

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 67 of 1998

1. Mohd. Ishaque S/o Karim Baksh Aged About 44 Years R/o Torba, Bilaspur Tahsil & Distt. Bilaspur Chhattisgarh.
2. Mohd. Ushran S/o Karim Baksh Aged About 41 Years R/o Torba, Bilaspur Tahsil & Distt. Bilaspur Chhattisgarh.
3. Moh. Suleman S/o Karim Baksh Aged About 38 Years R/o Torba, Bilaspur Tahsil & Distt. Bilaspur Chhattisgarh. **--- Appellants**

Versus

1. Maqbool Bee W/o Sheikh Mohd. Akhtar Aged About 59 Years R/o Torba, Bilaspur Tahsil & Distt. Bilaspur Chhattisgarh.
2. Iqbal Mohd. S/o Sheikh Mohd. Akhtar Aged About 28 Years R/o Juna Bilaspur M.P. Now Chhattisgarh , District : Bilaspur, Chhattisgarh
3. Jaria Khatoon D/o Sheikh Mohd. Akhtar Aged About 33 Years R/o Juna Bilaspur M.P. Now Chhattisgarh , District : Bilaspur, Chhattisgarh
4. Rashida Khatoon W/o Abdul Kadir Aged About 31 Years R/o Kathakoni Tahsil & Distt. Bilaspur Chhattisgarh , District : Bilaspur, Chhattisgarh
5. Hasina Khatoon W/o Sheikh Bashir Aged About 29 Years R/o Juna Bilaspur M.P. Now Chhattisgarh, District : Bilaspur, Chhattisgarh
6. Tahira Begum D/o Sheikh Mohd. Akhtar Aged About 22 Years R/o Juna Bilaspur M.P. Now Chhattisgarh , District : Bilaspur, Chhattisgarh **--- Respondents**

For the Appellants	:	Mr. Afroj Khan, Advocate
For the respondents	:	Mr. Ram Kumar Tiwari

FA No. 309 of 1999

Makbool Bee, aged about 57 years, widow of Shri Sheikh Mohd. Akthar, Resident of Korba, Bilaspur, Tehsil and District Bilaspur (M.P., now Chhattisgarh) **--- Appellant**

Versus

1. Mohd. Issak aged about 48 years,
2. Mohd. Usman, aged about 45, years,
3. Mohd. Suleman aged about 42 years,
4. Iqbal Ahmed, aged about 35 years, son of Shri Mehmood Akthar, resident of Korba, Bilaspur, Tehsil and District Bilaspur

5. Jarena Katoon, aged about 37 years, daughter of Shri Sheikh Mohd. Akthar, resident of Torba, Bilaspur
6. Basida Katoon, aged about 35 years, wife of Shri Abdul Kadir, resident of Kathakoni, Teh, Tehsil and District Bilaspur (M.P).
7. Hasina Katoon, aged about 33 years, wife of Shri Sheikh Basir, Resident of Juna, Bilaspur, M.P.
8. Tahira Begum, aged about 26 years, daughter of Shri Mohd. Akthar, resident of Torba, Bilaspur, Tahsil & District Bilaspur.

---- Respondents

For the Appellants	: Mr. Ram Kumar Tiwari, Advocate
For the respondents	: Mr. Afroj Khan, Advocate

