum was serving. Therefore, the acquisition of suit schedule 'B' property is self-acquisition of Shahnaz Begum and same cannot be considered as joint acquisition. Therefore, the deceased Shahnaz Begum has self acquired the suit schedule 'B' property. Accordingly, considered the suit schedule 'A' property as acquired jointly by the defendant and deceased Shahnaz Begum and the defendant is the owner of half share and remaining half share belongs to deceased Shahnaz Begum. Accordingly, it was divided in suit schedule 'A' and 'B' properties between the plaintiffs and defendant as above described.

18. The relationship between the plaintiffs, defendant and the deceased Shahnaz Begum is not in dispute. Upon appreciating the evidence on record, it is proved that plaintiff Nos.1 and 2 are brothers and plaintiff No.3 is the sister of deceased Shahnaz Begum and defendant is the husband of deceased Shahnaz Begum this is correctly appreciated by the Trial Court. The question to be considered on the basis of evidence on record is whether the suit schedule 'A' and 'B' properties are self-acquired properties of the defendant, but in the name of deceased Shahnaz Begum, or whether the suit schedule 'A' and 'B' properties were jointly acquired by the defendant and deceased Shahnaz Begum.

19. Upon considering the evidence on record, acquisition of suit schedule 'A' property was purchased by defendant when he was in service (before retirement) and suit schedule 'B' property was purchased after retirement of the defendant from service, but admittedly both were purchased in the name of deceased Shahnaz Begum. In

this context it is finding given by the Trial Court that suit schedule 'A' property was purchased jointly by the defendant and deceased Shahnaz Begum. Further, it is finding given that suit schedule 'B' property was purchased by the deceased Shahnaz Begum alone out of her earnings since at that time she was working as a Teacher and by that time defendant had retired from the service. Thus, by giving a finding of fact in this regard in respect of suit schedule 'A' and 'B' properties, the Trial Court has divided the properties as per the decree above described.

20. There is no evidence on record that the defendant had inherited both suit schedule 'A' and 'B' properties from his ancestors. Likewise, there is no evidence that deceased Shahnaz Begum had inherited the properties from her parents. Admittedly, it is also borne out from the records that when the defendant and deceased Shahnaz Begum were in service working as teachers, they have acquired suit schedule 'A' and 'B' properties. Since both the defendant and deceased

Shahnaz Begum were working as Teachers being Government servants, quite naturally they had saved some amount from their salary earnings. Thus, it is proved that both the defendant and deceased Shahnaz Begum have purchased the property jointly in the name of deceased Shahnaz Begum, but the suit schedule 'B' property was purchased when the deceased Shahnaz Begum was in service while working as a teacher, but at that time the defendant had attained superannuation.

21. Just because the suit schedule 'B' property was purchased after the retirement of defendant, that alone cannot be a factor to say that the deceased Shahnaz Begum had acquired the suit schedule 'B' property out of her own earnings. Though defendant has retired from service, he was getting pension and also might have saved some amount during his service therefore, it is proved that suit schedule 'B' property was acquired jointly by both the defendant and deceased Shahnaz Begum. Thus, it is joint acquisition of both defendant and deceased Shahnaz

Begum. In this regard, the Trial Court has committed an error that when the deceased Shahnaz Begum purchased the property, at that time the defendant was retired from the service and deceased Shahnaz Begum was in service therefore, it is held that the acquisition of suit schedule 'B' property by self-earnings of deceased Shahnaz Begum is not correct. The defendant and deceased Shahnaz Begum were husband and wife respectively, in what manner they have purchased the suit schedule 'A' property, in the same manner both the defendant and deceased Shahnaz Begum have purchased the suit schedule 'B' property, thus not only suit schedule 'A' property by joint earnings of the defendant and deceased Shahnaz Begum, likewise, acquisition of suit schedule 'B' property is also joint acquisition by the earnings of both defendant and deceased Shahnaz Begum. Thus, the Trial Court has committed an error in giving finding that the suit schedule 'B' property was self acquisition by Shahnaz Beum subsequent to retirement of the defendant. The finding that the deceased Shahnaz Begum was serving as a

teacher, such acquisition was made and the said acquisition of deceased Shahnaz Begum is not joint acquisition is not correct as it is contrary to the evidence on record.

22. The Trial Court has given correct finding on the acquisition of suit schedule 'A' property jointly by both the defendant and deceased Shahnaz Begum, but for the reasons above stated, suit schedule 'B' property was also jointly acquired by both the defendant and deceased Shahnaz Begum. The defendant had stated that out of his love and affection towards his wife - Shahnaz Begum, the properties were acquired in the name of Shahnaz Begum. This evidence of defendant is found to be quite natural that the defendant being husband of Shahnaz Begum has purchased property in the name of his wife. Also, with an intention to secure the life of his wife - Shahnaz Begum it is proved from the evidence on record and also it is rightly appreciated by the Trial Court that while the defendant and deceased Shahnaz Begum were working as Teachers

and being Government servants have jointly acquired the suit schedule 'A' and 'B' properties. Therefore, Point No.(ii) is answered in partly affirmative that suit schedule 'A' and 'B' properties are not self-acquired properties of the defendant alone, but joint earnings of both the defendant and deceased Shahnaz Begum. Also, Point No.(iii) is answered in the negative that acquisition of suit schedule 'A' and 'B' properties is not by self-earnings of deceased Shahnaz Begum alone but joint acquisition by both the defendant and deceased Shahnaz Begum. Thus, plaintiffs are not entitled to 50% of the share in both suit schedule 'A' and 'B' properties as per the Law of Inheritance applicable to the plaintiffs and defendant.

