



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 18TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

REGULAR SECOND APPEAL NO.5270 OF 2008 (DEC)

BETWEEN:

T. MOHAMED SHAFFI
DIED BY HIS LRS.

- 1A. PHAJALUNNISA W/O. LATE T. MOHAMED SHAFFI,
AGED ABOUT 71 YEARS,
R/AT. ADIVALA, CHITRADURGA,
ADIVALA-577511.
- 1B. FARIDA BANU D/O. LATE T. MOHAMED SHAFFI,
AGED ABOUT 52 YEARS,
R/AT NO.109, MAIN ROAD,
VANIVILASAPUR, CHITRADURGA,
VANIVILASAPURA-577599.
- 1C. T. AMJAD ALI
S/O. LATE T. MOHAMED SHAFFI,
AGED ABOUT 49 YEARS,
R/AT. NO.214, 3RD MAIN,
4TH CROSS, NEAR HOUSING BOARD COLONY,
J.P. NAGAR, HOSPET, BELLARY,
HOSPET-583201.
- 1D. ZAINULADIN
S/O. LATE MOHAMMED SHAFI,
AGED ABOUT 49 YEARS,
R/AT. HIRIYUR TALUKA ADIVALA,
HIRIYUR, CHITRADURGA,
ADIVALA-577511.
- 1E. SAIPUDDIN
S/O. LATE T. MOHAMED SHAFFI,

YASHAVANT
NARAYANKAR


Digitally signed by
YASHAVANT
NARAYANKAR
Date: 2025.12.19
12:12:14 +0530



NC: 2025:KHC-D:18648
RSA No. 5270 of 2008

AGED ABOUT 47 YEARS,
R/AT. HIRIYUR TALUK ADIVALA,
HIRIYUR, CHITRADURGA,
ADIVALA-577511.

...APPELLANTS

(BY SRI. D.L. JAGADESH, SR. COUNSEL FOR
SRI. RAJASHEKHAR GUNJALLI, ADVOCATE)

AND:

MOHAMMAD ALI
S/O. MOHAMMAD IMAM,
AGED ABOUT 50 YEARS,
OCC. COCONUT MERCHANT,
R/O. ADIWAL VILLAGE,
HIRIYUR TALUKA, NOW AT J.P. NAGAR,
BALLARI ROAD, HOSPET TALUKA,
NEAR DARGH MASJID,
BALLARI DISTRICT-563201.

...RESPONDENT

(BY SRI. ARUN L. NEELOPANT, ADVOCATE FOR
SMT. KAVITA S. JADHAV, ADVOCATE FOR R1)

THIS RSA IS FILED UNDER SECTION 100 OF CPC, PRAYING TO SET ASIDE THE JUDGMENT AND DECREE PASSED BY THE LEARNED PRINCIPAL CIVIL JUDGE (SR.DN.) AND JMFC HOSPET DATED 17.10.2008 PASSED IN R.A.NO.86/2007 REVERSING THE JUDGMENT AND DECREE PASSED BY THE LEARNED ADDITIONAL CIVIL JUDGE (JR.DN.) AND JMFC HOSPET DATED 20.08.2007 IN O.S.NO.49/2003 AND ALLOW THIS APPEAL WITH COSTS THROUGHOUT IN THE INTEREST OF JUSTICE.

THIS RSA APPEAL HAVING BEEN HEARD AND RESERVED ON 04.11.2025, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, COURT DELIVERED THE FOLLOWING:



CAV JUDGMENT

(PER: THE HON'BLE MR. JUSTICE C M JOSHI)

The plaintiff in O.S.No.49/2003 is before this Court assailing the reversal of the judgment of the Trial Court by the First Appellate Court in R.A.No.86/2007 dated 17.10.2008.

