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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

TUESDAY, THE 22ND DAY OF OCTOBER 2024 / 30TH ASWINA, 1946WP(C) NO. 36930 OF 2024PETITIONER:

RAZAK H
AGED 35 YEARS
S/O. LATE S.M. HANEEFA, RESIDING AT 4/43,
PUTHUSSERY CENTRAL VILLAGE, KANJIKODE P.O,
PALAKKAD TALUK, PALAKKAD DISTRICT, PIN - 678621

BY ADVS. JACOB SEBASTIAN
WINSTON K.V
ANU JACOB
BHARATH KRISHNAN G.
ARUNDHATHI SURESH BABU

RESPONDENTS:

- 1 THE ADDITIONAL TAHSILDAR, (LAND RECORDS)
PALAKKAD, TALUK OFFICE, CIVIL STATION COMPLEX,
PALAKKAD HEAD POST OFFICE, PALAKKAD DISTRICT,
PIN - 678001
- 2 THE VILLAGE OFFICER
PUTHUSSERI CENTRAL VILLAGE OFFICE, KANJIKODE
P.O, PALAKKAD DISTRICT, PIN - 678621

SRI.B.S.SYAMANTHAK, GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 22.10.2024, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

**“CR”****JUDGMENT**

The concept and principles governing the disposition of property by *Hiba* – gift under Muslim Personal Law - arises for consideration in this writ petition.

2. The petitioner is a Muslim following Muslim Personal Law. He is aggrieved by the Village Officer's decision refusing to mutate the property gifted by his father in his favour as per Ext. P3 gift deed on the ground that it is an unregistered document.

3. The immovable property having an extent of 14 cents of land in Old Sy.Nos.665/12 and 666/1 of Puthusseri Central Village, Palakkad Taluk, Palakkad District, covered by Exts.P1 and P2 title deeds originally belonged to the father of the petitioner named Haneefa. On 15.1.2016, the father of the petitioner gifted the said property in favour of the petitioner orally and he was put in exclusive physical possession of the property. Three days thereafter, on 18.1.2016, the father of the petitioner executed Ext.P3 unregistered gift deed in favour of the petitioner. The petitioner accepted the gift and took delivery of the property. Thereafter, the petitioner submitted Ext.P4



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application before the 2nd respondent to mutate the property in his name, to accept land tax from him and to provide a Thandaper Account. The 2nd respondent rejected Ext.P4 application as per Ext.P5 communication for the reason that Ext.P3 gift deed is not a registered document. It is challenging Ext.P5, the petitioner has approached this Court.

4. I have heard Sri. Jacob Sebastian, the learned counsel for the petitioner and Sri. B.S. Syamanthak, the learned Government Pleader.

5. The learned counsel for the petitioner submits that Section 123 of the Transfer of Property Act (for short 'the T.P. Act') which mandates that a gift can be made only through a registered document, is not applicable to Muslims and hence, oral gift made by the father of the petitioner to the petitioner and later on endorsed as per Ext.P3 unregistered gift deed is legally valid and hence the 2nd respondent is not justified in not mutating the property in the name of the petitioner on the ground that the gift deed in question is an unregistered one.

6. Chapter VII (Sections 122 to 129) of the T.P. Act deals with the gift of movable or immovable property. Section 122 defines 'gift' as a transfer of certain existing movable or immovable property made voluntarily and without



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consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee. Section 123 provides how the transfer of a gift is effected. It says that for the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses. However, Section 129 specifically lays down that the provisions of Chapter VII of the T.P. Act are not applicable to gifts of movable property made in contemplation of death or shall be deemed to affect any rule of Muhammadan law. Whenever the provisions of Chapter VII of the T.P. Act and Muslim law conflict, the latter shall prevail.

7. A gift under Muslim law is called *hiba*. Any Muslim, to whatever school of law he or she may belong, can make a *hiba*, of the whole of his or her property. A *hiba* is a bilateral transaction which takes effect when the donor declares that he has made a gift and the donee signifies his or her acceptance of the same. Over and above these, there is the requirement that ordinarily such possession of the gifted property as it may be possible to transfer must be handed over by the donor to the donee. Without these three essential conditions – declaration (*ijab*), acceptance (*qubul*) and delivery



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of possession (*qabza*) respectively - a gift under Muslim law will be legally incomplete. A gift of immovable property need not be reduced to writing nor necessarily registered under Muslim law. An oral gift fulfilling all three essential conditions is perfectly valid under Muslim law. Declaration as well as acceptance of the gift may be oral, whatever the nature of the property gifted¹. The requirement relating to writing or registration laid down for gifts under Section 123 of the T.P. Act does not apply to Muslims. Section 129 of the T.P. Act preserves the rule of Mohammedan Law and excludes the applicability of Section 123 of the T.P. Act to a gift of immovable property by a Muslim. Registration being irrelevant to its legal force, a deed setting out Muslim gift cannot be regarded as constitutive of the gift and is not compulsorily registerable.

