OFFICE OF THE PRINCIPAL DISTRICT & SESSIONS JUDGE, ROHINI COURTS: DELHI

Genl.I/F 3(A)/N-W & N/RC/2020/....467-538 Delhi, dated the...11.1.21

Copy of the letter bearing No. 368-X C-1 dated 05.01.2021 alongwith copy of order dated 14.12.2020 passed by Hon'ble Ms. Justice Pratiba M. Singh of Delhi High Court in C.R.P. No. 89/2016 & C.M. No. 549974/2018, 3821/2019 titled "Mohd. Ashraf & Ors. Vs. Abdul Wahid Siiddique" as received from Hon'ble High Court of Delhi, is being forwarded for information and necessary action/compliance to :

1. All the Ld. Judicial Officers, **(DHJS & DJS)**, North-West & North District, Rohini Courts, Delhi (through email-id).

2. Personal Office, Ld. Principal District & Sessions Judge, North-West & North District, Rohini Courts Complex, Delhi (through email-id).

3. The Dealing Official, R & I Branch, Rohini Courts, Delhi for uploading the same on LAYERS (through email-id).

4. The Dealing Official, Computer Branch, Rohini Courts, Delhi for uploading the same on WEBSITE (through email-id).

(Rakesh Kumar-IV)
Officer Incharge, General Branch
North-West & North District,
Rohini Courts Complex, Delhi.

COPY OF ORDER

IN THE HIGH COURT OF DELHI, NEW DELHI

No. 368-X C-1 dt. 5-1-21

From

The Registrar General
High Court of Delhi,
New Delhi.

To

1. P.A. To Registrar General
2. The District & Sessions Judge (Headquarters), Tis Hazari Courts, Delhi.
3. The District & Sessions Judge (Central), Tis Hazari Coutts, Delhi.
4. The District & Sessions Judge (West), Tis Hazari Coutts, Delhi.
5. The District & Sessions Judge (North), Rohini Courts, New Delhi.
6. The officiating District & Sessions Judge (North-West), Rohini Courts, Delhi.
7. The District & Sessions Judge (East), Karkardooma Courts, Delhi.
8. The District & Sessions Judge (North-East), Karkardooma Courts, Delhi
9. The District & Sessions Judge (Shahdara), Karkardooma Courts, Delhi
10. The District & Sessions Judge (South), Saket Courts, Delhi.
11. The District & Sessions Judge (South-East), Saket, New Delhi.
12. The District & Sessions Judge (New Delhi), Patiala House Courts, New Delhi.
13. The District & Sessions Judge (South-West), Dwarka Courts, New Delhi.
14. The District Judge Cum Special Judge, Rouse Avenue, New Delhi.

C.R.P. NO. **89/2016** & C.M. NO. **549974/2018, 3821/2019**

MOHD. ASHRAF & ORS. PETITIONER/S

VERSUS

ABDUL WAHID SIDDIQUE RESPONDENT/S

Petition under Section **115 of CPC** / 25B (8) of DRC Act against the order dated 12.02.2016 passed by Sh. Anurag Dass, Civil Judge -1, Central District, Tis Hazari Courts, Delhi in Suit No. 151/11.

Sir,

I am directed to forward herewith for information and immediate compliance of the copy of order dated **14.12.2020** passed by the **Hon'ble Ms. Justice Pratibha M. Singh** of this Court in the above noted case.

Please acknowledge receipt.

Yours faithfully

Encl: 1) Copy of Order dt. 14.12.2020
2) Memo of Parties

Admn. Officer (J) C – 1
For Registrar General

Ld. OIC Genl. Branch for necessary Compliance

प्रधान जिला एवं सत्र न्यायाधीश (उत्तर-पश्चिम)
Principal District & Sessions Judge (North-West)
रोहिणी कोर्ट, दिल्ली
Rohini Courts, Delhi
08/01/2021

$~4

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 14th December, 2020

\+ **C.R.P. 89/2016**

MOHD ASHRAF & ORS. ..... Petitioners

Through: Mr. Arpit Bhargava and Ms. Hina Bhargava, Advocates. (M: 9871316969)

versus

ABDUL WAHID SIDDIQUE ..... Respondent

Through: Mr. Rajiv Bajaj, Advocate.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done by video conferencing.

CM APPL. 3822/2019

2. This application has been filed by the Petitioners seeking condonation of 25 days' delay in re-filing the application for stay of the trial court proceedings till the disposal of the present petition. Delay is condoned. Application is disposed of.

