

**Court No. - 4**

**Case :-** SECOND APPEAL No. - 16 of 2024

**Appellant :-** Nisha Gupta

**Respondent :-** Inam Ahmed And Others

**Counsel for Appellant :-** Jai Prakash Yadav, Ram Bux Rawat

**Hon'ble Rajnish Kumar, J.**

1. Heard Sri Jai Prakash Yadav, learned counsel for the appellant.
2. This second appeal has been filed challenging the judgment and decree dated 21.12.2023 passed in Civil Appeal No.26 of 2022(Smt. Nisha Gupta versus Inam Ahmad & others) by the Additional Sessions Judge, Court No.3, Lakhimpur Kheri and judgment and decree dated 19.05.2022 passed in Civil Suit No.342 of 2007(Smt. Afsha Parveen @ Mona(Dead) and others versus Smt. Nisha Gupta & Others) by the Additional Civil Judge(S.D.), Court No.3, Lakhimpur Kheri.
3. Learned counsel for the appellant submits that in a suit for partition, which was decided by means of the judgment and decree dated 27.04.1992, 1/4<sup>th</sup> share in the land in dispute situated at Mohalla Sankata Devi, Lakhimpur, District Lakhimpur Kheri had come to Ahmed Ali @ Babu, who gave the same to Smt. Safia Begum, wife of Athar Ali through oral gift(hiba), which was accepted by her and possession was also given to her. Smt.Safia Begum executed the sale deed of her share of the land to the appellant for a consideration of Rs.20,000/- and the appellant is in possession on the land in dispute. But without considering the same, the trial court allowed the suit for permanent injunction filed by the predecessor-in-interest of the respondent nos.2 to 5 Smt.Afsha Parveen @ Mona who had died during pendency of the civil suit. The appeal filed by the appellant has also been dismissed

without considering the same, therefore the appellant is before this Court.

4. I have considered the submissions of learned counsel for the appellant and perused the documents placed on record of this appeal.

5. As borne out from the pleadings, the suit for partition of the land in dispute with the old house situated in Mohalla Sankata Devi, Lakhimpur, District Kheri bearing Regular Suit No.319 of 1989(Akhtar Jahan versus Akhtar Ali) was filed. The same was decided by means of the judgment and decree dated 27.04.1992 passed by the Additional Civil Judge, Lakhimpur Kheri and in pursuance thereof, Ahmed Ali @ Babu got 1/4<sup>th</sup> share in the land in dispute. The judgment and decree passed by the trial court was upheld in Civil Appeal No.54 of 1992(Akhtar Jahan versus Akhtar Ali), by means of the judgment and order dated 19.05.1995 passed by the Special Judge. The 1/4<sup>th</sup> share of Ahmed Ali @ Babu was sold by his successors namely Mazhar Ali, Irshad Ali, Irfan Ali and Gufran Ali i.e. the respondent nos. 6 to 9, who were defendants no.2 to 5 in the civil suit No.342 of 2007 filed for permanent injunction to the predecessor-in-interest of the respondents no.1 to 5 by means of the registered sale deed dated 07.12.2005. In the sale deed their mother Smt. Sayada Begum wife of Late Ahmed Ali had also signed the sale deed as an attesting witness, who had also share in the land in dispute. Therefore she had not raised any objection in regard to the sale in question. In pursuance of the sale deed, the possession was also handed over to the predecessor-in-interest of the respondent nos.1 to 5. The evidence adduced before the trial court proved the aforesaid facts and the possession of the predecessor-in-interest of respondent nos.1 to 5.

6. The claim of the appellant that 1/4<sup>th</sup> share was given to Smt. Shafia Begum through oral gift(hiba) could not be proved as no year, date, time or place of the same could be disclosed. The possession of Smt. Shafia Begum also could not be proved. It is also noticed that the dispute relates to 1/4<sup>th</sup> share of Ahmed Ali @ Babu and a plea has been taken that after decision of the suit on account of family settlement Athar Ali, Ajhar Ali, Ahmed Ali @ Babu, Kaiser Jahan and Akhtar Jahan made a oral gift of disputed house in favour of Smt. Shafia Begum @ Athar Ali, whereas once the partition was made by the Court, the question of family settlement does not arise and if family settlement was made, the question of oral hiba of share of Ahmed Ali @ Babu does not arise, that too by all, among whom the partition was made. Therefore it appears that only to set up a case, the plea was taken.

