

2026:PHHC:013133



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-2375-2002

Judgment Reserved On 16.01.2026

Judgment pronounced on 28.01.2026

NAZIR KHAN

...APPELLANT

VERSUS

SHAUKAT ALI AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Sunny K. Singla, Advocate
for the applicant-appellant.

Mr. Pawan Kumar, Senior Advocate with
Mr. Vidushi, Advocate and
Mr. Bhuvnesh Sharma, Advocate
for respondent No. 1.

Mr. Surinder Garg, Advocate
for respondent No. 3.

PARMOD GOYAL, J.

1. The present Regular Second Appeal has been preferred by the unsuccessful plaintiff-appellant, challenging the impugned judgments and decrees dated 07.02.2000 and 11.02.2002, passed by the learned Additional Civil Judge (Junior Division), Malerkotla, and the learned Additional District Judge, Sangrur, respectively, whereby the suit for declaration and possession filed by the appellant-plaintiff was dismissed and the first appeal against the said dismissal was also dismissed.

2. The appellant-plaintiff, in his suit for declaration and possession,

pleaded that Sahibzadi Boo Qudisia Begum (hereinafter referred to as Qudisia Begum), widow of Abdul Rehman Khan, son of Mohd. Ali Khan, was the owner in possession of the suit property. That she, being an old lady, started residing with the plaintiff in the suit property. About 8–9 years prior, she orally gifted the entire building to the plaintiff in the presence of respectables and delivered possession thereof to him. The plaintiff-appellant accepted the gift and came into possession of the building. That actual possession of Room Nos. 1 to 6, Verandah No. 7, and Courtyard Nos. 8 and 9, shown in red colour in the site plan, was delivered to the plaintiff, whereas the remaining portion shown in green colour remained in possession of the Assistant Registrar, Cooperative Societies, Malerkotla. Subsequently, she executed a memorandum of gift dated 24.12.1988 in respect of the oral gift, acknowledging the possession of the plaintiff-appellant. That she had also executed a Will dated 21.02.1989 giving her property to plaintiff before her death on 21.07.1991. The appellant-plaintiff had initially filed a suit for permanent injunction against defendant No. 1 and during the pendency of the said suit, plaintiff by way of amendment further sought declaration and mandatory injunction on the ground that defendant No. 1 along with Mohd. Ali (defendant No. 3) had dispossessed him from the suit property.

3. The suit was contested by the defendants. The ownership and possession of Qudisia Begum over the suit property were admitted. It was also admitted that she was governed by Mohammedan Law. However, it was denied that she had ever resided with the plaintiff as claimed. It was asserted that the plaintiff was not even allowed to enter into her residential portion.

That it was defendant No. 3 who used to serve and look after her. Alleged oral

gift in favour of the plaintiff was denied as false and incorrect. Delivery of possession of the suit property to the plaintiff was also denied. It was claimed that she had remained in possession of the entire building throughout her lifetime. That after her death, defendant No. 3, being the General Attorney of Mohd. Farook Khan of Lahore, in whose favour Qudisia Begum had executed a valid registered Will, has been receiving rent from the tenants, and that the son of Mohd. Ali, i.e. defendant No. 1-Shaukat Ali, is residing in a portion of the property with his family. The defendants denied that the plaintiff ever came into possession of the suit property. The memorandum of gift dated 24.12.1988 was alleged to be forged and fictitious and was denied to have been executed by Qudisia Begum. It was claimed that defendant No. 3 and his nephew were the persons who had served her and provided her with all necessities of life. The allegation of dispossession of the plaintiff during the pendency of the suit was also denied. Preliminary objections regarding the maintainability of the suit were raised and dismissal of the suit was prayed for.

4. From the pleadings of the parties, the following issues were framed:

- “1. Whether the plaintiff is entitled to the declaration, prayed for? OPP*
- 2. Whether the plaintiff was forcibly dispossessed from the portion of the building mentioned the head note 'B' of the plaint during the pendency of the suit by deft no.1 and 3? If so, its effect? OPP*
- 3. If issue no.2 is proved, whether the plaintiff is entitled to the possession of the building mentioned in heed note 'B'*

of the plaint? OPP

5. *Whether Qudsia Begum made oral gift of the property mentioned in head note 'A' of the plaint in favour of the plaintiff and thereafter Qudisia Begum executed a memo of gift dt.24.12.88 in favour of the plaintiff? If so, its effect?*

OPP

5. *Whether Qudsia Begum executed a will dt.21.2.89 in favour of the plaintiff? If So, its effect* *OPP*

6. *Whether the suit is not maintainable in the present form?*
OPD-1 and 3

7. *Whether Qudsia Begum executed a registered will dt.2.4.90 in favour of Mohd. Farooq Khan? If so, its effect?*
OPD 1 and 3

