



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE E.S.INDIRESH

REGULAR FIRST APPEAL NO. 475 OF 2014 (PAR)

BETWEEN:

1. MEHRUN BI
SINCE DECEASED REP. BY LRS.
 - 1(a). MR. MOHAMMED SANAULLA
H/O MEHRUN BI
AGED ABOUT 70 YEARS
 - 1(b). MR. MOHAMED INAYAHTULLA
S/O LATE MEHRUN BI
AGED ABOUT 44 YEARS
 - 1(c). MRS. BALQUEES FATHIMA
D/O LATE MEHRUN BI
AGED ABOUT 36 YEARS
 - 1(d). MRS. NARGIS FATHIMA
D/O LATE MEHRUN BI
AGED ABOUT 36 YEARS
- APPELLANTS NO.1(a) TO 1(d)
ARE R/AT 14/19C, 9TH A MAIN
BTM 1ST STAGE, BTM LAYOUT
BENGALURU - 560 029.
2. SYED MAHABOOB
SINCE DECEASED REP. BY LRS.
 - 2(a). MRS. ATHIYA MUBEEN
W/O LATE SYED MAHABOOB
R/O NO.50/3, RANOJI ROAD
MOHAMMEDAN BLOCK



BASAVANAGUDI
BENGALURU - 560 004.

... APPELLANTS

(BY SRI. TAJUDDIN, ADVOCATE)

AND:

1. SRI. ATHARULLA @ NAWAB JAN,
SINCE DECEASED REP. BY LRS. .
- 1(a). SMT. ANSARI BEGUM
W/O LATE SYED ATHARULLA
AGED ABOUT 52 YEARS
- 1(b). SMT. NOOR FATHIMA
D/O LATE SYED ATHARULLA
AGED ABOUT 43 YEARS
- 1(c). SRI. SYED MOIN ULLA
S/O LATE SYED ATHARULLA
AGED ABOUT 41 YEARS
- 1(d). SMT. ISHRATH FATHIMA
D/O LATE SYED ATHARULLA
AGED ABOUT 38 YEARS
- 1(e). SMT. NISHAD FATHIMA
D/O LATE SYED ATHARULLA
AGED ABOUT 36 YEARS
- 1(f). SMT. TANZEEM FATHIMA
D/O LATE SYED ATHARULLA
AGED ABOUT 35 YEARS
- 1(g). SRI. SYED TAMEEM ULLA
S/O LATE SAYED ATHARULLA
AGED ABOUT 32 YEARS



RESPONDENTS NO.1(a) TO 1(g)
ARE R/AT NO.256, 31ST 'A' CROSS
TILAKNAGAR, JAYANAGAR
BENGALURU SOUTH
BENGALURU - 560 041.

2. SMT. BADRUNNISA
D/O LATE SYED AZIM SAHEB
W/O WAZEER PASHA
P.C. NO.31
AGED ABOUT 47 YEARS
R/O DAR BAR LANE
KOLAR.
3. SYED ZIAULLS @ JANI BASHA
S/O LATE SYED AZIM SAHEB
NO.50/1, 1ST FLOOR, R.R. ROAD
MOHAMMEDAN BLOCK
BASAVANGUDI
BENGALURU - 560 004.
4. SHANKARAPPA
S/O LATE NARASIMHAIAH
AGED ABOUT 50 YEARS
R/O S. BINGIPURA VILLAGE
BEGUR HOBLI, ANEKAL TALUK
BENGALURU DISTRICT,
BENGALURU - 560 100.
5. MR. SAGAR SENDIL KUMARM
S/O MR. SHANKARAPPA
AGED : MAJOR
R/AT S. BINGIPURA VILLAGE
BEGUR HOBLI, ANEKAL TALUK
BENGALURU DISTRICT
BENGALURU - 560 100.
6. MR. T. PRAKASH REDDY
S/O THIMAPPA REDDY
AGED : MAJOR
R/AT 53/5A, 24TH CROSS



KEMPAMMA DEVI LAYOUT
HULIMAVU POST
BENGALURU - 560 076.

7. MS. SUKHANYA VASHIST
DIRECTOR
M/S. GRANARY WHOLESALE PVT. LTD
REGISTERED OFFICE AT
NO.43/61, 1ST FLOOR
SRINIDHI, SURVEYOR STREET
BASAVANAGUDI
BENGALURU - 560 004.

WARE HOUSE AT
SY.NO. 237, NEAR NEW
CHRIST ACADEMY S. BINGIPURA
BEGUR-KOPPA ROAD
BENGALURU - 560 078.

