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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FAMILY COURT APPEAL NO.21 OF 2019

Rahman Khan s/o Yousuf Khan
Age – 51 years, Occ – Advocate
R/o At present Gandewar Colony,
Near Railway Station, Bhokar,
Taluka – Bhokar, District - Nanded

APPELLANT

VERSUS

1. Gausiya w/o Rehman Khan (Divorced)
Age – 52 years, Occ – Assistant Teacher
Z. P. High School, Yatala,
Taluka – Dharmabad, District – Nanded

RESPONDENTS

2. Shamin Sultana w/o Yusuf Khan
Age – 62 years, Occ – Household affairs
and Pensioner,
R/o Umar Colony, Nanded

3. Yusuf Khan s/o Bashir Khan
Age – 65 years, Occ – Pensioner
R/o Fatema Hospital Itwara
Nanded

4. Sajid Rizwan Khan s/o Yusuf Khan
Age – 36 years, Occ – Service
in Police Department
R/o New Abadi Near Shaijinagar
Nanded

5. Irfan Khan s/o Yusuf Khan
Age – 32 years, Occ – Education
R/o Umar Colony, Nanded

6. Yasmin Begum d/o Sayed Ali
Age – 22 years, Occ – Household affairs
R/o Iqbalnagar, Nanded

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Mr. Rahman Khan Yousuf Khan, Appellant – party in person

Mr. R. P. Bhumkar, Advocate for Respondent No.1

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FAMILY COURT APPEAL NO.37 OF 2019
WITH
CIVIL APPLICATION NO. 5281 OF 2019

Gausiya w/o Rehman Khan
Age – 49 years, Occ – Teacher
R/o H. No. 9-7-793, Osmanpura
Nanded, Taluka & District - Nanded

APPELLANT

VERSUS

1. Rehman Khan s/o Yusuf Khan
Age – 50 years, Occ – Advocate
R/o At present Gandewar Colony,
Near Railway Station, Bhokar,
Taluka – Bhokar, District - Nanded
2. Shamin Sultana w/o Yusuf Khan
Age – 67 years, Occ – Household affairs
and Pensioner,
R/o Umar Colony, Degloor Naka,
Nanded Taluka and District - Nanded
3. Yusuf Khan s/o Bashir Khan
Age – 70 years, Occ – Pensioner
R/o Fatema Hospital Itwara
Nanded Taluka & District - Nanded
4. Sajid Rizwan Khan s/o Yusuf Khan
Age – 41 years, Occ – Service
in Police Department
R/o New Abadi Near Shivajinagar
Nanded, Taluka & District - Nanded
5. Irfan Khan s/o Yusuf Khan
Age – 37 years, Occ – Education
R/o Umar Colony, Degloor Naka,
Nanded, Taluka & District - Nanded
6. Yasmin Begum d/o Sayed Ali
Age – 27 years, Occ – Household affairs

RESPONDENTS

R/o Iqbalnagar, Nanded
Taluka & District – Nanded

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Mr. R. P. Bhumkar, Advocate for the Appellant
Mr. Rahman Khan Yousuf Khan, Respondent No.1-party in person

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**[CORAM : NITIN B. SURYAWANSHI, &
VAISHALI PATIL-JADHAV, J. J.]**

RESERVED ON : 30th SEPTEMBER, 2025
PRONOUNCED ON : 26th NOVEMBER, 2025

JUDGMENT (PER NITIN B. SURYAWANSHI, J.):

