



S.A.(MD).No.406 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 03.03.2023

PRONOUNCED ON : 27.04.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.(MD).No.406 of 2012

and

M.P.(MD).No.1 of 2012

1.R.Sumathi

2.Rajeswari

... Appellants

Vs.

1.S.Ramuvel @ Mohamed Abdur Rahim

2.K.Velayutham

3.Boominathan

... Respondents

Prayer:- Second Appeal is filed under Section 100 of Civil Procedure Code, praying to set aside the judgment and decree in A.S.No.17 of 2006 on the file of learned Principal District Judge, Thanjavur, reversing the judgment and decree dated 27.02.2006 made in O.S.No.105 of 1996 on the file of learned Principal Subordinate Judge, Thanjavur and allow this second



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appeal.

For Appellants : Mr.S.Anand Chandrasekar
for M/s.Sarvabhauman Associates

For R1 : Mr.C.Sundaravadivel

For R2 and R3 : Given up

J U D G M E N T

The defendants 1 and 2 in the suit are the appellants. The 1st respondent herein filed a suit for declaration of his title to the suit property and to set aside the Settlement Deed dated 20.01.1996 allegedly executed by him in favour of the 1st appellant and also for a consequential injunction restraining the appellants and other respondents from interfering with his possession. The suit was dismissed by the Trial Court and on appeal filed by the 1st respondent, the findings of the Trial Court were reversed and the suit was decreed as prayed for. Aggrieved by the same, the appellants are before this Court.

Plaint Averments:

2. (i) The 1st appellant is the daughter of the 1st respondent. The 2nd



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appellant is mother of 1st appellant and wife of 1st respondent. The 2nd respondent is the brother of 2nd appellant and the 3rd respondent is the relative of 2nd appellant.

2. (ii) The 1st respondent married 2nd appellant on 05.06.1981. The marital life between them were not cordial and 2nd appellant left the matrimonial home during 3rd week of January, 1982, when she was pregnant. The 1st respondent filed a petition for divorce against the 2nd appellant in H.M.O.P.No.108 of 1984 and the same was dismissed. Subsequently, the 1st respondent instituted another petition for divorce against the 2nd appellant in H.M.O.P.No.578 of 1995 on the file of the Principal Sub Court, Thanjavur and the same was pending at the time of institution of the present suit.

2. (iii) It was further alleged by the 1st respondent that on 17.01.1996, the appellants and other respondents came to the State Bank of India, Branch of Thanjavur where he was working and threatened him to execute a document transferring the suit property in their favour and he refused to



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execute any such document. It was further alleged by the 1st respondent that on 20.01.1996, the appellants and other respondents came to his office and threatened him of causing bodily injury and abducted him to a lodge. It was further alleged that the appellants and other respondents forced him to sign a document and he was taken to Maharnombuchavadi Sub Registrar's Office wherein he was made to sign the document and answer the questions put by the Sub Registrar in affirmative. It was further alleged that the gift deed in favour of the 1st appellant who was represented by guardian 2nd appellant, allegedly executed by him, was not executed by voluntary act of 1st respondent and the same was secured by compulsion and threat of causing bodily pain.

2. (iv) On these averments, the 1st respondent contended in his plaint that the Settlement Deed allegedly executed by him on 20.01.1996 was a void document and it would not confer any title to the 1st appellant. On these pleadings, he filed a suit for declaration of his title and to set aside the Settlement Deed executed by him in favour of the 1st appellant and for consequential injunction.



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3. The appellants and other respondents filed a written statement and contended that the relationship between the appellants and 1st respondent were very close and cordial. They specifically denied the averment in the plaint as if appellants and other respondents threatened the 1st respondent and compelled him to execute gift deed in favour of the 1st appellant. It was further contended that the 1st respondent sent several letters to the 2nd appellant and 2nd respondent herein admitting the execution of Settlement Deed on his own. It was further contended that the 1st respondent was leading an immoral life with another lady. It was also contended that the 1st respondent/plaintiff converted to Islam and changed his name and married a Muslim girl even during the subsistence of first marriage with the 2nd appellant. On these pleadings, the appellants and other respondents sought for dismissal of the suit.



