



A.S.No.449 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 07.07.2025

Pronounced on :16.07.2025

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Appeal Suit No.449 of 2022

and

C.M.P.No.16191 of 2022

Gani Israth Jabeen

.. Appellant/Defendant

/versus/

Shamaz Paraveen

.. Respondent/Plaintiff

Prayer: Appeal Suit has been filed under Section 96 of C.P.C., 1908, read with Order XLI, XLI A of C.P.C., to set aside the judgment and decree dated 22.04.2022 passed in O.S.No.33 of 2018 on the file of the III Additional District and Sessions Judge, Vellore at Tirupattur and allow the first appeal.

For Appellant :Ms.Nuzhath Khanam

For Respondent :Mr.K.Kumar



A.S.No.449 of 2022

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JUDGMENT

The defendant in the partition suit is the appellant herein. The plaintiff [Shamaz Paraveen] filed a suit for partition, seeking a direction to the defendant to divide the suit property into four equal shares and to allot $\frac{3}{4}$ share to the plaintiff.

2. The case of the plaintiff is that the suit property belonged to one Janab Kaka Shahina Aslam, wife of Malang Aslam Basha. The said Janab Kaka Shahina Aslam died on 23.11.2007. According to Shariat law, the property of a Muslim woman devolves equally upon her husband and siblings. Kaka Riyaz Ahmed Sahib, the brother of Janab Kaka Shahina Aslam, along with her husband Malang Aslam Basha, was entitled to an equal share in her property. Kaka Riyaz Ahmed Sahib subsequently released his share in favour of Malang Aslam Basha through a release deed dated 14.07.2008. Thus, Malang Aslam Basha became the absolute owner of the suit property.

3. The plaintiff, being the sister of Malang Aslam Basha, claims



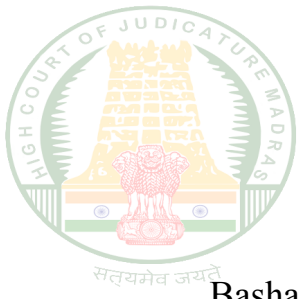
A.S.No.449 of 2022

WEB COPY

that she is entitled to a $\frac{1}{4}$ share in the property on the death of Malang Aslam Basha on 06.06.2015. The remaining sharer is the defendant, the second wife of Malang Aslam Basha. The plaintiff, claiming $\frac{3}{4}$ share in the suit property under Muslim Personal Law (Shariat Act), approached the Jamathadars for division of the property and requested allotment of her $\frac{3}{4}$ share. However, the defendant evaded partition, and therefore, the plaintiff filed a suit after issuing notice.

4. The plaintiff also contended that apart from the Schedule I property (inherited by Malang Aslam Basha through his wife), the deceased was running a printing press valued at Rs. 1,00,000/-, and had a bank deposit of Rs. 3,27,828/-. She claimed a $\frac{3}{4}$ share in all three assets.

5. The defendant denied the plaintiff's claims and stated that it is false to allege that Malang Aslam Basha died intestate on 06.06.2015 and that the property devolves upon the plaintiff and defendant in a 3:1 ratio as per Shariat law. The defendant contended that during his lifetime, Malang Aslam



A.S.No.449 of 2022

WEB COPY

Basha disposed of the suit properties and at the time of his death, he had debts amounting to Rs. 3,50,000/- payable to the State Bank of India, Vaniyambadi Branch, along with sundry debts amounting to Rs. 1,50,000/- to various individuals. The defendant claims to have discharged all these debts on behalf of the deceased.

6. Further, it was pleaded that Malang Aslam Basha, during his lifetime, made an oral gift (Hiba) of the property to the defendant on 24.07.2013 in the presence of respectable witnesses. He also delivered possession of the property to her. The defendant is currently residing in the said premises and paying the municipal tax.

7. The Trial Court Framed the Following Issues:

1. Whether the plaintiff is entitled to $\frac{3}{4}$ share in the suit properties as prayed for?

2. Whether the said Malang Aslam Basha gifted the suit property on 24.07.2013 as Hiba in favour of the defendant?



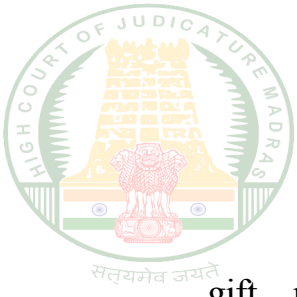
A.S.No.449 of 2022

WEB COPY

3. To what other relief(s) the plaintiff is entitled to?

8. The Trial Court partly allowed the suit, passing a preliminary decree in favour of the plaintiff, declaring her entitlement to $\frac{3}{4}$ share in Item No.1, i.e., the residential property (landed property). However, the suit was dismissed with respect to Item No.2 (Printing Press) and Item No.3 (Bank deposits). Aggrieved by the judgment and decree granting $\frac{3}{4}$ share to the plaintiff in the landed property, the defendant/appellant has filed the present appeal.

