



C.S.No.415 of 2017

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on 15.09.2022	Judgment Pronounced on 28.09.2022
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CORAM:

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

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1. Chand Begum
2. Abida Begum (deceased)
3. Mohammed Zahiruddin ... Plaintiffs

(First and third plaintiffs are the legal heirs of deceased second plaintiff as per the order of this Court dated 26.02.2019 made in Memo dated 15.11.2018 in C.S.No.415 of 2017)

..VS..

1. D.Saira Banu
2. M.Kiran Fathima Zohara
3. Thasildar
Aminjikai Taluk Office
Koyampedu
Chennai – 600 107.

Defendants

...



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This Civil Suit is filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 CPC, praying to pass a judgment and decree against the defendants for,

a) preliminary judgment and decree of partition and separate possession of the plaintiffs' 37.5% share, title and interest in the suit property more fully described in the schedule hereunder,

b) mesne profits from the defendants 1 and 2 at the rate of Rs.4,50,000/- per month with effect from the date of 01.03.2017 till the date of realisation,

c) appointment of receiver to take charge of the suit property,

d) to cancel the legal heir certificate issued by the third defendant vide certificate D.DIS.C/1470/2016 DATED 26.02.2016,

e) declare that the impugned release deed dated 20.04.2016, registered as document No.1809 of 2016, on the file of SRO, Anna Nagar executed by the second defendant in favour of the first defendant is null and void and not maintainable in law, and

f) cost of the suit.



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For Plaintiffs

: Mr.Abdul Ravoof

For Defendants

: Mr.H.Mahammed Farook

JUDGMENT

This suit is filed for the relief of partition and separate possession of plaintiffs' 37.5% shares, mense profits, appointment of receiver to take charge of the suit property, cancellation of legal heir certificate issued by the third defendant and for declaration that the impugned release deed dated 20.04.2016 registered in document No.1809 of 2016 on the file of SRO, Anna Nagar, executed by the second defendant in favour of first defendant is null and void and not maintainable in law and for costs of the suit.

2. The case of the plaintiffs is that the first defendant is the wife and the second defendant is the daughter of their brother late Mr.Mohammed Azeezuddin. The vacant land of the suit property was allotted to Mr.Mohammed Azeezuddin in 1974 by Tamil Nadu Housing Board. He was a bachelor at that time and in 1978 his father and sisters contributed money for the construction of ground floor. Tamil Nadu



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Housing Board executed sale deed dated 18.09.1996 in his favour.

Subsequently, with the help of third plaintiff, Mr.Mohammed Azeezuddin constructed ground floor and the remaining two floors in 1997. He kept the first and second plaintiffs along with his parents in the front portion of the ground floor and retained the rear portion for his living with the defendants. Remaining portions were let out to various tenants and he was getting monthly rent. With an intention to give a portion to his sister Abida Begum, he constructed a building with ground floor in the suit property, after obtaining planning permission from Corporation of Chennai and with the money secured by the sale of jewellerys of Abida Begum. Anticipating trouble from the first defendant, Mr.Mohammed Azeezuddin declared an oral gift in respect of the aforesaid property by declaring 62.5% in favour of his daughter and 37.5% collectively in favour of plaintiffs on 07.05.2015. Later, he confirmed the oral gift namely hiba by an affidavit dated 11.05.2015. This affidavit was executed before competent witnesses and a Notary Public and he delivered the possession of the said property to the plaintiffs. During March 2015, Mr.Mohammed Azeezuddin had given a complaint in K4 Police Station against the first defendant for the torture she



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gave in order to grab the suit property. Mr.Mohammed Azeezuddin died on 09.02.2016. As per Islamic Law of Succession, first defendant would be getting 12.5%, second defendant would be getting 50% and in the absence of parents, plaintiffs will be collectively getting the residue of 37.5% from the said property. Since Mr.Mohammed Azeezuddin declared the gift of 62.5% in favour of second defendant, first defendant will not get anything out of the said property. After the demise of Mr.Mohammed Azeezuddin, plaintiffs requested repeatedly for partition and separate possession. But there was no response. Plaintiffs were shocked to know from Encumbrance Certificate that first defendant had fraudulently obtained a release deed dated 20.04.2016 from the second defendant, on the basis of legal heir certificate issued by the third defendant. The legal heir certificate issued by the third defendant is against law and not maintainable. Therefore, this suit is for the reliefs aforesaid.

