

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

SECOND APPEAL NO. 158 OF 2017

(NURKHAN ABDUL KHAN PATHAN & ANR...VS.. BASHIRKHAN ABDULLA KHAN PATHAN & ANR.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri J.J. Chandurkar, Advocate for Appellants.
Shri P.P.Kotwal, Advocate for Respondent No.1.

CORAM : Z.A.HAQ, J.

DATED : JUNE 14, 2017.

Heard.

The original defendants have challenged the judgment and decree passed by the District Court. The substantial questions of law which arise for consideration are:

- i) Whether the document showing transfer of property by gift was required to be registered when the transfer of property is amongst Mohammedans ?
- ii) Whether the oral gift having been duly proved by the appellant No.1, the learned Judge was justified in placing reliance upon Section 124 of the Transfer of Property Act?
- iii) Whether the ingredients of valid gift deed in Mohammedan Law, viz; i) Declaration of gift by donor, ii) Acceptance of the gift by donee, impliedly or expressly taking of possession of the subject matter of the gift by the donee; actually or constructively, having been sufficiently proved by the appellant, the Judgment as passed is liable to be set aside?

The appeal is **ADMITTED** on the above substantial questions of law.

Shri P.P. Kotwal, advocate waives notice for the respondent No.1.

Call R & P.

The appellant shall file private paper book within six months.

CIVIL APPLICATION(CAS) NO.357/2017.

The learned advocate for the respondent No.1 has opposed the application, however, as the appeal is admitted for final hearing, the appellants are permitted to amend the memo of appeal.

Other substantial questions of law raised on behalf of the appellants may be considered by the Court at the time of hearing as per the proviso below sub-section (5) of Section 100 of the Code of Civil Procedure.

The civil application is **allowed** in the above terms.

CIVIL APPLICATION (CAS) NO.177/2017.

The execution of the decree is stayed on condition that the appellants furnish solvent surety for Rs.One Lakh.

It is further directed that the appellants will not create any third party right or interest in the suit land and shall not part with possession of the suit land.

The application is **allowed** in the above terms.

JUDGE