1. By filing Family Court Appeal No. 21 of 2019, Appellant – husband has challenged the judgment and decree dated 18th January, 2019 passed by Family Court, Nanded in Petition No. B-22 of 2014.
2. By filing Family Court Appeal No. 37 of 2019, the wife has challenged the same judgment and decree, to the extent of rejection of her claim of declaration and injunction over the suit property “B”.
3. For the sake of convenience, the litigating parties shall be referred as “husband” and “wife”.
4. The wife filed Special Civil Suit No. 149 of 2007, in the Court of Civil Judge, Senior Division, Nanded. After establishment of the Family Court at Nanded, under the orders

of the Principal District Judge, Nanded, the matter was transferred to the Family Court and numbered as Petition No. B-22 of 2014. The Petition was filed under clauses "C" and "D" of the explanation of section 7 of the Family Courts Act, for declaration of ownership and perpetual injunction, contending that the wife is legally wedded wife of husband and their marriage was solemnized on 19th May, 1993. Four issues were born out of the wedlock. Respondent No.1 is the husband, Respondents No. 2 and 3 are parents in law, Respondents No. 4 and 5 are brothers in law and Respondent No.6 is the keep of the husband.

5. It is the case of the wife that, plot No. 26, bearing Municipal No. 9-7-793 situated in Survey No. 136/A at Nanded, described in para 2 of the Petition (referred as suit property "A") so also two plots situated in survey No. 15 at village Brahmapuri, Taluka and District – Nanded, more specifically described in para 2 of the Petition (referred as suit property "B") were originally owned by the husband. Suit property "A" was orally gifted by husband to the wife on 23rd January, 2007, in presence of relatives and witnesses. Possession of the property was also delivered to her. By accepting the said gift, the wife became exclusive owner and possessor of the suit property "A".

The memorandum of gift was reduced into writing on 24th January, 2007. It was attested by two witnesses and was registered before notary public, Advocate Abdul Bari Siddiqui.

On 2nd April, 2006, the husband orally gifted suit property "B" to the wife and delivered its possession to her. By accepting the said gift, she became absolute owner and possessor of the suit property "B". The memorandum of oral gift dated 2nd April, 2007 was attested by two witnesses and notarized before notary public Advocate Savitri Joshi. (Hereinafter both the properties "A" and "B" will be referred as "suit properties").

6. It is further stated that the original memorandum of gifts were missing from the cupboard and the husband and his relatives have stolen the documents on 24th May, 2007 and report to that effect was lodged by wife to Itwara Police Station, alleging theft of the original gift deeds.

7. The husband and his relatives subjected the wife with physical and mental ill-treatment for unlawful demands, therefore, she lodged FIR against them under section 498A of the Indian Penal Code at Crime No. 71 of 2007 of Itwara Police Station. The husband brought Yasin Begum to the suit properties. Upon inquiry, they both assaulted her and threatened

to kill her. She lodged a report to the police station which was registered at NC No. 293 of 2007. The husband tried to evict the wife and her children from the suit properties. He denied wife's title over the suit properties. He is trying to interfere in her peaceful possession over the suit properties. He is intending to sell the suit properties to defeat the rights of the wife. The wife, therefore, published a proclamation in newspaper dated 17th May, 2007 informing the public at large not to enter into any transaction with the husband in respect of the suit properties. With these averments, the Petition was filed.

8. The husband opposed the petition by filing written statement Exhibit-29. He has specifically denied that he has gifted any property to the wife and executed any gift deed in her favour. He has never delivered possession of the suit properties to the wife. He is the exclusive owner and the possessor of the suit properties. Wife has lodged a false report to the police alleging theft of documents. It is contended that the contentions of the wife about the theft are self contradictory. His mother Shamin Sultana is a retired Head Mistress having pension and landed property. His brother Sajid Rizwan is serving in police department and has three house properties in Nanded. His brother Irfan Khan is studying in final year of MBBS at Latur.

Therefore, it is impossible that these persons would indulge in committing theft.