REGARDING POINT NO.(iv):

23. Section 51 of the Mahomedan Law (Mulla's Mahomedan Law) reads as follows:

> *"**51. Heritable property** – There is no distinction in the Mahomedan law of inheritance between movable and immovable property or between ancestral and self acquired property."*

24. Section 52 of the Mahomedan Law (Mulla's Mahomedan Law) reads as follows:

> *"**52. Birth-right not recognized** – The right of an heir-apparent or presumptive comes into existence for the first time on the death of the ancestor, and he is not entitled until then to any interest in the property to which he would succeed as an heir if he survived the ancestor."*

25. Section 53 of the Mahomedan Law (Mulla's Mahomedan Law) reads as follows:

> *"**53. Principle of representation** – According to the Sunni Law the expectant right of an heir-apparent cannot pass by succession to his heir, nor can it pass by bequest to a legatee under his will. According to the Shia law, it does pass by succession in the cases specified in §93 below."*

26. Section 96 of the Mahomedan Law (Mulla's Mahomedan Law) reads as follows:

> *"**96. Rules of succession among heirs of the first class** - The persons who are first entitled to succeed to the estate of a deceased Shia Mahomedan are the heirs of the first class along with the husband or wife, if any (§92(2)). The first class of heirs comprises parents, children, grandchildren, and remoter lineal descendants of the deceased. The parents inherit together with children, and, failing children, with grandchildren, and failing grandchildren, with remoter lineal descendants of the deceased, the nearer excluding the more remote (§88). Succession in this class is governed by the following rules:-*
>
> *(1) Father. - The father takes 1/6 as a Sharer, if there is a lineal descendant; as a Residuary, if*

there been no lineal descendant (see Table of Sharers, No.3).

(2) Mother. - The mother is always a Sharer, and her share is 1/6 or 1/3 (see Table of Shares, No.4).

(3) Son. - The son always takes as a Residuary.

(4) Daughter. - The daughter inherits as a Sharer, unless there is a son in which case she takes as a Residuary with him according to the rule of the double share to the male (see Table of Sharers, No. 5).

(5) Grandchildren. - On failure of children, the grandchildren stand in the place of their respective parents, and they inherit according to the principle of representation described in §93, 94 and 95, that is to say –

(i) the children of each son take the portion which their father, if living, would have taken as a Residuary and divide it among them according to the rule of the double share to the male;

(ii) the children of each daughter take the portion which their mother, if living, would have taken either as a Sharer or as a Residuary and divide it among them also according to the rule of the double share to the male.

(6) Remoter lineal descendants.- Succession among remoter lineal descendants is governed by the same principle of representation, that is to say, great-grandchildren take the portion which their respective parents, if living, would have taken, and divide it among them according to the rule of the double share to the male, and great-great-grand children take the portion which their respective parents, if living, would have taken, and divide it among them also according to the same rule.

Baillie, 11,276-279.

Mode of distribution among husband or wife and heirs of the first class—

first, assign his or her share to the husband or wife (see Table of Sharers Nos. 1-2);

next, assign their shares to such of the claimants as can inherit as Sharers only;
next, divide the residue, if any, among the residuaries;
lastly, if there be no Residuary, and the sum total of the shares is less than unity, apply the'Doctrine of Return' as stated in §106 to 109, and if the sum total exceeds unity, proceed as stated in §110.

Illustrations

a) Husband -- 1/2 (as sharer)
Mother -- 1/3 (as sharer)
Father -- 1/6 (as residuary)

Note – Under the Sunni Law, the mother takes 1/3 x 1/2 = 1/6, and the father 1/3 as a residuary (see Table of Shares, Sunni Law, No.5).

b) Wife -- 1/4 (as sharer)
Mother -- 1/3 (as sharer)
Father -- 5/12 (as residuary)

Note – Under the Sunni Law, the mother takes 1/3 x 3/4 = 1/4, and the father 1/2 as a residuary (see Table of Shares, Sunni Law, No.5).

c) Father -- 1/6 (as sharer)
Mother -- 1/6 (as sharer)
Son -- 2/3 (as residuary)

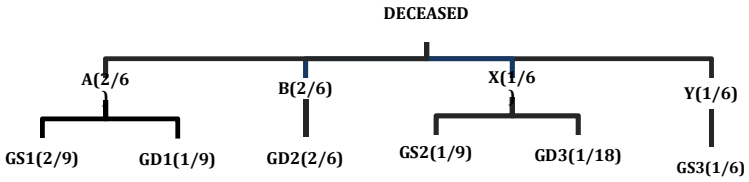
Note – If instead of a son, there was Son's daughter, she would have taken 2/3 as representing her father.

d) Father -- 1/6 (as sharer because there are daughters)
Mother -- 1/6 (as sharer)
2 daughters -- 2/3 (as sharers)

Note – The shares would be the same if we substitute daughters' sons or daughters' daughters for daughters.

e) A Shia dies leaving a grandson GS1 and a granddaughter GD1 by a predeceased son A, a granddaughter GD2 by another predeceased son B, a grandson GS2 and a granddaughter GD3 by a predeceased daughter X, and grandson GS3 by

another predeceased daughter Y, as shown in the following diagram:--



Here the two daughters X and Y, if leaving, would have taken as residuaries with the two sons A and B according to the rule of the double share to the male, so that A and B would each have taken 2/6, and X and Y would each have taken 1/6.

A's share 2/6 will pass to each son and daughter according to the rule of the double share to the male, so that GS1 will take 2/3 x 2/6 = 2/9 and GD1 will take 1/3 x 2/6 = 1/9.