8. *Whether Qudsia Begum had executed an unregistered will dt. 6.12.82 in favour of Jafar Ali Khan of Korbai and lateron cancelled this will? OPD 1 and 3.*

9. *Whether Qudsia Begum executed sale deed dt.2.4.90 of one plot in favour of Mohd. Ali defendant? OPD 1 & 3*

10. *Whether the plaintiff has no cause of action to file the present suit? OPD-2*

11. *Whether the suit is properly valued for the purpose of court fee and jurisdiction? OPP*

12. *Whether the defendant no.2 is the only LR of the Qudisia Begum? OPD-2*

13. *Whether this court has got no jurisdiction to try and decide*

the suit? OPD 1 & 3

14. *Whether the plaint is liable to be rejected u/o 7 rule 11*

CPC?OPD 1 & 3.

15. *Whether Qudsia Begum executed power of attorney*

dt.2.4.90 in favour of deft. no.3? If so, its effect? OPD 1 &

3

16. *Relief.”*

5. The learned Court of first instance decided the issue No. 1 to 4 against the plaintiff and in favour of the defendants. Alleged gift or possession of the plaintiff over the suit property was not accepted. Issue Nos. 5, 7 and 8, relating to the validity of the Wills dated 21.02.1989, sale-deed dated 02.04.1990 and Will dated 06.12.1982 and 02.04.1990, were decided in favour of the defendants and against the plaintiff. Issue Nos. 6 and 9 were also decided in favour of the defendants. Issue Nos. 10 and 11 were decided against the plaintiff. Issue No. 12 was not pressed and Issue No. 14 was noted to have been waived by the parties. Issue No. 13 was decided against defendant Nos. 1 and 3 and in favour of the plaintiff, holding that the Court had jurisdiction to try the present suit. Issue No. 15 was decided in favour of the defendants, holding that Qudsia Begum had executed a power of attorney dated 02.04.1990 in favour of defendant No. 3. The plaintiff was directed to pay the requisite court fee within 30 days and, consequently, the suit for declaration and possession was dismissed.

6. The first appeal preferred by the plaintiff-appellant was also dismissed and the findings of the learned Court of first instance were upheld.

7. The principal issue raised on behalf of plaintiff-appellant is

whether Qudsia Begum had gifted the suit property in favour of plaintiff, initially by way of an oral gift accompanied by delivery of possession, which was subsequently acknowledged through a memorandum of gift dated 24.12.1988.

8. It is worth noticing that there is no dispute regarding the ownership of Qudsia Begum over the suit property.

9. On the one hand, the plaintiff-appellant relies upon the alleged gift and delivery of possession in pursuance thereof. On the other hand, the respondents assert that the suit property was never gifted by Qudsia Begum to the plaintiff-appellant; rather, she remained in possession of the suit property throughout her lifetime and executed a registered General Power of Attorney as well as a registered Will in favour of the defendants to manage and deal with the property. Sale of part of property vide registered sale-deed dated 02.04.1990 executed by Qudsia Begum was also asserted.

10. Thus, the case of the appellant-plaintiff squarely rests upon the memorandum of gift dated 24.12.1988 and the Will dated 21.02.1989. However, both the Courts below, upon appreciation of the evidence led by the parties, have concurrently concluded that the plaintiff-appellant have failed to prove the gift, as well as the valid execution of the memorandum of gift dated 24.12.1988, delivery of possession and the Will dated 21.02.1989.

11. It is well settled that in order to establish a valid gift under Mohammedan Law, the person setting up the gift is required to prove the following essential ingredients:

- (i) a declaration of gift by the donor;
- (ii) acceptance of the gift, express or implied, by or on behalf of

the donee; and

(iii) delivery of possession of the subject-matter of the gift by the donor to the donee.

12. Both the Courts below have concurrently concluded that Qudsia Begum never parted with possession of the suit property in favour of the plaintiff-appellant, and therefore, no valid gift was ever made by her. Detailed and cogent reasons have been assigned for rejecting the plea of gift and for holding the memorandum of gift dated 24.12.1988 to be invalid. Both the Courts have recorded detailed findings of fact while rejecting the alleged gift and the validity of the memorandum of gift set up by the appellant-plaintiff.

