

Item-
6. 25-09-2025

SAT 206 of 2025
CAN 1 of 2025

sg Ct. 1

Kazi Tayab Ali
Versus
Kazi Kaiyam Ali, since deceased,
represented by his legal heirs, namely,
Khodeza Bibi & Ors.

Mr. Sounak Bhattacharya
Mr. Lutful Haque
Mr. Golam Karim Chowdhury
Ms. Taharima Khatun

...for the appellant

1. The plaintiff filed a suit asserting the right in respect of the immovable property which they claimed to have acquired by reason of an oral Heba. The parties are governed by Mohammadan Law. The oral gift is permissible under the Mohammadan Law. However, the problem the plaintiff faced at the trial was that they relied upon an oral Heba to substantiate their claim over and in respect of the property as owner thereof.
2. Curiously in the plaint, in the alternative, a claim of adverse possession has been pleaded. No satisfactory explanation was offered at the trial stage for not producing an unregistered deed claimed to be a deed of gift in favour of the plaintiff. The plaintiff although had mentioned that his elder brother, claiming the present defendant no.1, made one oral Heba on 8th May, 1975 with delivery of possession of the property in question but could not establish that any subsequent document, reference of any oral Heba was mentioned. Moreover, a claim for adverse possession has been made in the plaint.

The respondent no.1 is the elder brother of the plaintiff.

3. Before the learned First Appellate Court, reliance was placed on an unregistered deed, however, the said deed was never exhibited. The Court cannot look into a document which is not exhibited. The burden of proof lies on the plaintiff to prove that there is an oral Heba in favour of the plaintiff.
4. The learned Counsel appearing on behalf of the appellant has submitted that the unregistered deed itself creates a title in favour of the plaintiff. The deed in the recital has referred to an earlier permission to the plaintiff to carry on the business but did not subsequently state that there was an oral Heba in favour of the plaintiff. It was not the case of the plaintiff that the said unregistered deed is a deed of gift.
5. The Court cannot make out a third case for the parties. The Court has to frame issues on the basis of the pleadings and documents. In the absence of any specific pleading that the said unregistered deed is thus to be considered as a deed of gift or that an issue was framed on the basis of the document, we are of the view that the learned Trial Court as well as the First Appellate Court was justified in dismissing the suit.
6. The concurrent findings of fact of both the courts based on such pleadings and evidences does not call for any interference as it does not involve any substantial question of law.

7. With the above observation, the appeal and the application are dismissed. However, there shall be no order as to costs.

[Soumen Sen, C.J. (Acting)]

(Apurba Sinha Ray, J.)