B's share 2/6 will pass to his daughter GD2.

X's share 1/6 will be divided between her son and her daughter according to the rule of the double share to the male, so that GS2 will take 2/3 x 1/6 = 1/9, and GD3 will take 1/3 x 1/6 = 1/18.

Y's share 1/6 will pass to her son GS3.

The shares will thus be 2/9 + 1/9 + 2/6 + 1/9 + 1/18 + 1/6 = 1.

According to the Hanafi Law, GS1 and GD1 and GD2 are residuaries and they exclude GS2, GD3, and GS3 who are distant kindred. GS1 will take 1/2, and GD1 and GS2 will each take 1/4.

If in the above case, the deceased also left a wife, the wife will first take her share 1/8, and the remaining 7/8 will be divided among the six grandchildren in the same proportions."

27. Section 97 of the Mohamedan Law (Mulla's Mohamedan Law) reads as follows:

> *"**97. Rules of succession among heirs of the second class**- If there are no heirs of the first class, the estate (minus the share of the husband or wife, if any) devolves upon the heirs*

of the second class. The second class of heirs comprises grandparents h.h.s. and brothers and sisters and their descendants h.l.s. (§88). The rules of succession among the heirs of this class are different according as the surviving relations are —

(1) grandparents h.h.s., without brothers or sisters or their descendants;

(2) brothers and sisters or their descendants, without grandparents or remoter ancestors;

(3) grandparents h.h.s., with brothers and sisters or their descendants."

28. Section 99 of the Mohamedan Law (Mulla's Mohamedan Law) reads as follows:

*"**99. Brothers and sisters, without any ancestor** - If the deceased left no ancestors, but brothers and sisters of various kinds, the estate (minus the share of the husband or wife, if any) will be distributed among them according to the same rules as those in Hanafi Law. The said rules as follows:—*

(i) Brothers and sisters of the full blood exclude consanguine brothers and sisters.

(ii) Uterine brothers and sisters are not excluded by brothers or sisters either full or consanguine, but they inherit with them, their share being 1/3 or 1/6 according to their number (see Table of Sharers, Nos.6 and 7).

(iii) Full brothers take as Residuaries, so do consanguine brothers.

(iv) Full sisters take as Sharers (see Table of Sharers, No.8), unless there be a full brother in which case they take as Residuaries with him according to the rule of the double share to the male. Consanguine sisters also take as Sharers (see Table of Sharers, No.9) unless there be a

consanguine brother with them in which case they take as Residuaries with him according to the same rule.

Baillie, II, 280.

Illustrations

Note.-The shares of the several heirs in the following illustrations are the same both in Sunni and Shia law. The illustrations are given to familiarize the reader with combinations of heirs that are common in Shia law:-

(a) Husband -- 1/2 (as sharer)
Full (or cons.) sister -- 1/2 (as sharer)
(b) Wife -- 1/4 (as sharer)
Full brother -- 3/4 (as residuary)
(c) Husband -- 1/2 (as sharer)
Full brother -- 2/3 x (1/2) = 1/3 (as residuary)
Full sister -- 1/3 x (1/2) = 1/6 (as residuary)
(d) Wife -- 1/4 (as sharer)
Ut. brother -- 1/6 (as sharer)
Cons. brother -- 2/3 x (7/12) = 7/18 (as residuary)
Cons. sister -- 1/3 x (7/12) = 7/36 (as residuary)"

29. As per the above said Law of Inheritance, the husband and brothers are entitled to share as 'sharers' and plaintiff No.3 being a sister is entitled to share as 'residuary' since plaintiff No.3 has full brothers, who are plaintiff Nos.1 and 2. Therefore, plaintiff No.3 is entitled to a share as residuary.

30. Learned counsel for the defendant argued the case as if the Inheritance among the plaintiffs and defendant under the Hindu Law as per the provisions of Hindu Succession Act, 1956. The entire argument

canvassed by the counsel for the defendant is that defendant has acquired properties out of his self-earnings, but in the name of his wife - Shahnaz Begum out of love and affection. Therefore, it is self-earnings by the defendant and he alone is entitled to properties as per Law of Succession and plaintiffs do not have any share.

31. Further argument canvassed by the learned counsel for the defendant is as if the parties are governed by Hindu Law, but the parties herein are actually governed by Mahomedan Law. Therefore, parties in the suit are governed by the principles of Mahomedan Law. Hence, in this regard, submission made by the counsel for defendant cannot be accepted. The Law of Succession and Inheritance both in Mahomedan and Hindu law are different. The principles governing Hindu Law regarding Inheritance and Succession are different than Mahomedan Law. Therefore, as per the principles of Mahomedan Law, Law of Inheritance and Succession is to be considered according to their personal laws.

32. As discussed above, suit schedule 'A' and 'B' properties are jointly acquired by both the defendant and deceased Shahnaz Begum and as such defendant is having right of share to the extent of 50% exclusively. The plaintiffs are not entitled to any share in the share of defendant. As defendant's share is 50% exclusively, the plaintiffs are entitled to their share in the remaining 50% share of deceased Shahnaz Begum being full brothers and full sister along with the defendant. The defendant and plaintiff Nos.1 to 3 are entitled to share in the remaining 50% share of deceased Shahnaz Begum. Therefore, defendant is entitled to 50% share in the share of deceased Shahnaz Begum and plaintiff Nos.1 to 3 are entitled to remaining 50% share of the deceased Shahnaz Begum together with the defendant. Since plaintiff No.3 being a sister, is having share as residuary, therefore plaintiff No.3 is entitled to half of the share of plaintiff Nos.1 and 2. Therefore, defendant is entitled to 75% of the share (50% + 50% of Shahnaz Begum) and plaintiff