Hon'ble Shri Justice Goutam Bhaduri

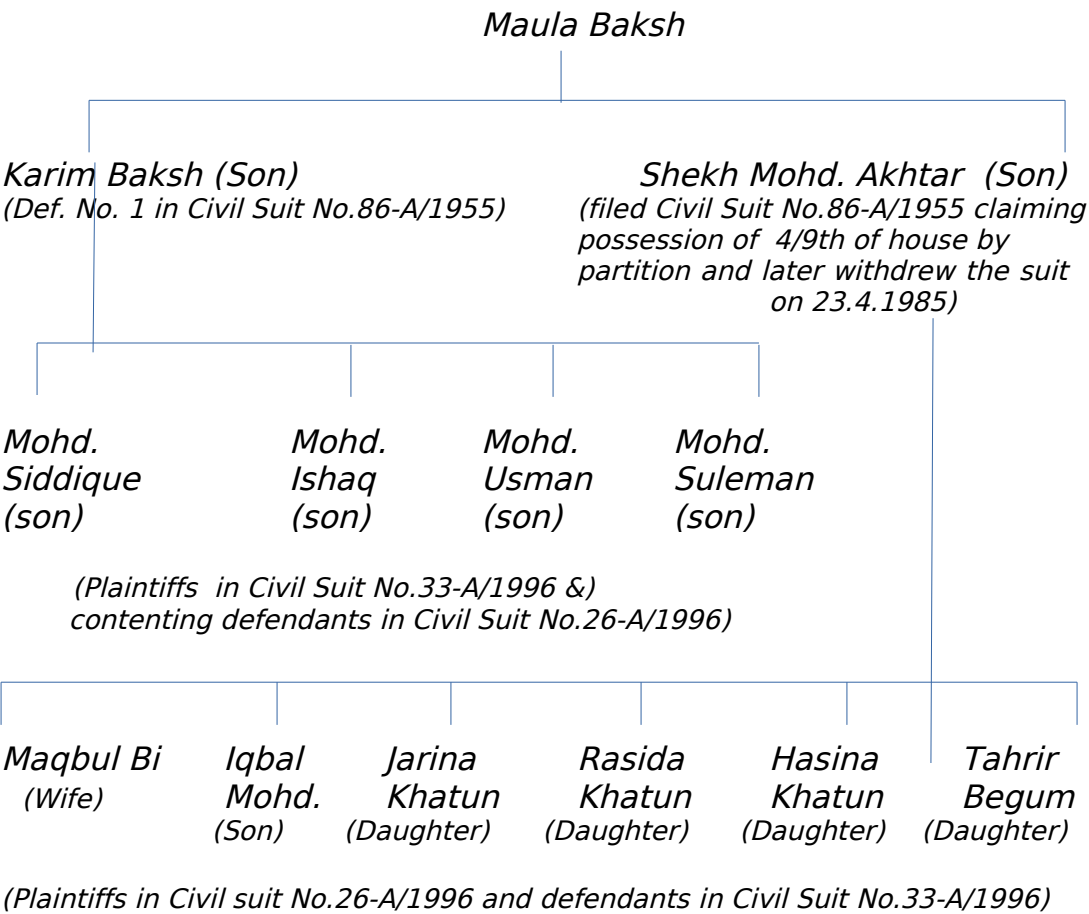
Judgment on Board

27.11.2018

1. Both the appeals are against the judgment and decree dated 08.08.1997 passed by 7th Additional District Judge, Bilaspur, passed in Civil Suit No.33-A/1996 and Civil Suit No. 26-A/96 which were decided together.
2. F.A. No.67 of 1998 is relating to Civil Suit No.33-A/1996 filed by Mohd. Siddiqui and others and F.A.No.309 of 1999 is relating to Civil Suit No.26-A/1996 filed by Maqbul Bi and others.
3. Civil Suit No.33-A/1996 was filed by sons of Karim Baksh namely Mohd. Siddiqui, Mohd. Ishak, Mohd. Usman, Mohd. Suleman against the widow of Shekh Mohd. Akhtar namely Maqbul Bi, son Iqbal Mohd., daughters Jarina Khatun, Rasida Khatun Hasina Khatun and Tahira begum wherein the order was passed on 08.08.1997 against which F.A. No.67 of 1998 has been filed.
4. Another suit was filed by Maqbul Bi widow of Sheikh Mohd.

Akhtar on 20.07.1987 against her cousins Mohd. Siddiqui, Mohd. Ishak, Mohd. Usman and Mohd. Suleman all sons of Karim Baksh and Iqbal Ahmad son of Mohd. Akhtar, Jarina Katoon, Rasida Khatum & Hasina Khatun daughters of Mohd. Akhtar. In addition, one Nandlal Sindhi was also arrayed as defendant.

5. In civil suit no.33-A/96 which was filed by Mohd. Siddiqui, Mohd. Ishak, Mohd. Usman & Mohd. Suleman sons of Karim Baksh, the prayer was made for declaration and possession. The genealogical tree is furnished as under:



