



W.P.(MD) No.18125 of 2026

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.07.2026

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD)No.18125 of 2026

and

W.M.P.(MD)No.13504 of 2026

Mohammed Ali Jinnah

... Petitioner

Vs.

1.The District Registrar,
Office of the District Registrar,
Virudhunagar,
Virudhunagar District.

2.The Sub Registrar,
Office of the Sub Registrar,
Vattirayiruppu,
Virudhunagar District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned Refusal Check Slip issued by the second respondent vide Refusal Check Slip vide No.RFL/Vettirayiruppu/7/2026 dated 13.05.2026 and quash the same and consequently directing the second respondent to register the Gift deed (Settlement Deed) presented by the petitioner within the time stipulated by this Court.

For Petitioner : Mr.A.Shajahan



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W.P.(MD) No.18125 of 2026

For Respondents : Mr.R.Parthiban
Standing Counsel

ORDER

The petitioner, a senior citizen aged about 75 years, is before this Court against the impugned Refusal Check Slip dated 13.05.2026 issued by the second respondent in proceedings bearing RFL/Vettirayiruppu/7/2026, whereby the petitioner's request for registration of a Settlement Deed in favour of his son, Ahamed Mohideen, came to be rejected on the ground that the petitioner had not produced any document to substantiate the alleged gift of the subject property by his father. The property in question had originally been purchased by the petitioner's father under Document No.1779 of 1970, dated 29.12.1970, in respect of Survey No.215/2, measuring an extent of 2,205 sq. ft.

2. The learned counsel for the petitioner has drawn the attention of this Court to the recent decision of the Hon'ble Supreme Court in **Mansoor Saheb (Dead) and Others v. Salima (D) by LRs. and Others** [(2024) SCC OnLine SC 3809], wherein the Hon'ble Supreme Court, after considering the decisions of the Privy Council as well as its earlier judgments on the issue, has observed as follows:-



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W.P.(MD) No.18125 of 2026

"24. The position of oral gift is well settled by the Courts of law. In 'Outlines of Mohammadan Law' [(2009) 6 SCC 160], 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 [4th ed., vol. i., p. 41], the Privy Council in Mohd. Abdul Ghani v. Fakhr Jahan Begam [1922 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



WEB COPY



W.P.(MD) No.18125 of 2026

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 [5th Edition] 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;



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W.P.(MD) No.18125 of 2026

- 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)

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.



WEB COPY



W.P.(MD) No.18125 of 2026

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



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W.P.(MD) No.18125 of 2026

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)

28. Under Mohammedan Law, a gift is to be effected in the manner laid down under the law. If the conditions prescribed by that law are fulfilled, the gift is valid, even though it is not effected by a registered instrument. But if the conditions are not fulfilled, the gift is not valid even though it may have been effected by a registered instrument. Therefore, a valid gift could be made by oral statements as well so long as the three requirements as discussed above are met thereby. This is because registration is not a requirement which obviates the need for a gift to be reduced in writing."

3. Per contra, the learned Standing Counsel appearing for the respondents has placed reliance on the recent decision of the Hon'ble Supreme Court in **Dharmrao Sharanappa Shabadi v. Syeda Arifa Parveen** [(2026) 3 SCC 460] and has drawn the attention of this Court to paragraph 36 of the said judgment, which reads as follows:



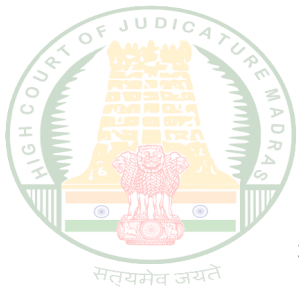
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W.P.(MD) No.18125 of 2026

"36.Chandu Lal Agarwala v. Khalilar Rahaman [Chandu Lal Agarwala v. Khalilar Rahaman, 1942 SCC OnLine Cal 69 : ILR (1942) 2 Cal 299, 309] further clarifies by stating that conduct is not the ultimate proof of relationship but an intermediate step. It allows the court to infer the "opinion" of the person whose conduct is in evidence. The court then weighs this opinion to arrive at its own conclusion regarding the relationship in issue. Hence, Section 50 does not make evidence of mere general reputation (without accompanying conduct) admissible as proof of a relationship. Further, if the conduct is of such a tenor, the Court only gets to a relevant piece of evidence, namely, the opinion of a person. It still remains for the Court to weigh such evidence and come to its own opinion as to the factum probandum, as to the relationship in question. In conforming to the above, the conduct, being a perceptible external fact, must be proved by "direct evidence" as defined in Section 60 of the Evidence Act. This means that the witnesses must testify to what they personally saw or heard."

4. Thus, under Mohammedan Law, an oral gift (Hiba) is not required to be registered under Section 17 of the Registration Act, 1908. What is essential for the validity of such a gift there is a clear manifestation of the donor's intention to make the gift, acceptance of the gift by the donee, and delivery and continued possession of the property by the donee. This legal position has been consistently reiterated by the Hon'ble Supreme Court.



W.P.(MD) No.18125 of 2026

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5. In the present case, the specific stand of the petitioner is that his father made an oral gift (Hiba) of the subject property in his favour on 01.04.1998, pursuant to which the petitioner put up a construction thereon and has been in continuous possession and enjoyment of the property ever since. *Prima facie*, the materials placed before this Court indicate that the petitioner would be entitled to have the Settlement Deed registered. However, the petitioner is required to substantiate his claim of continuous possession from 1998 onwards by producing contemporaneous records evidencing such possession.

6. Accordingly, if the petitioner produces documents such as property tax receipts, water tax receipts, electricity consumption bills, or any other contemporaneous records issued by the statutory authorities evidencing his uninterrupted possession and enjoyment of the property from the year 1998 onwards, the second respondent shall consider the same and, if satisfied, proceed to register the Settlement Deed dated 13.05.2026 in accordance with law.

7. With the above directions, the writ petition stands disposed of by remitting the matter to the second respondent for fresh consideration.



W.P.(MD) No.18125 of 2026

There shall be no order as to costs. Consequently, the connected

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NCC : Yes / No
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07.07.2026

To

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Virudhunagar District.

2.The Sub Registrar,
Office of the Sub Registrar,
Vattirayiruppu,
Virudhunagar District.



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W.P.(MD) No.18125 of 2026

C.SARAVANAN, J.

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W.P.(MD) No.18125 of 2026

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