13. On consideration of pleadings, evidence and arguments by both sides, I intend to concur with the concurrent findings of facts recorded by both the Courts for following reasons:

- (i) From the evidence of M.L. Goyal, Local Commissioner, who was appointed by the Court and who inspected the suit property on 16.12.1992, it clearly emerges that the suit property was in possession of defendant No. 1, as reflected in his report Ex. D-3. The Local Commissioner also noticed that a part of the suit property was in possession of the Assistant Registrar, Cooperative Societies, Malerkotla (hereinafter referred to as 'ARCS'), as a tenant and that rent was being paid by A.R.C.S., Malerkotla to Mohd. Ali (defendant No. 3), the General Power of Attorney holder of Mohd. Farooq Khan. The Local Commissioner had

obtained the signatures of the plaintiff-appellant on the memo of presence before inspecting the property. Plaintiff-appellant has also admitted that defendant No. 1 was found in possession of a part of the suit property at the time of inspection, as after inspection dated 16.12.2019 and after report of Local Commissioner, he had amended his suit and had sought possession of suit property. The plea of the plaintiff-appellant that he had been dispossessed by the defendants prior to the inspection was duly considered and rejected by both the Courts below. It was noticed that the application for appointment of the Local Commissioner was filed by the defendants on 30.11.1992 in the suit for permanent injunction instituted by the present plaintiff-appellant. In his reply to the said application, drafted on 03.12.1992 and filed on 04.12.1992, the plaintiff-appellant claimed himself to be in possession of the suit property as on that date. However, in the subsequently filed amended suit for declaration and possession, he claimed that he had been dispossessed on 25.11.1992. This inconsistent stand was duly noticed by both the Courts below to hold that the plaintiff was never in possession and that the subsequent suit had been filed only to explain his non-possession. The above-noted reasons, therefore, clearly points out that plaintiff-appellant was never in possession and claimed possession to justify gift.

- (ii) Both the Courts had further noticed that a part of the suit property had been under tenancy of A.R.C.S., Malerkotla on a monthly rent of Rs. 350/- for many years. Although the alleged oral gift was claimed to have been made 8–9 years prior to the memorandum of gift dated 24.12.1988, Qudisia Begum continued to receive rent even thereafter, as is evident from rent receipts Ex. DW-8/A to Ex. DW-8/F. Even the Local Commissioner noticed and attached rent receipts showing A.R.C.S. as tenant paying rent to Mohd. Ali, General Power of Attorney holder of Mohd. Farooq Khan. Finding by both the Courts that continued receipt of rent by Qudisia Begum clearly belied the claim that she had delivered possession of the suit property to the plaintiff-appellant, cannot be faulted with.
- (iii) Admittedly, Qudisia Begum died on 21.07.1991. The consistent case of the defendants was that she never gifted the suit property and remained in possession thereof throughout her lifetime. Apart from receiving rent from the tenant occupying part of the suit property, she also executed a sale deed dated 02.04.1990 (Ex. DW-7/B) in respect of a portion of the suit property. The execution of the said sale deed was duly proved by examining attesting witnesses. The evidence regarding execution of sale-deed is consistent and remained unrebutted by the plaintiff-appellant. It is worth noticing the sale-deed dated

02.04.1990 has never been challenged by plaintiff-appellant, though, he is claiming ownership of entire land. On the basis of the sale deed dated 02.04.1990, both the Courts have rightly concluded that it was Qudsia Begum who continued to remain in possession and control of the suit property and that no gift accompanied by delivery of possession had ever taken place.

- (iv) Perusal of evidence led by the plaintiff-appellant to prove the memorandum of gift dated 24.12.1988 and the Will dated 21.02.1989 shows same to be unreliable and full of material contradictions. To prove the memorandum of gift, the plaintiff-appellant examined himself as PW-11, Gurnam Singh, the scribe as PW-5, Beer Singh, one of the attesting witnesses as PW-2, and Boota Khan, the other attesting witness. While the plaintiff-appellant claimed that the oral gift was made 8–9 years prior to the memorandum of gift dated 24.12.1980, PW-2 stated that the oral gift was made 5–6 years prior to memorandum of gift contradicting case of plaintiff-appellant. PW-2 further stated that Qudsia Begum had never gone out of her house, implying that the memorandum of gift and the Will were executed at her residence, but simultaneously, PW-2 admitted that he had never visited her house, thereby falsifying his claim of witnessing the execution. PW-1 Bhura Singh, one of the witnesses, stated that the Will was

executed prior to the gift, whereas the plaintiff-appellant claimed that the memorandum of gift was made on 24.12.1988 and the Will was executed later on 21.02.1989, rendering the testimony of PW-1 discrepant and unreliable. PW-1 further contradicted the plaintiff-appellant by stating that possession was delivered only after execution of the memorandum of gift, whereas the plaintiff claimed delivery of possession much earlier i.e. 8-9 prior to memorandum of gift. PW-1 also claimed that the memorandum of gift was prepared at the house of Qudsia Begum but admitted that he had never gone inside her house. Further, PW-2 stated that entries regarding the memorandum of gift and Will were made in the register by the scribe, whereas PW-5, the scribe, admitted that no such entries were made and further admitted that he was not a licensed scribe. These contradictions makes testimonies relied upon by plaintiff-appellant to be unreliable as regards to gift, memorandum of gift dated 24.12.1988, Will dated 21.02.1989 and delivery of possession of property to appellant-plaintiff.