6. The plaintiffs Mohd. Siddiqui and others in civil suit No.33-A/96 contended that the suit property is a house situated at Torva, Bilaspur and they are the owners of the suit house. It is contended that the suit house was initially possessed by the grand father of the plaintiffs namely Maula baksh. It was stated that Maula Baksh had gifted the property to the

plaintiffs by registered gift deed dated 04.10.1948 and the possession of the suit was also given. It was further pleaded that Maula Baksh was working in Railways at Nagpur and the father of plaintiffs namely Karim Baksh was also working at Railways. It was stated that Sheikh Mohd. Akhtar, the another brother of Karim Baksh used to study at city college Calcutta and was dependent upon his father Maula Baksh and brother Karim Baksh. It was further pleaded that Maula Baksh has purchased the land from one Kamta Malgujar of village Torwa and constructed a temporary house in the year 1912-1913. Thereafter in 1940 a permanent house was made. It was stated that in the municipal records of Bilaspur, the name of Maula Baksh was recorded as owner. Subsequently, after the gift deed dated 04.10.1998, the names of plaintiffs were recorded.

7. The plaintiffs stated that the other brother Sheikh Mohmand Akhtar after completion of study in 1945 joined the Railways and was residing in Railway Quarter and while working in Railways, he died in harness in the year 1958. It was stated that Sheikh Mohmad Akhtar the other brother and Karim Baksh the father of plaintiffs did not have right of ownership over the property. The plaintiffs further stated that in the year 1955 one Lolamal Sindhi forcibly took over the possession of red color marked portion of the suit property for which a civil suit was filed by the plaintiffs before Civil Judge, Class II Bilaspur which was registered as Civil Suit No.29-A/1963 wherein the cost of Rs.900/- towards forcible occupation and damages of Rs.540/- were imposed.
8. The further pleading was that Sheikh Mohd. Akhtar had also

filed a suit bearing C.S.No. 86-A/1955 claiming partition of 4/9th share. The said suit for partition bearing No.86-A/1955 was withdrawn after adducing some part of evidence with liberty to file afresh. However, even after the withdrawal of the said suit for partition by Sheikh Mohd. Akhtar, no subsequent civil suit was filed by Mohd. Akhtar. It was stated that Mohd. Akhtar, the other brother of Karim Baksh does not have any right and title over the property. It was stated that part of house was sold to Lolumal by a sale deed dated 14.10.1955 by Mohd. Akhtar though he do not have any right to sell the property. Lolumal also filed a suit wherein he stated that the red color marked portion of the suit property so purchased belonged to Mohd. Akhtar which he got on partition from Maula Baksh and Karim Baksh. Hence the property wherein he is in possession is allotted to him on rent basis by the Rent Controlling Authority and thereafter it was sold to him vide sale deed dt. 14.10.1955 through Sheikh Mohd. Akhtar.

9. The plaintiffs stated that Civil Suit filed against Lolumal went upto High Court by way of Second Appeal No.514/1971 which was for possession and after death of Lolumal, his legal heirs Chimanlal, Meghraj, widow Rijhi Bai and daughters Devi Bai & Ganga Bai were made as parties. The plaintiffs further filed an execution case for red-marked portion of property which was acquired by Lolumal and for recovery of damages. It was stated that after losing the case in High Court and when the execution was proceeded, the legal heirs of Lolumal namely Chimanlal and others in collusion with defendants filed another Civil Suit No.2-A/79 and claimed

that the judgment and decree should not be executed. It was stated that in execution of Civil Suit No.29-A/1963 the plaintiffs came into possession on 11.05.1982 and they were already in possession of the rest of the house by virtue of gift deed dt. 04.10.1948. It was also stated that on 18.05.1982 the defendants forcibly entered into the house and took over the possession. Therefore, it was contended that the suit filed by the defendants for partition and possession was also not tenable, as such, the claim made by the defendants be dismissed.

10. The defendants contended that in the suit house Maula Baksh and his two sons Mohd. Akhtar and Karim Baksh were living together since 1937. It was stated that Sheikh Mohd. Akhtar and Karim Baksh were continuing their shop together at Budwari Bazar, Bilaspur and from the joint income of the parties, the house was constructed, therefore, all three had the right over the suit property. It was stated that after the death of Maula Baksh, his sons Mohd. Akhtar and Karim Baksh had equal share, therefore, the red marked portion of the property was given by Mohd. Akhtar to Lolumal and certain loan transactions were also entered into between the parties. It is further stated that Maula Baksh has not given the house by way of gift. Defendants further stated that Maula Baksh has taken the loan of Rs.3200/- from one U.N. Das resident of Cuttack and when the house was attached in execution and recovery of money, in order to avoid such execution of the decree, the fake sham gift deed was executed. Therefore, the plaintiffs did not get any right over the suit property. It was further stated that in the year 1982