CM APPL. 54975/2018

3. This application has been filed by the Petitioners for exemption from filing certified copies of the annexures and fair typed copies of dim annexures. Allowed, subject to all just exceptions. Application is disposed of.

C.R.P. 89/2016 & CM APPLs. 54974/2018, 3821/2019

4. Two short issues arise in this petition:

   i. Firstly, whether the judgment of the Trial Court dismissing the application under Order XII Rule 6 CPC, after nearly one and a

half years of arguments being heard and the order being reserved, is sustainable?

ii. Whether rights in an immovable property can be legally and validly derived on the basis of a *fatwa* issued by a *maulvi* and its binding nature on a third party?

5. A suit for possession and recovery of damages was filed by three Plaintiffs i.e., Mr. Mohd Ashraf, Ms. Sadia Saad Yusuf and Mr. Javed Iqbal, who are the Petitioners in the present petition, against Mr. Abdul Wahid Siddique i.e., the Respondent/Defendant *(hereinafter, "Defendant")*. The case of the Plaintiff's/Petitioners *(hereinafter, "Plaintiff's")* is that they are the owners of the suit property, being property bearing no 1525-27, Begum Manzil, Pataudi House, Darya Ganj, New Delhi-110002 *(hereinafter, "suit property")* and they trace back their title to one Mst. Musharraf Begum through six registered sale deeds and a fatwa, which are as under:

i. Fatwa dated 6th November, 1971 issued by Mufti Musharraf Ahmed, Jamia, Fatehpuri, Delhi which, as per the Plaintiff's, vested rights in Mr. Mohammad Salim Hussain.

ii. Sale Deed dated 18th February, 1999 executed by Mr. Asmat Saleem, son of Late Mr. K.M. Salim Hussain in favour of Mr. Arshad Zarabi and Mr. Zahid Hussain.

iii. Sale Deed dated 26th June, 2002 executed by Mr. Arshad Zarabi and Mr. Zahid Hussain in favour of Mr. Mohd. Ashraf by which Mr. Mohd. Ashraf is stated to have acquired 75% of the suit property.

iv. Sale Deed dated 7th February, 2011 executed by Mr.Zahid Hussain in favour of Mr. Javed Iqbal by which Mr. Javed Iqbal is stated to have acquired 25% share in the suit property.

v. Sale Deed dated 7th February, 2011 executed by Mr. Mohd. Ashraf favour of Mr. Javed Iqbal by which Mr. Javed Iqbal is stated to have acquired 9% share in the suit property i.e a total of 34% share in the suit property.

vi. Sale Deed dated 7th February, 2011 executed by Mr. Mohd. Ashraf in favour of Ms. Sadia Saad Yusuf, by which Ms. Sadia Saad Yusuf is stated to have acquired 33% share in the suit property.

Thus, the foundation of all the Sale Deeds is the fatwa dated 6th November, 1971.

6. Further, the case of the Plaintiffs is that the Defendant was a tenant of Mst. Musharraf Begum and has no right in the suit property. Purchase of the suit property was made by the Plaintiffs by registered sale deed in the year 2002 and 2011, pursuant to which notice demanding arrears of rent and vacation of premises was issued in May, 2011 to the Defendant. The Defendant challenged the ownership of the Plaintiffs on various grounds leading to the filing of the suit for possession.

7. The Defendant's defence is that the original owner had made a declaration, transferring ownership in favour of the Tenants. The Defendant's case in the written statement is as follows:

i. That if the rent is Rs.375/- per month then the provisions of the Delhi Rent Control Act, 1958 would apply.

ii. The Plaintiff's own case is that the Defendant is in possession since 32 years or more and no rent has been paid by the Defendant over this entire period. Thus, the Defendant is the owner of the suit property by means of adverse possession.

iii. The Plaintiff does not disclose the chain of documents by which the

Plaintiff became the exclusive owner of the suit property and if the said chain is disclosed it would be clear that the ownership is claimed on the basis of forged and fabricated documents.

iv. No person has demanded the rent from the Defendant since 1971. There is no rent agreement or rent receipt in favour of the Plaintiff or even the original owner Mst. Mussharaf Begum.

v. Since Mst. Mussharaf Begum had no children and no close relatives during her lifetime she had declared that the tenants/occupants of the property would become owners upon her death.

vi. The intention of the Plaintiff is to grab the suit property on the basis of forged and fabricated documents.

vii. That an unlawful attempt was made to disconnect the electricity supply to the premises which was restored by an order of the ld. Civil Judge in Suit No. 387/2011.