It is further contended that the wife compelled her brother Feroz Nasir to perform four marriages and to pronounce divorce to his wives. She is the sole dominating authority in her family. On 5th January, 1995, she told him that her maternal uncle shall kill Nasir Chous. She also threatened him that he should not disclose this fact to any one. After some days, wife's father expired. Ali Nasir Chaous, brother of wife disclosed him that they have killed their father. Subsequently, Ali Nasir Chous is murdered in Nanded. The wife forcefully took the husband to Kandhar. His statement was recorded by the Investigating Officer at Kandhar. Husband owned a shop at Bhokar. By selling the shop, the wife grabbed the consideration amount. She is serving as teacher in Zilla Parishad school. She did not perform her duties properly and hence she was suspended. She has physically and mentally ill-treated her in laws. She demanded that her loan installments should be paid by the in laws. She has no right or interest in the suit properties and he is the absolute owner of the suit properties. A false proclamation is published by the wife in the newspaper in respect of the suit properties. He claimed that the allegations in the Petition filed by the wife are

patently false and baseless and, therefore, the petition should be dismissed.

9. The Family Court, after recording evidence and hearing the parties, has partly decreed the Petition filed by the wife, thereby declaring that the wife is owner and possessor of the property "A" and perpetually restrained the husband, his agents or any person acting on his behalf, from obstructing possession of the wife over suit property "A", except in accordance with law. However, rejected claim of the wife in respect of suit property "B". Hence, these Appeals.

10. Heard the husband, party in person and learned Advocate for the wife. The in laws, though represented by advocate, have not advanced any arguments at the time of the final hearing of these Appeals.

11. The husband filed written submissions on affidavit, wherein he has quoted excerpts from the evidence of wife and also quoted observations / findings of the Family Court, to contend that the Family Court has erred in allowing the Petition of the wife to the extent of the suit property "A". It is submitted that after the marriage in 1993, he co-habited with the wife till 2005. Four children were begotten out of the wedlock. On 15th

February, 2005, the wife gave Khula to the husband, which was notarized on 18th February, 2005. The gist of the submissions of the husband is that, since the wife is a divorcee, there was no occasion for him to give the suit property by way of oral gift to her. According to him, the conditions of a valid Hibinama are not complied with in the present case. Therefore, it cannot be said that there was valid gift / Hibinama in favour of the wife. According to him, the document (bond) was purchased by wife, it was written in her handwriting, notarized in Nanded district on 18th February, 2005. With a view to grab his property, false complaint and cases are filed by the wife against him and his parents. He has also contended that the notary register does not bear his signature or thumb impression, therefore, it should not be relied upon. He, therefore, claims that the impugned judgment and decree are unsustainable and the same be quashed and set aside, by allowing the Appeal filed by him. In the Appeal memo, he has also gone to the extent of making allegations against the Family Court Judge that he brought unnecessary pressure on him during the cross-examination. Husband has placed reliance on various decisions.

12. Learned Advocate for the wife, on the other hand, supported the impugned Judgment to the extent it allows the Petition filed by the wife in respect of property "A". In the Appeal filed by the wife, he, however, assailed the findings recorded by the Family Court to the extent it denied relief to the wife in respect of property "B". He submits that by examining witnesses, the wife has proved her case and, therefore, the Family Court ought to have allowed the petition filed by the wife, in respect of property "B" also.

13. Upon hearing the rival submissions of the parties, following points arise for consideration :

A. Whether the impugned judgment and decree passed by the Family Court needs interference?

B. Whether the Family Court is justified in denying the relief to the wife in respect of property "B"?

14. Since both these points are interrelated, they are decided as follows:

15. Before considering the rival contentions of both the parties, it is apt to consider as to what constitutes a valid gift 'Hiba', under the Mohammedan law. The Apex Court, in **"Hafeeza Bibi and Others V/s Shaikh Farid (Dead) By LRs and Others"**

(2011) 5 SCC 654, has succinctly enumerated the essentials of Hiba / gift as follows:

“24. 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.

25. 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.

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

27. In our opinion, merely because the gift is reduced to writing by a Mohammadan instead of it having been made orally, such writing does not become a formal document or instrument of gift. When a gift could be made by Mohammadan orally, its nature and character is not changed because of it having been made by a written document. What is important for a valid gift under Mohammadan Law is that three essential requisites must be fulfilled. The form is immaterial. If all the three essential requisites are satisfied constituting valid gift, the transaction of gift would not be rendered invalid because it has been written on a plain piece of paper. The distinction that if a written deed of gift recites the factum of prior gift then such deed is not required to be registered but when the writing is contemporaneous with the making of the gift, it must be registered, is inappropriate and does not seem to us to be in conformity with the rule of gifts in Mohammadan Law."