when the bailiff of the Court (*Machkuri*) came to attach the house, the defendants disclosed that they are in possession of the suit house. It was also stated that on 11.05.1982 when the bailiff (*Machkuri*) came to the house for execution of decree of possession against legal heirs of Lolumal i.e., Chiman Lal and others, it came to fore that some of the goods of Chimanlal were kept in the room and the defendants were put into possession. The defendants further stated that the gift deed is sham and bogus, therefore, it is required to be declared as null and void, as such, the plaintiff did not have any cause of action. Consequently, the defendants claimed half of the share of the entire suit house and further damages were also claimed. A perusal of the order would show that one suit was for declaration and possession and the other suit was for partition wherein the issues were simultaneously discussed and decided.

11. The learned Court framed 11 issues in Civil Suit No.33-A/96 which was filed by Mohd. Siddiqui, Mohd. Ishak, Mohd. Usman & Mohd. Suleman who claimed that the property has been gifted by Maula Baksh. After appreciating the evidence, the Court gave a finding that the suit house absolutely belonged to Maula Baksh and it was gifted on 04.10.1948 and except the part of property which was delineated in red colour in plaint map, the rest of the property was covered by gift deed dt. 04.10.1948. The Court below further held that Mohd. Akthar the other brother who had filed Civil Suit No.86-A/1955 to claim partition of 4/9th share was withdrawn on 23.04.1985 and further held that since no further suit was filed, the defendants were entitled

to bring a fresh suit. The Court below further held that though civil suit no.86-A was withdrawn wherein also gift deed (Baxisnama) dated 04.10.1948 was challenged but the defendants were entitled to challenge the same. The court below further held that the plaintiffs of Suit No.33-A/96 had obtained the possession of part of the suit house delineated in red colour on 11.5.1982. It also held that the defendants has forcibly vacated the plaintiffs on 18.5.1992. The court below further held that part of the suit house was mortgaged by Mohd. Akthar to Lolumal by obtaining Rs.300/- and in lieu of payment of loan, a part of the suit house was sold. It was also held that the said sale deed was sham and bogus as against the plaintiffs. The court further held that the legal heirs of Lolumal had given possession of the part of suit property delineated in red to the defendants.

12. The Court further held that the finding of judgment and decree passed in Second Appeal No. 514/1971 which was decided on 10.08.1987 would not be binding on the defendants. It is further held that the defendants did not have any right in respect of the suit property barring the portion of the red colour marked in the plaint map. Similarly in civil suit No.26-A/1996 which was filed by Maqbul Bi, the Court held that barring certain part of house delineated in red colour, the defendants 1 to 4 namely Mohd. Siddiqui, Mohd. Ishak Mohd. Usman, Mohd. Suleman are in possession of the rest of the property. The court further held that the rest of issues framed in Civil Suit No.26-A/1996 were interlinked to Civil Suit No.33-A/1996 and it was held that Maqbul Bi was not entitled to claim partition. Eventually the

judgment/ decree was passed whereby Civil Suit No.26-A/1996 filed by Maqbul Bi for partition was dismissed.

13. In respect of Civil Suit No.33-A/1996 the decree was passed on 08.08.1997 that Mohd. Siddiqui, Mohd. Ishak, Mohd. Usman and Mohd. Suleman are the owners of the suit house except the part of property which was delineated in red colour. With respect to restoration of possession of part of the plaint property delineated in red colour, the suit of plaintiffs Mohd. Siddiqui & others was dismissed. Hence, these two present appeals, one appeal bearing F.A. No.67-/1998 was filed by Mohd. Siddiqui & others for declaration and possession of the entire property and another appeal bearing F.A. No.309 of 1999 is preferred by Maqbul Bi against the dismissal of the suit for partition.
14. Before this Court when both the instant appeals were taken up for hearing on 26.12.2018, at the request of learned counsel for both the parties the matter was passed over to 27.12.2018. Civil Suit No.33-A was filed in the year 1996 and another civil suit was filed way back in the year 1987. Therefore it appears that more than 30 years have elapsed. Both the counsels contended that order of the court below is bad therefore it be set aside and the appeals be allowed. Except this no submission is made. Under the circumstances, the Court itself has to examine the record of the case by scrutinizing the same.
15. Perused the records of the court below, pleadings and the evidence of the parties.
16. A perusal of the plaint filed by Mohd. Siddiqui, Mohd. Ishak, Mohd. Usman and Mohd. Suleman would show that they had