3. Defendants admitted the relationship between the parties, but denied the claim made by the plaintiffs with regard to the construction of the building in the suit property through the alleged



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contribution made by the plaintiffs and their father. It is the case of the defendants that the building in the suit property was constructed in three phases ie., the ground floor in 1978, first floor in 1999 and the second floor in 2005. The funds for the construction of this building was raised by Mr.Mohammed Azeezuddin by obtaining loan and using his retirement benefits. None of the plaintiffs or their father had contributed to the construction of the building. The deceased Mr.Mohammed Azeezuddin was an Engineering graduate and served as an Engineer in Integral Coach Factory (ICF), Perambur since 1966. The suit land was allotted to him by the Housing Board. In 1978, he got a loan from the Government of India and constructed a ground floor. He also obtained housing loan from LIC Housing Finance. Subsequently, he constructed first floor in 1999 and second floor in 2005, all with the help of loan and his retirement benefits. The plaintiffs have no independent income. In fact, the third plaintiff was jobless at that point of time. The claim made by the plaintiffs that Mr.Mohammed Azeezuddin executed oral gift on 07.05.2015 in favour of the plaintiffs and confirmation of hiba on 11.05.2015 are not true. The confirmation of hiba document dated 11.05.2015 is an ex-facie bogus and



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forged document. This document is created to fraudulently deceive and grab the property of the defendants. The original documents are under the possession and custody of the first defendant. Mr.Mohammed Azeezuddin gave the suit property to the defendants through an oral gift during his life time. Subsequently, he made a declaration on 20.05.2015. Therefore, the plaintiffs have no manner of any right in the suit property either through the alleged oral gift dated 07.05.2015 or confirmation of hiba dated 11.05.2015 or under Mohammedan Law of Inheritance. Mr.Mohammed Azeezuddin was suffering from brain tumor and it was the defendants who were helping him during his surgery in 2013 and for subsequent treatment. Plaintiffs have not shown any concern for his health. Mr.Mohammed Azeezuddin declared the defendants 1 and 2 as the proprietors of the suit property. Third defendant issued a legal heir certificate. Second defendant executed a release deed in favour of first defendant relinquishing her right in the suit property. That is perfectly in order. There is nothing illegal in it. Plaintiffs 1 and 2 were permitted to reside in the suit property out of the relationship and sympathy shown by the deceased Mr.Mohammed Azeezuddin and that is continued even after his death. They are only permissive occupants. The



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alleged oral gift dated 07.05.2015 and confirmation of hiba dated 11.05.2015, all are vague and bogus and the plaintiffs are not entitled for any relief in the suit property, in view of the gift in favour of defendants.

4. On the basis of these pleadings, the following issues were framed for trial:-

1. (i) Whether the declaration by way of Hiba made by the deceased Mr.Mohammed Azeezudin on 20.05.2015 in favour of the First and Second Defendants is true and genuine?
- (ii) Whether the declaration by way of Hiba in favour of the Plaintiffs and Second Defendant said to have been executed by the deceased Mr.Mohammed Azeezudin on 11.05.2015 is true and genuine?
- (iii) Whether the Plaintiffs are entitled to any share in the property of the deceased Mr.Mohammed Azeezudin and if so, what are their respective shares?
- (iv) What are the shares of the First and Second defendants in the property of the deceased Mr.Mohammed Azeezudin?



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(v) Whether the release deed dated 20.04.2016 registered in document No.1809 of 2016 on the file of SRO, Anna Nagar executed by the Second Defendant in favour of the First Defendant is null and void?

(vi) Whether the Plaintiffs are entitled to the mesne profits from the first and second Defendants? If so, at what rate?

(vii) Whether the legal heirship certificate dated 26.02.2016 issued by the Third Defendant in favour of the First and Second Defendants is valid?

5. PW.1 was examined on the side of the plaintiffs and Exs.P1 to P13 were marked. DWs.1 to 3 were examined on the side of the defendants and Exs.D1 to D18 were marked.

6. **Issues 1 & 2 :-**

From the case set out by the parties, it is clear that there is no dispute with regard to the relationship between the parties, ie., defendants 1 and 2 are the wife and daughter of deceased Mr.Mohammed Azeezuddin



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respectively and plaintiffs are his sisters and brother. Subsequent to the filing of the suit, second plaintiff died and first and third plaintiffs are her legal representatives. It is also not in dispute that the land in the suit property was allotted to the deceased Mr.Mohammed Azeezuddin by Tamil Nadu Housing Board in 1974 and a sale deed in respect of the land was executed in his favour in 1996. The certified copy of the sale deed in favour of Mr.Mohammed Azeezuddin dated 18.09.1996 is produced as Ex.P1. Original letter of confirmation of sale issued by the Tamil Nadu Housing Board in favour of the deceased Mr.Mohammed Azeezuddin dated 15.05.1973 and original lease-cum-sale agreement issued by Tamil Nadu Housing Board in favour of deceased Mr.Mohammed Azeezuddin dated 17.10.1974 are produced as Exs.D1 and D2.