16. Keeping in mind the aforesaid principles, we now proceed to scrutinize the evidence on record, to see whether the wife has proved these essential ingredients, by leading evidence.

17. Perusal of the evidence on record shows that, in order to prove her contentions the wife has examined herself as PW-1 (Exhibit-76), Notary Savitri Joshi as PW-2 (Exhibit-131), Notary

Gigani Mohammad Salim as PW-3 (Exhibit-135), Notary Suddiqui M. A. Bari as PW-4 (Exhibit-137), Shaikh Younus Shaikh Nawab as PW-5 (Exhibit-138) and Syed Akram Ali Syed. Rasul as PW-6 (Exhibit-143). The wife has entered the witness box and filed evidence affidavit reiterating the pleadings in the Petition. In support of her case, the wife relied on the following documents :

Sr. No.	Particulars	Exhibit
01	Memorandum of gifts	80 and 81
02	Affidavit of husband	79
03	Entry of wife's name in Municipal Record	82
04	Copy of sale deed No. 2720 of 2002	83
05	Copy of lease deed No. 5537 of 2005	84
06	Copy of compliant dated 25.04.2007	85
07	Copy of NC No. 293 of 2007	86
08	Copy of FIR No. 71 of 2007	87
09	Public Notice	88

18. Admitted facts in this case are that, marriage of husband and wife was solemnized in the year 1993 and four children were born out of the said wedlock. Wife is a teacher and husband is an advocate by profession. Number of civil and criminal cases are filed by both of them against each other.

19. Wife has stated on oath that, on 23rd January, 2007 husband orally gifted the suit property "A" to her, in presence of

relatives and witnesses and delivered its possession to her. She has accepted the said gift and thereby became the owner and possessor of the suit property "A" from 23rd January, 2007. The memorandum of oral gift was reduced into writing on 24th January, 2007 and it is attested by two witnesses and it is notarized at serial No. 3378 before notary public Advocate Bari Siddiqui (PW-4). The husband himself has conducted the cross-examination of the wife, but he could not dispel her contentions about oral gifts and execution of the memorandum of the gifts (Exhibits-80 and 81) as well as delivery of possession of the gifted properties to the wife. Nothing damaging to the case of the wife is brought on record by the husband during her cross-examination.

20. PW-3 Mohd Saleem Gigani, examined by the wife, has deposed that he is a practicing advocate and he knows the husband and wife. On 24th January, 2007, husband approached him with a prepared draft of gift called Hiba, by which he had gifted the property situated at Osmanpura, Nanded to the wife, on 23rd January, 2007 and also prepared affidavit in support of the said gift deed. PW-3 advised husband to get the memorandum executed before notary public. Accordingly, the husband approached notary public Advocate Bari Siddiqui (PW-

4). He gave identification of husband before the notary public. Thus, he has confirmed the preparation and execution of the documents in his presence.

21. PW-4 Advocate Bari Siddiqui has deposed that he is notary public, since 2007. When confronted with the affidavit at Exhibit-79 and memorandum of oral gift at Exhibit-80, he testified that both the documents were registered before him and they bear his seals and signatures. The husband has executed memorandum of gift Exhibit-80 in favour of the wife. Both the documents were registered with him at serial Nos. 99 and 100.

22. From the above evidence, it is clear that the wife has proved her case in respect of property "A", by examining two advocates PW-3 and PW-4. They have withstood the cross-examination by husband. Their evidence supports the case of the wife. The husband has claimed that both these witnesses have political affinity with the paternal family of the wife, however, there is nothing on record to substantiate this contention. Fact remains that PW-3 and PW-4, both belong to the same profession as that of the husband and in normal course, they would not depose against their colleague. Since PW-3 has prepared Exhibits-79 and 80 and PW-4 had notarized the said documents, they have supported the case of the wife.