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4. Before the Trial Court, the 1st respondent was examined as PW.1. One of his colleague was examined as PW.2. On behalf of the appellants, the 2nd appellant was examined as DW.1. The 2nd respondent was examined as DW.2 and two persons, who mediated between the 2nd appellant and 1st respondent were examined as DW.3 and 4. The Attestor to Settlement Deed allegedly executed by 1st respondent (Ex.A8/Ex.B1) was examined as DW.5. The 3rd respondent was examined as DW.6. The brother of 1st respondent, who also mediated between 2nd appellant and 1st respondent was examined as DW.7. The Trial Court on appreciation of oral and documentary evidence available before it came to the conclusion that Ex.B1/Settlement Deed executed by the 1st respondent in favour of 1st appellant was valid and binding on him and consequently, dismissed the suit. Aggrieved by the same, the 1st respondent filed an appeal in A.S.No.17 of 2006 on the file of Principal District Court, Thanjavur. The First Appellate Court reversed the findings of the Trial Court and decreed the suit as prayed for. Aggrieved by the same, the appellants are before this Court.



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5. This Court at the time of admission formulated the following substantial questions of law:-

“1. Has not the learned Principal Subordinate Judge committed error in law for applying Muslim Law to the appellants when the marriage between the 1st respondent/plaintiff and 2nd appellant was subsisting under the Hindu Marriage Act at the time of execution of settlement deed in favour of his minor daughter/1st appellant and his family and its members continue to be Hindus?

2. Were the findings of the trial Court improper or holding that the settlement deed was not executed and registered under threat on coercion in the absence of any objection or complaint by the 1st respondent/plaintiff?”

6. The learned counsel for the appellants elaborating the substantial questions of law framed at the time of admission, submitted that the appellants though pleaded coercion to avoid the Registered Settlement Deed executed by him, miserably failed to prove the same by leading cogent evidence and consequently, the finding rendered by the First Appellate



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Court as if, the settlement was not the result of voluntary act on the part of the 1st respondent cannot be sustained. The learned counsel further submitted that the finding entered by the First Appellate Court that the Gift Settlement executed by 1st respondent must fail as it did not satisfy three ingredients of valid gift under Mohammedan Law is vitiated as there was no plea by the 1st respondent with regard to the application of Muslim Personal Law for the gift effected by him.

7. Per contra, the learned counsel for the 1st respondent tried to sustain the judgment passed by the First Appellate Court by contending that 1st respondent admittedly converted to Islam and hence, when he executes a Gift Settlement Deed it is only the Personal Law of Muslims relating to execution of Gift Deed is applicable and the provisions of Transfer of Property Act, 1882, cannot be applied to the gift by a Muslim. The learned counsel further relied on the judgment of the Allahabad High Court in ***Someshwar vs. Barkat Ullah and others*** reported in ***AIR 1963 All 469*** for the proposition that when gift is made by a Muslim to a Non-Muslim, it is only the Mohammedan Law, which is applicable. The learned counsel



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further submitted that under Mohammedan Law in order to make valid gift three essential ingredients shall be satisfied. The learned counsel relied on the judgment of the Hon'ble Apex Court in ***Hafeesa Bibi and others vs. Shaikh Farid*** reported in ***AIR 2011 SUPREME COURT 1695*** in support of the said contention. The learned counsel also relied on the unreported judgment of this Court passed in ***S.M.Syed Mohammed Buhari vs. The Sub Registrar and 2 others in W.P.No.18051 of 2011, dated 09.12.2011*** in this regard. In nutshell, it is the contention of the learned counsel for the 1st respondent in order to make a valid gift under Mohammedan Law, three essential ingredients viz., (i) declaration of gift by donor, (ii) acceptance by donee and (iii) delivery of possession shall be satisfied. According to the learned counsel, in the case on hand, none of the three ingredients were satisfied and hence, the gift by 1st respondent in favour of the 1st appellant ought to be treated as invalid.



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Discussions on the Substantial Questions of Laws:

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8. (i) A perusal of the plaint averments by the 1st respondent would make it clear that he challenged the alleged gift deed executed by him under Ex.B1 in favour of his minor daughter/1st appellant represented by her mother/2nd appellant only on the ground of flaw in consent. It was the specific case of the 1st appellant that at the time of execution of the gift deed, appellants and other respondents abducted him from his office and confined him in a lodge and forcibly obtained his signature in the document.