8. The following issues were framed in the suit on 23rd October, 2013:

> *"1. Whether the plaintiff is entitled to decree for recovery of possession of suit property? OPP*
>
> *2. Whether the plaintiff is entitled to decree for recovery of damages at the rate of Rs.25,000/- p.m. from the date of filing of the suit till the possession is handed over? OPP*
>
> *3. Whether the plaintiff is entitled to decree of permanent injunction restraining the defendant from creating third party interest in the suit property? OPP*
>
> *4. Whether the defendant has become the owner of the suit property by way of adverse possession? OPD*

5. Relief."

9. After issues were framed, an application under Order XII Rule 6 CPC was filed by the Plaintiffs. Arguments on the application were heard on 27th September 2014 and the matter was fixed for orders/clarifications on 15th October, 2014. Thereafter, on several dates, the order was not passed. Further, without any direction from the Court, on two occasions the Defendant filed case law. Finally, the Plaintiffs moved an application under Order XX Rule 1 CPC seeking pronouncement of judgment and finally, the impugned order dismissing the Order XII Rule 6 CPC application was passed on 12th February, 2016.

10. Mr. Bhargava, ld. counsel for the Plaintiffs submits on the first issue that going by the judgment of this Court in ***Deepti Khera v. Siddharth Khera [CM (M) 1637/2019, decided on 18th November, 2019]***, which relied on the judgment by the Supreme Court in ***Anil Rai v. State of Bihar, (2001) 7 SCC 318***, the order was passed very belatedly. On this very ground, it is argued that the impugned order is liable to be set aside.

11. On this issue, Mr. Bajaj, ld. counsel for the Defendant does not dispute the chronology of events leading to the pronouncement of the judgment.

12. A perusal of the order sheet of the Trial Court shows that the orders passed on various dates after hearing in the Order XII Rule 6 CPC application are as under:

Date of Order	Contents of Order
7th August, 2014	Reply to the application under Order 12 R 6 read with Section 151 CPC filed on behalf of the defendant. Copy

	supplied. Taken on record. Put up for hearing arguments on pending application on 27.9.2014.
27th September, 2014	Arguments on application u/o 12 R 6 read with Section 151 CPC heard. Put up for order/clarifications if any, on 15.10.2014. Defendant is at liberty to file case law in his support.
15th October, 2014	It is reported that defendant has filed some case law in support of his contention. In view of this, put up for order/clarification, if any, on 26.11.2014.
26th November, 2014	Put up for purpose fixed on 10.12.2014.
10th December, 2014	Lawyers are on strike today. Put up for order/clarifications, If any, on 29.01.2015.
29th January, 2015	Put up for order at 04.00 pm. Matter called up again (04.00 pm): No time left for dictating order as considerable time has been devoted in recording evidence in Suit No.209/14. Put up for order on 16.02.2015.
16th February, 2015	No court time left for dictating order. Put up for order on 12.3.2015.
12th March, 2015	Put up for purpose already

	fixed for 10.04.15. Ld. Presiding Officer is on 1st half day leave today.
10th April, 2015	No court time left for dictating order. Put up for order on 05.05.2015
5th May, 2015	Put up for order on 23.05.2015.
23rd May, 2015	No court time left for dictating order. Put up for order on 06.06.2015.
6th June, 2015	No court time left for dictating order. Put up for order on 16.07.2015.
16th July, 2015	No court time left for dictating order. Put up for order on 22.08.2015.
22nd August, 2015	No court time left for dictating orders. Put up for order on 04.09.2015.
4th September, 2015	No court time left for dictating order. Put up for order on 24.09.2015.
24th September, 2015	Some case is filed on behalf of defendant by the clerk of Ld. counsel for defendant. Put up for order on 13.10.2015.

13. In view of the delay in pronouncement of orders in the application under Order XII Rule 6, the Plaintiff filed an application under Order XX seeking pronouncement of orders by the Court. On the said application, the following order was passed by the Court on 13th October 2015.

