2024 INSC 1006

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4211 OF 2009

MANSOOR SAHEB (DEAD) & ORS. …APPELLANT(S)

VERSUS

SALIMA (D) BY LRS. & ORS. …RESPONDENT(S)

WITH

CIVIL APPEAL NO. 4213 OF 2009

J U D G M E N T

SANJAY KAROL J.

1. The instant appeals, preferred by the original defendants, arise out of the judgment and order dated 13.01.2006 passed by the High Court of Karnataka whereby it dismissed the appeals filed by the original-defendants, confirming the decree passed by the Court of the Principal Civil Judge (Sr. Dn.)[1], Bijapur in O.S. No.140 of 1988 in favour of the original plaintiffs (Respondents herein).

[1] Hereinafter referred to as 'Trial Court'

2. Admittedly, the parties are governed by Mohammedan law. The following questions arise for our consideration:-

(a) Whether an owner of property can, in his lifetime, transfer said property to his heirs by way of partition?

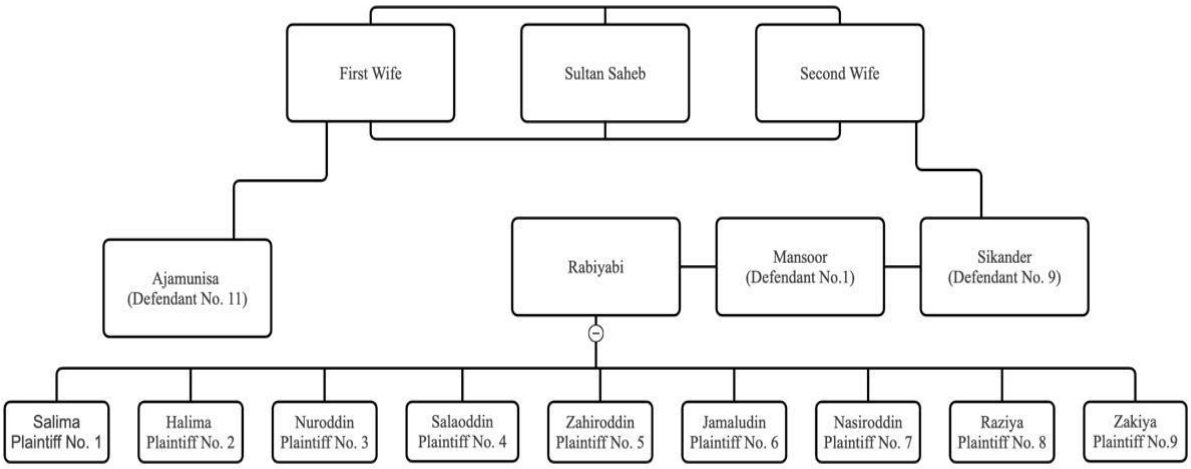
(b) Whether, in the facts of this case, the requisites of a valid gift were met and also whether nomenclature employed in Mutation Entry can be said to be indicative of intentions?

FACTUAL MATRIX

3. The brief facts are stated by referring to the parties as per their status in the Trial Court.

4. One Sultan Saheb, the owner of the suit land described in Schedule B and C being agricultural land and house property respectively, of the plaint, died on 09.01.1978. Through his first marriage, he had one daughter namely, Ajamunisa (defendant no.11). With his first wife passing away, he remarried and, from this second marriage, had three children- two sons, namely Mansoorsaheb (defendant no.1), Sikandar (defendant no.9) and daughter namely, Rabiyabi. Plaintiff nos.1 to 9 are the children of Rabiyabi, who had died on 08.06.1985. Defendant no.2 is Mansoorsaheb's wife, defendant nos. 3 to 7 are his children, defendant no.8 is defendant no.1's daughter-in-law. Defendant no.10 is the son of defendant no.9.

For ease of understanding, the position of parties is demonstrated through a family tree:



5. The case of the plaintiffs is that Sultan Saheb was the owner and possessor of the suit property. On his death, defendant no.1 got his name, as also the names of defendant no. 9 & 11 mutated in the revenue records to the exclusion of the plaintiffs' mother, Rabiyabi, also a successor-in-interest. As such, plaintiffs are entitled to 1/6th share in different scheduled properties and sought partition by way of O.S. No.140/1988.