7. However, there seems to be some dispute with regard to the construction made in the suit property. Plaintiffs claimed that the ground floor was constructed by late Mr.Mohammed Azeezuddin with the funds provided by plaintiffs 1 and 2 and his father. It is also claimed that the ground floor and other two floors were constructed with the help of third



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plaintiff. This is seriously disputed by the defendants 1 and 2. It is the specific case of the defendants 1 and 2 that the funds for the construction of the building in the suit property was raised by the deceased Mr.Mohammed Azeezuddin from Government loan, LIC loan and his retirement benefits. In support of this claim, they produced Exs.D3 - original special form of loan agreement issued by ICF dated 17.04.1979, Ex.D4 - original planning permit issued by Corporation of Chennai to Mr.Mohammed Azeezuddin dated 29.04.1978, Ex.D5 – original building permit issued by Corporation of Chennai to Mr.Mohammed Azeezuddin dated 29.04.1978, Ex.D6 – Original permission for construction of first floor extension granted by Railway Board to Mr.Mohammed Azeezuddin dated 28.04.1999, Ex.D7 - Original provisional certificate instalment under housing loan issued by LIC Housing Finance to Mr.Mohammed Azeezuddin dated 28.08.2000, Ex.D8 – original EMI schedule issued by LIC Housing Finance to Mr.Mohammed Azeezuddin dated 03.08.2000, Ex.D9 – original pension payment order issued by ICF to Mr.Mohammed Azeezuddin dated 01.04.2003, Ex.D10 – original repayment of housing loan by Mr.Mohammed Azeezuddin to LIC dated 08.07.2006.



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8. Thus, it is seen that the defendants have produced Exs.D3 to D10 documents in support of their claim that the building in the suit property was constructed by Mr.Mohammed Azeezuddin from raising the Government loan, LIC loan and his retirement benefits. On the other hand, the plaintiffs have not produced any single document to show that they had in any way contributed or their father contributed the fund for the construction of the building in the suit property. Plaintiffs have pleaded in the plaint that the first and second plaintiffs and their father had contributed funds for the construction of the ground floor and on the same breath, they said that the ground floor and other floors were constructed with the help of third plaintiff. It is pertinent here to refer to the evidence of third plaintiff, who was examined as PW.1. He stated that his brother started construction in the suit property in 1978 when he was studying +2. He is not aware of the fact that his brother obtained loan from Integral Coach Factory for construction of the building. He is not aware of the fact of how much of money was paid by his sisters. He admitted that he has not produced any document to prove that his father and sisters contributed money for the



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construction of the ground floor. He also admitted that he has not produced any document for the contribution through his father's retirement amount and the jewels. His second sister has no job and no income. He is not aware of the fact that when the first floor and second floor were constructed? and when his brother retired from his job. He is not aware of the fact that whether his brother obtained LIC loan for construction of the first floor and whether his brother constructed second floor after his retirement in 2005. He is not aware that his brother constructed the first floor and second floor using his retirement amount and LIC loan. Worst is that, he stated that it is not stated in the plaint that he helped in the construction of second and third floors; the averment made in this regard in the plaint is not correct and he has not helped his brother for the construction of the building. Thus, it is seen from his evidence that he has not produced any material to show that the plaintiffs or their father had contributed funds in the construction of the building in the suit property. By his own evidence, he admitted that he has not contributed any fund for the construction of the building in the suit property. On the other hand, we had seen that DW.1, through her evidence and production of Exs.D3 to D10



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documents, clearly proved that the building in the suit property was constructed by late Mr.Mohammed Azeezuddin by obtaining Government loan, LIC loan and by using his retirement benefits.

9. We have seen that both the plaintiffs and defendants claimed that the deceased Mr.Mohammed Azeezuddin gave them the suit property through oral gift followed by confirmation of gift through written instrument. Plaintiffs claimed that through oral gift dated 07.05.2015 deceased Mr.Mohammed Azeezuddin gave 62.5% of the suit property in favour of his daughter/second defendant and 37.5% collectively in favour of plaintiffs and that was followed by confirmation affidavit dated 11.05.2015. On the other hand, defendants claimed that during the life time of deceased Mr.Mohammed Azeezuddin, he gave oral gift of the suit property in favour of defendants equally and subsequently, made a declaration in this regard on 20.05.2015. The affidavit of confirmation of hiba dated 11.05.2015 is produced as Ex.P2. The declaration of the deceased Mr.Mohammed Azeezuddin dated 20.05.2015 is produced as Ex.D11. Plaintiffs have not examined any independent witness to prove Ex.P2. Defendants have



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examined DW.2 and DW.3, apart from DW.1 in proof of Ex.D11.