7. Learned counsel for the appellant has relied on a coordinate Bench judgment of this Court, in the case of ***Ashiq Ali and others versus Smt. Rasheeda Khatoon and another; 2005 (23) LCD 258*** and has submitted that once the oral gift(hiba) was made and the same was accepted with delivery of possession, the predecessor-in-interest of the appellant had got all the rights and she had rightly executed the sale deed in favour of the appellant.

8. This Court, in the aforesaid judgment, relied by learned counsel for the appellant has held that for a valid gift under the Mohammadan Law, there are three essential requirements ,i.e, declaration of the gift by the donor, acceptance of the gift expressed or implied by or on behalf of the donee and delivery of possession of the subject of the gift by the donor to the donee and if all the three requirements are fulfilled, the oral gift would be valid and it cannot be ignored on the ground that a gift made

by a Mohammadan is not in accordance with Section 123 of the Transfer of Property Act. The relevant paragraph 20 to 23 is extracted hereinbelow:

*"20. Admittedly, in any gift by a Mohammedan, three essential requirements have to be complied with for a valid gift :*

*(i) Declaration of the gift by the donor.*

*(ii) Acceptance of the gift expressed or implied by or on behalf of the donee.*

*(iii) Delivery of such possession of the subject of the gift by the donor to the donee.*

*21. Since the deed itself makes it clear that upto the date of the execution of this deed, the executant was in possession, and there can be no oral gift without possession. Therefore, this document cannot be constituted to be a memorandum of gift but it is a gift deed itself.*

*22. Learned counsel for the respondent No. 1 has fairly conceded that if the gift deed is executed in writing, its registration is compulsory under Section 17 of the Registration Act irrespective of the fact that an oral gift is possible under the Mohammedan Law. In view of the statements of deed noted above, the finding of the learned Appellate Judge, that the deed in question is a memorandum of gift is not found correct and it is perverse based on wrong interpretation of the document in question. It cannot be described as a document evidencing the oral gift but it is a document creating a gift in favour of the plaintiff. In view of the said reasons, I hold that lower appellate court has misread the document dated 9.10.1970 by describing it as a document evidencing an oral gift allegedly made two years earlier.*

*23. So far as the first substantial question of law stated in the memorandum of appeal is concerned, I hold that in view of the provision under Section 129 of the Transfer of Property Act, the provision of Section 123 of the Transfer of Property Act shall not affect the validity of the gift under any rule of Mohammedan Law, so if an oral gift is there and the aforesaid three requirements are fulfilled, it cannot be ignored on the ground that a gift made by a Mohammedan is not in accordance with Section 123 of the Transfer of Property Act but if a gift deed is executed, it is not exempt from registration in accordance with the provision under*

*Section 17 of the Registration Act. Section 129 of the Transfer of Property Act does not exempt the written gift deed executed by a Mohammedan."*

9. Adverting to the facts of the present case, this Court finds that the appellant has failed to prove the oral gift(hiba) made in favour of Smt. Shafia Begum because no year, date, place and time of the oral gift(hiba) has been given and though it has been asserted that the same was accepted and the possession was also delivered but the possession could not be proved, therefore, this Court is of the view that the appellant is not entitled for any benefit of the aforesaid judgment.

10. In view of above, this Court is of the view that there is no illegality or error in the impugned judgment, order and decree and no substantial question of law arises in this appeal. The appeal is misconceived and lacks merit and liable to be dismissed.

11. This second appeal is, accordingly, **dismissed** at the admission stage.

**Order Date :- 27.2.2024**

Akanksha