> *"It is submitted by Ld. counsel for the plaintiff that some case law has been filed by the defendant on the last date of hearing without supplying copy to him and without his knowledge as such he did not get opportunity to respond. It is also submitted by the Ld. counsel that his application under Order 20 read with Section 151 CPC was filed on 21.08.2015, ld. Counsel again submit that the application was filed on 22.08.2015, however not placed on record.*
>
> *Ld. Counsel seeks to press his application and do not wish to wait till 4.00 p.m.*
>
> *Heard.*
>
> *At the outset the submission as made by the Ld. counsel for the plaintiff is misconceived and contrary to record.*
>
> *Ld. Counsel failed to substantiate his submission to disentitle or stop the parties to file case law in support of their case. The case law as filed by the defendant is available on record and open for inspection by the plaintiff on filing of appropriate application; same has not been done by the plaintiff. Even otherwise, vide order dated 27.09.2014 liberty was granted to the defendant to file case law and same was not objected by Ld. counsel for plaintiff. Further, as per record, the application, as referred by the Ld. counsel for the plaintiff is available on record with necessary report by ahlmad and the endorsement overleaf the application reflects date of filing as 04.09.2015.*

It is the endeavour of this court to dispose of the matter at the earliest within the limited working hours although there is pendency of about 895 cases. Parties are also at liberty to inspect the judicial record to keep track of their case. In view of foregoing observations, application stands disposed of.

Put up for order on 13.01.2016."

The order was finally pronounced dismissing the application on 12th February, 2016. The said order of dismissal is impugned in the present petition.

14. From the above table it is clear that the matter has been repeatedly adjourned for orders over a period spanning more than one and a half years. This would be contrary to the timelines prescribed by the Supreme Court in ***Anil Rai (supra)***, which has been reiterated by this Court in ***Deepti Khera (supra).***

15. The broad guidelines to be followed by the Trial Court once arguments are heard and orders are reserved is set out in ***Deepti Khera (supra)*** as follows:

"9. While this Court is conscious of the fact that there are pressures on the Trial Courts, non-pronouncement of orders for more than a year cannot be held to be justified. It has been observed in several matters that trial courts keep matters 'FOR ORDERS' for months together and sometimes orders are not pronounced for even 2-3 years. Thereafter the judicial officer is transferred or posted in some other jurisdiction and the matter has to be reargued. Such a practice puts enormous burden on the system and on litigants/lawyers. The usual practice ought to be to pronounce orders

within the time schedule laid down in the CPC as also the various judgements of the Supreme Court. In civil cases maximum period of two months can be taken for pronouncing orders, unless there are exceptional cases or there are very complex issues that are involved.

10. Accordingly, in respect of pronouncement of orders, the following directions are issued:

When arguments are heard, the order sheet ought to reflect that the matter is part-heard;

Upon conclusion of arguments, the order sheet ought to clearly reflect that the arguments have been heard and the matter is reserved for orders. If the court is comfortable in giving a specific date for pronouncing orders, specific date ought to be given;

Orders ought to be pronounced in terms of the judgment of the Supreme Court in Anil Rai (supra);

The order ought to specify the date when orders were reserved and the date of pronouncement of the order."

16. Recently the Supreme Court in ***Balaji Baliram Mupade and Anr. v. State of Maharashtra and Ors., [Civil Appeal No. 3564/2020, decided on 29th October, 2020]*** has also observed as under:

"2. Judicial discipline requires promptness in delivery of judgments - an aspect repeatedly emphasized by this Court. The problem is compounded where the result is known but not the reasons. This deprives any aggrieved party of the opportunity to seek further judicial redressal in the next tier of judicial scrutiny.

3. A Constitution Bench of this Court as far back as in the year 1983 in the State of Punjab v. Jagdev Singh Talwandi - (1984) 1 SCC 596 drew the

attention of the High Courts to the serious difficulties which were caused on account of a practice which was increasingly being adopted by several High Courts, that of pronouncing the final orders without a reasoned judgment. ...

4. Further, much later but still almost two decades ago, this Court in Anil Rai v. State of Bihar - (2001) 7 SCC 318 deemed it appropriate to provide some guidelines regarding the pronouncement of judgments, expecting them to be followed by all concerned under the mandate of this Court. It is not necessary to reproduce the directions except to state that normally the judgment is expected within two months of the conclusion of the arguments, and on expiry of three months any of the parties can file an application in the High Court with prayer for early judgment. If, for any reason, no judgment is pronounced for six months, any of the parties is entitled to move an application before the then Chief Justice of the High Court with a prayer to re-assign the case before another Bench for fresh arguments.

5. The aforementioned principle has been forcefully restated by this Court on several occasions including in Zahira Habibulla H. Sheikh v. State of Gujarat [(2004) 5 SCC 353 : AIR 2004 SC 3467 paras 80-82], Mangat Ram v. State of Haryana (2008) 7 SCC 96 paras 5-10] and most recently in Ajay Singh v. State of Chhattisgarh, (2017) 3 SCC 330 : AIR 2017 SC 310.

...