2. The factual matrix of the case that is relevant for the purpose of this appeal is summarized as below:

(a) The plaintiff/appellant herein sought the following reliefs in the suit:

"XIV. The Plaintiff, therefore, prays that the Honourable Court be pleased to pass the Decree in favour of the Plaintiff and against the Defendant:

(a) declaring the title -absolute ownership of the Plaintiff to the Plaint Schedule described house;

(b) consequentially directing the Defendant to deliver the vacant possession of the Plaint Schedule described house to the Plaintiff;

(c) granting costs of the suit; and

(d) granting such other relief or reliefs as the Honourable Court may deem fit and necessary in the circumstances of the Case."



(b) It is the case of the plaintiff that he is the absolute owner of the suit schedule property bearing Door No.168 situated at 9th ward in Hospet. The plaint avers that the defendant is the plaintiff's sister's husband and the plaintiff has married the sister of the defendant. For some years, both the plaintiff and the defendant were in the business of coconuts. The defendant had settled down in Hiriyyuru for few years for procuring coconuts. He had rented a house and later he purchased the said house. The defendant used to procure the coconuts and dispatch them as per the plaintiff's instructions to the northern part of Karnataka.

(c) In the end of the year 1990, the plaintiff left for North Karnataka along with his family members for developing the coconut business. When the plaintiff returned after few months, the defendant had forcibly occupied the suit house and prevented the plaintiff and his family from entering the house. When questioned his high handedly, the defendant claimed the ownership over the suit house contending that the plaintiff had executed a gift deed in his favour. The plaintiff was surprised since he had at no point of time had executed any such gift



deed. On demand to show the original deed, the defendant stating that the original had been lost and he has only a copy, showed the same.

(d) The plaintiff got suspicious and felt that the defendant had fabricated the said gift deed.

(e) In view of the relationship, the plaintiff did not force the defendant to vacate the suit house and later the plaintiff complained about the defendant's high handed act of trespass to the elders of the community who advised the defendant to vacate and settle the matter. The plaintiff avers that lot of time was spent by elders in making efforts to settle the matter. Finally, the defendant adamantly refused to deliver the possession of the suit house in favour of the plaintiff.

(f) It was further alleged that the gift in favour of the defendant is not in accordance with the principles of the Mohammedan Law and therefore, finding no other alternative and efficacious remedy, the plaintiff approached the Court seeking a declaration of his title over the suit schedule property and also for possession of the said property.



3. In pursuance to the suit summons, the defendant appeared and filed his written statement.

(a) The defendant admitted the relationship between the plaintiff and the defendant but however, he denied all the contentions of the plaintiff. The defendant contended that plaintiff has executed the registered gift deed on 12.02.1969 and as such, the plaintiff has lost his right over the suit schedule property. The defendant denied the allegation of the plaintiff regarding forcible occupation of the suit house and that an effort was made by the plaintiff for amicable settlement with the help of the elders.

(b) The defendant contended that the gift by the plaintiff in his favour is legal and valid and is in accordance with the principles of the Transfer of Property Act as well as the Mohammedan Law.

(c) The defendant further contended that the plaintiff with collusion with one M. A. Wahab had got filed suit in O.S.No.110/2000 before the Civil Judge (Sr.Dn), Hospet for specific performance of an alleged agreement of sale executed



by the plaintiff in favour of the said M. A. Wahab. In the said suit, the defendant was arrayed as the defendant No.2.

(d) It is alleged that the plaintiff felt that he would fail in the said suit and therefore has approached this Court seeking declaration by seeking to ignore the alleged gift deed in order to defraud the defendant. Hence, the suit be dismissed.

(e) It is contended that, in the suit bearing O.S.No.110/2000, the suit property is valued at ₹70,000/- and therefore, the present suit valued at ₹35,000/- is incorrect and as such, the Court fee paid is not correct and valid. Therefore, the defendant sought dismissal of the suit.