6. In their written statements, the defendants contended that Sultan Saheb himself had divided the property, R.S.No.249/1A/1, into three parts, gifting one part each to his sons and retaining the third remaining part. Subsequently, in September 1980, he partitioned the retained third portion among his four children. Reliance is placed on the Mutation Entry No. 8258 dated 21.01.1973, which is disputed by the plaintiffs.

7. The Trial Court framed thirteen issues and held that an oral gift was not made to the sons as the essential requisites were not conclusively proven. It rejected the

plea of partition on the ground that under Mohammedan Law, property partitioned during the owner's lifetime requires a written registered document. After examining witnesses and evidence placed on its record, it held the plaintiffs jointly entitled to 1/6th share, defendant nos.1 and 9 each entitled to 1/3rd share and defendant no.11 to 1/6th share in the suit schedule properties.

8. While dismissing the appeals, the High Court concurred with the Trial Court's findings on both issues of gift and partition. It reiterated the position under Mohammedan Law that as long as the owner is alive, the partition is unknown to the members governed by Muslim Law. Regarding the gift, it was held that the witnesses' testimonies failed to substantiate the plea for an oral gift.

SUBMISSIONS OF THE PARTIES

9. Mr. V.N. Raghupathy, learned counsel for the Appellants, submitted that writing is not essential to effectuate the transfer of immovable property by way of gift. Sultan Saheb made a declaration of gift, which was accepted by the donees, and possession was delivered to them, as evidenced by the Mutation Entry No.8258 (Ex. P1). He placed reliance on Section 129 of Transfer of Property Act,1882 and submits that writing is not essential to effectuate transfer of immovable property by way of gift. Further reliance is placed on ***Hafeeza Bibi v S.K. Farid***[2] to describe the three essentials of a gift under Mohammadan Law. It is submitted that Sultan Saheb made

[2] (2011) 5 SCC 654

a declaration of gift, the same was accepted by the donees and possession was delivered to the donees which is evident from Mutation Entry (Ex.P1).

10. It is submitted that the erroneous description of the transaction as *watni*/partition instead of an oral gift made the plaintiffs contend that Sultan Saheb and his sons had no right to divide/partition the property, but if the nomenclature 'partition' in Mutation Entry (Ex.P1) is replaced by 'oral gift', the remaining contents clearly shows that the transaction was an oral gift. Further reliance is placed on ***N.Mani v. Sangeetha Theatre & Ors.***[3] and ***Mathai Samuel v. Eapen Eapen***[4]. It is further submitted that the High Court failed to exercise its jurisdiction as a First Appellate Court depriving appellant his valuable right. In furtherance of the said submission, the learned counsel refers to ***B.V. Nagesh v. H.V. Srinivasamurthy***[5].

11. Mr. SN Bhat, learned senior counsel for the Respondents, submitted that the Mutation Entry No.8258 dated 21.01.1973 refers only to an alleged partition, and there is no reference to any gift as alleged by the appellants. It is further submitted that the said Mutation Entry was purported to have been made on the basis of a report *('wardi')* submitted to the revenue officials, but the appellants-defendants never produced such a report. Further, it is submitted that, unlike Hindu Law, children governed by Mohammedan Law have no pre-existing right; thus, there can be no oral partition of properties during the lifetime of the owner. To buttress his

[3] (2004) 12 SCC 278
[4] (2012)13 SCC 80
[5] (2010) 12 SCC 530

submission the learned senior counsel relies on ***Abdul Rahim & Ors. v. Sk. Abdul Zabar***[6] and ***K. Mahammad Ghouse Sahib v. Jamila Bi & Ors.***[7]

APPRECIATION OF LAW & ANALYSIS

12. At the outset we may remind ourselves of the observations made in regard to personal laws by J.S. Khehar the then CJI in his dissenting judgment in ***Shayara Bano v. Union of India***[8]***:***