- (v) Both the Courts have rightly noticed that despite the alleged gift having taken place in 1979–80, no steps were taken by the plaintiff-appellant to have the ownership reflected in the municipal or revenue records. The plaintiff admitted that he had never paid any municipal taxes, and

that Qudisia Begum continued to pay all taxes during her lifetime. No documentary evidence was produced to show payment of taxes, municipal charges, or expenses or for amenities by the plaintiff after the alleged delivery of possession, who claimed to have been delivered to him in 1978-80, 8-9 years prior to memo of gift dated 24.12.1988.

- (vi) Further report of the handwriting and fingerprint expert, examined as DW-5 Dr. Atul Kumar Singla, who proved his report Ex. DW-5/1, opining that the signatures appearing on the memorandum of gift dated 24.12.1988 and the Will dated 21.02.1989 did not tally with the standard signatures of Qudsia Begum, demolish the left out case of appellant-plaintiff. The expert evidence remained unrebutted and unchallenged, as no contrary expert evidence was led by the plaintiff-appellant.

14. On the cumulative appreciation of the evidence on record, both the Courts below concurrently held that neither the due execution of the memorandum of gift dated 24.12.1988 nor the Will dated 21.02.1989, nor the delivery of possession of the suit property by Qudsia Begum, stood proved.

15. From the conclusions arrived at by both the Courts and upon re-appreciation of the evidence on record, I am in agreement with the findings recorded by the learned Courts below. The appreciation of evidence is based on the material available on record. The reasons assigned for not accepting the alleged oral gift, delivery of possession by Qudsia Begum to the plaintiff-appellant, as well as the execution of the memorandum of gift dated

24.12.1988 and the Will dated 21.02.1989, are sound and do not call for any interference. The plaintiff has failed to prove delivery of possession as well as the due execution of the memorandum of gift and the Will. Delivery of possession is the most essential ingredient to constitute a valid gift, and failure to establish the same is fatal to the case of the appellant.

16. Faced with the above conclusions, learned counsel for the plaintiff-appellant referred to the alleged compromise/writing dated 08.11.1992 (Ex. PW-8/A) to contend that the defendants had admitted the possession of the plaintiff-appellant and had agreed to restore possession which was allegedly taken forcibly. However, I find myself in agreement with the reasons recorded by both the Courts below for rejecting the said compromise. The alleged writing dated 08.11.1992 was rightly discarded, as no reliance could be placed upon a document stated to have been executed at the police station. Further, the Court of first instance rightly noticed that the line relating to possession appeared to have been subsequently inserted, being in different ink and written with a different pen.

17. The findings of fact recorded by the Courts below, therefore, cannot be faulted with, and possession of the plaintiff cannot be accepted merely on the basis of the said writing, particularly when overwhelming material on record clearly establishes that possession was never delivered to the plaintiff and that he was never in possession of the suit property. Both the Courts have rightly concluded that Qudsia Begum had not gifted the suit property to the plaintiff-appellant.

18. The Courts below have also correctly held that the Will dated 21.02.1989, allegedly executed by Qudsia Begum, was not duly proved. The

Will was further doubted on the ground that the plaintiff was a total stranger to Qudsia Begum, whereas the defendants were her family members, making it highly improbable that Qudsia Begum, who remained in possession of the suit property throughout her lifetime, would have disinherited her family in favour of an unrelated person. The plea of the plaintiff that he and his wife were serving and looking after Qudsia Begum cannot be accepted merely on the basis of oral assertions and photographs relied upon by him, in the absence of any reliable evidence. Evidence of witnesses to Will is full of contradictions and discrepant, therefore, cannot be relied upon. This further casts serious doubt on the genuineness of the Will dated 21.02.1989. Since onus to prove gift (along with delivery of possession) and Will was upon plaintiff-appellant, which he had failed to discharge the suit as well as appeal were rightly dismissed by Courts below. No other question of fact and law raised or arises.

19. In view of the above discussions, there is no merit in the present appeal. The appeal is accordingly dismissed, and the judgments and decrees passed by the Courts below are upheld.

20. Pending miscellaneous application(s), if any, also stand(s) disposed of accordingly.

28.01.2026
manoj

(PARMOD GOYAL)
JUDGE

Whether Speaking/Reasoned	:	Yes
Whether Reportable	:	Yes/No