4. On the basis of the above pleadings, the Trial Court framed issues as below:

- “೧. ತಾನು ದಾವಾ ತಪಶೀಲು ಸ್ಥಿರಾಸ್ತಿಯ ಸಂಪೂರ್ಣ ಮಾಲೀಕನೆಂದು ವಾದಿ ಸಾಬೀತು ಪಡಿಸುತ್ತಾನೆಯೇ?
೨. ದಾವಾ ತಪಶೀಲು ಸ್ಥಿರಾಸ್ತಿಯ ಸ್ವಾಧೀನತೆಗೆ ವಾದಿ ಅರ್ಹನೇ?
೩. ಈ ನ್ಯಾಯಾಲಯಕ್ಕೆ ದಾವೆಯನ್ನು ಇತ್ಯರ್ಥಗೊಳಿಸುವ ಅಧಿಕಾರ ವ್ಯಾಪ್ತಿ ಇಲ್ಲವೆಂದು ಪ್ರತಿವಾದಿ ಸಾಬೀತು ಪಡಿಸುತ್ತಾನೆಯೇ?
೪. ಏನು ಆದೇಶ ವ ಡಿಕ್ರಿ?”



5. In order to substantiate their contentions, the plaintiff was examined as PW1 and three documents were marked as Ex.P.1 to 3. The defendant was examined as DW1 and Ex.D1 to 18 were marked.

6. After hearing the arguments by both the sides, the Trial Court answered Issue No.1 and 2 in the affirmative, Issue No. 3 in the negative and proceeded to decree the suit as prayed by the plaintiff. It directed the defendant to vacate the suit schedule property within period of three months and to hand over the possession of the same to the plaintiff.

7. Being aggrieved, the defendant approached the First Appellate Court in R.A.No.86/2007. After hearing the arguments, the First Appellate Court framed the following points for consideration:

- 1. Whether the finding of the trial Court that plaintiff has proved his title to the suit schedule property is correct?*
- 2. Whether the judgment of the trial Court calls for interference?*
- 3. What order?*



8. The First Appellate Court answered the points in favour of the defendant and allowed the appeal. Being aggrieved, the plaintiff is before this Court in second appeal.

9. While admitting the appeal on 27.02.2009, this Court had framed the following substantial questions of law:

- i) Whether the Lower Appellate Court was justified in holding that the suit of the plaintiff is hit by the provisions of the Limitation Act in the manner considered by the Lower Appellate Court by looking into Article 58 of the Limitation Act?*
- ii) Whether the manner of consideration of Ex.D-1 -Gift deed by the Courts below has led to perverse appreciation of the evidence and the position as accepted by the Lower Appellate Court is contrary to the position of law?*

10. During pendency of this appeal, the plaintiff/appellant filed an application under Order I Rule 10 of CPC seeking to implead respondent No.2 on the ground that during the interregnum of the decree passed by the First Appellate Court and the filing of the present appeal, the defendant had sold the property to the proposed respondent No.2. This Court observing that the transaction between the defendant and the



proposed respondent No.2 would be subject to the outcome of the suit, as available under Section 52 of the Transfer of Property Act, rejected the said application.

11. The arguments by learned Senior Counsel Sri.D.L.Jagadish appearing for the appellant and the learned counsel appearing for the respondent were heard.

12. The learned counsel appearing for the appellant/plaintiff submitted that the essential ingredients of a Mohammedan gift are not established by the defendant to prove the Ex.D1. He contends that the original of the gift deed has not been produced by the defendant and therefore, production of the secondary evidence in the form of certified copy is not justifiable.

13. Secondly, he submits that the DW1, in his testimony in O.S.No.110/2000, had stated that his father had given the gift deed to him after his marriage. However, in the present case, he had laid a foundation to produce the certified copy by saying that the original has been lost. Therefore, there is discrepancy in respect of the admissibility of Ex.D.1.



14. Thirdly, he submits that the essential ingredients of a Mohammedan gift are not established. It is submitted that to validate a gift under Mohammedan law there are three essential ingredients. In this regard he places reliance on the judgment in the case of ***Mansoor Saheb (Dead) and others v. Salima (D) By LRs and others***¹. In the said judgment, after scanning over several judgments, In paragraph 25, the Apex Court holds as below:

"25. The upshot of the above discussion is that there are three essential elements which are necessary for a valid gift deed. They are:

a) The gift has to be necessarily declared by the person giving the gift, i.e., the donor;

b) Such a gift has to be accepted either impliedly or explicitly by or on behalf of the donee; and

c) Apart from declaration and acceptance, there is also a requirement of delivery of possession for a gift to be valid."