> **"240 …**Reference was also made to the definition of the term Personal Law in *Conflict of Laws 188* (7th Edn., 1974) by R.H. Graveson, who defined the term as under:
> "*The idea of the Personal Law is based on the conception of man as a social being, so that those transactions of his daily life which affect him most closely in a personal sense, such as marriage, divorce, legitimacy, many kinds of capacity, and succession, may be governed universally by that system of law deemed most suitable and adequate for the purpose …*"
> (emphasis in original)
> …
> **322.** "Personal law" has a constitutional protection. This protection is extended to "Personal Law" through Article 25 of the Constitution. It needs to be kept in mind that the stature of "Personal Law" is that of a fundamental right. The elevation of "Personal Law" to this stature came about when the Constitution came into force. This was because Article 25 was included in Part III of the Constitution. Stated differently, "Personal Law" of every religious denomination is protected from invasion and breach, except as provided by and under Article 25."
> (Emphasis supplied)

13. Mohammedan Law, being the personal law, possesses its own legal principles and regulations which govern family relationships in matters such as marriage, divorce, inheritance, custody and guardianship. Its distinctive feature sets it apart

[6] (2009) 6 SCC 160
[7] 1949 SCC OnLine Mad433
[8] (2017) 9 SCC 1

from other personal laws on fundamental issues. It is pertinent to examine the legal principles, if any, governing partition under Mohammedan law.

14. Tahir Mahmood[9], in his book 'The Muslim Law of India', 2nd Edition, Chapter 12 (Law of Inheritance) Para II, has provided for various concepts related to succession in Muslim Law which distinguish it from other personal laws:

> "1. The Muslim law of succession is basically different from the parallel indigenous systems of India. The doctrine of janmswatvavada (right by birth), which constitutes the foundation of the *Mitakshara law* of succession, is wholly unknown to Muslim law. The law of inheritance in Islam is relatively close to the classical *Dayabhaga law,* though it differs also form that on several fundamental points. The modern Hindu law of succession (as laid down in the Hindu Succession Act, 1956) is, however, much different from both the aforesaid classical systems; it has a remarkable proximity, in certain respects, to the Muslim law of inheritance.
>
> 2. The division of heritage (daya) into sapratibandh ('obstructed') and apratibandh ('unobstructed')-self-acquired and ancestral- is equally foreign to Muslim law. Whatever property one inherits (whether from his ancestors or from others) is, at Muslim law, one's absolute property- whether that person is a man or a woman.
>
> 3. In Muslim law, so long as a person is alive he or she is the absolute owner of his or her property; nobody else (including a son) has any right, whatsoever, in it. It is only when the owner dies- and never before- that the legal rights of the heirs accrue. There is, therefore, no question of a would-be heir dealing in any way with his future right to inherit.
>
> 4. The Indian legal concepts of 'joint' or 'undivided' family, 'coparcenary', karta, 'survivorship', and 'partition', etc., have no place in the law of Islam. A father and his son living together do not constitute a 'joint family'; the father is the master of his property; the son (even if a minor) of his, if he has any. The same is the position of brothers or others living together.
>
> 5. Unlike the classical Indian law, female sex is no bar to inherit property. No woman is excluded from inheritance only on the basis of sex. Women have, like men, right to inherit property independently, not merely to receive maintenance or hold property 'in lieu of maintenance'. Moreover, every woman who inherits some property is, like a man, its absolute owner; there

[9] The author is a recognized expert on Islamic law, having written numerous acclaimed works on the subject. He was a retired professor of law at Delhi University and the founder of Department of Islamic Law at the Indian Institute of Islamic Studies, New Delhi.

> is no concept of either stridhan or a woman's 'limited estate' reverting to others upon her death.
>
> 6. The same scheme of succession applies whether the deceased was male or a female. This is one of those salient features of Muslim law of succession which distinguish it from modern Hindu law of inheritance."
>
> (Emphasis supplied)

15. The position on devolution of property under Mohammedan Law has been succinctly captured in Chapter 22- Law of Succession and Inheritance of Mulla on Mohammedan Law 5th Edition in the following terms: "*all properties devolve by succession, so the rights of heirs come into existence only on the death of the ancestor. The whole property vests in them*." The Mohammedan Law has well-defined rules of inheritance that come into effect upon the death of the ancestor, and its policy has been to restrain the owner from interfering in such well-defined rules. Transfer of property if required to be made during the lifetime of a person, they may do so primarily by way of gift (*hiba).* Other methods include the writing of a will but even therein certain restrictions have been postulated.