... RESPONDENTS

(BY SRI. SIDDHARTH H.M., ADVOCATE FOR R2, R3,
& R1(a) TO R1(g);
SRI. P.V. CHANDRASHEKAR, ADVOCATE FOR R4 TO R6;
SRI. PRATEEK RATH, ADVOCATE FOR R7)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION
96 READ WITH ORDER XLI OF CPC AGAINST THE JUDGMENT &
DECREE DATED 24.01.2014 PASSED IN ORIGINAL SUIT
NO.2790/2003 ON THE FILE OF THE XLIII ADDITIONAL CITY
CIVIL & SESSIONS JUDGE, BENGALURU PARTLY DECREERING
THE SUIT FOR PARTITION.

THIS REGULAR FIRST APPEAL HAVING BEEN RESERVED
FOR ORDERS, COMING ON FOR PRONOUNCEMENT THIS DAY,
E.S. INDIRESH J., DELIVERED THE FOLLOWING:



CORAM: HON'BLE MR. JUSTICE E.S.INDIRESH

CAV JUDGMENT

1. This appeal is preferred by the plaintiffs challenging the judgment and decree dated 24.01.2014 in O.S.No.2790/2003 on the file of the XLIII Addl. City Civil and Sessions Judge Bengaluru, decreeing the suit of the plaintiffs in part.
2. For the sake of convenience, parties are referred as per their status before the Trial Court.
3. The plaintiffs had filed suit in O.S.No.108/1996 before the Court of Munsiff and JMFC at Anekal and thereafter, the said suit was withdrawn and made over to City Civil Court, Bengaluru and accordingly, re-numbered as O.S.No.2790/2003.
4. The facts in nutshell for the purpose of adjudication of the appeal are that, the father of the plaintiffs - Syed Azim Saheb had four daughters and three sons. Plaintiffs and defendant Nos.1 to 3 are the children of Syed Azim Saheb. The second daughter died. The parents of the plaintiffs and defendant Nos.1 to 3 died intestate. During the pendency of the suit, plaintiff No.2 died and his legal heirs were brought on record.



Defendant No.4 got impleaded in the suit. It is the case of the plaintiffs that, the plaintiffs and defendant Nos.1 to 3 are governed by the Shariat Law. The grievance of the plaintiffs is that the defendant Nos.1 to 3 in collusion with the revenue officials, created documents in their name, denying the right of the plaintiffs in respect of the suit schedule properties. It is the case of the plaintiffs that, originally the land in question was belonging to the grandfather of the plaintiffs as per the Gift Deed dated 10.09.1932, and after the death of the grandfather, the father of the plaintiffs became owner of the schedule properties. Hence, the plaintiffs filed the suit seeking relief of partition in respect of the suit schedule properties.

5. After service of summons, defendants entered appearance, and defendant Nos.3 and 4 filed written statement. It is the specific case of the defendant No.3 that the plaintiffs have not included certain other properties of the family of their late father, and therefore, the suit is liable to be dismissed.

6. It is the specific case of defendant No.3 that, the item No.1 was originally inam land and during 1932, the jodidar of



the land, gifted the property in favour of Syed Hussain Sab @ Choonur Sabh, (grandfather of the defendant No.3). It is the case of defendant No.3 that, the property was inherited by his father. It is also stated that, plaintiffs and defendant No.4 have colluded with each other to grab the suit item No.1 and therefore, sought for dismissal of the suit. It is also stated in the written statement that item No.2 of the schedule properties belonged to Khajia bi (maternal grandmother of defendant No.3) and therefore, sought for equitable share in the schedule properties.

7. Defendant No.4 has filed separate written statement by contending that, item No.1 of the suit schedule property is an inam land, granted in favour of father of the defendant No.4 during 1962 by the Special Deputy Commissioner of Inam Abolition, Bangalore, in case No.INA.PR.255/1960-61 and therefore, sought for dismissal of the suit.

8. The Trial Court, based on the pleadings on record, formulated the following issues for its consideration:

"1. Whether plaintiffs prove that the suit properties were belonging to the ownership of their father



and the plaintiffs defendants 1 to 3 are tenants-in-common in suit properties?

2. Whether defendant No.3 proves that suit item No.2 was belonging to the exclusive ownership of his mother Smt. Hydar Bi Ur Malan Bi?

3. Whether defendant No.3 proves that his mother gave the partition of suit item No.2 to plaintiff No.2 by way of gift?

4. Whether defendant No.3 proves that his mother gave the remaining portion of suit item No.2 to defendants 1 and 3 by way of Hiba on 8/1/1990?