8. (ii) It was further alleged that he was taken to Sub Registrar's office and made to answer in affirmative to the questions asked by the Sub Registrar. The gift deed was executed by 1st respondent on 20.01.1996. The present suit was filed by the 1st respondent only on 27.06.1996 nearly after 6 months. Absolutely, there is nothing on record to suggest appellants made any objection as to execution of the gift deed immediately after the alleged coercion ceased to exist or atleast within reasonable time.



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8. (iii) On the contrary, in Exs.B3 to B6 letters written by him to his brother viz., DW.2, he admitted to the execution of gift deed. He also admitted to the execution of gift deed under Ex.B11 and B12/letters written by him to his brother viz., DW.7. It is settled law whenever a party to a contract pleads that consent to the contract was obtained by employing coercion, it is for him to prove the alleged employment of coercion by leading cogent evidence. It is the specific case of the 1st respondent that he executed Ex.B1/gift deed in favour of his daughter, 1st appellant under coercion and he appeared before the Sub Registrar and admitted execution of the document under duress. Therefore, there is no dispute with regard to the execution of document by the 1st respondent. The only dispute is with regard to the flaw in consent pleaded by him.

8. (iv) Except the interested testimony of the 1st respondent, there is no acceptable evidence to support the plea of coercion. The evidence of his co-employee viz., PW.2 is not useful to prove the plea of coercion. PW.2 had deposed that 1st respondent informed him that 4 or 5 persons compelled



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him to sign a document and made him to appear before the Sub Registrar and sign the document there. Therefore, PW.2 had no personal knowledge about the alleged coercion pleaded by the 1st respondent. His evidence is a hearsay one with regard to fact of alleged coercion and consequently, it will not advance the case of 1st respondent.

8. (v) As mentioned earlier, the Ex.B1/gift deed was executed on 20.01.1996 and the suit was filed 6 months thereafter on 27.06.1996. The fact of alleged coercion was raised by the 1st respondent for the first time in his pre-suit legal notice issued under Ex.A1 dated 24.04.1996. From 20.01.1996 to 24.04.1996 for nearly 3 months, the 1st respondent failed to raise his little finger regarding alleged act of coercion by the appellants. Had the plea of coercion made by the 1st respondent been true, as a normal prudent person, the 1st respondent should have complained to the police regarding coercion employed by the appellants immediately after alleged coercion ceased to exist. In fact, co-employee of 1st respondent who was examined as PW.2 deposed that he was informed by 1st respondent regarding act of coercion by appellants on the very same day and he immediately



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asked him to give a complaint to the police and he responded by saying complaint was already given to the police. The relevant portion of PW.2's evidence in vernacular is extracted below:-

“வாதி எங்களிடம் வாதியை 4இ5 பேர் அழைத்து சென்று கட்டாயப்படுத்தி பத்திரங்களில் கையெழுத்து வாங்கியதாக சொன்னார். அப்படியே பதிவாளர் அலுவலகத்துக்கு அஜாத்து சென்று வாதியிடம் கையெழுத்தும் வாங்கினார். என்று சொன்னார். காவல் நிலையத்திற்கு புகார் கொடுத்திருக்கலா என்று கேட்டேன். கொடுத்தேன் என்று சொன்னார்.”

However, there is no evidence available on record to show that 1st respondent made a complaint to the police immediately after alleged coercion ceased to exist.

9. Under Section 19 of the Indian Contract Act, 1872, if consent of a person to a contract was obtained by employing coercion the said contract is voidable at the option of the person whose consent was so obtained. Therefore, merely because, there is a flaw in consent the agreement cannot be treated as void *ab initio*.



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10. In other words, the agreement is valid and binding on the parties, unless it is avoided by a party whose consent was so obtained. The party, whose consent was obtained by coercion is expected to avoid the contract immediately, after coercion ceased to exist. In any event, the option of avoiding the contract shall be exercised within reasonable time without any delay. In the case on hand, for nearly 3 months, the 1st respondent failed to raise any objection and on the contrary by writing letters to DW.2 and DW.3 under Exs.B3 to B6, B11 and B12, he admitted execution of document. The 1st objection was made by him only on 24.04.1996 under Ex.A1, legal notice issued through his counsel. The 1st respondent is a bank employee working in State Bank of India and he is not an illiterate person. In such circumstances, this Court is unable to accept the plea of coercion made by the 1st respondent when it was not established by any acceptable evidence. Therefore, the finding of the First Appellate Court that execution of Ex.B1 was not the result of voluntary act by the 1st respondent is liable to be set aside.