8. Of course, Muslim Personal Law does not prohibit written gifts. Writing in respect of a gift may take place in two different ways. The gift may be made orally and completed in all respects, but later, it may be stated in writing that the said gift has been made. Alternatively, writing may be contemporaneous with the making of the gift. In the former case, it is well settled that the writing evidencing the past transaction of oral gift need not be registered notwithstanding

1 **Tahir Mahmood, The Muslim Law of India, Butterworths**, 2002, p164



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the provisions in the Indian Registration Act². Under Section 17 of the Registration Act, an instrument of gift of immovable property must be registered. Section 49 of the Registration Act, which deals with the effect of non-registration of documents required to be registered, says that no document required by Section 17 or by any provision of the T.P. Act to be registered shall affect any immovable property comprised therein. In fact, Section 17 of the Registration Act does not prescribe a registered instrument for a valid gift; it only prescribes that if the gift is effected by a written instrument, then it must also be registered. The expression 'instrument of gift of immovable property' in Section 17 of the Registration Act denotes an instrument or deed that creates, makes or completes the gift, thereby transferring the ownership of the property from the donor to the donee. A deed of gift simply acknowledging the past transaction of oral gift is not in itself an instrument effecting, creating or making the gift but a mere piece of evidence. It cannot be treated as an instrument of gift which requires registration. So an oral gift recognised by the Muslim Law is not ruled by the Registration Act.

9. Various High Courts³ took the view that where the

² (ibid at p 164,165)

³ **Chota Uddandu Sahib v. Masthan Bi (Died) and Others** (AIR 1975 AP 271), **Ghulam Ahmad Sofi v. Mohd. Sidiq Dareel and Others** (AIR 1974 J&K 59), **Nasib Ali v. Wajed Ali** (AIR 1927 Cal. 197)



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execution of the instrument of gift is contemporaneous with the making of the gift, it must be registered as provided under Section 17 of the Registration Act. However, the law was finally settled by the Supreme Court⁴ and held that 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 Mohammedan Law.

10. Merely because the gift is reduced to writing by a Muslim, 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 Muslim orally, its nature and character are not changed because of it having been made by a written document. What is important for a valid gift under Muslim Law is that three essential requisites must be fulfilled. The form is immaterial. If all three essential requisites - declaration, acceptance and delivery of possession - are satisfied, constituting a valid gift under Muslim Law, the transaction of the gift would not be rendered invalid because it has been written on a plain piece of paper⁵. So also, mere

⁴ *Hafeeza Bibi & Others v. Shaikh Farid (Dead) by LRs and Others* (2011) 5 SCC 654

⁵ (ibid)



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registration of a gift deed will not validate a purported gift which is otherwise invalid under Muslim Law. As rightly observed by Justice V.R. Krishna Iyer, a Muslim gift may be valid even without a registered deed and may be invalid even with a registered deed⁶.

11. Coming to the merits of the case, the recital in Ext.P3 would show that the father of the petitioner orally gifted the property to the petitioner, the petitioner accepted it and the property was delivered to him. All the essential conditions of a Muslim gift, i.e., declaration, acceptance and delivery of possession have been satisfied. There is also a recital in Ext. P3 that the father of the petitioner handed over the original title deeds, Exts.P1 and P2, to the petitioner. Hence, the gift orally made and later endorsed as per Ext.P3 is perfectly valid under Muslim Personal Law.

12. For the aforementioned reasons, the 2nd respondent is not justified in not mutating the property on the ground that Ext.P3 is an unregistered document. Accordingly, Ext.P5 is set aside. The petitioner shall produce the original of Exts. P1 to P3 before the 2nd respondent. The 2nd respondent is directed to effect the transfer of registry of the property covered by Ext.P3 in the name of the petitioner within a period

⁶ *Assan Rawther v. Ammu Umma* (1971 KLT 684)



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of two weeks thereafter. After effecting the transfer of registry as directed above, the 2nd respondent shall provide a Thandaper Account to the petitioner and accept land tax from him.

The writ petition is disposed of as above.

Sd/-

DR. KAUSER EDAPPAGATH

JUDGE

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APPENDIX OF WP(C) 36930/2024

PETITIONER EXHIBITS

- Exhibit-P1 A TRUE COPY OF THE REGISTERED SALE DEED
NUMBER 4802/1986 OF THE SRO PALAKKAD
DATED 25.09.1986.
- Exhibit-P2 A TRUE COPY OF THE REGISTERED SALE DEED
NUMBER 207/1991 OF THE SRO, PALAKKAD
DATED 11.01.1991.
- Exhibit-P3 A TRUE COPY OF THE GIFT DEED DATED
18.01.2016 EXECUTED BY S.M. HANEEFA IN
FAVOUR OF THE PETITIONER.
- Exhibit-P4 A TRUE COPY OF THE APPLICATION DATED
01.10.2024 SUBMITTED BY THE PETITIONER.
- Exhibit-P5 A TRUE COPY OF THE COMMUNICATION DATED
04.10.2024 ISSUED BY THE SECOND
RESPONDENT.
- Exhibit-P6 A TRUE COPY OF THE JUDGMENT DATED
16.03.2023 IN W.P.(C) NO. 31543/2022 OF
THIS HONOURABLE COURT.