5. Whether plaintiffs are entitled for partition and separate possession of their share in suit property? If yes, at what share?

6. Whether plaintiffs are entitled for mesne profits?

7. Whether plaintiffs are entitled for the reliefs sought for?

8. What order or decree?"

9. In order to establish their case, the second plaintiff got himself examined as P.W.1 and got marked 40 documents as Exs.P1 to P40 and on the other hand, defendant No.4 got himself examined as D.W.1 and got examined two more



witnesses as D.W.2 and D.W.3 and got marked 17 documents as Exs.D1 to D17. The Trial Court, after considering the material on record, by its Judgment and Decree dated 24.01.2014, decreed the suit in part. The suit came to be dismissed in respect of the item No.1 of the schedule properties and the respective share was allotted in favour of the plaintiffs and defendants 1 to 3 in respect of the item No.2 of the suit schedule properties. Feeling aggrieved by the same, the plaintiffs have preferred this appeal.

10. I have heard Sri. Tajuddin, learned counsel for the appellants, Sri. Siddharth H.M, learned counsel for respondent Nos. 2, 3 and 1 (A-G), Sri. P.V Chandrashekar, learned counsel for respondent(s) No.4 to 6 and Sri. Prateek Rath, learned counsel for the respondent No.7.

11. Learned counsel for the appellants submitted that, the item No.1 of the schedule properties belonged to the ancestors of the appellants, wherein, the plaintiffs have produced the entire revenue documents to substantiate their title in respect of the item No.1 of the schedule properties, since 1962-1988. It is also argued by the learned counsel for the appellants, by



referring to Exs.P24 and P25, wherein, the Endorsement has been issued stating that the suit item No.1 claimed by the defendant No.4 is based on a fraudulent and fake document and therefore, it is contended that, item No.1 of the schedule properties is not granted to the defendant No.4. It is also argued by the learned counsel for the appellants that, the defendant No.4 has played mischief by creating certain documents by inserting SY.No.237 in the separate schedule of the adjacent land's owners and as such, sought for interference of this Court. Learned Counsel for the appellants further submitted that, the plaintiffs have no grievance in respect of allotment of share in Item No.2 of the suit schedule properties.

12. It is also argued by the learned counsel for the appellants that the appellants had the benefit of injunction against some intruders, who tried to interfere with the schedule property and in view of the Judgment and decree in O.S.No.167/1987, disposed of on 04.04.1989 by the competent Court at Anekal, wherein, an order of permanent injunction was passed. The said judgment and decree in O.S.No.167/1987 is confirmed in R.A.No.18/1993. In this regard, it is argued that the finding recorded by the Trial Court is contrary to records. It is further



argued by the learned counsel for the appellants that, despite the order of injunction granted by the competent Court, the defendant No.4 trespassed into item No.1 of the schedule properties and took possession of the land in question forcibly. It is the principal argument of the learned counsel for the appellants that the Trial Court has ignored Ex.P25 and the suit came to be dismissed as against item No.1 based on a bogus document and therefore, sought for setting aside the impugned judgment and decree passed by the Trial Court.

13. Per contra, Sri. P.V. Chandrashekar, learned counsel appearing for the defendant No.4, submitted that the suit item No.1 was granted in favour of the father of defendant No.4 as per the order passed on 07.04.1964(Ex.D1)by the Special Deputy Commissioner. It is also argued by the learned counsel for the defendant No.4 that the ancestors of the plaintiffs have filed application seeking grant of land in LRF(INAM)121/1983-84, before the Land Tribunal and the said proceedings was suppressed by the plaintiffs and therefore contended that, the plaintiffs are not entitled for relief in this appeal. It is also contended by the learned counsel for defendant No.4, that father of defendant No.4 had filed application under Section 10



of the Mysore (Personal and Miscellaneous) Inams abolition Act, 1954 and as such, the land was granted in favour of father of defendant No.4 (Ex.D4) and therefore contended that, the appeal deserves to be dismissed.

14. In the light of the submissions made by the learned counsel appearing for the parties, I have carefully examined the original records. The points for determination in this appeal are as follows:

" (1) Whether the plaintiffs establish their title in respect of the item No.1 of the schedule properties?

