

KABC010294542022



**IN THE COURT OF THE I ADDL. CITY CIVIL &
SESSIONS JUDGE (CCH – 02) AT BENGALURU**

Present : **Sri. B.P. DEVAMANE, LL.M.,**
I Addl. City Civil & Sessions Judge,
Bengaluru City.

Dated this the 1st day of July 2026

O.S. 7091 / 2022

PLAINTIFF : **Khadir Khan,**
S/o late Rahman Khan,
Aged about 40 years,
R/o # 703, Kasim Street,
Bungalamedu,
PERNAMBUT – 635 810,
Vellore District, Tamil Nadu.

(By **Smt. M.L. Srimathi, Adv.**)

- VS -

DEFENDANTS : 1. **Ms. Noor Fathima,**
D/o late Rahman Khan,
Aged about 47 years,

2. **Mrs. Khamrunnissa,**
W/o late Rahman Khan,
Aged about 73 years,

D1 & D2 r/o Old No.19, New No.02,
3rd Cross, Potters Colony,
Behind New Bamboo Bazaar,
BENGALURU – 560 002.

(**D1** by **Sri. M.C. Ashok Kumar, Adv.**,
D2 Absent.)

Date of Institution of the suit	03.11.2022		
Nature of the Suit (suit for pronote, Suit for declaration & possession, Suit for injunction, etc.):	Suit for Partition, Permanent Injunction & Declaration		
Date of the commencement of recording of the Evidence:	22.05.2023		
Date on which the Judgment was pronounced:	01.07.2026		
Total duration:	<u>Year/s</u>	<u>Month/s</u>	<u>Day/s</u>
	03	07	28

(**B.P. DEVAMANE**)
I Addl. City Civil & Sessions Judge,
Bengaluru City.

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J U D G M E N T

Plaintiff filed this suit for partition claiming 4/7th share in the suit schedule properties and for declaration that the gift deed

dated 12.10.2017 executed by his father in favor of defendant No.1 in respect of suit schedule 'B' property is not binding on plaintiff, injunction and for *mesne* profits.

2. Case of the plaintiff in brief is that plaintiff and defendant No.1 are the children of defendant No.2 and late Rahman Khan who died on 23.01.2019. Father of plaintiff and defendant No.1 Mr. Rahman Khan acquired suit schedule 'A' property i.e., property bearing old No.19/2, new No.2, situated at 3rd Cross, Potter's Colony, Bamboo Bazaar, Bengaluru, measuring east-west 30 feet & north-south 40 feet and suit schedule 'B' property bearing property No.12 situated at 1st Cross, Potter's Colony, Bamboo Bazaar, Bengaluru, measuring east-west 40 feet & north-south 50 feet, as per the boundaries mentioned in the plaint. Suit schedule A and B properties were acquired by Rahman Khan under the settlement deed dated 26.09.1969 and he was in possession & enjoyment of said properties. After death of Rahman Khan, plaintiff & defendants are entitled for their share in said properties as co-owners and they are in joint possession & enjoyment of said properties.

2(a). When plaintiff demanded to effect partition in respect of suit schedule A and B properties, defendants refused. Defendant No.1 gave copy of the khatha certificate of schedule A and B properties stating that she got transferred said properties in her name. On verification, schedule A property standing in the name of defendant No.1, but there is no entry regarding the same in the encumbrance certificate from the year 01.04.2010 to 23.09.2022. In respect of suit schedule B property, defendant

No.1 got created gift deed dated 12.10.2017 registered in the office of Sub-Registrar, Basavanagudi, Bengaluru. Both transactions regarding suit schedule A and B properties are not binding on plaintiff.

2(b). Plaintiff is working as Teacher in private school and earning monthly salary of Rs.15,000/-. Wife of plaintiff is not having good health. Plaintiff is having a son aged about 14 years and daughter aged about 17 years. Plaintiff is not financially sound and he is residing in rental house in Tamil Nadu. Defendant No.1 is unmarried woman staying with father & defendant No.2. Taking undue advantage of her stay with parents, to deprive the share of plaintiff, has got created said gift deeds in respect of suit schedule property which are not binding on plaintiff's share in the suit schedule properties. Hence, prayed to decree the suit.