9. The appellant contends that the Trial Court failed to properly consider the principles of oral gift (Hiba) under Shariat Law. According to the appellant, the property came into the hands of Malang Aslam Basha through his first wife, Janab Kaka Shahina Aslam, and he made an oral gift in favour of his second wife (the appellant) in the presence of elders. It is further argued that since it is a residential house, both Malang Aslam Basha and the defendant were residing in it and the three essential conditions for a valid oral



A.S.No.449 of 2022

gift, namely, declaration, acceptance and delivery of possession were satisfied.

10. In support of the oral gift:

- Declaration was spoken by DW-3, who described how the oral gift took place in the presence of elders.
- Acceptance was established through the testimony of the defendant.
- Possession was evidenced by the defendant's continuous residence in the property and her payment of municipal taxes.

11. Per contra, the learned counsel appearing for the respondent/plaintiff submitted that the claim of *Hiba* is a fabricated story, concocted by the defendant to deprive the lawful share of the plaintiff. The evidence of DW-1, DW-2, and DW-3 is inconsistent and contradictory. The Trial Court had rightly disbelieved the version of DW-3, noting it to be an improvised version of the alleged oral gift, and rejected the plea of *Hiba* accordingly.



A.S.No.449 of 2022

WEB COPY

12. Point for Determination:-

Whether the Trial Court erred in disbelieving the oral gift (Hiba) dated 24.07.2013?

13. Exhibit A1 is the sale deed dated 03.01.1994 in the name of Janab Kaka Shahina Aslam, who passed away on 23.11.2007. It is not disputed that $\frac{1}{2}$ share in the first item of the suit property came into the hands of Malang Aslam Basha on the death of his wife, Janab Kaka Shahina Aslam, on 23.11.2007. Subsequently, Kaka Riyaz Ahmed Sahib, the brother of Janab Kaka Shahina Aslam, released his $\frac{1}{2}$ share in favour of Malang Aslam Basha through a release deed dated 14.07.2008, thereby making Malang Aslam Basha the absolute owner of the entire property.

14. Thus, Malang Aslam Basha became the absolute owner of the first item of the property, which is an undisputed fact accepted by both the plaintiff and the defendant. After the demise of Janab Kaka Shahina Aslam, Malang Aslam Basha married the defendant and both were residing in the first

7/17



A.S.No.449 of 2022

item property, i.e., the residential premises.

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15. The plaintiff's case is that Malang Aslam Basha died intestate on 06.06.2015, and during his lifetime, he was running a printing press under the name and style of "Graphic Art Printers", which is Item No.2 of the suit property. As per Shariat Law, the property of Malang Aslam Basha ought to devolve upon his wife and sister in the ratio of 1:3, respectively.

16. Per contra, the defendant claims that during his lifetime, Malang Aslam Basha orally gifted the first item property to her on 24.07.2013, in the presence of respectable elders. To substantiate the alleged oral gift (*Hiba*), the defendant examined the following witnesses:

- Sunakaisar Ahmed, General Secretary, Vaniyambadi Education Society (DW.2);
- Mohammed Jafurullah, Building Contractor (DW-3); and



A.S.No.449 of 2022

WEB COPY

- Mohammed Makkin, Merchant, Vaniyambadi (DW.4).

17. These witnesses generally deposed about the oral gift made by Malang Aslam Basha in favour of the defendant in their presence. While they confirmed the voluntary declaration by Malang Aslam Basha and the acceptance of the gift by the defendant, there were certain contradictions. However, it does not hit their reliability as they are elderly and respected members of the community and there is no reason for them to depose falsely against the plaintiff.

18. The learned counsel for the respondent/plaintiff, however, strongly argued that there is a lack of consistent and reliable evidence from DW-2 and DW-3 regarding the declaration of the gift and the presence of the defendant at the relevant time. The verbatim declaration, according to the plaintiff, is primarily spoken only by DW-4, which appears to be an improvised version, brought in after DW-2 and DW-3 failed to substantiate the defendant's case.



A.S.No.449 of 2022

WEB COPY

19. The above contention of the learned counsel for the respondent, though apparently appear to be impressive, cannot be accepted. The failure of the witnesses to verbatim reproduce the declaration of *Hiba* does not render an otherwise valid oral gift invalid. Under Mohammedan Law what completes a *Hiba* is the declaration, acceptance, and delivery of possession, not the exact recital of the declaration.

20. Failure to verbatim reproduce the declaration of the donor does not invalidate a valid Hibba. The Hon'ble Supreme Court in ***Mansoor Saheb (dead) & others vs. Salima (D) by LRS, & others***, after extensively discussing the essential ingredients of a valid oral gift under Mohammedan Law, observed as follows:

“25.The upshot of the above discussion is that there are three essential elements which are necessary for a valid gift deed.They are:

a)The gift has to be necessarily declared by the person giving the gif, i.e., the donor;



b)Such a gift has to be accepted either impliedly or explicitly by or on behalf of the donee; and

c)Apart from declaration and acceptance, there is also a requirement of delivery of possession for a gift to be valid.

26.It is a fact that the requirements for the validity of a gift deed are sequential. One must follow the other. The latter can only hold water if the first one is complied with. In other words, if (a) is not complied with, (b) and (c) would not be of consequence; similarly, if (a) and (c) are met without (b), it would still be of no consequence. In the end, all three conditions must be met.”