16. Prior to looking to the above said sources, a general understanding of partition would also be instructive. Advanced Law Lexicon[10] defined partition as a separation between joint owners or tenants in common of their respective interests in land, and setting apart such interest, so that they may enjoy and possess the same in severalty. In ***Shub Karan Bubna v. Sita Saran Bubna,***[11] partition was defined as under:

[10] P Ramanatha Aiyar 3rd Edition Reprint 2009
[11] (2009) 9 SCC 689

> **"5.** "Partition" is a redistribution or adjustment of pre-existing rights, among co-owners/coparceners, resulting in a division of lands or other properties jointly held by them into different lots or portions and delivery thereof to the respective allottees. The effect of such division is that the joint ownership is terminated and the respective shares vest in them in severalty.
>
> **6.** A partition of a property can be only among those having a share or interest in it. A person who does not have a share in such property cannot obviously be a party to a partition. "Separation of share" is a species of "partition". When all co-owners get separated, it is a partition. Separation of share(s) refers to a division where only one or only a few among several co-owners/coparceners get separated, and others continue to be joint or continue to hold the remaining property jointly without division by metes and bounds. For example, where four brothers owning a property divide it among themselves by metes and bounds, it is a partition. But if only one brother wants to get his share separated and other three brothers continue to remain joint, there is only a separation of the share of one brother."
>
> (Emphasis supplied)

17. Let us now turn to the position as it is under Mohammedan Law. The right of an heir-apparent comes into existence for the first time on the death of the ancestor, and he is not entitled until then to any interest in the property to which he would succeed as an heir if he survived the ancestor [*See*: Mulla Principles of Mahomedan Law, 22nd Edition, Chapter 6; ***Abdul Wahid Khan v. Mussumat Noran Bibi & Ors.***[12]]. Reference may also be made to the decision of this case in ***Gulam Abbas v. Haji Kayyum Ali & Ors***.[13] wherein a bench of three learned judges observed *albeit* in connection with renunciation of inheritance as under:

> "**7.** Sir Roland Wilson, in his "*Anglo Mohamadan Law"* (p. 260, para 208) states the position thus:
>
> > "For the sake of those readers who are familiar with the joint ownership of father and son according to the most widely prevelant school of Hindu Law, it is perhaps desirable to state explicitly that in Mohammedan, as in Roman and English Law,

[12] 1885 SCCOnLine PC 4
[13] (1973) 1 SCC 1

> nemo est heres viventis.....a living person has no heir. An heir apparent or presumptive has no such reversionary interest as would enable him to object to any sale or gift made by the owner in possession; See *Abdul Wdhid*, L.P. 12 I.A., 91, and 11 Cal 597 (1885) which was followed in *Hasan Ali*, 11 All 456, (1889). The converse is also true: a renunciation by an exepectant heir in the lifetime of his ancestor is not valid, or enforceable against him after the vesting of the inheritance.""
>
> (Emphasis supplied)

It is also important to note that the doctrine of partial partition does not apply to Mohammedan Law as the heirs therein are tenants-in-common. Succession is to a definite fraction of the estate in question. A.N. Ray, J. as his Lordship then was wrote in ***Syed Shah Ghulam Ghouse Mohiuddin v. Syed Shah Ahmed Mohiuddin Kamisul Quadri***[14], as follows:

> **"20.** … In Mohammedan law the doctrine of partial partition is not applicable because the heirs are tenants-in-common and the heirs of the deceased Muslim succeed to the definite fraction of every part of his estate. The shares of heirs under Mohammedan law are definite and known before actual partition. Therefore on partition of properties belonging to a deceased Muslim there is division by metes and bounds in accordance with the specific share of each heir being already determined by the law."