Nos.1 to 3 are entitled to 25% share in the 50% share of deceased Shahnaz Begum both in suit schedule 'A' and 'B' properties. The defendant will have 3/4th share in suit schedule 'A' and 'B' properties. Plaintiff Nos.1 and 2 will get 1/10th share each and plaintiff No.3 is entitled 1/20th share in the suit schedule 'A' and 'B' properties. Therefore, Trial Court has committed error so far as making quantification of share in the suit schedule 'B' property. It is held that suit schedule 'B' property is not only purchased by self-earnings of deceased Shahnaz Begum, but also by earnings of the defendant along with earnings of Shahnaz Begum, therefore suit schedule 'B' property is jointly acquired by both the defendant and deceased Shahnaz Begum. Accordingly, I answer Point No.(iv) in ***partly affirmative*** holding that quantification of shares allotted to the plaintiffs and defendant is correct insofar as suit schedule 'A' property is concerned and not correct insofar as suit schedule 'B' property. When it is held that suit schedule 'A' and 'B' properties are jointly acquired by both the defendant and deceased Shahnaz

Begum, the share between defendant and deceased Shahnaz Begum is 50:50 in both suit schedule 'A' and 'B' properties. Thus, in this way, defendant is entitled to 50% of share in both suit schedule 'A' and 'B' properties exclusively and remaining 50% of share to be divided between the defendant and plaintiff Nos.1 to 3.

33. Plaintiff Nos.1 to 3 and defendant together are entitled to share in the remaining 50% of the share of Shahnaz Begum, the defendant is entitled to 50% of share of Shahnaz Begum. Plaintiff Nos.1 and 2 being sharers and plaintiff No.3 being residuary are entitled to share in remaining 25% of the share of Shahnaz Begum's 50% share in the suit schedule 'A' and 'B' properties. Thus, defendant is entitled to $3/4^{th}$ share and plaintiff Nos.1 and 2 are entitled to $1/10^{th}$ share each being sharers and plaintiff No.3 is entitled to $1/20^{th}$ share being residuary.

34. Learned counsel for the defendant submitted that when Shahnaz Begum also joined hands with her husband/defendant for acquisition of purchase of suit

schedule 'A' and 'B' properties, which was by hard earned money by both the defendant and deceased Shahnaz Begum. Therefore, it is argued that defendant and deceased Shahnaz Begum are considered as single soulmate because of union of two souls of defendant and deceased Shahnaz Begum. Thus, both defendant and Shahnaz Begum became one soul after marriage. Therefore, defendant alone is entitled to share in the suit schedule 'A' and 'B' properties and plaintiffs being brothers and sister of deceased Shahnaz Begum, are not entitled to any share and in this regard, he made comparison with the Law of Succession as per Hindu Succession Act, 1956 under the Hindu law and Mahomedan Law.

35. The whole argument canvassed by the counsel for the defendant is that defendant is the husband of Shahnaz Begum and two souls are united after marriage between defendant and Shahnaz Begum and thus, defendant alone is entitled to entire suit schedule properties. Though this argument canvassed by the

counsel for the defendant/Sri.Mohammed Sayeed sounds correct but the Personal Law being governing for Mahomedans is different. Since, learned counsel for the defendant/Sri. Mohammed Sayeed also touches upon the concept of marriage, it is worth to mention here provisions of Mahomedan law.

36. Sub-Section 3 of Section 7 of B. R. Verma's Mohammedan Law published by Law Publishers (India) Pvt. Ltd. 9th Edition 2005 defines 'Marriage' as follows:

> *"**Section-7. Definition "**Marriage" (nikah) is a permanent and unconditional civil contract (which comes into immediate effect) made between two persons of opposite sexes with a view to mutual enjoyment and procreation and legalizing of children.*
>
> ***1.xxxxx***
>
> ***2.xxxxx***
>
> ***3. Conception of Marriage** – The main features of a Mohammedan marriage may be summarized as below:*
>
> *(1) It is civil contract. Marriage is essentially an agreement between the parties. But the agreement is subject to certain restrictions imposed by law. A contract of marriage differs from other contracts. In ordinary contracts the terms and conditions are settled and defined by parties, but in cases of marriage contracts, there are many conditions and presumptions of law although, in a limited sense, it may be said that in a contract of marriage the wife corresponds to the property and dower to the price. Thus, a contract of marriage is not like other contracts, allowed by*

law to be for a limited period only. It should be permanent. Any condition that the marriage would be for a limited or particular period is void.

As to the effect of legal conditions, see N. 4 below and Sec. 26 NN. 7-9

(2) Marriage is not a sacrament, although it is a religious ceremony. The Mohammedan conception of marriage essentially differs from the Hindu conception according to which marriage is not mere civil contract but is a sacrament which makes the marriage indissoluble. Marriage under the Mohammedan Law terminates on death or divorce.

(3) It is an act of piety and devotion. The Mohammedan Law has made marriage an obligatory duty where it is necessary to restrain passions from commission of wrongs which are prohibited.

(4) Marriage without sex is an anathema. Sex is the foundation of marriage and without a vigorous and harmonious sexual activity it would be impossible for any marriage to continue for long. It cannot be denied that the sexual activity in marriage has an extremely favourable influence on a woman's mind and body. The result being that if she does not get proper sexual satisfaction, it will lead to depression and frustration.

(5) The design and object of marriage is not only the procreation of children but also mutual enjoyment. It is also instituted for the solace of life and is one of the prime or original necessities of man. It is, therefore, lawful even in extreme old age and even in death-illness without any hope of off-spring. Mohammedan Law definitely discourages celibacy."