11. We must note with regret that the counsel extended through various judicial pronouncements including the one referred to aforesaid appear to have been ignored, more importantly where oral orders are pronounced. In case of such orders, it is expected that they are either dictated in the Court

or at least must follow immediately thereafter, to facilitate any aggrieved party to seek redressal from the higher Court. The delay in delivery of judgments has been observed to be a violation of Article 21 of the Constitution of India in Anil Rai's case (supra) and as stated aforesaid, the problem gets aggravated when the operative portion is made available early and the reasons follow much later."

Thus, the Supreme Court has also recently reiterated the decision in ***Anil Rai (supra)***. The Trial Court has to pronounce the order in terms of the timelines laid down in ***Anil Rai (supra)***, which has been reiterated by this Court in ***Deepti Khera (supra)***.

17. Thus, there can be no doubt that the impugned order would be liable to be set aside on this very ground. However, since this is an application under Order XII Rule 6 CPC, issues in the suit have already been framed and the suit was filed way back in 2011, this Court proceeds to examine the application on merits.

18. The second issue which arises is as under:

Whether rights in an immovable property can be legally and validly derived on the basis of a fatwa issued by a maulvi and its binding nature on a third party?

19. The submission of Mr. Bhargava, ld. counsel is that a *fatwa* is not illegal as held in the judgment of the Supreme Court in ***Vishwa Lochan Madan v. Union of India & Ors., (2014) 7 SCC 707***. A *fatwa,* in fact, binds as a whole and is a method of bringing about amicable settlement between the parties. A *fatwa per se* is not illegal and the original owner, her husband and her sister having passed away, issuance of the *fatwa* in favour of the nephew of the original owner cannot be held to be illegal. He further relies

upon a judgment of this Court in ***Hari Gopal Manu v. B.S. Ojha, [RFA No.388/2015, decided on 10th February, 2016]*** to argue that once the Defendant accepts that he is a tenant, he cannot challenge the rights of the owner. He also relies upon the judgment of this Court in ***Mahinder Pal Singh v. Ali Hussein Khan F+, [CS(OS) 1684/2009, decided on 1st December, 2011]*** to argue that an oral declaration cannot be relied upon by the Defendant in this matter.

20. On the other hand, ld. counsel for the Defendant submits that the original sale deed dated 18th February, 1999, which is part of the chain of documents leading to the Plaintiffs' sale deed, itself records that Mst. Musharraf Begum had passed away on 20th July, 1971 and her husband had also died. Her sister passed away on 3rd August, 1971 leaving behind Khawaja Mohammad Salim Husain who had allegedly succeeded to the estate of Mst. Musharraf Begum on the basis of a *fatwa*. The manner in which the *fatwa* describes him as the nephew of Mst. Musharaf Begum is also not clear. A *fatwa* needs to be proved in accordance with law. In any event, the Plaintiffs' case is not one for being decreed under Order XII Rule 6 CPC.

21. Heard counsels for the parties. The legality and validity of a *fatwa* issued by *maulvis* has been the subject matter of the judgment of the Supreme Court in ***Vishwa Lochan Madan v. UOI & Others., (2014) 7 SCC 707***. The Supreme Court was concerned with the question as to whether a *fatwa* is binding and if so, in what manner. The Supreme Court was unequivocal in its pronouncement that a *fatwa* does not satisfy the requirements of a legally binding document and they do not trace their origin to validly made law. The observations of the Supreme Court are as under:

"13. As it is well settled, the adjudication by a legal authority sanctioned by law is enforceable and binding and meant to be obeyed unless upset by an authority provided by law itself. The power to adjudicate must flow from a validly made law. A person deriving benefit from the adjudication must have the right to enforce it and the person required to make provision in terms of adjudication has to comply that and on its failure consequences as provided in law are to ensue. These are the fundamentals of any legal judicial system. In our opinion, the decisions of Dar-ul-Qaza or the fatwa do not satisfy any of these requirements. Dar-ul-Qaza is neither created nor sanctioned by any law made by the competent legislature. Therefore, the opinion or the fatwa issued by Dar-ul-Qaza or for that matter anybody is not adjudication of dispute by an authority under a judicial system sanctioned by law. A Qazi or Mufti has no authority or powers to impose his opinion and enforce his fatwa on anyone by any coercive method. In fact, whatever may be the status of fatwa during Mogul or British Rule, it has no place in independent India under our constitutional scheme. It has no legal sanction and cannot be enforced by any legal process either by the Dar-ul-Qaza issuing that or the person concerned or for that matter anybody. The person or the body concerned may ignore it and it will not be necessary for anybody to challenge it before any court of law. It can simply be ignored. In case any person or body tries to impose it, their act would be illegal. Therefore, the grievance of the petitioner that Dar-ul-Qazas and Nizam-e-Qaza are running a parallel judicial system is misconceived.