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10. It is submitted by the learned counsel for the defendants that Ex.P2 – affidavit of confirmation of hiba is a rank forgery document for the reason that stamp paper shows that the name of Chand Begum was struck off, then the name of Mr.Mohammed Azeezuddin was written. This document is said to have been executed on 11.05.2015. But the Notary Public was granted licence only in December 2016. The Notary Public's signature gives date of 11.05.2015. It is not possible for a Notary Public who was recognised as a Notary in December 2016, to vouch for this document on 11.05.2015. This very fact is enough to conclude that Ex.P2 is the forged document created for the purpose of depriving the defendants' independent claim in the suit property.

11. In reply, learned counsel for the plaintiffs submitted that Ex.P2 is a true document. May be the date and seal is wrongly given. That is not the ground for rejecting Ex.P2 document. Defendants' claim of oral gift and declaration of confirmation of oral gift through Ex.D11 are not true



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for the reason that the alleged oral gift and execution of Ex.D11 are not reflected in Ex.P5 release deed executed by second defendant in favour of first defendant. Even under Ex.D11, there is no specific mention that the suit properties were given to defendants through oral gift and in confirmation of the oral gift, Ex.D11 was executed. Ex.D11 would take effect after the death of Mr.Mohammed Azeezuddin. It is in the form of a Will and it is not in conformity to the gift under Mohammedan Law. In the absence of oral gift, the parties are entitled to succeed to the properties of Mr.Mohammed Azeezuddin under Mohammedan law of Inheritance. Even in the absence of oral gift under Ex.P2, plaintiffs are collectively entitled for 37.5% share in the suit property. Plaintiffs have claimed right in the suit property both on the basis of oral gift Ex.P2 and under the Mohammedan law of Inheritance.

12. This submission was countered by the learned counsel for the defendants and he submitted that mere omission to mention the oral gift in Ex.D11 and in Ex.P5-release deed does not mean that the oral gift was not given and Ex.D11 was not executed. Mr.Mohammed Azeezuddin,



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on his own writing, had written in Ex.D11 that defendants 1 and 2 are his wife and daughter and they are entitled for the property. It is also submitted by him that the plaintiffs have specifically claimed in the case that they claimed partition on the basis of oral gift and that was the evidence of PW.1. When there is an oral gift in favour of the defendants, followed by declaration of confirmation (Ex.D11), plaintiffs cannot now claim share under Mohammedan law of inheritance. As to the requirement of oral gift, namely hiba, he pressed into service the following judgments:-

- (i) ***K.Veerankutty ..vs.. Pathummakutty Umma and others*** reported in ***AIR 1956 Madras 514***; and
- (ii) ***Hafeeza Bibi and others ..vs.. Shaikh Farid (dead) by LRs and others*** reported in ***Indian Kanoon***.

13. Both the parties claimed two oral gifts followed by confirmation through written instrument. Both the parties deny the existence of oral gift and its confirmation through written instrument in favour of other party. Therefore, we have to first find out whether there was any oral gift given by the deceased Mr.Mohammed Azeezuddin in favour of



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anyone of the parties followed by its confirmation through written instrument; and if there is an oral gift followed by a written confirmation, whether the gift is in accordance with law.

14. We have seen that the plaintiffs have produced Ex.P2 – affidavit of confirmation of oral hiba, dated 11.05.2015. Though this affidavit shows two witnesses as attestors, none of them was examined as a witness. As rightly pointed out by the learned counsel for the defendants, the stamp paper for the execution of this affidavit bears the name Chand Begum, but her name was struck off and the name of deceased Mr.Mohammed Azeezuddin was written. This document was said to have been executed on 11.05.2015. The Advocate - Notary and Commissioner of Oaths had also signed on 11.05.2015. However Notary seal shows that the Advocate was recognised as a Notary as per G.O.Ms.No.12/2016. From this seal, it is seen that he was recognised as Notary only from December 2016. It is not known whether he was a Notary before December 2016. No efforts were made by the plaintiffs to clarify this discrepancy. In the absence of any evidence to clarify this serious discrepancy, it has to be



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necessarily concluded that this document had not come into existence as claimed by the plaintiffs and it is certainly possible that this document is created for the purpose of this case. A perusal of evidence of PW.1 with regard to Ex.P2 shows that he admitted that there is a slight variation in the signature found in first and second pages, because his brother was tense. He stated that whenever his brother signed he used to mention his name in capitals. However, his name was not written in capitals in Ex.P2. He stated that he was not there when the witnesses signed in Ex.P2. He admitted that Notary Public affixed his signature in Ex.P2 on 11.05.2015. He stated that it is mentioned in Ex.P2 that all the original documents and deeds of the property were delivered to Mohammed Zahiruddin, but continued to state that the original documents were not handed over to him by his brother because of the problem created by other side. The evidence of PW.1 confirms that the Notary Public signed the document on 11.05.2015, whereas it bears the seal of December 2016. There is slight variation in the signature of Mr.Mohammed Azeezuddin in pages 1 and 2 in Ex.P2. When he claimed that the documents of the property had been handed over to him, in reality, the documents were not handed over to him. None of the