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11. The First Appellate Court also rendered a finding that Gift Deed was obtained by appellants and other respondents under the guise of withdrawing a criminal case initiated by 2nd appellant under the Dowry Prohibition Act, 1961 and therefore, it is opposed to public policy. The 1st respondent in his plaint averment only pleaded about employment of alleged act of coercion. He had not pleaded anything that the gift deed was obtained on a promise that criminal case filed against him would be withdrawn on execution of gift deed.

12. It is settled law that no amount of evidence without a foundation in pleadings can be taken into consideration. Therefore, the finding rendered by the First Appellate Court as if, Settlement Deed executed by 1st respondent was procured by making a false promise as if, criminal case against the 1st respondent would be withdrawn on execution of Settlement Deed cannot be accepted in the absence of plea and consequently, the same is liable to be set aside.



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13. The next question that has to be decided in this second appeal is applicability of Transfer of Property Act, 1882 to the gift by Mohammedans. In the case on hand, the 1st respondent converted to Islam and therefore, on the date of Ex.B1, the donor was a Muslim and the donee viz., the 1st appellant was a Hindu. Placing reliance on the decision of the Allahabad High Court in *Someshwar vs. Barkat Ullah and others* reported in *AIR 1963 All 469*, learned counsel for the appellants vehemently contended that when a Mohammedan makes a gift in favour of Hindu only the law relating to Mohammedans shall apply. The learned counsel further by relying on the decision of this Court in *Mrs.Kalidha Adib Begum and another vs. S.A.Bashirunnissa Begum Hussaini and others* reported in *1970 2 MLJ 98* submitted that in order to constitute a valid gift following ingredients shall be satisfied,

(i) declaration of gift by donor, (ii) acceptance of donee, (iii) delivery of possession. It is the submission of the learned counsel for the appellants that delivery of possession and also acceptance of gift by donee were not proved in this case and hence, gift is not valid in the eye of law.



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14. While considering the applicability of law relating to gift under Sections 122 and 123 of Transfer of Property Act, 1882, Section 129 of the Transfer of Property Act, 1882 assumes significance, the same is as follows:-

“129. Saving of donations mortis causa and Muhammadan law.—Nothing in this Chapter relates to gifts of movable property made in contemplation of death, or shall be deemed to affect any rule of Muhammadan law.”

15. Section 2 of the Transfer of Property Act, 1882 reads as follows:-

“2. Repeal of Acts-Saving of certain enactments, incidents, rights, liabilities, etc.—In the territories to which this Act extends for the time being the enactments specified in the Schedule hereto annexed shall be repealed to the extent therein mentioned. But nothing herein contained shall be deemed to affect—

(a) the provisions of any enactment not hereby expressly repealed;



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(b) any terms or incidents of any contract or constitution of property which are consistent with the provisions of this Act, and are allowed by the law for the time being in force;

(c) any right or liability arising out of a legal relation constituted before this Act comes into force, or any relief in respect of any such right or liability; or

(d) save as provided by section 57 and Chapter IV of this Act, any transfer by operation of law or by, or in execution of, a decree or order of a Court of competent jurisdiction, and nothing in the second Chapter of this Act shall be deemed to affect any rule of Muhammadan law.”

16. A reading of Section 2 of Transfer of Property Act, 1882 would make it clear that Second Chapter of Transfer of Property Act, 1882 shall not affect any rule of Muhammadan Law. However, gift of immovable properties are dealt with under Chapter-VII of Transfer of Property Act, 1882. Therefore, exclusion of Second Chapter under Section 2 of the Act will not affect the applicability of Chapter-VII of the Transfer of Property Act, 1882 to Mohammedan. A perusal of Section 129 of the Transfer of Property Act, 1882 extracted above would make it clear that nothing in



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Chapter-VI of the Act, would affect any rule of Mohammedan Law.

Therefore, merely because, Section 123 of Transfer of Property Act, 1882 contemplates gift of immovable property by registered instrument signed by donor and attested by two witnesses, the same will not affect rule of Mohammedan Law, which permits Hiba or Oral Gift by satisfying above mentioned three essential ingredients.