filed Civil Suit No.33-A/1996 for declaration and possession of the suit house. In the said civil suit a mandatory injunction has also been prayed for that they be declared as owners of the suit property and further possession of the suit property delineated in red colour be restored. Whereas in Civil Suit No.26-A/96 filed by Maqbul Bi and others wherein the plaintiffs were the contesting respondents would show that the suit was for partition. The plaintiff Mohd. Siddiqui and others claimed that the entire suit property exclusively belonged to Maula Baksh which was gifted to them on 04.10.1948. On the other hand Maqbul Bi, the widow of Sheikh Mohd. Akhtar has claimed the partition of property as Shekh Mohd.Akhtar was no more.

17. The statement of D.W.2 Abdul Saleem is relevant here to ascertain whether the property belonged to Maula Baksh as his absolute property. In his statement D.W.2 Abdul Saleem has stated that his uncle Maula Baksh, Karim Baksh and Mohd. Akhtar, the husband of Maqbul Bi were residing in the house. He has stated that the part of the land was initially purchased by Maula Baksh and subsequently rest of the property were also purchased by him. Thereafter, Karim Baksh and Maula Baksh have constructed the house as both were working in Railways. He further submits that in the suit house, the part of the property covered by red colour, Maqbul-Bi along-with her son and daughters were residing and in the rest of the house Mohd. Siddiqui and others were residing. So according to the defendant witness, the property was purchased by Maula Baksh alone and Karim Baksh subsequently made an addition for construction of house.

18. D.W.1 Shabir Husain who was examined on 24.07.1996 was shown as 46 years of age and had stated that in the year 1937 Karim Baksh, Mohd. Akhtar and Maula Baksh had made double storeyed house of four rooms over the suit property. Though he was aged about 46 years on the date of deposition, he has made the statement of fact of the year 1937. Therefore such part of the statement will be completely of no use to the defendants.
19. The deposition of Karim Baksh through whom the contesting defendants Maqbul Bi and others were claiming partition is also relevant. The statement of Karim Baksh was recorded in Civil Suit No.86-A/1955 marked as Ex.D-15. He stated therein that the suit house was not gifted to avoid any attachment of recovery but in fact the gift was made. He has further stated that the suit house was of Maula Baksh. He has further stated that in the year 1928, permanent structure was made and thereafter in 1949 further construction was made by Maula Baksh. He further stated that in 1949 his father Maula Baksh received G.P. Fund and out of that, Rs.3000/- was spent in construction of house. He further stated that he was residing separately and in different portion of the property he was residing. He further stated that he was not in good terms with his father i.e., Maula Baksh, therefore, he was separated. Further statement would show that Karim Baksh was born on 1950 whereas the suit property was purchased in the year 1913 and part of other property was purchased in 1936 and in 1949 the house was constructed.
20. The statement of Shekh Mohd. Akhtar which is marked as

Ex.D-16 was recorded on 05th March, 1956. The statement of Sheikh Mohd. Akhtar through whom Maqbul Bi (wife) and their daughters and son were claiming, goes to show that her husband has admitted the fact that the suit property was of Maula Baksh. There is no occasion to disbelieve such statement. The maker of statement was dead on the date. Therefore by examination of the statement of Sheikh Mohd. Akhtar this fact was established that the property was an exclusive property of Maula Baksh. As such the finding arrived at by the learned court below in Civil Suit No.33-A/1996 and also in C.S. No.26-A/1996 in respect of issue nos. 1 & 2 that the suit property belonged to Maula Baksh exclusively cannot be faulted.

21. The further question which comes for consideration that whether Maula Baksh has executed the gift deed Ex.P.1 dated 04.10.1948 in favour of Mohd. Siddiqui, Mohd. Ishak, Mohd. Usman and Mohd. Suleman ? The gift deed Ex.P-1 is a registered document and on the date when it was exhibited it was 30 years old document. Therefore, the presumption of correctness follows. Nothing adverse prima facie has come on record to disbelieve the same.
22. In the statement of plaintiff witness P.W.1 Mohd. Siddiqui he stated about the document Ex.P-1 and proved it. According to P.W.1 Mohd. Siddiqui, after the gift deed was made the names of 4 brothers were recorded in the municipal records and the tax was paid by them. The tax receipts are filed as Ex.P-2 & Ex.P-3 which show very faint in pencils that the name of plaintiffs were recorded. Shekh Mohd. Akhtar, the other brother of Karim Baksh has filed Civil Suit in 1954