3. Defendant No.2 appeared before the Court and prayed time to engage counsel. But she did not turn up nor engaged any advocate nor filed Written Statement. Defendant No.1 filed Written Statement and admitted the relationship among the parties. Defendant No.1 admit that herself and plaintiff are the children of Rahman Khan and defendant No.2, who is their mother and wife of Rahman Khan. It is also admitted that Rahman Khan acquired suit schedule A and B properties under the settlement deed dated 26.09.1969. It is denied that suit schedule properties are in joint possession of plaintiff & defendants. It is contended that plaintiff is younger son of Rahman Khan and defendant No.1 is elder daughter of

Rahman Khan. Plaintiff and defendant No.1 completed their schooling in Cambridge School, K.H. Road, Bengaluru. Defendant No.1 completed her B.Sc., and was taking tuition in home apart from her regular job at Alhaj Attar Syed Hussain Waqf, Bengaluru. Defendant No.1 was paying her entire earnings to her father Rahman Khan. Plaintiff completed M.Sc., and was shifted to Nelamangala. The educational expenses were borne by father of plaintiff & defendant No.1 i.e., Rahman Khan. Rahman Khan was running a shop bearing No.101, 1st floor, SRK Market, Bengaluru, under the name & style 'Bearing & Tools Traders'. Plaintiff after completion of post-graduation under the guise of doing internship and preparing for competitive exams shifted to Nelamangala and during his stay at Nelamangala, almost about two to three years his entire expenses and so-called fee were borne by his father.

3(a). In order to give money as demanded by plaintiff, Rahman Khan sold said shop. Thereafter, Rahman Khan came to know that at Nelamangala plaintiff cheated many people including his friends and neighbors and extracted money by making false assurances of securing job to them. Those people caught plaintiff and called Rahman Khan over phone and demanded to return the money availed by plaintiff, otherwise they will file complaint and hand over plaintiff to the police. Immediately, Rahman Khan went to the place and came to know about unlawful activities of plaintiff. Plaintiff admitted regarding unlawful money extraction from the people under false promise of securing job. Thereafter, Rahman Khan borrowed loan from

his relatives to settle the amount. Later, Rahman Khan sold 1.5 acres of agricultural land standing in the name of defendant No.2 situated at Haidervattam, Tirupattur, Tamil Nadu. Having no faith in the plaintiff and to safeguard his property, Rahman Khan, out of love & affection gifted suit schedule A property in favor of defendant No.1 under the registered gift deed dated 24.12.2008.

3(b). In the year 2009-10 plaintiff joined ICICI Prudential Insurance Company and forced his father and defendant Nos.1 & 2 to take insurance policies to reach his target. After joining the said company again plaintiff cheated many people i.e., company's customers and Rahman Khan settled all those amounts by selling the house property owned by defendant No.2 situated at Palanagakuppam, Tirupattur, Tamil Nadu. Thereafter, plaintiff left his job and relocated from Nelamangala to Sudhama Nagara, Bengaluru. Unfortunately, plaintiff started his fraudulent activities of cheating the people in Sudhama Nagara locality also. Rahman Khan informed his relatives, friends and people in the locality not to have any financial transaction with plaintiff. Plaintiff availed hand loans from the people in Sudhama Nagara and absconded for more than 1½ years. During that period, Rahman Khan had to shift to Potter's Colony, Bengaluru. Rahman Khan settled all the amounts that is cheated by plaintiff. Plaintiff never mend his ways towards life and continued to do the fraudulent activities taking hand loans by changing places and thereby pressuring Rahman Khan to settle all his hand loans. Plaintiff never taken responsibility or care towards his parents both financially & emotionally. On the contrary, plaintiff

damaged the reputation & prestige of Rahman Khan and family members in the society. Rahman Khan spent all his lifetime earnings towards plaintiff and also lost his properties to settle the dues made by plaintiff and lost his shop No.101 at 1st floor, SKR Market, Bengaluru, which was the source of his livelihood.

3(c). Considering all these circumstances and in order to save the property, Rahman Khan gifted suit schedule B property in favor of defendant No.1 on 12.10.2017 under the registered gift deed. Rahman Khan developed several health issues like BP, diabetes and kidney problem. When Rahman Khan was hospitalized, plaintiff never took care of him. It is defendant No.1, who took care of Rahman Khan and borne hospital expenses. After the death of Rahman Khan, plaintiff suggested defendant No.1 to sell the suit schedule properties and he has also brought some prospective buyers to the schedule properties. But, defendant No.1 refused to sell the suit schedule properties. Hence, plaintiff has filed this false suit knowing that his father has executed gift deeds in favor of defendant No.1 out of love & affection. Plaintiff has filed this suit only to grab the suit schedule properties belonging to defendant No.1. Hence, prayed to dismiss the suit.