15. Drawing attention to the factual matrix of the present case, the learned Senior Counsel for the appellant submits that the Ex.D1, which is the certified copy of the registered gift deed,

¹ AIR 2025 SC 373



though declares that the donor is making a gift, it doesn't show anything either explicitly or impliedly that it has been accepted by the donee i.e., the defendant. He also points out that the handing over of the possession of the suit schedule property by the plaintiff to the defendant is also not established by this document. He points out to the fact that immediately after the gift on 12.02.1969, the entries in the Municipal records had not been changed and this indicates that the possession had remained with the plaintiff. Therefore, he contends that the essential ingredients of the Mohammedan gift are not established by the defendant.

16. Fourthly, he submits that the defendant had not got his name entered in the Municipal records to establish that he was in possession of the property. The say of the plaintiff that in the year 1990, the defendant had forcibly occupied the suit schedule property gets an impetus from this aspect. Therefore, it is contended by the learned counsel for the appellant that the First Appellate Court had erred in holding that the gift is valid.

17. So far as the limitation is concerned, he points out that the cause of action had arose in the year 1999. He submits



that all along, since the year 1990, there was effort by the plaintiff to get the possession of the property with the help of the elders of the community. Therefore, he contends that the suit is well in time.

18. Per contra, the learned counsel appearing for the defendant submits that the gift deed is dated 12.02.1969. He points out that Ex.D.1/gift deed shows a categorical expression by the plaintiff that he wants to gift the suit schedule property to the defendant.

19. Secondly, he points out that it being a registered gift deed, the possession goes with the gift deed and therefore, the defendant's possession of the property has to be accepted. He further contends that the discrepancy in the deposition of the defendant regarding the defendant coming in possession of the gift deed is not a material one. When the defendant had laid a foundation to say that the original gift deed has been lost and such a contention was taken up by him in O.S.No.110/2000, the same also holds good in the present case. It may be true that in the deposition, the defendant had deposed in O.S.No.110/2000 that his father had handed over the gift deed to him and in the



present case, he deposed that the gift deed has been lost long ago, this discrepancy is not of much relevance since unavailability of the gift deed has been stated by him. It is not necessary that the manner in which the defendant lost the gift deed is to be established.

20. Regarding the limitation, he submits that the First Appellate Court is justified in holding that the question of limitation being a question of law can be raised at any point of time. He points out that paragraph 4 of the plaint mentions that the plaintiff came to know about the hostile title and occupation of the premises by the defendant in the year 1990. It is the case of the plaintiff that he had left Hospet in the year 1990 along with his family for expanding his business and when he returned after a few months, the defendant had occupied the premises. Therefore, when the plaintiff came to know that the defendant is in occupation of the suit property on the basis of the gift deed in the year 1990, the hostility of the defendant was known to the plaintiff. Therefore, the cause of action for the suit had arose in the year 1990 itself. It is contended that when the hostile title of the defendant was made known to the plaintiff in the year 1990,



by applying Article 65 of the Limitation Act, the period of 12 years comes to an end in the year 2002. Therefore, when a suit is filed in the year 2003, the suit is hopelessly barred by time. He further submits that the plaintiff, while disclosing the cause of action, says that the cause of action arose in the year 1999. No discernible incident or a cause of action has been stated in the plaintiff to show that such cause of action had arose in the year 1999. Even if the cause of action had arose in the year 1999, if the suit is based on the previous title, applying Article 58 of Limitation Act, the period of limitation ends in the year 2002. Therefore, at any stretch of imagination, it cannot be said that the suit is in time. He points out that plaintiff is cleverly drafted the plaintiff to overcome the limitation, but the plaintiff has failed in his endeavour. Therefore, he submits that the First Appellate Court is justified in considering the question of limitation as Section 4 of the Limitation Act casts a burden on the Court to verify this aspect.