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witnesses had been examined in proof of Ex.P2. For all these reasons, this Court has to necessarily conclude that Ex.P2 is not a true and genuine document, but created for the purpose of this case as claimed by the defendants. There is no independent evidence in support of the claim of oral gift dated 07.05.2015. Ex.P2 is also not proved in the manner known to law. Therefore, this Court rejects the claim of the plaintiffs that Mr.Mohammed Azeezuddin had given the suit property through oral gift on 07.05.2015 followed by its confirmation on 11.05.2015 through Ex.P2. Thus, issue No.2 is answered against the plaintiffs.

15. Coming to the oral gift claimed in favour of the defendants 1 and 2 followed by his declaration through Ex.D11, DWs.1 to 3 had been examined in support of this claim. However there are serious doubts raised by the plaintiffs with regard to Ex.D11 as mentioned earlier that, this document does not mention that there was an oral gift earlier to this document; this document is like a Will and it has to come to effect only after the death of Mr.Mohammed Azeezuddin; there is no delivery of property; The valid gift under Mohammedan Law requires,



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- (i) declaration of gift by the donor;
- (ii) acceptance of the gift, express or implied by or on behalf of the donee;
- (iii) delivery of possession of the subject of the gift by the donor to the donee.

Only if these conditions are complied with, the gift is complete. Therefore when these three ingredients are absent in Ex.D11, the claim of oral gift cannot be accepted. Apart from that, the oral gift is not mentioned in Ex.P5- release deed that had come into existence subsequent to Ex.D11.

16. It is observed in the judgment reported in ***AIR 1956 Madras 514 (K.Veerankutty ..vs.. Pathummakutty Umma and others)*** that,

“There can be no doubt that Ex.A2 conforms to all the conditions of a valid gift, as it contains a gift by the donor, acceptance of the same by and on behalf of the donee and delivery of possession of the subject of the gift by the donor to the donee. As the gift is made by the natural guardian of the first



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donee, there is no necessity to deliver possession, for as stated in Mulla's Mohammedan Law (12th edition) at page 137, paragraph 129, no change of possession is necessary in the case of a gift by a grandfather to his minor grand son if the father is dead, for in that case, the grandfather is the person, who is to take delivery on behalf of his minor grandson and his guardian.”.

17. It is observed in ***Hafeeza Bibi and others ..vs.. Shaikh Farid (dead) by LRs and others*** reported in Indian Kanoon – <http://indiankanoon.org/doc/1734626>, as follows:-

27. The position is well settled, which has been stated and restated time and again, that the three essentials of a gift under Mohammadan Law are; (i) declaration of the gift by the donor; (2) acceptance of the gift by the donee and (3) delivery of possession. Though, the rules of Mohammadan Law do not make writing essential to the validity of a gift; an oral gift fulfilling all the three essentials make the gift complete and irrevocable. However, the donor may record the transaction of gift in writing.



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Asaf A. A. Fyzee in Outlines of Muhammadan Law, Fifth Edition (edited and revised by Tahir Mahmood) at page 182 states in this regard that writing may be of two kinds : (i) it may merely recite the fact of a prior gift; such a writing need not be registered. On the other hand, (ii) it may itself be the instrument of gift; such a writing in certain circumstances requires registration. He further says that if there is a declaration, acceptance and delivery of possession coupled with the formal instrument of a gift, it must be registered. Conversely, the author says that registration, however, by itself without the other necessary conditions, is not sufficient.

18. No doubt that these judgments discussed about the essential requirements of gift under Mohammedan Law. As indicated above, to constitute a valid gift, the following three ingredients should be present, namely,

- (i) declaration of gift by the donor;
- (ii) acceptance of the gift, express or implied by or on behalf of the donee;



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- (iii) delivery of possession of the subject of the gift by the donor to the donee.

Of course, it is not necessary that it must be recorded in a written instrument. But when there is a written instrument executed in support of any proof of oral gift, it must stand the scrutiny of the law.

19. As rightly pointed out by the learned counsel for the plaintiffs, there is certainly no whisper about the oral gift in favour of the defendants in Ex.D11. There is no clear indication in the written instrument as to when the deceased Mr.Mohammed Azeezuddin had given the oral gift of the suit property in favour of the defendants. However it is seen from Ex.D18, a copy of the police complaint given to the City Commissioner of Police, Chennai that the defendants claimed that Mr.Mohammed Azeezuddin orally gifted the suit property in favour of the defendants in 2015. No date and month is mentioned. It is also claimed that it was followed by a declaration dated 20.05.2015. It is an admitted fact that the second defendant had executed a release deed in favour of first defendant, in respect of the suit property relinquishing her 50% of the share. Copy of this



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release deed is produced as Ex.P5. This document had come into existence on 20.04.2016, subsequent to the execution of Ex.D11 on 20.05.2015.