37. Thus, "Marriage" according to Mahomedan Law is not sacrament but a civil contract. Therefore it is clear from the definition of marriage that marriage according to Mahomedan Law, is not sacrament like Hindu Conception

of Marriage, but a civil contract. All rights and duties in a marriage arise immediately after the marriage is completed.

38. According to Chapter VIII of S.K. Mitra's Mahomedan Law authored by Sri.S.P.Sen Gupta and Sri.Sunil Kumar Mitra published by Calcutta Kamal Law House, Calcutta Second Edition 2001 reprint 2006, the distinction between Hindu and Muslim Law of Marriage reads as under:

> "***2. Distinction between Hindu and Muslim Law of Marriage:***
>
> *The Muslim law of marriage differs from the Hindu law of marriage in the following respects:*
>
> *(1) A Hindu marriage is essentially a religious sacrament whereas a Muslim marriage is in the nature of a civil contract, with all its incidents of offer and acceptance, presence of witnesses and necessity of consideration.*
>
> *(2) A Hindu, after the Hindu Marriage Act, 1955, cannot marry more than one wife at a time whereas a Muslim can marry as many as four wives at the same time.*
>
> *(3) The grounds of obtaining a decree for divorce under Sec. 2 of the Dissolution of Muslim Marriage Act are different from the grounds of dissolution of Hindu Marriage under sec. 13 of the Hindu Marriage Act.*

> *(4) The Muslim system of obtaining divorce by the husband by oral talak without a decree of court is unknown to Hindu Law."*

39. The above said Clause (4) now has become redundant in view of recent judgment on talak in the case of ***SHAYARA BANO VS. UNION OF INDIA AND OTHERS[1].***

40. Therefore, marriage among Mahomedans is a civil contract and not sacrament. Law of Inheritance is different under Mahomedan Law than Hindu Law.

41. Article 14 of the Constitution of India stipulates as follows:

> ***"14. Equality before law.-*** *The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India".*

42. Therefore, 'Women' in India are all equal but the Personal Law according to religion makes difference among the women though they are Citizen of India. A 'Woman' in Hindu Law is having birth right equal to that of

[1] (2017) 9 SCC 1

Son being a Daughter. When under Hindu Law a daughter is given equal status and right in all respects enjoying rights as that of son the same is not so under Mahomedan Law. Therefore, the Court is of the opinion that our Country needs Uniform Civil Code in respect of their Personal Laws and Religion, only then the object of Article 14 of the Constitution of India will be achieved. A 'Daughter' under Hindu Law is having equal status/right/entitlement and interest as that of Son and in case of wife she is having equal status as that of husband, this is more or like fulfilling object and principle enshrined under Article 14 of the Constitution of India, but it is not so under the Mahomedan Law.

43. As in the present case, the plaintiffs being two brothers and sister of deceased Shahnaz Begum, though plaintiff No.3 being sister is entitled to share as residuary but not as sharer. This is one of the circumstances of discrimination between brothers and sister, but that is not found under Hindu Law. The brothers and sisters are

equally having status/right/entitlement and interest under Hindu Law. Therefore, this is an example for necessity of making Law on "Uniform Civil Code".

44. The Article 44 of the Constitution of India reads as follows:

> ***"44. Uniform civil code for the citizens*** *– The State shall endeavour to secure for the citizens a uniform civil court throughout the territory of India."*

45. The Uniform Civil Code is the most debatable issue in the Constituent Assembly. Some of the Hon'ble members of the Constituent Assembly favoured Uniform Civil Code and some of the Hon'ble members have expressed different opinion on implementation of Uniform Civil Code. The chairman of drafting committee of the Constitution **Dr.B.R.Ambedkar**[2] in his most illustrious speech has argued in favour of Uniform Civil Code. Here some of the excerpts:

> *"we have in this country a uniform code of laws covering almost every aspect of human relationship. We have*

[2] Vol VII C.A.D at 551

> *a uniform and complete Criminal Code operating throughout the country, which is contained in the Penal Code and the Criminal Procedure Code. We have the Law of Transfer of Property, which deals with property relations and which is operative throughout the country. Then there are the Negotiable Instruments Acts: and I can cite innumerable enactments which would prove that this country has practically a Civil Code, uniform in its content and applicable to the whole of the country. The only province the Civil Law has not been able to invade so far is Marriage and Succession. It is this little corner which we have not been able to invade so far and it is the intention of those who desire to have article 35 as part of the Constitution to bring about that change"*

He emphasised the fact that in India we already have uniform laws in most of the human relationships. Dr Ambedkar then rejected the argument that the muslim personal law was immutable and uniform through whole of India. He said,

"My first observation would be to state that members who put forth these amendments say that the Muslim personal law, so far as this country was concerned, was immutable and uniform through the whole of India. Now 1 wish to challenge that statement. I think most of my friends who have spoken on this amendment have quite forgotten that up to 1935 the North-West Frontier Province was not subject to the Shariat Law. It followed the Hindu Law in the matter of succession and in other matters, so much so that it was in 1939 that the Central Legislature had to come into the field and to abrogate the application of the Hindu Law to the Muslims of the North-West Frontier Province and to apply the Shariat Law to them. That is not all.

My honourable friends have forgotten, that, apart from the North-West Frontier Province, up till 1937 in the rest of India, in various parts, such as the United Provinces, the Central Provinces and Bombay, the Muslims to a large extent were governed by the Hindu Law in the matter of succession. In order to bring them on the plane of uniformity with regard to the other Muslims who observed the Shariat Law, the Legislature had to intervene in 1937 and to pass an enactment applying the Shariat Law to the rest of India."