21. In the present case, DW.1 (the defendant) categorically deposed that she accepted the gift and has been in possession of the property ever since. Being a residential house and that the defendant was residing in it with the deceased Malang Aslam Basha, acceptance and possession are both implicit. No further proof is required on this aspect.

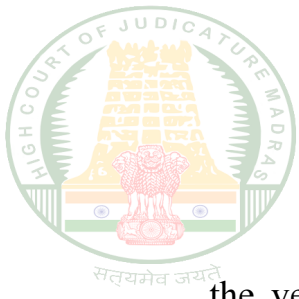


A.S.No.449 of 2022

WEB COPY

22. The witnesses for the plaintiff denied any knowledge of the oral gift. However, they also had no knowledge of the debts left by Malang Aslam Basha nor they produced any evidence showing that the printing press machinery was owned by Malang Aslam Basha or that a sum of Rs.3,27,828/- was left by Malang Aslam Basha in his bank account at State Bank of India, Vaniyambadi Branch. Thus, it is evident that the plaintiff was not in joint possession or enjoyment of the suit schedule properties after the demise of Malang Aslam Basha. Consequently, the claim that Malang Aslam Basha died intestate, leaving behind properties to be inherited by his sister (plaintiff) to the extent of $\frac{3}{4}$ share and by his second wife (defendant) to the extent of $\frac{1}{4}$ share, is incorrect. The oral *Hiba* dated 24.07.2013 has been proved by the defendant through oral testimony, satisfying the test of preponderance of probability.

23. In the case in hand, the declaration by Malang Aslam Basha to donate the property to his wife was spoken to by DW.3 and DW.4. Though



A.S.No.449 of 2022

WEB COPY

the verbatim declaration spoken by DW.4, DW2 and DW3 also generally affirmed that Malang Aslam Basha had openly declared his intention to gift the property to the defendant in their presence. The presence of the defendant at the time of the declaration is also uniformly supported by all witnesses. Whether she symbolically accepted the gift by taking the donor's hands, as doubted by the respondent, is immaterial. Acceptance may be implied or explicit, and need not always be physical or verbal in the donor's presence.

24. In this case, the declaration occurred in the residential premises (Item No.1) where Malang Aslam Basha and the defendant were living together as husband and wife. Hence, there is no doubt as to the existence of declaration, acceptance, and possession, which are ingredients of a valid *Hiba*. This view is well supported by the judgment of the Bombay High Court in ***Kaddaranbi and others Vs. Fatimabi and others***, reported in ***AIR 1981 Bombay 406*** at relevant page 413, where it was held:

"The general rule is that a donor must divest



WEB COPY



A.S.No.449 of 2022

himself of all the control of the property which is the subject matter of the gift. Delivery of possession has, therefore, got to be a concomitant of the gift. But, when a father gifts property to his child, the position is peculiar. While it is true that law does not find anything wrong for the father to gift his property to his child, the difficulty arises from a twofold position. Firstly, a minor may not be physically able to be in possession of the property except through his guardian and, secondly the father is himself the guardian of the property of his minor child. Delivery of possession by a Mohammedan father to his minor child is, for all practical purposes, delivery by right hand to the left hand. This is evidently the reason why the strict requirement of delivery of possession is not strictly insisted upon in the case of a bonafide gift by the father to his minor child. In a sense the requirement continues, but it is fulfilled in a somewhat different manner. Till the date of the gift, the father is in possession of the relevant property on his own behalf, from the date of the gift he is in possession of the same, but only on behalf of the



A.S.No.449 of 2022

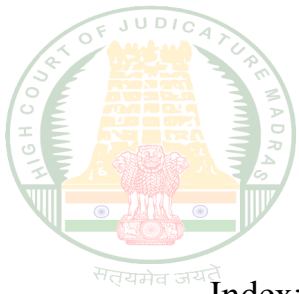
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minor.”

25. A similar principle applies when a husband gifts the residential property to his wife, formal delivery of possession is not required when the parties already reside in the gifted property. In light of the above facts and legal position, this Court finds that the Trial Court has failed to properly appreciate the evidence of DW.2 to DW.4, who had deposed about the oral gift in favour of the defendant. Furthermore, the plaintiff's case that she was in joint possession of the property with her brother is unsupported by evidence. The plaintiff's side witnesses were entirely unaware of the oral.

26. Accordingly, this *Appeal Suit is allowed*. Consequently, the connected Civil Miscellaneous Petition is closed. There shall be no order as to costs. The judgment and decree in O.S.No.33 of 2018, passed by the III Additional District and Sessions Judge, Vellore at Thirupattur, is hereby set aside.

16.07.2025



A.S.No.449 of 2022

Index:yes/no

Internet:yes/no

Speaking order/non speaking order

Neutral citation:yes/no

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To

1.The III Additional District and Sessions Judge, Vellore at Tirupattur.

2.The Section Officer, V.R.Section, High Court, Madras.



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A.S.No.449 of 2022

DR.G.JAYACHANDRAN,J.

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Pre-delivery judgment made in
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16.07.2025