However, there is no whisper about the alleged oral gift or execution of Ex.D11 in Ex.P5. Rather it is claimed in Ex.P5 that Mr.Mohammed Azeezuddin died intestate leaving behind his wife and daughter, meaning thereby Mr.Mohammed Azeezuddin had not executed any oral gift or declaration affidavit dated 20.05.2015. Though DW.1 to DW.3 had given evidence in support of oral gift and Ex.D11, when neither this document is mentioned in Ex.P5 nor there is any acceptable explanation offered for omission to mention the oral gift and Ex.D11 in Ex.P5, the logical conclusion that has to be drawn is that the oral gift in 2015 and execution of Ex.D11 by Mr.Mohammed Azeezuddin are all imaginary and created for the purpose of this case. When she was asked about the declaration as to whether the declaration was mentioned in Ex.P5 release deed executed, DW.1 answered in negative. She also admitted not mentioning about the oral gift in Ex.P5. She admitted that the signature of her husband found in other documents differ from the signature found in Ex.D11. She also admitted that there is no mention about the earlier oral gift and its



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confirmation in Ex.D11. DW.2 stated that she did not know as to whether the oral gift is mentioned in Ex.D11. DW.3 admitted that there is no mention about the oral gift in Ex.D11. Except the interested testimony of DW's, there is no independent and acceptable evidence with regard to the oral gift said to have been given by the deceased Mr.Mohammed Azeezuddin in favour the defendants. In the absence of proof of oral gift and any reference to oral gift in Ex.D11 or its failure to mention in Ex.P5 release deed, this Court has to come to the only conclusion that the oral gift alleged by the defendants in their favour by Mr.Mohammed Azeezuddin in 2015 and its confirmation through Ex.D11 are created only for the purpose of this case and therefore, this Court finds that the oral gift alleged by the defendants and Ex.D11 declaration dated 20.05.2015 are not true and genuine and therefore, the defendants cannot claim right on the basis of alleged oral gift and its confirmation in EX.D11 dated 20.05.2015. Thus, the issue No.1 is answered against the defendants.

20. **Issue Nos.3 and 4:**

When the claims made by the plaintiffs and defendants on the



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basis of alleged oral gift followed by written confirmation, are negated by this Court, it goes without saying that the parties are entitled for claiming right in the suit property under personal law ie., Mohammedan law of inheritance. It is submitted by the learned counsel for the plaintiffs that the plaintiffs are mainly claiming right in the suit property only on the basis of oral gift and confirmation of oral gift and they cannot abandon their case and rely upon the weaknesses of the defendants' case and in support of this principle, the judgment reported in **1993 Supp (2) SCC 560 (Srichand ..vs.. Inder)** is relied. It is true that they claimed in the cause of action column that the plaintiffs are entitled to partition through the oral gift dated 07.05.2015 followed by confirmation dated 11.05.2015. However in the body of the plaint, they clearly stated that they are entitled to share even under Mohammedan Law of Inheritance. Plaint has to be read as a whole. Therefore, there is no deviation in the claim of the plaintiffs that they are entitled for share in the suit property.

21. As per Mohammedan personal law, in the event of death of a male mohammedan intestate, the devolution of interest of his



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property takes place as follows:-

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“In Muslim Law, three Classes of Heirs are recognized. They are:

Sharers, Residuaries and Distant Kindreds.

Sharers :

Sharers are entitled to a prescribed share of the inheritance.

The Sharers are 12 in number and are as follows: (1) Husband, (2) Wife, (3) Daughter, (4) Daughter of a son (or son's son or son's son's son and so on), (5) Father, (6) Paternal Grandfather (true Grandfather), (7) Mother, (8) Grandmother on the male line (True Grandmother), (9) Full sister (10) Consanguine sister (11) Uterine sister, and (12) Uterine brother.

Residuaries :

If there are no Sharers, or if there are Sharers, but there is a residue left after satisfying their claims, the whole inheritance or the residue as the case may be, devolves upon Residuaries in the order set forth.

I Descendants:

1. Son ii. Son's son and so on.

II Ascendants:

- i. Father. ii. True Grand father and so on.



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III Descendants of father:

i. Full brother. ii. Full sister. iii. Consanguine brothers. iv. Consanguine sister. v. Full brothers son vi. Consanguine brother's son vii. Full brother's sons's son viii. Consanguine brother's son's son

IV Descendants of true Grandfather

i. Full paternal uncle; ii. Consanguine Paternal Uncle; iii. Full paternal uncle's son; iv. Consanguine Paternal uncle's son; v. Full paternal uncle's son's son; vi. Consanguine paternal uncle's son's son; viii. Male descendants or more remote true grandfathers.