In this connection, he puts somemore example as existed in other parts of India.

"In North Malabar the Marumakkathayam Law applied to all--not only to Hindus but also to Muslims. It is to be remembered that the Marumakkathayam Law is a Matriarchal form of law and not a Patriarchal form of law.

The Mussulmans, therefore, in North Malabar were up to now following the Marumakkathyam law. It is therefore no use making a categorical statement that the Muslim law has been an immutable law which they have been following from ancient times. That law as such was not applicable in certain parts and it has been made applicable ten years ago. Therefore if it was found necessary that for the purpose of evolving a single civil code applicable to all citizens irrespective of their religion, certain portions of the Hindus law, not because they were contained in Hindu law but because they were found to be the most suitable, were incorporated into the new civil code projected by article 35, I am quite certain that it would not be open to any Muslim to say that the framers of the civil code had done great violence to the sentiments of the Muslim community."

PROMINENT LEADERS SUPPORTED THE UNIFORM CIVIL CODE:

SHRI SARDHAR VALLABAI PATEL:

Shri. Sardhar Vallabai Patel advocated for UCC to promote national integration and eliminate divisions based on religious or community-based laws. He also stressed on the significance of creating a common set of laws applicable to all citizens, irrespective of their religious background.

DR. RAJENDRA PRASAD:

Dr. Rajendra Prasad supported the idea of UCC as a means to ensure equal rights for women and promote gender justice. He also acknowledged the challenges in implementing a UCC but stressed the importance of modernizing India's legal system. H.V. Kamath, member in Constituent Assembly supported the UCC, emphasizing the need to establish a unified legal system that transcends religious divisions.

SHRI. T. T KRISHNAMACHARI:

Shri. T. T Krishnamachari, Senior Congress Leader supported the UCC highlighting the importance of gender equality and the need for a unified legal system in a diverse nation. He emphasized that a UCC would promote social justice, eliminate, discrimination and foster a more harmonious society.

SHRI. MAULANA HASRAT MOHANI:

Shri. Maulana Hasrat Mohani, prominent muslim leader supported the UCC, emphasizing the importance of gender justice and equal rights for women in muslim personal laws. He argued for reforms within personal laws to align them with the principles of justice and equality.

It appears from the speech of Dr Ambedkar that he strongly favoured the UCC for India but, at the same time he wanted to remove the fear of the Muslim members relating to the UCC. And here Dr Ambedkar came with an assurance. He said:

> *"Article 35 which merely proposes that the State shall endeavour to secure a civil code for the citizens of the Country." It does not say that after the code is framed the State shall enforce it upon all citizens merely because they are citizens. It is perfectly possible that the future Parliament may make a provision by way of making a beginning that the Code shall apply only to those who make declarations that they are prepared to be bound by it, so that in the initial stage the application of the code may be purely voluntary[3]."*

In the last line of his speech Dr Ambedkar reminded that his suggestion was not novel method, it was adopted in the Shariat Act of 1937 when it was applied to territories other than the North West Frontier Province and in case of Uniform Civil Code it would be perfectly possible for Parliament to introduce a provision of that sort, so that fear of Muslim members might be removed. In light of these facts Dr Ambedkar saw no substance in the proposed amendments of the Muslim members and he opposed the same.

In the end of the debate, Article 35 was carried without any amendements and it was later renumbered as Article 44, and read:

> ***"The State shall endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India."***

46. The Hon'ble Supreme Court in the case of ***MOHD. AHMED KHAN VS. SHAH BANO BEGUM AND***

[3] Vol VII C.A.D at 551

OTHERS[4] ***(Mohd. Ahmed Khan's case)*** suggested the parliament to enact a law on Uniform Civil Code. It is observed at paragraph Nos.32 and 33 as follows:

> ***"32.*** *It is also a matter of regret that Article 44 of our Constitution has remained a dead letter. It provides that "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India". There is no evidence of any official activity for framing a common civil code for the country. A belief seems to have gained ground that it is for the Muslim community to take a lead in the matter of reforms of their personal law. A common Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies. No community is likely to bell the cat by making gratuitous concessions on this issue. It is the State which is charged with the duty of securing a uniform civil code for the citizens of the country and, unquestionably, it has the legislative competence to do so. A counsel in the case whispered, somewhat audibly, that legislative competence is one thing, the political courage to use that competence is quite another. We understand the difficulties involved in bringing persons of different faiths and persuasions on a common platform. But, a beginning has to be made if the Constitution is to have any meaning. Inevitably, the role of the reformer has to be assumed by the courts because, it is beyond the endurance of sensitive minds to allow injustice to be suffered when it is so palpable. But piecemeal attempts of courts to bridge the gap between personal laws cannot take the place of a common Civil Code. Justice to all is a far more satisfactory way of dispensing justice than justice from case to case.*

[4] (1985) 2 SCC 556

> ***33.*** *Dr Tahir Mahmood in his book Muslim Personal Law (1977 Edn., pp. 200-02), has made a powerful plea for framing a uniform Civil Code for all citizens of India. He says:"In pursuance of the goal of secularism, the State must stop administering religion-based personal laws." He wants the lead to come from the majority community but, we should have thought that, lead or no lead, the State must act. It would be useful to quote the appeal made by the author to the Muslim community;*
>
> > *"Instead of wasting their energies in exerting theological and political pressure in order to secure an "immunity" for their traditional personal law from the state's legislative jurisdiction, the Muslims will do well to begin exploring and demonstrating how the true Islamic laws, purged of their time-worn and anachronistic interpretations, can enrich the common civil code of India."*
>
> *At a Seminar held on October 18, 1980 under the auspices of the Department of Islamic and Comparative Law, Indian Institute of Islamic Studies, New Delhi, he also made an appeal to the Muslim community to display by their conduct a correct understanding of Islamic concepts on marriage and divorce (see Islam and Comparative Law Quarterly, April-June, 1981, p. 146)."*