17. It does not mean, a Mohammedan shall not effect gift of his immovable property by way of registered instrument by satisfying Section 123 of the Transfer of Property Act, 1882. Section 129 of the Transfer of Property Act, 1882 is only having the effect of saving the law relating to gift under Muslim Law. If a Mohammedan makes Hiba or Oral Gift of his property in favour of another person, as per Personal Law applicable to him, the same is valid. The validity of the said oral gift cannot be challenged by pointing out the mandatory procedure contemplated under Section 123 of the Act. However, if a Mohammedan follows the procedures under Section 123 of Transfer of Property Act, 1882 effects gift of his immovable property as contemplated under the provisions of the said act, there is nothing in the



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Act which prevent a Muslim from gifting the property by following the procedure under Section 123 of the Act. Section 129 of the Act does not say provisions of Chapter-VII of Transfer of Property Act, 1882 are not applicable to Mohammedans. It only says the provisions under Chapter-VII shall not affect any rule of Mohammedan Law.

18. As far as law relating to gift by Mohammedans in favour of a Non-Muslim is concerned, in the decision of the Allahabad High Court in ***Someshwar vs. Barkat Ullah and others*** reported in ***AIR 1963 All 469*** and that of Patna High Court in ***Mr.Tabera vs. Ajodhya Prasad*** reported in ***AIR 1929 Patna 417***, the High Courts of Allahabad and Patna had taken a view that when a Muslim effects gift of his property in favour of a Non- Muslim, it is the Personal Law of the Donor which is applicable to the transaction of gift.



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19. Admittedly, in the case on hand, Donor is a convert to Islam and he made gift of his property in favour of his daughter, who had not converted to Islam. The law relating to gift by Mohammedans was very well explained by the Hon'ble Apex Court in ***Hafeesa Bibi and others vs. Shaikh Farid*** reported in ***AIR 2011 SUPREME COURT 1695***. The relevant portion of the Hon'ble Apex Court's judgment reads as follows:-

“28. Mulla, Principles of Mahomedan Law (19th Edition), Page 120, states the legal position in the following words:

"Under the Mahomedan law the three essential requisites to make a gift valid : (1) declaration of the gift by the donor: (2) acceptance of the gift by the donee expressly or impliedly and (3) delivery of possession to and taking possession thereof by the donee actually or constructively. No written document is required in such a case. Section 129 Transfer of Property Act, excludes the rule of Mahomedan law from the purview of Section 123 which mandates that the gift of immovable property must be effected by a registered instrument as stated therein. But it cannot be taken as a sine qua non in all cases that whenever there is a writing about a Mahomedan gift of immovable property there must be



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registration thereof. Whether the writing requires registration or not depends on the facts and circumstances of each case.”

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31. Section 129 of T.P. Act preserves the rule of Mohammadan Law and excludes the applicability of Section 123 of T.P. Act to a gift of an immovable property by a Mohammadan. We find ourselves in express agreement with the statement of law reproduced above from Mulla, Principles of Mahomedan Law (19th Edition), page 120. In other words, it is not the requirement that in all cases where the gift deed is contemporaneous to the making of the gift then such deed must be registered under Section 17 of the Registration Act. Each case would depend on its own facts. (emphasis supplied)

32. We are unable to concur with the view of the Full Bench of Andhra Pradesh High Court in the case of Tayyaba Begum (AIR 1962 AP 199) (FB). We approve the view of the Calcutta High Court in Nasib Ali (AIR 1927 Cal 197) that a deed of gift executed by a Mohammadan is not the instrument effecting, creating or making the gift but a mere piece of evidence, such writing is not a document of title but is a piece of evidence.

33. We also approve the view of the Gauhati High Court



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in the case of Md. Hesabuddin (AIR 1984 Gau 41). The judgments to the contrary by Andhra Pradesh High Court, Jammu and Kashmir High Court and Madras High Court do not lay down the correct law.