In view of this evidence on record, we do not find any error on the part of the Family Court in recording a finding that wife has proved that she has become owner of the suit property "A" under gift deed dated 23rd January, 2007.

23. In support of her case, the wife has examined PW-5 Shaikh Yunus. It has come in his evidence that he was called by husband for witnessing Hiba on 24th January, 2007. The said document was prepared in his presence and at that time, the wife, the husband, advocate Gigani (PW-3) were present. Hibanama was typed at City Zerox center. He identified his signature and signatures of husband and wife on Exhibit-80. Hibanama was registered before notary public Advocate Bari Siddiqui (PW-4). In cross-examination, he admitted that his family members are members of Bachat Gut run by wife and that his house is situated at a distance of about 25 feet from the suit property "A". He was not present at the time of transaction that took place between wife and husband on 23rd January, 2007.

From his evidence, it is clear that his family members are members of Bachat Gat run by wife, but that itself is not sufficient to discard his otherwise reliable testimony. It has come

in his evidence that he works at City Zerox Center situated near District Court premises and he was called from his workplace by the husband. Thus, he was brought by the husband at the time of execution of gift deed dated 24th January, 2007.

24. From the evidence of wife, PW-3, PW-4 and PW-5, execution of gift deed (Exhibit-80) and swearing of affidavit (Exhibit-79) by the husband before notary public advocate Siddiqui on 24th January, 2007, is established.

25. It is the case of the wife that original notarized gift deeds were stolen by her in laws, therefore, she has placed reliance on the photo copies of the documents at Exhibits-79, 80 and 81. A report (Exhibit-85) was lodged by the wife to Itwara Police Station, Nanded on 25th April, 2007, wherein it is alleged that while the wife was on duty, the theft was committed at her house and original gift deeds, gold ornaments of 4 grams and cash of Rs.4000/- was stolen from her cupboard. It is further alleged that the husband has performed 3 more marriages and he and his family members subjected her to physical and mental torture, therefore, she suspected that they must have committed the theft.

26. The wife, by filing application Exhibit-75, sought

permission of the Family Court to lead secondary evidence. After hearing the parties, the said application was allowed by the Family Court. After allowing the application Exhibit-75, affidavit of the husband (Exhibit-79), memorandum of gifts (Exhibits-80 and 81) which according to the wife are stolen, were exhibited. Entry of wife's name, in the Municipal record is taken at Exhibit-82.

27. It is a matter of record that stamp paper (Exhibit-80) is purchased by the husband. On going through Exhibit-80, it is evident that the husband has stated about his ownership over the suit property "A", in the first para, then it is mentioned that the wife (respondent) is his wife and he has natural love and affection for her. Therefore, on 23rd January, 2007, he offered to gift the suit property "A" to the wife, in presence of relatives and witnesses. The wife has accepted the gift. It is, therefore, clear that the husband has gifted the suit property "A" to the wife, by way of oral gift on 23rd January, 2007. There is also a statement about the delivery of possession of the suit property "A" to the wife. The husband has acknowledged that all his rights over the suit property "A" are terminated on 23rd January, 2007. Accordingly, the memorandum of oral gift was executed. Thus, there is sufficient evidence to show that the property "A" is

gifted by the husband to the wife and the possession of the same is delivered to her. Pursuant to the execution of memorandum of gift (Exhibit-80), the possession of the property "A" is delivered to the wife and vide Exhibit-82, name of the wife is recorded to the property card of property "A".

28. The above evidence is sufficient to demonstrate that the gift deed (Exhibit-80) in respect of property "A" fulfills essential conditions of the gift deed / Hiba under the mohammedan law as well as the conditions stated by the Apex Court in "**Hafeeza Bibi**" (*supra*). All the essential ingredients of the valid gift are fulfilled in the present case, in respect of property "A". Therefore, the Family Court has rightly come to the conclusion that the wife has proved that she has become owner of the suit property "A" under gift deed dated 23rd January, 2007, executed by the husband.