47. Further, the Hon'ble Supreme Court in the case of ***SARLA MUDGAL (SMT), PRESIDENT, KALYANI AND OTHERS VS. UNION OF INDIA AND OTHERS***[5] ***(Sarla***

[5] (1995) 3 SCC 635

Mudgal's Case) at paragraph Nos.33, 36, 37 and 38 has observed as follows:

> ***"33.*** *Article 44 is based on the concept that there is no necessary connection between religion and personal law in a civilised society. Article 25 guarantees religious freedom whereas Article 44 seeks to divest religion from social relations and personal law. Marriage, succession and like matters of a secular character cannot be brought within the guarantee enshrined under Articles 25, 26 and 27. The personal law of the Hindus, such as relating to marriage, succession and the like have all a sacramental origin, in the same manner as in the case of the Muslims or the Christians. The Hindus along with Sikhs, Buddhists and Jains have forsaken their sentiments in the cause of the national unity and integration, some other communities would not, though the Constitution enjoins the establishment of a "common civil code" for the whole of India.*
>
> ***36.*** *The successive Governments till date have been wholly remiss in their duty of implementing the constitutional mandate under Article 44 of the Constitution of India.*
>
> ***37.*** *We, therefore, request the Government of India through the Prime Minister of the country to have a fresh look at Article 44 of the Constitution of India and "endeavour to secure for the citizens a uniform civil code throughout the territory of India".*
>
> ***38.*** *We further direct the Government of India through Secretary, Ministry of Law and Justice to file an affidavit of a responsible officer in this Court in August 1996 indicating therein the steps taken and efforts made, by the Government of India, towards securing a "uniform civil code" for the citizens of India. Sahai, J. in his short and crisp supporting opinion has suggested some of the measures*

which can be undertaken by the Government in this respect."

48. Further, the Hon'ble Supreme Court in the case of ***JOHN VALLAMATTOM AND ANOTHER VS. UNION OF INDIA***[6] ***(John Vallamattom's Case)*** at paragraph No.44 has observed as follows:

> ***"44.*** *Before I part with the case, I would like to state that Article 44 provides that the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India. The aforesaid provision is based on the premise that there is no necessary connection between religious and personal law in a civilized society. Article 25 of the Constitution confers freedom of conscience and free profession, practice and propagation of religion. The aforesaid two provisions viz. Articles 25 and 44 show that the former guarantees religious freedom whereas the latter divests religion from social relations and personal law. It is no matter of doubt that marriage, succession and the like matters of a secular character cannot be brought within the guarantee enshrined under Articles 25 and 26 of the Constitution. Any legislation which brings succession and the like matters of secular character within the ambit of Articles 25 and 26 is a suspect legislation, although it is doubtful whether the American doctrine of suspect legislation is followed in this country. In Sarla Mudgal v. Union of India*[7] *it was held that marriage, succession and like matters of secular character cannot be brought within the guarantee enshrined under Articles 25 and 26 of the Constitution. It is a matter of regret that Article 44 of the Constitution has not been given effect to. Parliament is still to step*

[6] (2003) 6 SCC 611
[7] *[(1995) 3 SCC 635 : 1995 SCC (Cri) 569]*

in for framing a common civil code in the country. A common civil code will help the cause of national integration by removing the contradictions based on ideologies."

49. Fundamental duties and the Uniform Civil Code:*

"42nd amendment of the Constitution 1976 brought beautiful concept of Fundamental duties in the Indian Constitution. It may be pointed out that some of the fundamental duties are already being enforced through ordinary laws but some of the fundamental duties appears to be legally non-enforceable because they are vague and imprecise[8]. So far as the legal status of fundamental duties are concerned these are not capable of legal enforcement, this can be regarded as 'directory.' Again, these duties of individual citizens cannot be enforced through Mandamus, as they do not perform public duties[9]. However the above discussion does not suggest that these fundamental duties have no legal value. It may be mentioned that there is a close relationship between the ideals of fundamental duties and uniform civil code and it may be demonstrated that some of the fundamental duties also indicates desirability to have the Uniform Civil Code in India.

The Object of the Article 44 in India is to achieve national unity and integrity through communal harmony. The basic object of the fundamental duties are also of the view that every citizen of India must have a duty to

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* *Courtesy: The book "Uniform Civil Code" authored by Ms.Aishwarya S. Hanchate and Vaishnavi S. Hanchate*

[8] M.P. Jain, India constitutional law 1987 P. 750

[9] Surya Narayan V. Union of India AIR 1982 S.C. 17.

promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and sectional diversities. Uniform Civil Code is also a medium through which the people belonging to heterogeneous elements come to united in to a nation. Which also find a prime place in the preamble of the constitution. It has been laid down in Art 51 A (c) that it shall be the duty of every citizen of India to uphold and protect the sovereignty, unity and integrity of India.

Apart from that goal of the national unity, one of the most important objects of the uniform civil code has been to protect the dignity of women by giving them equal status in the society. As it is seen that the personal laws of almost all the communities have been against the equal right of women. The Uniform Civil Code has been considered as a friend of women since it may abolish the ill effects of personal laws. One of the fundamental duties also says that it shall be the duty of every citizen of India "to renounce practices derogatory to the dignity of women", therefore, from this point also the ideals of fundamental duties and Uniform Civil Code are the same.