18. It is acknowledged that Islamic Law has four sources— (*i*) Quran (*ii*) Hadith (*iii*) Ijma and (*iv*) Qiyas. It is commonly accepted that all Islamic personal law has to derive from these four sources. There is a generally acknowledged division among these four sources as well. The Quran is pre-eminent and deserving of all primacy followed by the other three in that very order. The question involved in these appeals also, of inheritance and/or gift must be decided in reference thereto only. The topic

[14] (1971) 1 SCC 597

of inheritance has been dealt with primarily under Chapter 4 of the Quran[15], Al-Nisa. The relevant verses are as under:

> "4:11 Allah commands you regarding your children: the share of the male will be twice that of the female.[1] If you leave only two ˹or more˺ females, their share is two-thirds of the estate. But if there is only one female, her share will be one-half. Each parent is entitled to one-sixth if you leave offspring.[2] But if you are childless and your parents are the only heirs, then your mother will receive one-third.[3] But if you leave siblings, then your mother will receive one-sixth[4]—after the fulfilment of bequests and debts.[5] ˹Be fair to˺ your parents and children, as you do not ˹fully˺ know who is more beneficial to you.[6] ˹This is˺ an obligation from Allah. Surely Allah is All-Knowing, All-Wise.
>
> 4:12 You will inherit half of what your wives leave if they are childless. But if they have children, then ˹your share is˺ one-fourth of the estate—after the fulfilment of bequests and debts. And your wives will inherit one-fourth of what you leave if you are childless. But if you have children, then your wives will receive one-eighth of your estate—after the fulfilment of bequests and debts. And if a man or a woman leaves neither parents nor children but only a brother or a sister ˹from their mother's side˺, they will each inherit one-sixth, but if they are more than one, they ˹all˺ will share one-third of the estate[1]—after the fulfilment of bequests and debts without harm ˹to the heirs˺.[2] ˹This is˺ a commandment from Allah. And Allah is All-Knowing, Most Forbearing.
>
> 4:176 They ask you ˹for a ruling, O Prophet˺. Say, "Allah gives you a ruling regarding those who die without children or parents." If a man dies childless and leaves behind a sister, she will inherit one-half of his estate, whereas her brother will inherit all of her estate if she dies childless. If this person leaves behind two sisters, they together will inherit two-thirds of the estate. But if the deceased leaves male and female siblings, a male's share will be equal to that of two females. Allah makes ˹this˺ clear to you so you do not go astray. And Allah has ˹perfect˺ knowledge of all things.[1]"

19. Reading of the above verses reveals clearly with the use of the words 'leave', 'leaves' or 'man dies' that division of property is only possible upon the death of a person, amongst his heirs. There is no prescription as to how the partition of property may take place when a person is alive.

[15] https://quran.com/4

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*.

21. Sultan Saheb therefore during his lifetime could not have partitioned his property, giving two parts thereof to his sons. The same is not in accordance with law. The possibility of Sultan Saheb's succeeding their father in interest of the said property, could only have arisen in 1978 when Sultan Saheb passed away. When the partition of property would have taken place upon his death in 1978, the appellants as also the respondents herein would have received shares as prescribed under Mohammedan Law. As already observed *supra,* the only way permissible to Sultan Saheb to have given two parts of his property to his two sons would have been through *hiba*, the requirements of which have been culled out further ahead in this judgment.

22. Let us now turn our attention to the next question arising for adjudication i.e., the claim of the appellants herein that their father Sultan Saheb had in fact gifted two parts of his property to them.

23. We now examine the law that deals with oral gifts and their validity under Mohammedan Law. A *hiba* literally means "*the donation of a thing from which the donee may derive benefit*". Technically, it is "*an unconditional transfer of property,*

made immediately and without any exchange or consideration, by one person to another and accepted by or on behalf of the latter."[16]

24. The position of oral gift is well settled by the Courts of law. In '*Outlines of Mohammadan Law*'[17], A.A. Faizee described '*gift*' as:

> "A man may lawfully make a gift of his property to another during his lifetime; or he may give it away to someone after his death by will. The first is called a disposition inter vivos; the second, a testamentary disposition. Muhammadan law permits both kinds of transfers; but while a disposition inter vivos is unfettered as to quantum, a testamentary disposition is limited to one-third of the net estate. Muhammadan law allows a man to give away the whole of his property during his lifetime, but only one-third of it can be bequeathed by will."