14. As observed earlier, the fatwa has no legal status in our constitutional scheme. Notwithstanding that it is an admitted position that

fatwas have been issued and are being issued. The All India Muslim Personal Law Board feels the "necessity of establishment of a network of judicial system throughout the country and Muslims should be made aware that they should get their disputes decided by the Qazis". According to the All India Muslim Personal Law Board "this establishment may not have the police powers but shall have the book of Allah in hand and sunnat of the Rasool and all decisions should be according to the book and the sunnat. This will bring the Muslims to the Muslim courts. They will get justice".

15. The object of establishment of such a court may be laudable but we have no doubt in our mind that it has no legal status. It is bereft of any legal pedigree and has no sanction in laws of the land. They are not part of the corpus juris of the State. A fatwa is an opinion, only an expert is expected to give. It is not a decree, nor binding on the court or the State or the individual. It is not sanctioned under our constitutional scheme. But this does not mean that existence of Dar-ul-Qaza or for that matter practice of issuing fatwas are themselves illegal. It is informal justice delivery system with an objective of bringing about amicable settlement between the parties. It is within the discretion of the persons concerned either to accept, ignore or reject it. However, as the fatwa gets strength from the religion; it causes serious psychological impact on the person intending not to abide by that. As projected by Respondent 10 "Godfearing Muslims obey the fatwas". In the words of Respondent 10 "it is for the persons/parties who obtain fatwa to abide by it or not". He, however, emphasises that "the persons who are Godfearing and believe that they are answerable to the Almighty and have to face the consequences of their doings/deeds, such are the persons, who submit to the fatwa". Imrana's case is

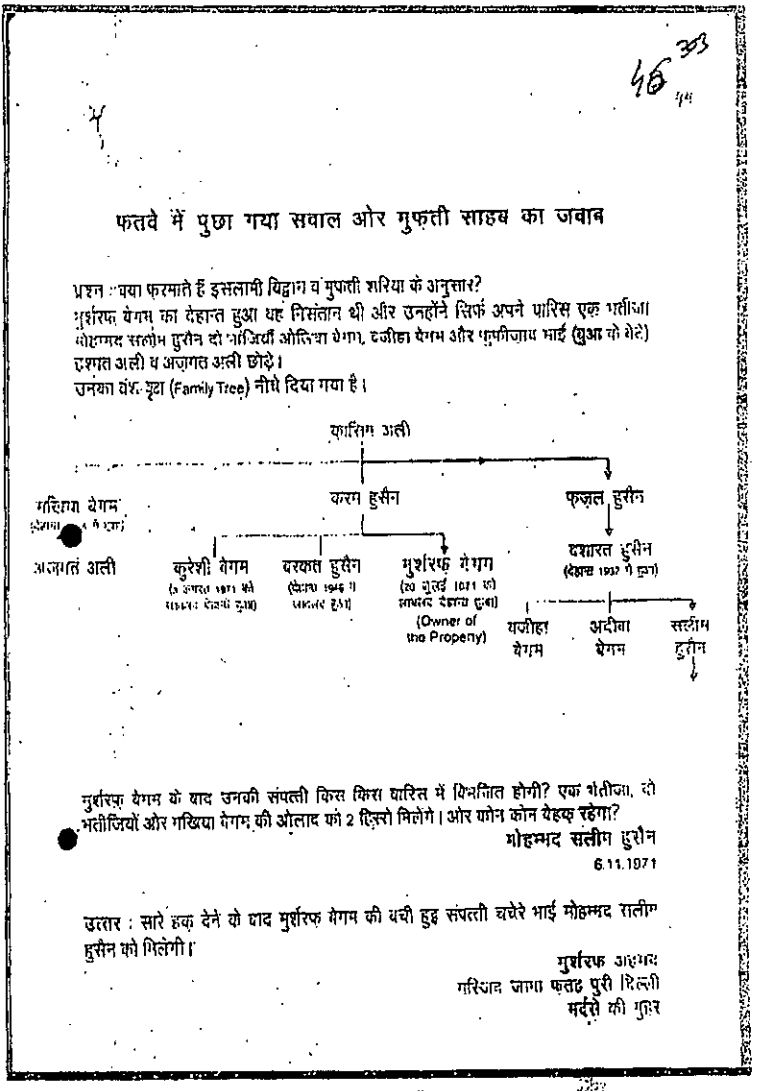
an eye-opener in this context. Though she became the victim of lust of her father-in-law, her marriage was declared unlawful and the innocent husband was restrained from keeping physical relationship with her. In this way a declaratory decree for dissolution of marriage and decree for perpetual injunction were passed. Though neither the wife nor the husband had approached for any opinion, an opinion was sought for and given at the instance of a journalist, a total stranger. In this way, the victim has been punished. A country governed by rule of law cannot fathom it."