In the end it can be stated that there is close relationship between ideals of fundamental duties and the Uniform Civil Code since the fundamental duties have been used to determine the reasonableness of the law. Thus if Uniform Civil Code is formulated, it should not be seen as violation of the fundamental right of the religion."

50. **Implementation of the Uniform Civil Code in India:**[*]

> *"During the constitutional assembly debates, Dr. B.R. Ambedkar was influenced by the west and sought to adopt the Uniform Civil Code in India to promote uniformity and unity in the society. The other members of the constituent assembly we*[10]*re adamantly opposed to the idea of a uniform civil code because of India's enormous diversity of culture and religion, arguing that its implementation would violate the rights to freedom of religion and the management of religious affairs guaranteed by Articles 25 and 26, respectively, of the Constitution. As a result, part IV of the Constitution introduced the Uniform Civil Code as a guiding principle of state policy, to be applied by the government in the future.*
>
> *Dr. B.R. Ambedkar, a fervent advocate, expressed it best: "Personally, I do not understand why religion should be given such broad, sweeping authority to govern all aspects of life and prevent the preventing the government from entering that area; We the People possessing this freedom to alter our broken social system, which is rife with disparities, bias, and other issues that are in opposition to our essential rights*[11]*". The Statement amply demonstrates Dr. B.R. Ambedkar's dedication to a uniform civil code that has the potential to fundamentally alter India's personal landscape.*
>
> *A progressive nation is symbolised by its uniform civil code. It suggests that caste and religion are no longer as important to the*

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[*] *Courtesy: The book "Uniform Civil Code" authored by Aishwaraya S.Hanchate and Vaishnavi S. Hanchate*

[10] 1R.C.S. Sarkar, uniform civil code, journal of constitutional & parliamentary studies, 1969 vol 3, 83 at P. 87.

[11] Constituent assembly debates, (1948), Vol. VII P. 544

> *country. India has had rapid economic growth, but socially we have reached a point where we are neither advanced nor backward. The Code will serve to eliminate doubt and unite the country[12].”*
>
> *“After India gained independence, Chaudhari Hyder Husein, a well-known lawyer, said, "We have come to believe that it is natural for Hindus to be controlled by Hindu Law and Muslims to be governed by Muslim Law, but it is entirely a mediaeval idea and has no place in the modern world. As a result, the Indian Civil Code needs to be a single, comprehensive document. This is the legal response to the issue facing the community. It appears to be extremely necessary for the country's integration with a single law and the development of a single nation[13].”*

51. The enactment of legislation on Uniform Civil Code as enshrined under Article 44 of the Constitution of India will achieve the object and aspirations enshrined in the Preamble of the Constitution of India, bringing about a true secular democratic republic, unity, integrity of the nation, securing justice, liberty, equality and fraternity. The Court is of the opinion that bringing a law on Uniform Civil Code and its enforcement certainly give justice to women, achieve equality of status and opportunity for all

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[12] Justice Tulzapurkar, - uniform civil code (An Article) 1987 P. 20
[13] ChaudhariHyderHusein- “A unified code for India” AIR (1949) (Journal- Vol. 68) PP 71-72

and accelerate the dream of equality among all women in India irrespective of caste and religion and also assure dignity individually through fraternity.

52. Therefore, the enactment of a law on Uniform Civil Code will truly achieve the objects of the principles enshrined in the Preamble of the Constitution of India. Therefore, the Court is of the opinion that it should make a request to the Parliament and State Legislatures to make every endeavour to enact a statute on Uniform Civil Code. It has been informed to the Court that some states (Goa and Uttarakhand) have already enacted laws on Uniform Civil Code.

53. Therefore, the Registrar General is requested to forward copy of this judgment to the Principal Law Secretaries of both Union of India and State of Karnataka with a hope that the Union of India and State of Karnataka will make endeavour in this regard in enacting the Legislation on Uniform Civil Code achieving object of the Article 44 of the Constitution of India.

54. Considering the facts and circumstances involved in the present case as above discussed, the appeal filed by the appellants/plaintiffs in RFA No.935/2020 is liable to be dismissed. RFA Crob.No.33/2023 is liable to be allowed in part.

In the result, I proceed to pass the following:

ORDER

i. The appeal filed by the appellants/plaintiffs in RFA No.935/2020 is ***dismissed***.

ii. The cross appeal filed by the defendant/cross objector in RFA Crob. No.33/2023 is ***allowed in part***.

iii. The impugned judgment and decree dated 12.11.2019 passed in O.S.No.25162/2019 by the LXXII Additional City Civil and Sessions Judge at Mayo Hall Bengaluru (CCH-73), is hereby modified holding that plaintiff Nos.1 and 2 are entitled to have 1/10th share each in the suit schedule 'A' and 'B' properties. Plaintiff No.3 is entitled to have 1/20th share in suit schedule 'A' and 'B' properties and the defendant is entitled 3/4th share in the suit

schedule 'A' and 'B' properties by metes and bounds.

iv. No order as to costs.

v. Draw award accordingly.

vi. The High Court Legal Services Committee is directed to pay professional fee to the learned Amicus Curiae as per Rules.

vii. The Registrar General of High Court of Karnataka is requested to forward copy of this order to the Principal Law Secretaries of both Union of India and State of Karnataka with a request to make an endeavour in Legislating on Uniform Civil Code fulfilling aspirations of Article 44 of the Constitution of India.

SD/-
(HANCHATE SANJEEVKUMAR)
JUDGE

SRA/PB