Ameer Ali defines '*hiba*' in the following terms:

> "A *hiba* is a voluntary gift without consideration of property or the substance of thing by one person to another so as to constitute the donee the proprietor of the subject matter of the gift."

While referring to Mohammedan Law, by Syed Ameer Ali[18], the Privy Council in ***Mohd. Abdul Ghani*** v. ***Fakhr Jahan Begam***[19] observed:

> "For a valid gift inter vivos under the Mahomedan law applicable in this case, three conditions are necessary, which their Lordships consider have been correctly stated thus: *"*(*a*) manifestation of the wish to give on the part of the donor; (*b*) the acceptance of the donee, either impliedly or expressly; and (*c*) the taking of possession of the subject-matter of the gift by the donee, either actually or constructively."
>
> (Emphasis supplied)

[16] Hedaya, 482
[17] (2009) 6 SCC 160
[18] 4th ed., vol. i., p. 41.
[19] 1922 SCC OnLine PC 18

This Court, in ***Jamila Begum*** v. ***Shami Mohd.***,[20] reiterated the essentials of valid and complete gift as laid down in ***Abdul Rahim*** (supra)**,**[21]:

> **"**23. Under the Mohammedan law, no doubt, making oral gift is permissible.
> …
> 13. The conditions to make a valid and complete gift under the Mohammadan law are as under:
>
> (*a*) The donor should be sane and major and must be the owner of the property which he is gifting.
> (*b*) The thing gifted should be in existence at the time of hiba.
> (*c*) If the thing gifted is divisible, it should be separated and made distinct.
> (*d*) The thing gifted should be such property to benefit from which is lawful under the Shariat.
> (*e*) The thing gifted should not be accompanied by things not gifted i.e. should be free from things which have not been gifted.
> (*f*) The thing gifted should come in the possession of the donee himself, or of his representative, guardian or executor."

Mulla on Mohammedan Law[22] provides for the manner in which a gift is to be made which are:

> "by a clear and unequivocal declaration of intention of making a gift made orally or in writing by the donor or his agent, and
> i. accepted expressly or impliedly by the donee or his agent except in the case of a gift,
> a. by a guardian to his ward; or
> b. of a debt to the debtor; and
> ii. Such declaration and acceptance must be followed by the delivery of possession (actually or, constructively) of the subject-matter of the gift by the donor or his agent to;
> a. the donee or his agent; or
> b. To the guardian, if the donee is a minor or lunatic; or
> c. To the husband if the donee is a minor wife provided that the marriage has been consummated; or
> d. To the trustees, if the gift is made through a trust.
> iii. On the delivery of possession, a gift becomes complete, immediately."
>
> (Emphasis supplied)

[20] (2019) 2 SCC 727
[21] (2009) 6 SCC 160
[22] 5th Edition

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 gift, 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.

27. Thus, registration of gift is not required under Mohammedan Law and, the unwritten and unregistered gift executed by the donor in favour of donees is valid. This position has been reiterated by this Court on various occasions. We may refer to a few of them.

In ***Rasheeda Khatoon*** v. ***Ashiq Ali***[23]**,** it was observed:

> "17. …a gift under the Muhammadan law can be an oral gift and need not be registered; that a written instrument does not, under all circumstances require registration; that to be a valid gift under the Muhammadan law three essential features, namely, (*i*) declaration of the gift by the donor, (*ii*) acceptance of the gift by the donee expressly or impliedly, and (*iii*) delivery of possession either

[23] (2014) 10 SCC 459

> actually or constructively to the donee, are to be satisfied; that solely because the writing is contemporaneous of the making of the gift deed, it does not warrant registration under Section 17 of the Registration Act."
>
> (Emphasis supplied)

This position was reiterated by this Court in ***Hafeeza Bibi*** v. ***Sk. Farid***[24] -