Distant Kindred: Those relations by blood who are neither sharers nor Residuaries.”

22. Here in the case on hand, the defendants 1 and 2 are the wife and daughter of the deceased. The plaintiffs are the full sisters and full brother of the deceased. The deceased has no son but one daughter, hence the wife of the deceased/first defendant herein, as a sharer, is entitled to 1/8 share in the property of the deceased. The daughter of the deceased/second defendant herein, as a sharer, is entitled to half share in the property of the



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deceased ie., 4/8 share. After satisfying the claim of the sharers, the residues left are 3/8 share, which are to be allotted to the residuaries. Pending suit, second plaintiff died. Under normal circumstances, the full sister will take part as a sharer. Because of the presence of full brother, she will take her part along with him as a residuary. Hence, the full brother, as a residuary, is entitled to double the share in the residue than that of his full sister. Accordingly, the full brother/third plaintiff herein is entitled to 2/3 share in the residue ie., 2/8 share in the property and the full sister/first plaintiff herein is entitled to 1/3 share in the residue ie., 1/8 share in the property. Each of the parties are entitled to shares in the suit property as mentioned below:-

First plaintiff (full sister—as residuary)	-	1/8 share
Third plaintiff (full brother—as residuary)	-	2/8 shares
First defendant (wife – as sharer)	-	1/8 share
Second defendant (daughter—as sharer)	-	4/8 shares

Therefore, the plaintiffs are jointly entitled to 3/8 share ie. 37.5% and defendants are jointly entitled to 5/8 share ie., 62.5% in the property of deceased Mohammed Azeezuddin. Accordingly, Issues 3 and 4 are



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answered.

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23. Issue No.5:

In the light of the findings given in Issue Nos.1 and 2, this Court finds that the release deed executed by second defendant in favour of first defendant on the premise that each are entitled for 1/2 undivided share in the suit property is not correct and therefore, this release deed has to be necessarily declared as null and void and not maintainable in law and accordingly declared.

24. Issue No.6

In view of the findings recorded in Issue Nos.1 and 2 that the plaintiffs and defendants are entitled for share in the suit properties and that the defendants are receiving rents from the tenants, the plaintiffs are entitled for mense profits from the defendants and it is relegated to an enquiry under Order 20 Rule 12 CPC.

25. Issue No.7:

The legal heir certificate issued by the third defendant in favour of



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defendants 1 and 2 is not produced before this Court. It is not in dispute that the defendants 1 and 2 are wife and daughter of the deceased Mr.Mohammed Azeezuddin and that his direct legal heirs, namely, sharers. May be that they cannot claim share in the property on the basis of legal heir certificate, but the legal heir certificate can be utilised for other purpose. Therefore, it is not necessary to cancel the legal heir certificate issued by the third defendant in favour of defendants 1 and 2.

26. In the result,

(i) The plaintiffs are jointly entitled to 3/8 share ie. 37.5% and the defendants are jointly entitled to 5/8 share ie., 62.5% in the property of the deceased Mohammed Azeezuddin and their individual share is as follows:-

First plaintiff (full sister—as residuary)	-	1/8 share
Third plaintiff (full brother—as residuary)	-	2/8 shares
First defendant (wife – as sharer)	-	1/8 share
Second defendant (daughter—as sharer)	-	4/8 shares.

(ii) the plaintiffs are entitled for mesne profits from the defendants and it is relegated to an enquiry under Order 20 Rule 12 CPC.



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(iii) In view of ordering an enquiry under Order 20 Rule 12

CPC with respect to the claim of share in the rents and the mesne profits, this Court is of the considered view that the appointment of receiver is not necessary. Therefore, the prayer for appointment of receiver is dismissed.

iv) The prayer with respect to cancellation of legal heir certificate issued by the third defendant vide certificate D.DIS.C/1470/2016 Dated 26.02.2016 is dismissed.

v) The impugned release deed dated 20.04.2016, registered as document No.1809 of 2016, on the file of SRO, Anna Nagar executed by the second defendant in favour of the first defendant is declared as null and void and not maintainable in law.