29. The husband has vehemently contended that taking into consideration admissions given by wife that his mother is a retired Head Mistress, his one brother is serving in Police Department and another brother is studying MBBS and his brother's wife is a teacher and considering their position, it is difficult to believe that they would ill-treat wife and they would commit theft, as alleged by the wife in Exhibit-85. It is further

contention of the husband that, false report (Exhibit-85) is filed by the wife and it has not reached to any logical end, no action is taken by the police on the said report and therefore, the said report should not be considered.

30. It is evident from the record that the report (Exhibit-85) is filed by the wife on 25th May, 2007. It appears that after the husband got knowledge of the said report, he filed complaint to Superintendent of Police, Nanded alleging that the wife is intending to grab his property. He also filed an application on 3rd May, 2007 to the Commissioner of the Municipal Corporation, Nanded alleging that some persons have prepared false documents of Hiba, by blackmailing him. The husband has also claimed that his title deeds were stolen by the wife. It is pertinent to note that the husband has produced original title deeds at Exhibit-71. This supports the case of the wife that originals of Exhibits-79, 80 and 81 were lost.

31. The husband claims that the wife has forged the documents to grab his properties. Admittedly, the husband has not filed any civil suit seeking cancellation of the gift deeds. He had initiated criminal prosecution under section 420, 468 and 471 of the Indian Penal Code against the wife. In cross-examination, the husband has admitted that in his complaint

under section 420 of the IPC, the Police have filed "B" summary report. Fact remains that the husband has filed report with Itwara Police Station on 8th August, 2007. Thus, it is clear that though the husband filed applications with Municipal Commissioner and the Superintendent of Police, he has lodged the criminal prosecution after delay of 5 months. In this report, he has not mentioned as to on which date he came to know about the execution of the forged gift deeds. The husband has mentioned in his report that photo copies of the memorandum of gift deeds were prepared. He has also alleged that the wife has obtained bogus caste certificate of Chhaparband community and on the basis of the said certificate, she secured job of teacher and she prepared false and forged Hiba.

32. The Investigating Officer, on completion of the investigation, submitted a report that it is transpired that the caste certificate issued by the Tahsildar, Kandhar to the wife is genuine.

33. The wife had lodged complaint about theft of original caste certificate and original Hibanama. During investigation, it was revealed that the husband has executed the Hiba in favour of the wife. Learned Chief Judicial Magistrate has observed that from the final report it seems that the Investigating Officer has

conducted thorough investigation. Notary Advocates Mr. Abdul Bari Siddiqui, Advocate Savitri Joshi and Advocate Mr. Salim Gigani have stated that the husband and wife had been to them on 23rd January, 2007 and 2nd April, 2006 and the husband executed Hiba of his two properties in favour of the wife. Advocate Mr. Gigani identified the husband and wife. He stated that he prepared Hiba as per the say of the husband, the same was read over to the husband and the wife and thereafter they signed the Hiba in the presence of witnesses Shaikh Yunus and Mohammad Ismail Sattar and thereafter, it was notarized by affixing photographs of the husband and the wife. After perusing the investigation papers and "B" summary report with the prosecution, learned Chief Judicial Magistrate has allowed the "B" summary with the prosecution. Therefore, there is no substance in the contention of the husband that the wife has committed forgery of gift deeds.

34. The husband has further contended that he was having strained relations with the wife, since 2004 and the marriage was already dissolved, therefore, there was no occasion for him to gift the immovable properties to the wife.

35. It is significant to note that, the husband has given suggestion to the wife in cross-examination that, after the Khula

dated 16th February, 2005, he had remarried with her. The same suggestion is also given by the husband to the wife in her cross-examination recorded in RCC No. 649 of 2007 stating that their remarriage was performed in the year 2006. It is a matter of record that, in the letter dated 16th April, 2004, written by the wife to the Superintendent of Police, it is stated that a compromise was arrived at between the husband and the wife with the mediation of her uncle and other respectable persons and they both have resolved their dispute. The wife, therefore, requested to drop action against the husband. In this view of the matter also, it is not possible to accept the contention of the husband that there were strained relations between him and the wife and, therefore, he had no occasion to gift the property to her.