> "**10.** In Mahboob Sahab v. Syed Ismail [(1995) 3 SCC 693] this Court referred to Principles of Mahomedan Law by Mulla, 19th Edn. and in para 5 noticed the legal position, in relation to a gift by a Muslim incorporated therein, thus: (SCC pp. 696-97)
>
> > "5….It would, thus, be clear that though gift by a Mohammadan is not required to be in writing and consequently need not be registered under the Registration Act; for a gift to be complete, there should be a declaration of the gift by the donor; acceptance of the gift, expressed or implied, by or on behalf of the donee, and delivery of possession of the property, the subject-matter of the gift by the donor to the donee. The donee should take delivery of the possession of that property either actually or constructively. On proof of these essential conditions, the gift becomes complete and valid. In case of immovable property in the possession of the donor, he should completely divest himself physically of the subject of the gift."
> >
> > (Emphasis supplied)

This Court in ***D.N. Joshi*** v. ***D.C. Harris***[25] placed reliance on the following observation of ***Hafeeza Bibi*** (*supra*):

> "**31…**
>
> > **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 a 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 a valid gift, the transaction of gift would not be rendered invalid because it has been written on a plain piece

[24] (2011) 5 SCC 654
[25] (2017) 12 SCC 624

> 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…"
>
> (Emphasis supplied)

28. Under Mohammedan Law, a gift is to be effected in the manner laid down under the law. If the conditions prescribed by that law are fulfilled, the gift is valid, even though it is not effected by a registered instrument. But if the conditions are not fulfilled, the gift is not valid even though it may have been effected by a registered instrument. Therefore, a valid gift could be made by oral statements as well so long as the three requirements as discussed above are met thereby. This is because registration is not a requirement which obviates the need for a gift to be reduced in writing.

29. Another aspect which needs to be considered is the Mutation Entry. The appellants claim that even though the entry uses the word 'partition', it should be read as 'gift'. Both the Trial Court and High Court have held that the same is not possible and if the entry reads 'partition' it has to necessarily be read as so.

30. In order to appreciate this contention, two aspects are important. One, the importance of nomenclature and two, the purpose of a mutation entry.

31. Before proceeding further, it should be apposite to reproduce the Mutation Entry:

> "The details of the partition of the property done by Sultan Abdul Khader Shek in favour of his two sons:

Sy. No.	Extent	Akara	Occupants
249/A1/1A	4 acres 3 guntas	1-79	Shek Sultan Saheb Abdul Khader Shek
249/A1/1B	4 acres 15 ¼	1-80	Mansoor Sikandar S/o Sultansah
249/A1/1C	4-15	1-80	

From this two pattas taken effect as per the wardi."

Indubitably, it is a settled law that only the substance, not the form or nomenclature, is pertinent to determine the nature of the transaction. '*Partition*' and '*gift*' are two terms that have different requisites, require different circumstances, and bear different consequences. Partition, as already noted above, is the division of property among co-owners, whereas gift is a voluntary transfer of existing property made voluntarily without consideration. The legal necessities of both these modes of conveyance are quite different and, thus, cannot be liberally interpreted.

32. What is required to be considered is the intention as shown by the words written in a document as observed by this Court in ***Mathai Samuel*** (*supra*)**:**

> **"19.** The primary rule of construction of a document is the intention of the executants, which must be found in the words used in the document. The question is not what may be supposed to have been intended, but what has been said. We need to carry on the exercise of construction or interpretation of the document only if the document is ambiguous, or its meaning is uncertain. If the language used in the document is unambiguous and the meaning is clear, evidently, that is what is meant by the executants of the document. Contemporary events and circumstances surrounding the execution of the document are not relevant in such situations.
>
> **…**
>
> **21.** Coleridge, J. in Shore v. Wilson [(1842) 9 Cl & Fin 355 : 8 ER 450 (HL)] [Cl & Fin at pp. 525-26] held as follows : (ER pp. 517-18)
>
> > "The intention to be sought is the intention which is expressed in the instrument, not the intention which the maker of the instrument may have had in his mind. It is unquestionable that the

> object of all exposition of written instruments must be to ascertain the expressed meaning or intention of the writer; the expressed meaning being equivalent to the intention … it is not allowable … to adduce any evidence, however strong, to prove an unexpressed intention varying from that which the words used import. This may be open no doubt to the remark, that, although we profess to be explaining the intention of the writer, we may be led in many cases to decide contrary to what can scarcely be doubted to have been the intention, rejecting evidence which may be more satisfactory in the particular instance to prove it. The answer is, that interpreters have to deal with the written expression of the writer's intention, and courts of law to carry into effect what he has written, not what it may be surmised, on however probable grounds, that he intended only to have written."