(2) Whether the judgment and decree passed by the Trial Court requires interference by this Court? "

15. The controversy in this appeal is with regard to the ownership with respect to Item No.1 of the suit schedule properties. The plaintiffs claim two items of schedule properties as belonging to their ancestors, particularly as to item No.1 of the suit schedule properties. It is the case of the plaintiffs that, item No.1 of the schedule properties was gifted to the



grandfather of the plaintiffs - Syed Hussain Saab @ Choonur Sabh, as per Ex.P1. It is to be noted that, Ex.P1 is an unregistered document, however, as per Mohammedan Law, a gift by a Mohammedan need not be registered, however same has to be acted upon in terms of the Judgment of the Hon'ble Supreme Court in the case of **MANSOOR SAHEB (DEAD) AND OTHERS Vs. SALIMA (D) BY LRS. AND OTHERS** reported in **2024 SCC ONLINE SC 3809**, wherein, paragraph Nos.23 to 27 read as under:

" **23.** We now examine the law that deals with oral gifts and their validity under Mohammedan Law. A hiba literally means "the donation of a thing from which the donee may derive benefit". Technically, it is "an unconditional transfer of property, made immediately and without any exchange or consideration, by one person to another and accepted by or on behalf of the latter."

24. The position of oral gift is well settled by the Courts of law. In 'Outlines of Mohammadan Law', A.A. Faizee described 'gift' as:

"A man may lawfully make a gift of his property to another during his lifetime; or he may give it away to someone after his death by will. The first is called a disposition inter vivos; the second, a testamentary disposition. Muhammadan law permits both kinds of



transfers; but while a disposition inter vivos is unfettered as to quantum, a testamentary disposition is limited to one-third of the net estate. Muhammadan law allows a man to give away the whole of his property during his lifetime, but only one-third of it can be bequeathed by will.”

Ameer Ali defines ‘hiba’ in the following terms:

“A hiba is a voluntary gift without consideration of property or the substance of thing by one person to another so as to constitute the donee the proprietor of the subject matter of the gift.”

While referring to Mohammedan Law, by Syed Ameer Ali, the Privy Council in *Mohd. Abdul Ghani v. Fakhr Jahan Begam* [1992 SCC OnLine PC 18] observed:

“For a valid gift inter vivos under the Mahomedan law applicable in this case, three conditions are necessary, which their Lordships consider have been correctly stated thus : “(a) manifestation of the wish to give on the part of the donor; (b) the acceptance of the donee, either impliedly or expressly; and (c) the taking of possession of the subject-matter of the gift by the donee, either actually or constructively.”

(Emphasis supplied)

This Court, in *Jamila Begum v. Shami Mohd.*, [(2019) 2 SCC 727] reiterated the essentials of valid and complete gift as laid down in *Abdul Rahim* (supra), [(2009) 6 SCC 160]:

“23. Under the Mohammedan law, no doubt, making oral gift is permissible.



...

13. The conditions to make a valid and complete gift under the Mohammadan law are as under:

- (a) The donor should be sane and major and must be the owner of the property which he is gifting.
- (b) The thing gifted should be in existence at the time of hiba.
- (c) If the thing gifted is divisible, it should be separated and made distinct.
- (d) The thing gifted should be such property to benefit from which is lawful under the Shariat.
- (e) The thing gifted should not be accompanied by things not gifted i.e. should be free from things which have not been gifted.
- (f) The thing gifted should come in the possession of the donee himself, or of his representative, guardian or executor."

Mulla on Mohammedan Law provides for the manner in which a gift is to be made which are:

"by a clear and unequivocal declaration of intention of making a gift made orally or in writing by the donor or his agent, and

- i. accepted expressly or impliedly by the donee or his agent except in the case of a gift,
 - a. by a guardian to his ward; or
 - b. of a debt to the debtor; and
- ii. Such declaration and acceptance must be followed by the delivery of possession (actually or,



constructively) of the subject-matter of the gift by the donor or his agent to;

- a. the donee or his agent; or
 - b. To the guardian, if the donee is a minor or lunatic; or
 - c. To the husband if the donee is a minor wife provided that the marriage has been consummated; or
 - d. To the trustees, if the gift is made through a trust.
- iii. On the delivery of possession, a gift becomes complete, immediately."

(Emphasis supplied)

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.

26. It is a fact that the requirements for the validity of a gift deed are sequential. One must follow the other. The latter can only hold water if the first one is complied with. In other words, if **(a)** is not complied with, **(b)** and **(c)** would not be of consequence; similarly, if **(a)** and **(c)** are met without **(b)**, it would still be of no consequence. In the end, all three conditions must be met.



27. Thus, registration of gift is not required under Mohammedan Law and, the unwritten and unregistered gift executed by the donor in favour of donees is valid. This position has been reiterated by this Court on various occasions. We may refer to a few of them.

