



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.10 OF 2019**

Abdulgani Miraso Bagwan (deceased)
through LRs Harun Abdulgani Bagwan
and Ors.

... Appellants

versus

Ahmed Gajbar Bagwan and Ors.

... Respondents

WITH
CIVIL APPLICATION NO.9 OF 2019
WITH
INTERIM APPLICATION NO.2013 OF 2023
WITH
INTERIM APPLICATION NO.2012 OF 2023

Mr. Surel Shah, Sr. Advocate with Mr. Anand S. Patil, for Appellants.

CORAM: N.J.JAMADAR, J.

DATE : 11 JUNE 2025

P.C.

1. Heard Mr. Shah, the learned Senior Advocate for the Appellants.
2. This Second Appeal is directed against the judgment and decree dated 5 June 2017 passed by the learned District Judge, Gadhinglaj in Regular Civil Appeal No.41 of 2008 whereby the appeal preferred by the Respondents came to be allowed by setting aside the judgment and decree dated 13 March 2009 passed by the learned Civil Judge, Gadhinglaj in RCS No.75 of 1994, thereby dismissing the suit for partition and injunction instituted by the Respondents – Plaintiffs.
3. Miraso Bagwan was the common ancestor. Miraso had two wives,

Hajarabi and Almabi. Gajbhar was the son of Miraso born to the first wife Hajarabi. The Plaintiffs are the sons and daughters of Gajbhar. Almabi, second wife of Miraso, had four sons and five daughters – the Defendants and the successors in interest of the Defendants.

4. The Respondents – Plaintiffs instituted a suit for partition and permanent injunction with the assertion that the Plaintiffs were entitled to a share in the suit properties left behind by Miraso; the Defendants had started to cause obstruction to the joint possession of the Plaintiffs over the suit properties and had sold one of the suit properties to Defendant No.11 unauthorizedly, and, thus, the said sale was not binding on the share of the Plaintiffs.

5. The Defendants resisted the suit for partition by asserting that the deceased Miraso, during his life time, had effected an oral gift of the suit properties described in paragraph No.1A and 1B of the plaint in favour of Defendant Nos.1 and 2, Ibrahim – the predecessor in title of Defendant Nos.3 to 8, and Kasim, another son, who had passed away issueless, in accordance with the principles of Mahomadan Law, and, thereupon, the names of Abdul – Defendant No.1 and Akbar – Defendant No.2, Ibrahim – predecessor in title of Defendant Nos.3 to 8, and Kasim, the sons of Miraso born to Almabi, were mutated to the record of rights of the suit properties described in paragraph No.1A and 1B of the plaint. Therefore, the Plaintiffs had no right to seek

partition in the suit properties.

6. Learned Civil Judge was persuaded to accept the defence set up by the Defendants, primarily on the basis of the entries in the record of rights. It was held that they carried presumptive value and, thus, bolstered up the case of the Defendants of oral gift, permissible under the Mahomedan Law. Thus, the suit came to be dismissed.

7. Being aggrieved, the Plaintiffs carried the matter in appeal before the District Court. By the impugned judgment and order, the learned District Judge was persuaded to reverse the findings of the trial Court. Learned District Judge was of the view that on the basis of mere entries in the record of rights on the suit lands, which are made for fiscal purpose, an inference of oral gift was not sustainable. Learned District Judge took into account the fact that after the demise of Miraso, vide mutation entry No.4058, the names of the Plaintiffs were also mutated to the record of rights as the successors in interest of Miraso. Likewise, to the house property also, the name of Gajabar, son of Miraso born to Hajarabi, the first wife, was mutated. In substance, there was no evidence to support the theory of oral gift.

8. Mr. Shah, learned Senior Advocate for the Appellants – Defendants, made a strenuous effort to draw home the point that the learned District Judge could not have interfered with the finding of facts recorded by the trial Court on the basis of cogent evidence. Mr. Shah took the Court through the

pleadings and evidence to buttress the submission that the first Appellate Court unjustifiably interfered with the findings of facts.

9. I am unable to persuade myself to agree with the submissions of Mr. Shah. I have perused the written statement filed on behalf of Defendant Nos.1 to 8 and the evidence adduced in support of the theory of oral gift. Undoubtedly, there can be a valid oral gift under the Mahomedan Law. A gift is not fettered by the restrictions which the testamentary disposition under the Mahomedan Law is subject to. A gift can be made to an heir and sharer or even a stranger, provided the three essentials, namely, declaration, delivery of the property and acceptance of the gift by the donee, are fulfilled,

10. In the case at hand, the claim of the Defendants of oral gift is as vague and bald as it could be. Gift was allegedly made in favour of the sons of Miraso from the second wife Almabi purportedly jointly in the year 1958. There was no pleading and evidence on the aspect of the declaration in the presence of named persons. Nor there is evidence of acceptance of the gift by the donees jointly or in specific shares. Learned District Judge was, thus, justified in drawing an inference that merely on the basis of the mutation of the names of the sons of the deceased from the second wife Almabi to the record of rights of the suit properties, an inference of oral gift could not have been drawn.

11. In the circumstances of the case, no question of law, much less a

substantial question of law, arises for consideration.

12. Second Appeal, thus, stands dismissed.

13. Civil Application and Interim Applications also stand dismissed.

(N.J.JAMADAR, J.)