34. Now, as regards the facts of the present case, the gift was made by Shaik Dawood by a written deed dated February 5, 1968 in favour of his son Mohammed Yakub in respect of the properties 'A' schedule and 'B' schedule appended thereto. The gift - as is recited in the deed - was based on love and affection for Mohammed Yakub as after the death of donor's wife, he has been looking after and helping him. Can it be said that because a declaration is reduced to writing, it must have been registered? We think not. The acceptance of the gift by Mohammed Yakub is also evidenced as he signed the deed. Mohammed Yakub was residing in the 'B' schedule property consisting of a house and a kitchen room appurtenant thereto and, thus, was in physical possession of residential house with the donor. The trial court on consideration of the entire evidence on record has recorded a categorical finding that Shaik Dawood (donor), executed the gift deed dated February 5, 1968 in favour of donee (Mohammed Yakub), the donee accepted the gift and the donor handed over the properties covered by the gift deed to the donee. The trial court further



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held that all the three essentials of a valid gift under the Mohammadan Law were satisfied. The view of the trial court is in accord with the legal position stated by us above. The gift deed dated February 5, 1968 is a form of declaration by the donor and not an instrument of gift as contemplated under Section 17 of the Registration Act. As all the three essential requisites are satisfied by the gift deed dated February 5, 1968, the gift in favour of defendant 2 became complete and irrevocable.”

Therefore, it is not required in all cases where the gift deed is contemporaneous to the making of the gift, it shall be registered as per provisions of Section 17 of the Registration Act, 1908 and each case would depend on it's own facts. In the above said decision, the Hon'ble Apex Court categorically held that under Muslim Personal Law it is not necessary in all cases where the Gift Deed is contemporaneous to making of the gift it must be registered. Therefore, depends on the facts and circumstances of the case, in some cases gift by a Muslim may require registration. In the case on hand, Donor is a Muslim and Donee is a Non-Muslim. The Muslim Personal Law (Shariat) Application Act, 1937 is applicable only in cases where the



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parties are Muslims (Reference may be had to Section 2 of Shariat Act, 1937 in this regard). Further, Section 2 of the said Act, begins with non-obstante clause in so far as custom or usage are concerned. However, non-obstante clause in Section 2 of the said Act is not relating any other law in operation. Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937, reads as follows:-

“2. Application of personal law to Muslims.—
Notwithstanding any custom or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females including personal property inherited or obtained under contract or gift or any other provision of personal laws, marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and mubaraat, maintenance, dower, guardianship, gifts, trusts and trust properties and wakfs (other than charities and charitable institutions and charitable and religious endowments) the rules of decision in cases where the parties are Muslims shall be the Muslim Personal Law (Shariat).”

Therefore, in cases where there is a conflict between the custom or usage and the Muslim Personal Law (Shariat) Application Act, 1937, by virtue of



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non-obstante in Section 2 of the said Act, later will prevail over former. On the other hand, the non-obstante clause employed in Section 2 of the Act would not affect the operation of other laws. In the case on hand, both the parties to the Settlement Deed are not Muslims. When a gift is made by a Muslim in favour of Non-Muslim, the same will not be covered by the Muslim Personal Law (Shariat) Application Act, 1937 as both the parties to the transaction are not Muslims. Therefore, the provisions of Muslim Personal Law (Shariat) Application Act, 1937, will not get attracted in the case on hand, where donor is a Muslim and donee is a Non-Muslim. Consequently, I hold in the case on hand, donor is entitled to settle the property by following provisions of Transfer of Property Act, 1882.

20. The learned counsel for the appellant vehemently contended that there is no evidence available on record to suggest acceptance of gift by donee and delivery of possession by donor in favour of donee. Therefore, in such circumstances, the two essential ingredients of Mohammedan Law are not satisfied.



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21. As held by the Hon'ble Apex Court in *Hafeesa Bibi* case (cited supra) a gift deed by a Mohammedan can always be taken as a evidence of gift. I have already come to a conclusion that Ex.B1 is a valid document and the 1st respondent/plaintiff failed to prove coercion pleaded by him. Therefore, the recitals found in Ex.B1 are binding on the 1st respondent. A reading of Ex.B1 would make it clear that the 1st respondent made express declaration of gift in favour of 1st appellant and handed over possession of the same in favour of 1st appellant. Even in the preamble portion of the Gift Deed, the place of residence of the 1st appellant was mentioned as the subject matter of the gift.

22. A reading of aforesaid document would make it clear that even under Ex.B1, the place of residence of 1st appellant was mentioned as the subject matter of the gift. The 1st respondent expressly declared the gift and possession of subject matter of the gift was handed over to the 1st appellant. Therefore, there is no difficulty in coming to the conclusion that there was express declaration of gift by the 1st respondent and constructive possession



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of the suit property was handed over to the 1st appellant. The 1st appellant is none other than the minor daughter of 1st respondent. The place of residence of 1st appellant was also mentioned as the suit property in the document. On account of the close relationship of father and minor daughter, no further evidence is necessary to prove the delivery of possession. The property is deemed to be delivered to the minor donee in view of express recital in the gift deed to that effect.