28. Accordingly, this suit is decreed in part. No costs.

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28.09.2022

List of witnesses examined on the side of the plaintiffs:-

PW.1 - Mr.Mohammed Zahiruddin

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List of Exhibits marked on the side of the plaintiffs:-

<i>Exhibit</i>	<i>Date</i>	<i>Document</i>
Ex.P1	18.01.2017	Certified copy of the sale deed dated 18.09.1996 executed by Tamil Nadu Housing Board in favour of deceased Mr.Mohammed Azeezuddin.
Ex.P2	11.05.2015	Confirmation of hiba affidavit by Mr.Mohammed Azeezuddin, confirming the oral gift (hiba) dated 07.05.2015.
Ex.P3	21.03.2016	Computer generated copy of death certificate of Mr.Mohammed Azeezuddin.
Ex.P4	05.01.2017	Original Encumbrance Certificate issued by SRO, Annanagar.
Ex.P5	09.01.2017	Certified copy of the release deed dated 20.04.2016 executed by second defendant in favour of first defendant.
Ex.P6	24.01.2017	Office copy of notice issued by the plaintiffs' counsel to the defendants
Ex.P7 (series- 2Nos.)	02.02.2017	Original Acknowledgment cards signed by the defendants 1 and 3.
Ex.P8	07.02.2017	Original reply sent by the counsel for the defendants to the counsel for the plaintiffs.
Ex.P9	10.02.2017	Copy of the rejoinder sent by the counsel for the



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<i>Exhibit</i>	<i>Date</i>	<i>Document</i>
		plaintiffs to the counsel for the defendants.
Ex.P10	14.02.2017	Original Acknowledgment card signed by the defendants' counsel to the plaintiffs' counsel.
Ex.P11	09.02.2017	Office copy of notice by the plaintiffs' counsel to the tenants.
Ex.P12 (series- 3Nos.)	14.02.2017	Original Acknowledgment cards signed by the tenants to the plaintiffs' counsel.
Ex.P13	03.03.2017	Original valuation report by the licensed surveyor to the plaintiffs.

List of witnesses examined on the side of the defendants:-

DW.1 - Mrs.Saira Banu

DW.2 - Mr.Mohamed Yeesah

DW.3 - Mrs.M.Rabiya

List of exhibits marked on the side of the defendants:-

<i>Exhibit</i>	<i>Date</i>	<i>Document</i>
Ex.D1	15.05.1973	Original letter of confirmation of sale issued by Tamil Nadu Housing Board in favour of the deceased Mr.Mohammed Azeezuddin.
Ex.D2	17.10.1974	Original lease cum sale agreement issued by Tamil Nadu Housing Board in favour of the deceased Mr.Mohammed Azeezuddin.
Ex.D3	17.04.1979	Original special form of agreement-loan agreement



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<i>Exhibit</i>	<i>Date</i>	<i>Document</i>
		entered between deceased Mr.Mohammed Azeezuddin and ICF.
Ex.D4	29.04.1978	Original planning permit issued by Corporation of Chennai to the deceased Mr.Mohammed Azeezuddin.
Ex.D5	29.04.1978	Original building permit issued by Corporation of Chennai to the deceased Mr.Mohammed Azeezuddin.
Ex.D6	28.04.1999	Original permission for construction of first floor/extension granted by the Railway Board to deceased Mr.Mohammed Azeezuddin.
Ex.D7	28.08.2000	Original provisional certificate of instalment under housing loan issued by LIC Housing Finance for 2000-2001 to deceased Mr.Mohammed Azeezuddin.
Ex.D8	03.08.2000	Original EMI schedule issued by LIC Housing Finance to deceased Mr.Mohammed Azeezuddin.
Ex.D9	01.04.2003	Original pension payment order issued by ICF to deceased Mr.Mohammed Azeezuddin.
Ex.D10	08.07.2006	Original repayment of housing loan by deceased Mr.Mohammed Azeezuddin to LIC.
Ex.D11	20.05.2015	Original declaration affidavit (oral gift) executed by deceased Mr.Mohammed Azeezuddin in favour of defendants 1 and 2.
Ex.D12	13.08.2013	Original rental agreement executed between first defendant and Trivent Systems (P) Ltd.,



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<i>Exhibit</i>	<i>Date</i>	<i>Document</i>
Ex.D13		Original passbook issued by Karnataka Bank in the name of first defendant.
Ex.D14	08.10.2007	Photocopy of R.C.Book for the Ford (Sedan) car bearing registration No.TN 02 AC 6824 issued by RTO, Annanagar to first defendant.
Ex.D15	25.04.1996	Original demand note (NOYT) issued by Madras Telephones to first defendant.
Ex.D16	03.11.1999	Original Indian Gas Customer subscription voucher issued in the name of first defendant.
Ex.D17		Original passbook issued by Karnataka Bank in the name of deceased Mr.Mohammed Azeezuddin.
Ex.D18	27.07.2017	Copy of police complaint, along with original visitors pass, lodged to City Commissioner of Police by the first defendant.

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Internet: Yes

Index : Yes

Speaking/Non speaking order



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G.CHANDRASEKHARAN, J.,

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