21. He points out that the question of limitation in the present case is not a question of fact and law. But only on the



basis of the plaint averments, the suit can be said to be not maintainable.

22. Further, the learned counsel appearing for the respondent also places reliance on the judgment in the case of ***Abdul Rahim v. S K Abdul Zabbar***², where the Apex Court dealt with a similar situation involving a registered gift deed among Mohammedans. In paragraph 14 it was held as below:

"14. Indisputably, the deed of gift is a registered one. It contains a clear and unambiguous declaration of total divestment of property. A registered document carries with it a presumption that it was validly executed. It is for the party questioning the genuineness of the transaction to show that in law the transaction was not valid. We have noticed hereinbefore that Razak had been receiving rent from the tenants. In fact, respondent No.1 in his suit claimed a decree for apportionment of rent. We would presume that Razak had been collecting rent from the tenants during the life-time of his father. The agency to collect rent, however, came to end as soon as an order of mutation was passed in his favour. Apart from the fact that Razak was allowed to continue to collect rent which having regard to the declaration made in the deed of gift must be held to be on his own behalf and not on behalf of the donor."

² AIR 2010 SC 211



REG. SUBSTANTIAL QUESTION OF LAW NO.1:

23. It is the contention of the respondent that the suit is barred by time. It is submitted that the defendant though had not raised question of limitation in the written statement, the Court can decide the question of limitation as it relates to the jurisdiction of the Court. Section 3 of the Limitation Act throws burden upon the Court to look into the question of limitation. Particularly, Section 3(1) of the Limitation Act, reads as below:

"3. Bar of limitation.—(1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence."

24. Thus, it may be seen that although limitation has not been set up by the defendants, it is the duty of the Court to ascertain that the suit is filed in time. Therefore, the First Appellate Court was justified in considering the question of limitation.

25. The learned counsel appearing for the respondent has submitted that paragraph 4 of the plaint clearly shows that



the limitation had begun to run in the year 1990. He heavily relies upon the averments of the paragraph 4 of the plaint to contend that the admissions of the plaintiff in the plaint being on the higher footings than the evidence, the Trial Court could have considered this aspect. It is pointed out that the present suit is filed before the Trial Court on 21.02.2003. It is submitted that the plaint is cleverly drafted in order to invoke the provisions of Article 65 of the Limitation Act. It is pointed out that the plaintiff is seeking a declaration of title over the suit schedule property and consequently, relief of possession. Therefore, it is Article 65 of the Limitation Act, which has to be applied to the facts and circumstances narrated in the plaint. Paragraph 4 of the plaint reads as under:

"IV. That being so, about the end of the year 1990 or so, the Plaintiff left for North Karnataka along with his family for developing the business there. When the Plaintiff returned after few months, the Suit Defendant had forcibly occupied the suit house of Plaintiff and the Plaintiff and her family were prevented from entering the house. When questioned he claimed the ownership, on the basis of an alleged gift deed, said to have been executed by the Plaintiff in his favour. It was then the Plaintiff was shockingly surprised, since he had at no time executed any such Deed. On demand to show the original alleged Gift Deed, the Defendant stated that he had lost it and has only a copy of it. The Plaintiff's suspicions that the



Defendant might have got the Gift Deed fabricated got thereby strengthened. The Plaintiff did not force him out in view of his relationship. The Defendant has resorted to the hostile attitude since the death of the Plaintiff's sister i.e., Defendant's wife.

26. From perusal of paragraph 4 of the plaint, it is evident that in the end of the year 1990, the plaintiff left for North Karnataka and after few months, he returned and the defendant had forcibly occupied the house of the plaintiff and plaintiff was prevented from entering the house. It is relevant to note that the plaint also states that the defendant had stated that he is in occupation of the suit schedule property on the basis of the gift deed executed by the plaintiff. Therefore, the contention of the defendant that he is having title to the suit schedule property by virtue of the gift deed executed by the plaintiff was informed to the plaintiff in the year 1990. Therefore, the pleadings of the plaint are clear and categorical in showing that the plaintiff was informed about the gift deed and on the basis of such gift deed, the defendant was in possession of the property in the year 1990 and as such, the hostility of the possession of the defendant was within the knowledge of the plaintiff. Obviously, the possession of the defendant had become hostile and adverse to the interest of the plaintiff in the year



1990. When the suit is filed in the year 2003, the period of 12 years has already lapsed and as such, the suit has to be held to be barred by time.