…

> **25.** ...In order to ascertain the intention of the testator, the point for consideration is not what the testator meant but what that which he has written means. It is often said that the expressed intentions are assumed to be actual intentions. This Court in *A. Sreenivasa Pai* v. *Saraswathi Ammal* [(1985) 4 SCC 85] held that: (SCC p. 89, para 4)
>
> > "*4.* … In construing a document, whether in English or in any Indian language, the fundamental rule to be adopted is to ascertain the intention adopted from the words employed in it."
>
> …"
>
> (Emphasis supplied)

33. The words used in a document have to be understood in their natural meaning with reference to the language employed. While interpreting any document, common or usual meaning is ascribed to the words unless that leads to absurdity. Lord Wensleydale, in an oft-quoted passage, stated the rule of literal construction:

> "In construing will and indeed statutes and all written instruments, the grammatical and ordinary sense of the word is adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument in which case the grammatical and ordinary sense of the words maybe modified, so as to avoid that absurdity, and inconsistency, but no further."
>
> (Emphasis supplied)

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***[26] **-**

> **"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.***[27] **–**

> **"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."

[26] (1996) 6 SCC 223
[27] 2021 SCC OnLine SC 802

This position was recently reiterated by this Court in ***P. Kishore Kumar v. Vittal K. Patkar***[28].

36. Proceeding to the factual circumstances of the case, the primary requirement of '*declaration of clear and unequivocal intention*' is not proved. The testimonies of the witnesses, DW2 (Rasoolsab) and DW3 (Gulabsingh), examined by the original defendants/appellants, do not offer any relevant details which can show that the donor, Sultan Saheb, possessed the requisite intent and with that intent, he made a declaration in favour of his sons. Having considered the material on record, we do not find any reason to take a view differing from the Trial Court and High Court in disbelieving the testimonies of these witnesses. A perusal of the Trial Court judgment lends credence to this conclusion for the testimonies as extracted therein are nothing but vague, it seems that the witnesses were trying desperately to make relevant testimony grasping at strands of fading memory. That apart, there is no mention of these witnesses in the Mutation Entry. Even though the other two requisites, i.e. acceptance and possession, may have been proved, the essential requirement of the declaration made with clear and unequivocal intention remains unfulfilled, which is of significance. When neither the words of the Mutation Entry nor the Entry itself support the claim of the original-defendants/appellants in any manner, for neither can it be a gift nor does the Mutation Entry mean that any title rests with them, the

[28] 2023 SCC OnLine SC 1483

case of the original-defendants/appellants necessarily has to fail. The oral gift made by Sultan Saheb in favour of his sons cannot be held to be a valid gift.

37. The questions of law are answered accordingly.

38. As a result of our discussions in the foregoing paragraphs, we do not find any fault with the reasoning given by the Trial Court and the High Court *qua* the questions of gift and partition. The correct position of law in so far as registration is concerned has been stated in the preceding paragraphs as not applying to gifts and wholly inapplicable to partition as the concept itself is foreign to this branch of personal law in the lifetime of the ancestor. The order passed by the Trial Court in O.S. No.140/88 and confirmed by the High Court in RFA No.469 of 1998, clubbed with RFA No.493 of 1998, is confirmed in the above terms. Both the appeals stand dismissed.

39. Before parting with this matter, we record our appreciation for the invaluable assistance provided by Mr. Huzefa Ahmadi, Senior Counsel.

Pending application(s), if any, shall stand disposed of.

……., J.
[C.T. RAVIKUMAR]

……..J.
[SANJAY KAROL]

New Delhi;
December 19, 2024.