



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**REVIEW APPLICATION (CIVIL) NO. 110 OF 2012
IN SA/183/2011**

**SYED MOHIUDDIN SYED KADU AND ORS
VERSUS
HUJRABEE SHAIKH ABDUL REHMAN DIED THROUGH LRS.
ABDUL REHMAN AND OTHERS**

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Advocate for Applicants : Mr. N. L. Jadhav h/f Mr. Nagarsoge
Sahebrao A.

Advocate for Respondent Nos.1 to 6 : Mr. Mujtaba Gulam
Mustafa.

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**CORAM : SHAILESH P. BRAHME, J.
DATE : 29.09.2025**

FINAL ORDER :-

1. Heard both sides.
2. A judgment and order dated 01.02.2012 passed by learned Single Judge is sought to be reviewed by the applicants who are unsuccessful defendants in the second appeal. Respondents had filed suit for administration of the estate which was dismissed by the Trial Court. The decree is reversed by Lower Appellate Court and further confirmed in the second appeal by the order in question.
3. Learned counsel for the applicants submits that suit filed by respondents was barred by limitation and the findings are

perverse. It is further contended that applicants have longstanding possession and they have perfected the title which is not properly appreciated. It is further submitted that mutation entry Nos.172 and 175 have not been properly interpreted by the learned Judge. It is submitted that order in question is apparently illegal because no land is left for carving out share to the respondents. It is further submitted that Lower Appellate Court should have remanded the matter by framing additional issue.

4. All the submissions are repelled by learned counsel appearing for the respondents. It is disclosed that no plea was taken by the applicants that the transaction between original owner and the applicants' father was that of Hiba. It is submitted that all aspects of the matter have been dealt with by Lower Appellate Court. It is further submitted that the submissions canvassed by applicants would not constitute any ground to recall the order in question.

5. I have carefully gone through the order sought to be reviewed as well as judgment of Lower Appellate Court in Regular Civil Appeal No.187 of 2007. Parties are Muslim and their succession is governed by their personal laws. It is rightly observed by Appellate Court as well as learned Judge in the

order in question that there is no pleading as well as corroborative evidence to indicate that in the year 1983 Syed Manik executed oral Hiba in favour of the applicants' father. It cannot be reiterated by the applicants that it was Hiba and not the partition.

6. The mutation entries which are pressed into service by the applicants are indicative of the partition. Those cannot be interpreted to mean Hiba. It is trite law that a Muslim cannot partition his property during lifetime amongst his children. Any theory of partition by Syed Manik in favour of applicants' father and further interse partition by father in favour of the applicants is against Momedian law. This aspect is fairly and properly discussed making reference to paragraph Nos.44 and 56 of Momedian law. I do not find any perversity. A useful reference can be made to following, relevant extracts of the latest judgment in the matter of *Mansoor Saheb (Dead) and others Vs. Salima (D) by L.Rs. and others ; 2024 Supreme (SC) 1215* are as follows :

“20. One may reasonably conclude, having referred to the primary texts and commentaries on Mohammedan Law, that partition while a person is alive between him and his heirs is impermissible. The manner in which partition is to take place after the death of the ancestor is set out in great detail in the sources of Mohammedan Law however, the same is beyond the scope of the present lis.”

“34. A perusal of the Mutation Entry No.8258 (Ex.P1) shows that Sultan Saheb got the 'partition' done in favour of his sons. The words "partition of the property done by Sultan Abdul Khader Shek" clearly indicate his intention to divide the property into three parts without any indication of his intent to gift the property to his sons. Had Sultan Saheb intended to gift the property, it ought to have been recorded as a gift in the Mutation Entry.”

“35. Additionally, the purpose of mutation entry, as is well settled is only limited to revenue records. They do not, in any way, translate to or confer any title in regard to the subject matter property. Some decisions reflecting this position of law are as follows:

In Sawarni v. Inder Kaur, (1996) 6 SCC 223 :

"7. Mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question."

In Jitendra Singh v. State of M.P. & Ors. 2021 SCC Online SC 802:

"7. Right from 1997, the law is very clear. In the case of Balwant Singh v. Daulat Singh (D) By Lrs., reported in (1997) 7 SCC 137, this Court had an occasion to consider the effect of mutation and it is observed and held that mutation of property in revenue records neither creates nor extinguishes title to the property nor has it any presumptive value on title. Such entries are relevant only for the purpose of collecting land revenue. Similar view has been expressed in the series of decisions thereafter."

This position was recently reiterated by this Court in P. Kishore Kumar v. Vittal K. Patkar, 2023 SCC Online SC 1483.”

7. All the Courts below including High Court dealt with issue of limitation. I do not find any perversity or any apparent mistake in those findings. The theory of adverse possession pressed into service by the applicants is also misplaced. In that regard also, I do not find any mistake on the face of the record.

8. The respondent is awarded 1/9th share which is executable in respect of land Gut No.84. Out of that, only 10 acre has been alienated to one Rahimoddin Sirajoddin. The balance land is with the applicants and they are liable to hand over possession of the share awarded to the respondents. The decree is executable.

9. No case is made out to cause any interference in the judgment and order sought to be reviewed.

10. Review application is rejected.

(SHAILESH P. BRAHME, J.)

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