27. It is pertinent to note that paragraph 10 of the plaint is contrary to what has been stated in paragraph 4 of the plaint. The plaintiff in paragraph 10 of the plaint states that he was in possession till the year 1999. This cannot be accepted. In paragraph 10 and 11 it is stated as below:

"X. It is submitted that the Plaintiff is the lawful owner of the Schedule described house, having purchased the same and has continued to this day as the Owner thereof, being in possession till 1999. The Municipal Demand Register Extract, the Tax Paid Receipts and other such Documents, clearly establish the title of the Plaintiff and his lawful possession till the Defendant forcibly prevented the Plaintiff to continue in possession, falsely claiming to be the Donee. The Plaintiff being so dispossessed is entitled for possession, based on his title as well as for the declaration of his title."

XI. The Cause of action for the Suit arose long back when the Plaintiff purchased the Suit house, in or about the year 1999 when in the absence of the Plaintiff and his family, the Defendant kept the house in wrongful possession, subsequently when the Muslim Elders endeavoured to settled, in 1996-97 when the Defendant got the house mutated in his name in the Municipal records based on the fabricated Document without notice to the Plaintiff, subsequently till now when the Defendant



*has been adamantly preventing the Plaintiff to enter the house,
at Hospet, within the Jurisdiction of this Honourable Court."*

28. It is worth to note that in the year 1996, the defendant had already occupied the house and got the house entered in his name. This is a clear indication that the defendant was asserting his title over the suit schedule property on the basis of the gift deed executed by the plaintiff. It is evident that the plaintiff knew about the alleged gift deed on the basis of which claim of the defendant was based. Even then, the plaintiff did not seek cancellation of the alleged gift deed. Evidently, the defendant had shown a copy of the gift deed to the plaintiff in the year 1990. It is not known whether it was a copy of the original gift deed or the certified copy. The PW1 in his testimony states that after showing the copy of the gift deed shown by the defendant, he obtained certified copy of the gift deed and then he made an effort through the elders of the community to reach settlement.

29. This clearly shows that the plaintiff came to know that he was signatory to the gift deed and even then he does not file a suit for cancellation of the said gift deed. The



circumstances narrated in the plaint are clearly near to the circumstances dealt with by the Apex Court in the case of **Abdul Rahim (referred supra)**. It is evident that for declaration of title and possession thereof, Article 65 of the Limitation Act is applicable. If the plaintiff had sought for cancellation of the gift deed, then Article 58 of the Limitation Act would have been made applicable, which clearly bars the suit to be filed in that regard. Therefore, in an effort to obviate the bar of limitation, a suit for declaration of title was filed by the plaintiff. Hence, the pleadings of the plaintiff itself show that the suit was barred when it was filed on 21.02.2003.

30. Learned counsel appearing for the respondent has also placed reliance in the case of **L.Raghwendra Sharan Singh v. Ram Prasanna Singh (Dead) by Lrs³**, where the plaintiff had sought declaration of title without praying cancellation of the deed of gift. In paragraph 6.1 and 7.1, the Apex Court observes as below:

"6.1. At the outset, it is required to be noted that the plaintiff has instituted the suit against the defendant for a declaration

³ AIR 2019 SC 1430



that the defendant has acquired no title and possession on the basis of the deed of gift dated 6-3-1981 and that the plaintiff has got title and possession in the said property. In the suit, the plaintiff has prayed for the following reliefs:

A. That on adjudication of the facts stated above, it be declared that the defendant acquired no title and possession on the basis of the said showy deed of gift dated 6-3-1981 and the plaintiff has got title and possession in the said property.