challenging such gift deed. The copy of the plaint is exhibited as Ex.P-4. However, subsequently according to the statement of the plaintiffs, the same was withdrawn. The defence as raised by the plaintiffs that the said gift deed was made to avoid the attachment of house is not proved by any document. It is a registered document and is also coming from lawful custody. Therefore, only by oral evidence the contents of this documents cannot be doubted. Further according to the statement of P.W.1, they accepted the gift and were put to possession of property except the red marked colour portion which made gift complete and there is no challenge to it. Consequently the gift deed Ex.P-1 made by Maula Baksh in favour of 4 of the plaintiffs also stands proved.

23. A perusal of statement of P.W.1 Mohd. Siddiqui would show that he has stated that in the suit house his uncle Mohd. Akhtar was also living along with him and when he was working in the Railways, he was allotted a house by the Railways in the year 1954 and his part of possession was given by uncle to one Lolumal Sindhi as his uncle used to reside in railway quarter. He further deposed that the disputed part of land of the house which was marked in red colour was given to Lolumal Sindhi and Lolumal Sindhi was in possession. Therefore, the statement would show that the entire possession of the part of gifted property was not given to the plaintiffs. According to the statement of P.W.1 he filed a suit against Lolumal Sindhi which went up to High Court. The order is filed as Ex.P-10. Ex.P-10 would show that Second Appeal No. 514/1971 was decided. The legal heirs of

Lolumal namely Chimanlal & others were made as party/ respondents. The High Court in such order held that the gift deed dated 07.10.1948 cannot be challenged by the stranger as Lolumal had challenged the same on the ground that the part of the property was not affected wherein they were in possession. Subsequently, the second appeal having been decided in favour of Mohd. Siddiqui and others, the possession of suit property was obtained by intervention of the Court. The delivery of possession is marked as Ex.P-11 and the possession part is marked as Ex.P-13, therefore, the plaintiff Mohd. Siddiqui and others came into possession.

24. The plaintiff witness (P.W.1) further stated that on 18.05.1982 Maqbul Bi came with 40-50 persons and broke opened the lock and thereafter took over the possession of the part of property which was described in red coloured mark, for which a report was made. The copy of such report is Ex.P-15. The fact that the plaintiffs were not in possession of the said part of property which was delineated in red colour, is proved by subsequent event. As per the statement of P.W.1 the house which was given on rent to Lolumal was given by his uncle Mohd. Akhtar. Mohd. Akhtar has seriously contended that part of house was in his possession and the plaintiffs also said that Mohd. Akhtar was in possession of the said part of the house. The evidence is there to show that after he got the residential quarter allotted from the Railways he went and used to reside therein and Lolumal was placed in possession. Therefore, at the time of gift the plaintiffs were not in possession of the part of house which was delineated in red colour. Therefore, when the gift was made

on 04.10.1948 except the red marked portion, rest of the part of property was given to the plaintiffs Mohd. Siddiqui & others. Since the parties were governed by Muslim Law as such to complete a gift, 3 essential ingredients have to be fulfilled i.e., (1) declaration gift by the donor; (2) acceptance of the gift express or implied, by or on behalf of one donee and (3) delivery of possession of the subject of the gift by donor to the donee.

25. In the circumstances, the finding arrived at by the court below that except the red color marked portion, the rest of the property was covered under the gift as possession of the same was not delivered to the plaintiffs appears to be correct. Since it has already been held that the suit property was purchased and owned by Maula Baksh as it is his sole and exclusive property, the claim made on behalf of Maqbul Bi, widow of Mohd. Akhtar for partition cannot be allowed. As per the statement of Mohd. Akhtar itself (Ex.D-16), the property was exclusive property of Mohd. Maula Baksh. Therefore, the dismissal of suit for partition i.e., Civil Suit No.26-A/1996 appears to be correct.

26. In the result, after entire scrutiny of documents and evidence, I am of the opinion that the findings arrived at by the Court below in the judgment/decree passed in in both the civil suits do not require any interference as the same is outcome of plausible/acceptable evidence. Accordingly both the appeals are dismissed.

Sd/-

GOUTAM BHADURI
JUDGE