36. The wife has also placed on record copies of title documents of suit property "A" at Exhibit-83 and 84. The husband has placed on record certified copy of sale deed No. 2720/02 at Exhibit-70. Exhibit-70 shows that the suit property "A" was purchased by the husband on 28th August, 2002 from Mohd. Khalil Khan. Thus, the husband has acquired clear title of the suit property "A" pursuant to the sale transaction.

37. Memorandum affidavit (Exhibit-79) sworn by the husband

contains the same recitals of the gift deed (Exhibit-80) and it is duly executed in the presence of witnesses. Therefore, there is no merit in the contention of the husband that he has not executed the gift deed as well as the memorandum affidavit.

38. During the trial, the husband filed application (Exhibit-144) stating that he did not sign or put his thumb impression on the register of notary public and, therefore, the notary public register of Advocate Bari Siddiqui be sent to the handwriting expert. Though the said application was allowed, the husband, by filing application (Exhibit-158) contended that he does not intend compliance of the order passed below Exhibit-144 and requested not to send the notary public register for handwriting analysis. In the light of these facts, the Family Court has rightly drawn an adverse inference against the husband to disbelieve his version.

39. So far as claim of the wife, in respect of the property "B" is concerned, she has placed on record lease deed dated 23rd January, 2002 at Exhibit-71, executed by Azimoddin Gulam Rabbani in the capacity of GPA of his father Gulam Rabbani in favour of Abdul Hamid Abdul Mannan. This document indicates that the suit property "B" was originally belonging to Shaukat Islam as service Inam. Wakf Board assumed control of the said

property and subsequently gave permission to lease out the property. Thereafter, Shaukat Islam leased 5 Acres of land to Gulam Rabbani for 99 years by lease deed dated 6th January, 1987. Subsequently, the Wakf Board granted permission to change use of the said property and also permitted non agriculture use and to sub-lease the property. By lease deed at Exhibit-71, the suit property "B" was given on lease of 96 years to Abdul Hamid Abdul Mannan, he expired on 16th February, 2002. The lease deed dated 21st October, 2005 is at Exhibit-84, by which wife of Abdul Hamid (lessee in Exhibit-71), in the capacity of his heir, sub leased suit property "B" to the husband for a period of 92 years. Since the husband is sub lessee of the suit property "B", he is not entitled to transfer the suit property to any other person by way of sale, gift or will. Since the husband is not the owner of the suit property "B", he has no authority / right to gift the ownership of the said property to the wife. As the husband has no right or authority to transfer the ownership of suit property "B", hence the wife cannot claim that the suit property "B" is gifted to her by the husband.

40. In this view of the matter, the wife has failed to prove that she has become owner of the suit property "B" pursuant to the gift deed (Exhibit-81) dated 2nd April, 2007, executed by the

husband. Therefore, we do not find any merit in the appeal filed by the wife challenging the said finding recorded by the Family Court.

41. In view of the above discussion, it is not necessary to go into the evidence led by the wife to prove the gift deed at Exhibit-81 in respect of property "B".

42. The Family Court has properly appreciated the evidence on record and is justified in passing the impugned judgment and decree. We do not find any illegality or perversity in the findings recorded by the Family Court and the approach of the Family Court in assessing the evidence on record. The impugned judgment is a well reasoned judgment and no case is made out by the husband or the wife to interfere in the impugned judgment and decree.

43. For the aforestated reasons, Point "A" is answered in negative and point "B" is answered in affirmative. Therefore, both the appeals are dismissed. Parties to bear their own costs. In view of disposal of the Family Court Appeals, pending Civil Application is also disposed of.

[VAISHALI PATIL-JADHAV]
JUDGE

[NITIN B. SURYAWANSHI]
JUDGE