22. A perusal of the above judgment makes it abundantly clear that a *fatwa* cannot be imposed on a third party. A *fatwa* can be completely ignored and no one needs to challenge the same before any Court of law. Imposition of a *fatwa* would itself be illegal. The effect of this judgment on the alleged *fatwa*, which is the basis of the Plaintiffs claim to ownership, would therefore have to be adjudicated by the Trial Court.

23. Moreover, the manner in which ownership of immovable property can either be vested or transferred is governed by the Transfer of Property Act, 1882 and the provisions of the Registration Act, 1908 have to be complied with. While inheritance can undoubtedly be decided on the basis of personal law, in the present case, there has been no adjudication as to who has inherited the suit property which belongs to Mst. Mussharaf Begum and in what share. A Court of law would have to adjudicate this issue after considering the documents and evidence before it. A mere unilateral *fatwa* allegedly issued in favour of one Mohd. Salim Hussain, on the basis of which his son purportedly transferred the rights to the Plaintiffs, cannot be a valid and legal transfer in the eyes of law - that too, for decreeing a suit under Order XII Rule 6 CPC.

24. Recognizing such rights based on a *fatwa* which has not been examined or sanctioned by a Court of law would be contrary to the Constitutional scheme. While a *fatwa* can be the basis of an amicable settlement of disputes between parties who submit to such a settlement process, binding the same on a third party would be contrary to law. As held in ***Masoor Ahmed v. State (NCT of Delhi) and Ors., 2008 (103) DRJ 137,*** as per Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937, issues relating to intestate succession, special property of females, including personal property, marriage, dissolution of marriage, maintenance, dower, guardianship, gifts, trusts and trust properties, and wakfs would be governed by the Muslim Personal Law (Shariat). However, this Shariat law would have to be applied by the Court dealing with the dispute. The Court in *seisin* of a dispute would have to satisfy itself as to the legality and validity of the claim to ownership and only then pass an order in accordance with law. There cannot be any legality or validity attached to a *fatwa*, especially in respect of ownership in an immovable property. Such a declaration would also not be binding on any third party.

25. A perusal of the entire chain of documents shows that the basis of the Plaintiffs' claim of ownership to the suit property is the alleged *fatwa* dated 6th November, 1971 issued by Mufti Musharraf Ahmed, Jamia, Fatehpuri, Delhi. The said *fatwa* is in the form of a conversation and is recorded below. The original *fatwa* is in Urdu but a Hindi translation has been placed on record and is extracted below:



फतवे में पुछा गया सवाल और मुफ्ती साहब का जवाब

प्रश्न : क्या फरमाते हैं इस्लामी विद्वान व मुफ्ती शरिया के अनुसार?
मुशरफ बेगम का देहान्त हुआ वह निसंतान थी और उनहोंने सिर्फ अपने वारिस एक भतीजा मोहम्मद सलीम हुसैन दो भांजियाँ ओलिया बेगम, दजीहा बेगम और एक भांजा भाई (मुआ को बेटे) इशरत अली व अज़मत अली छोड़े।
उनका वंश-वृक्ष (Family Tree) नीचे दिया गया है।

मुशरफ बेगम के बाद उनकी संपत्ती किस किस वारिस में विभाजित होगी? एक भतीजा, दो भतीजियों और मखिया बेगम की औलाद को 2 हिस्से मिलेंगे। और बाकि कौन कौन वेहक रहेगा?
मोहम्मद सलीम हुसैन
6.11.1971

उत्तर : सारे हक देने के बाद मुशरफ बेगम की बची हुइ संपत्ती चचेरे भाई मोहम्मद सलीम हुसैन को मिलेगी।
मुशरफ अहमद
मरिजद जामा फतह पुरी दिल्ली
मर्दसे की मुहर

26. Firstly, the genuinity of the above document has not been established by the Plaintiffs. Whether, in fact, such a *fatwa* was issued or not is not clear. This *fatwa* forms the foundation of the other Sale Deeds as per which the Plaintiffs have acquired ownership rights. Unless and until, this foundational document is proved in accordance with law, the Plaintiffs cannot claim rights in the suit property. Moreover, even as per the above document, after the demise of Mst. Mussharaf Begum, she had left behind various other heirs

including two nieces and an uncle, apart from her nephew – Mohd. Salim Hussain. The *fatwa* itself states that after the other heirs' rights are given, then the nephew – Mohd. Salim Hussain would become the owner of the suit property. The question as to whether rights in the property have been given to the other heirs or not is not clear. Moreover, during oral submissions, ld. counsel for the Defendant has also submitted that the question as to whether Mohd. Salim Hussain is himself a nephew or not is in doubt. Thus, all the foundational facts in this case are yet to be established.