B. That it be declared that the said showy deed of gift dated 6-3-1981 is not binding upon the plaintiff.

C. That the possession of the plaintiff be continued over the suit property and in case if he is found out of possession, a decree for recovery of possession be passed in favour of the plaintiff.

D. That the defendant be restrained by an order of ad interim injunction from transferring or encumbering or interfering with the possession of the plaintiff over the suit land, during the pendency of the suit.

E. That the cost of the suit be awarded to the plaintiff and against the defendant.

F. Any other relief or reliefs which the Court deems fit and proper, be awarded to the plaintiff and against the defendant."

7. xxxxx

7.1. *At this stage, it is required to be noted that, as such, the plaintiff has never prayed for any declaration to set aside the gift deed. We are of the opinion that such a prayer is not asked cleverly. If such a prayer would have been asked, in that*



case, the suit can be said to be clearly barred by limitation considering Article 59 of the Limitation Act and, therefore, only a declaration is sought to get out of the provisions of the Limitation Act, more particularly, Article 59 of the Limitation Act. The aforesaid aspect has also not been considered by the High Court as well as the learned trial court."

31. The plaintiff, in his testimony before the Trial Court as PW1, reiterated the plaint averments. It is pertinent to note that though the plaint avers that on 12.02.1969, when the alleged gift was executed, the possession was not given to the defendant. That does not come in the way of the limitation. Be it a gift deed or any other document, the defendant had clearly stated before the plaintiff that he is the owner of the property by virtue of valid document and as such, the interest of the defendant was clearly adverse to the plaintiff. This cannot be overcome by saying that the gift deed was invalid for the reason that it was not followed by handing over of the possession. Therefore, this Court is of the view that the finding of the First Appellate Court on the question of limitation cannot be interfered with.

32. Obviously, the First Appellate Court dealt with the question of limitation and came to the conclusion that even



though it was not raised before the Trial Court, in view of Section 3(1) of the Limitation Act, it can be looked into. This finding of the First Appellate Court cannot be termed to be either perverse or arbitrary at any stretch of imagination. ***Therefore, the First Substantial Question of Law is answered in the affirmative*** holding that the suit is hit by the provisions of the Limitation Act.

REG. SUBSTANTIAL QUESTION OF LAW NO.2:

33. Insofar as the second substantial question of law is concerned, the learned counsel appearing for the appellant contends that the gift deed dated 12.02.1969 did not see the light of the day and the averments made in the said gift deed at Ex.D1 shows that the essential ingredients of Mohammedan Gift are not complied with. It is pointed out that the said gift deed was pressed into service by the defendant only in the year 1996 for entering his name in the municipal records. He points out that though the defendant had showed the gift deed to him in the year 1990, it was not at all acted upon till the year 1996. It is also pointed out that testimony of DW1 is not clear as to



whether he had received the original gift deed from his father or not and there are divergent statements by him in the present suit and in O.S.No.110/2000.

34. A perusal of the judgment of the Trial Court shows that it fastened the burden of proving the gift deed on the defendant. In its opinion, a denial of gift deed by the plaintiff was sufficient enough to shift the onus to the defendant. Therefore, it proceeds to consider the gift deed and opines that Ex.D1 is certified copy of certified copy and therefore, it is not admissible. It does not look at Ex.D1, which shows that the gift deed was produced in O.S.No.110/2000 and it was marked in that suit. It also notices that the defendant was a minor aged about 4 years, when the gift deed was executed on 12.02.1969 and he was represented by minor guardian, his father. Therefore, it opines that the defendant had no such mental maturity to make misrepresentation to the plaintiff to execute the gift deed. It also notices that the allegation of fraud, misrepresentation etc., cannot be attributed to the defendant, who was minor. It considers that Ex.D1 is the certified copy of certified copy and therefore, holds that it is not admissible. Ultimately, it comes to



the conclusion that Section 90 of the Evidence Act is not applicable to the certified copy and repels the believability of the gift deed.