23. It would be appropriate to refer to the decision of the Hon'ble Apex Court in *Abdul Rahim vs. SK.Abdul Zabbar* reported in **(2009) 6 SCC 160** in this regard, wherein while considering delivery of possession and validity of gift under Mohammedan Law, the Hon'ble Apex Court observed as follows:-

“20. Indisputably, the deed of gift is a registered one. It contains a clear and unambiguous declaration of total divestment of property. A registered document carries with it a presumption that it was validly executed. It is for the party questioning the genuineness of the transaction to show that in



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law the transaction was not valid.

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24. A learned Single Judge of the Orissa High Court in Abu Khan v. Moriam Bibi held:

“... delivery of possession may be either actual or constructive 'Possession' has been defined in Section 394 of Muslim Law by Tyabji. The definition runs thus:

'A person is said to be in possession of a thing, or of immovable property, when he is so placed with reference to it that he can exercise exclusive control over it, for the purpose of deriving from it such benefit as it is capable of rendering, or as is usually derived from it.

Thus, possession can be shown not only by acts of enjoyment of the land itself but also by ascertaining as to in whom the actual control of the thing is to be attributed or the advantages of possession are to be attributed or the advantages of possession are to be credited, even though some other person is in apparent occupation of the land. In one case, it would be actual possession and in the other case, it would be constructive possession.”

In that case, handing over of the deed of gift coupled with the declaration made in the document was held to be



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sufficient for constituting a valid gift. (See also valia Peedikakkandi Katheessa Umma v. Pathakkalan Narayanath Kunhamu) We agree with the ratio laid down therein.”

24. Though First Appellate Court relied on a stray line in the written statement of the appellants that 1st appellant would take action for possession of the suit property for coming to the conclusion that there was no physical delivery of possession, by the 1st respondent donor, much reliance cannot be placed on the said pleadings in view of fact that mutation had taken place subsequent to the gift deed in favour of the 1st appellant and patta was issued in her name. The recital in Ex.A1 gift deed and subsequent mutation in favour of donee would make it clear that physical possession was delivered to the 1st appellant. As mentioned earlier in gift deed that the address of both donor and donee were mentioned as subject matter of the Gift. Hence, in the light of decision of Hon'ble Apex Court in **Abdul Rahim vs. SK.Abdul Zabbar** reported in **(2009) 6 SCC 160** cited supra, this Court has no hesitation in coming to the conclusion that Gift Settlement executed by 1st respondent is valid and recitals therein coupled with mutation in



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revenue records proves delivery of possession.

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25. As far as the acceptance of gift is concerned in pursuance of gift deed executed by 1st respondent mutation in revenue records had taken place as per Ex.B2. A perusal of Ex.B2 would make it clear that on application filed by 1st appellant, represented by her mother 2nd appellant, patta of the suit property was changed in favour of 1st appellant. Ex.B2 also mentions that 1st appellant has been enjoying the suit property in pursuance of gift deed executed by 1st respondent. In such circumstances, there is no difficulty in coming to the conclusion that the donee accepted the gift and effected mutation in her favour. Therefore, reading of Exs.B1 and B2 would make it clear that all the three essential ingredients of Muslim Law for effecting Hiba or Oral Gift had been satisfied in this case. Therefore, the judgment and decree passed by First Appellate Court as if, the essential ingredients of valid gift under Muslim Law was not proved in the present case, is liable to be set aside.



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26. In view of the discussions made earlier, both the questions of law are answered in favour of the appellants and against the respondents.

In Nutshell:

(a) The Second Appeal is allowed by setting aside the judgment and decree passed by the First Appellate Court.

(b) The judgment and decree passed by the Trial Court stands restored.

(c) Consequently, the connected miscellaneous petition is closed.

(e) In the facts and circumstances of the case, there will be no order as to costs.

27.04.2023

NCC: Yes
Index: Yes
dm



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- 1.The Principal District Judge,
Thanjavur.
- 2.The Principal Subordinate Judge,
Thanjavur.
- 3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

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S.A.(MD).No.406 of 2012

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