27. The Defendant has in the written statement denied the chain of documents and has alleged that the documents are forged and fabricated. The Defendant has also set up a defense that a declaration was made by Mst. Mussharaf Begum that after her demise the occupants of the various portions of the suit property would be the owners. Whether such a declaration was made or not is not clear. The defense of adverse possession has also been taken and would require to be adjudicated. The Defendant is in physical possession of the property and a decree would result in the Defendant being dispossessed. This court is of the opinion that the issues are such that they cannot be decided in an Order XII Rule 6 CPC application.

28. In view of the above, this Court holds that the present suit is not liable to be decreed under Order XII Rule 6 CPC. There is no admission by the Defendant in the written statement, documents or otherwise. In fact, there is a clear denial by the Defendant of the right of the Plaintiffs. Even if the Defendant is stated to have admitted Mst. Mussharaf Begum's ownership of the property, the same would not lead to a decree being passed as much as the Plaintiffs would have to validly and legally trace back their title to Mst. Mussharaf Begum. The other defences of the Defendant, including adverse

possession, would also have to be adjudicated.

29. This Court expresses enormous dissatisfaction over the manner in which passing of orders under Order XII Rule 6 CPC was delayed by the Trial Court after hearing arguments. However, on merits, the dismissal of the application under Order XII Rule 6 CPC would not be liable to be interfered with.

30. The Plaintiffs are stated to have filed their evidence by way of affidavit. In view thereof, considering the fact that the suit is more than nine years old, it is directed that trial of the suit be concluded within six months and judgment be pronounced on or before 31st July, 2021.

31. The petition is disposed of in the above terms. All pending applications are also disposed of.

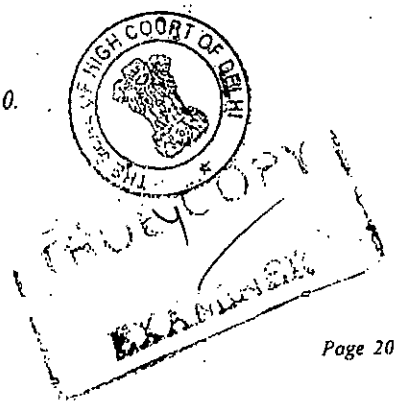
32. Copy of this order be sent to the ld. Registrar General of this Court and be also circulated to District & Sessions Judges of all Districts to ensure that the timelines as prescribed in ***Anil Rai (supra)***, ***Balaji Baliram Mupade (supra)*** and ***Deepti Khera (supra)*** are adhered to in respect of pronouncement of orders.

[redacted] Sd/-

PRATHIBA M. SINGH
JUDGE

DECEMBER 14, 2020
dk/dj/T

corrected and released on 19th December 2020.



IN THE HIGH COURT OF DELHI AT NEW DELHI

CIVIL REV. PET. 89 OF 2016

In the matter of:

MOHD. ASHRAF AND ORS. ...PETITIONERS

VS

ABDUL WAHID SIDDIQUE ...RESPONDENTS

District Court Details:
Case No. CS 151/2011
Cause Title- Mohd Ashraf & Ors. vs Abdul Wahid Siddique
Date of impugned order- 12.02.2016
Name of Judge- Sh. Anurag Dass, Civil Judge, Tis Hazari, District- Central

AMENDED MEMO OF PARTIES

IN THE MATTER OF:

Mohd Ashraf
S/o Mohd Yusuf,
R/o 736, Katra Fazal Pura, Suiwalan,
Delhi-110006 ...Petitioner No.1

Sadia Saad Yusuf,
D/o Late Shri Saad Mahmood,
R/o 2164, Ahata Kalay Sahib,
Qasimjan Street, Ballimaran,
Delhi-110006 ...Petitioner No.2

Javed Iqbal,
S/o Late Shri Nizeeruddin,
R/o 1972, Gali Rajan, Kucha Chelan,
Darya Ganj
New Delhi ...Petitioner No.3