In *Rasheeda Khatoon v. Ashiq Ali* [(2014) 10 SCC 459], it was observed:

"17. ...a gift under the Muhammadan law can be an oral gift and need not be registered; that a written instrument does not, under all circumstances require registration; that to be a valid gift under the Muhammadan law three essential features, namely, (i) declaration of the gift by the donor, (ii) acceptance of the gift by the donee expressly or impliedly, and (iii) delivery of possession either actually or constructively to the donee, are to be satisfied; that solely because the writing is contemporaneous of the making of the gift deed, it does not warrant registration under Section 17 of the Registration Act."

(Emphasis supplied)

This position was reiterated by this Court in *Hafeeza Bibi v. Sk. Farid* [(2011) 5 SCC 654] -

"**10.** In *Mahboob Sahab v. Syed Ismail* [(1995) 3 SCC 693] this Court referred to Principles of Mahomedan Law by Mulla, 19th Edn. and in para 5 noticed the legal position, in relation to a gift by a Muslim incorporated therein, thus : (SCC pp. 696-97)

"5....It would, thus, be clear that though gift by a Mohammadan is not required to be in writing and



consequently need not be registered under the Registration Act; for a gift to be complete, there should be a 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 property, the subject-matter of the gift by the donor to the donee. The donee should take delivery of the possession of that property either actually or constructively. On proof of these essential conditions, the gift becomes complete and valid. In case of immovable property in the possession of the donor, he should completely divest himself physically of the subject of the gift."

(Emphasis supplied)

This Court in D.N. Joshi v. D.C. Harris [(2017) 12 SCC 624] placed reliance on the following observation of Hafeeza Bibi (supra):

"31...

27. In our opinion, merely because the gift is reduced to writing by a Mohammadan instead of it having been made orally, such writing does not become a formal document or instrument of gift. When a gift could be made by a Mohammadan orally, its nature and character is not changed because of it having been made by a written document. What is important for a valid gift under Mohammadan Law is that three essential requisites must be fulfilled. The form is immaterial. If all the three essential requisites are satisfied constituting a valid gift, the transaction of gift would not be rendered invalid because it has been written on a plain piece of paper. The distinction that if



a written deed of gift recites the factum of prior gift then such deed is not required to be registered but when the writing is contemporaneous with the making of the gift, it must be registered, is inappropriate and does not seem to us to be in conformity with the rule of gifts in Mohammadan Law..."

(Emphasis supplied)

16. It is forthcoming from the records that the defendant No.4 is claiming right over the property in question as per the order dated 07.04.1964 (Annexure-D1) passed by the Special Deputy Commissioner, Inams Abolition. It is also forthcoming from the records that, the ancestors of the appellants have filed an application before the Land Tribunal, Anekal Taluk, to register their right as tenants and accordingly, sought for granting occupancy right in respect of the item No.1 of the suit schedule properties in the case No.LRF/INM:09/1983-84 and 121/1983-84. Taking into consideration the fact that the defendant No.4 is also claiming very same rights before the Land Tribunal and therefore, the claim made by the plaintiffs that item No.1 of the suit schedule properties is gifted to their father as per Ex.P1 is without any basis and the plaintiffs failed to establish their title in respect of the Item No.1 of the suit



schedule properties and therefore, the finding recorded by the Trial Court is just and proper.

17. It is also forthcoming from the records that, the defendant No.4 has produced RTC extracts at Exs.D8 to D12, mutation entries as per Ex.D2 and has paid the tax as per Ex.D13-D17 and same has been appreciated by the Trial Court as to possession in respect of the Item No.1 of the suit schedule property vests with the defendant No.4, by considering the deposition of D.W.1 to D.W.3 as to the same, and therefore, I am of the view that, the Trial Court has properly appreciated the material on record and rightly arrived at the conclusion that, the suit item No.1 of the schedule properties was granted in favour of father of the defendant No.4 and the said aspect was rightly considered by the Trial Court by appreciating the entire material on record and therefore, there is no perversity in the Judgment and Decree passed by the Trial Court.

18. It is also to be noted that, as there is discrepancy in the schedule to the item No.1 of the schedule properties as mentioned in the Ex.P1 and the plaint schedule property, I am



of the view that, the plaintiffs cannot claim any right over the item No.1 of the schedule properties and therefore, the points for consideration referred to above, favour the defendant No.4.

19. In the result, the appeal is dismissed.

Pending I.As. are disposed of as not surviving for consideration.

SD/-
(E.S.INDIRESH)
JUDGE

sac
List No.: 1 Sl No.: 47