35. The First Appellate Court holds that the certified copy of the gift can be accepted as secondary evidence when it is shown that the original is lost. It is pertinent to note that the view of the First Appellate Court regarding the certified copy of the certified copy though is not explicit is acceptable inasmuch as the Trial Court had relied on a decision where the copy of the certified copy was produced, which was held to be inadmissible. In the case on hand, it is the certified copy of Ex.D1, which was marked in O.S.No.110/2000 and the defendant has produced the certified copy of the marked document.

36. The First Appellate Court notices that the initial burden of proving the title is on the plaintiff and he had not discharged it and therefore, the onus of proving the execution of the gift deed and its validity would not arise for consideration. The First Appellate Court holds that the primary burden of proving the title is on the plaintiff and the plaintiff had not proved his title.



37. Be that as it may, a perusal of the Ex.D1 would show that it is a certified copy, which came to be admitted in evidence on the basis of the foundation that the original had been lost by the defendant. The manner in which the original was lost etc., need not be gone into when a certified copy is available on record. However, Ex.D1 does not mention anything that the defendant, who was minor at the time of execution of the gift deed, had accepted the gift. The document does not show that the father of the defendant No.1, as a guardian, had accepted the said gift. It is also worth to note that there is no material on record to show that the possession had been first handed over to the defendant through his guardian in the year 1969. Obviously, the name of the defendant was entered in the municipal records in the year 1996. There is no endorsement on Ex.D1 that the possession was received by the donee.

38. The perusal of the testimony of the DW1 shows that since the date of possession, he is in enjoyment of the suit schedule property. Evidently, to substantiate the said contention, there are no documents to show that since the year 1969 till 1996, the defendant was in enjoyment of the property. The rent



agreements produced by defendant commences from the year 1995 onwards. Therefore, there is nothing on record to show that the defendant or his father, as minor guardian of the defendant, were in possession of the properties from the date of the gift deed.

39. When the gift deed did not mention the essential ingredients of acceptance of the gift deed and handing over the possession of the gifted property, it is not possible for this Court to hold that the gift deed was acted upon and it can be termed to be a valid gift under the Mohammedan Law. As noticed supra, the Hon'ble Apex Court has laid down the essential ingredients after referring catena of judgments.

40. Obviously, two of the ingredients are not available in the form of evidence. Therefore, on the intrinsic value of Ex.D1, it cannot be said that it was a valid gift. Under these circumstances, the proof in respect of the gift deed at Ex.D1 and its validity are not satisfactory. Hence, ***the second substantial question of law is answered in the affirmative.***



41. The gift deed is relied upon by the defendant to establish his title over the suit schedule property, but the plaintiff knowing that the defendant relying upon the gift deed, and that there was threat to his title, kept mum from the year 1990 till the year 2003. The defendant is in possession and enjoyment of the property for more than 12 years though on the basis of invalid gift. Therefore, when the suit of the plaintiff is hit by the law of limitation, as discussed supra, even if we hold that the gift deed relied by the defendant is invalid, that would not enure to the benefit of the plaintiff. Under these circumstances, the suit of the plaintiff has to be dismissed on the question of law of limitation. It is for that reason the allowing of the appeal by the First Appellate Court has to be upheld and it is not necessary for this Court to consider the other aspects discussed by the First Appellate Court.

42. For the aforesaid reasons, it is not necessary to go into the further details regarding the manner in which the Ex.D1 was appreciated by the Trial Court as well as the First Appellate Court.

43. In the result, the appeal fails. Hence, the following:



ORDER

- (i) The appeal is ***dismissed***.
- (ii) The judgment in R.A.No.86/2007 dated 17.10.2008 passed by the Principal Civil Judge (Sr.Dn) and JMFC, Hospet dismissing the suit filed by the plaintiff in O.S.No.49/2003 on the file of the Additional Civil Judge (Jr.Dn) and JMFC, Hospet, is hereby confirmed.
- (iii) Costs made easy.

**SD/-
(C M JOSHI)
JUDGE**

YAN
CT:PA
List No.: 1 Sl No.: 51