4. Based on the pleadings, the Court has framed following issues : -

ISSUES

1. Whether the plaintiff proves that plaintiff and defendant Nos.1 & 2 are enjoying the suit schedule properties as tenant in common ?

2. Whether the plaintiff proves that the khatha effected in the name of defendant No.1 in respect of suit A schedule property is not binding on his share ?
3. Whether the plaintiff proves that the gift deed executed in favour of defendant No.1 on 12.10.2017 by Rahman Khan is not binding in respect of suit B schedule property on his share ?
4. Whether the defendant No.1 proves that Rahaman Khan out of love & affection during his lifetime gifted suit schedule A & B properties under gift deeds dated 24.12.2008 & 12.10.2017 ?
5. Whether the defendant No.1 proves that the suit of the plaintiff is barred by law of limitation ?
6. Whether the defendant No.1 proves that the Court-fee & suit valuation paid by plaintiff is not proper ?
7. Whether the plaintiff is entitled for the reliefs as claimed in the suit ?
8. What Order of Decree ?

5. In order to prove the case, plaintiff examined himself as PW1 and also examined another witness as PW2 and got marked the documents at Ex.P1 to P12. On the other hand, defendant No.1 examined herself as DW1 and got marked the documents at Ex.D1 to D9.

6. Heard both sides. Perused the material on record.

7. My findings on the above issues are as under : -

**Issue Nos.1 to 3 &
5 to 7 : In the Negative**

Issue No.4 : In the Affirmative

**Issue No.8 : As per final order,
for the following : -**

REASONS

8. ISSUE Nos.1 to 4 & 7 : All these issues are interconnected with each other. Hence, they are taken together for discussion in order to avoid repetition of facts.

It is the case of plaintiff that defendant No.1 is his sister and defendant No.2 is his mother. His father Rahman Khan died leaving plaintiff and defendant Nos.1 & 2 and suit schedule A & B properties. Suit schedule A & B properties are in joint possession & enjoyment of plaintiff and defendant Nos.1 & 2. Hence, as per Muslim law, plaintiff is entitled for 4/7th share in the suit schedule properties. It is further averred that there is no entry in the encumbrance certificate from 01.04.2010 to 23.09.2022 regarding gift deed in respect of schedule A property. Defendant No.1 got created gift deed dated 12.10.2017 in respect of suit schedule B property. Said gift deed is not binding on plaintiff. Hence, prayed to decree the suit.

9. Defendant No.2 is the mother of plaintiff & defendant No.1. But, she has not filed any Written Statement. Defendant No.1 filed Written Statement and admitted relationship among the parties. It is also admitted that suit schedule A & B properties were acquired by her father Rahman Khan under the settlement deed dated 26.09.1969. It is the contention of defendant No.1 that her father Rahman Khan provided education

to both his children i.e., plaintiff & defendant No.1. He spent money for the educational expenses of plaintiff. Plaintiff was conducting tuition where he misappropriated money from the people stating that he will secure job to them. Thereafter, he started life insurance business where also he cheated the people and thereafter he availed hand loans from the local people and all those times it is Rahman Khan who settled the amounts availed by plaintiff from the people. Plaintiff damaged the reputation & prestige of Rahman Khan. To satisfy the unlawful demands and to settle the amounts availed by plaintiff from different people, Rahman Khan has sold his shop No.101 in the name 'Bearing & Tools Trading' which was the only source for his livelihood. Rahman Khan also sold the house and land standing in the name of his wife i.e., defendant No.2 to settle the amounts raised by plaintiff by misappropriating. Under these circumstances, Rahman Khan in order to save his property and out of love & affection on his daughter i.e., defendant No.1, he has gifted suit schedule A property in the year 2008 and schedule B property in the year 2017.

10. Plaintiff filed his affidavit in lieu of examination-in-chief reiterating the plaint averments as PW1 and got marked 12 documents as Ex.P1 to P12 and also examined one witness in support of his case as PW2. Defendant No.1 examined herself as DW1 and got marked certified copy of gift deed dated 12.10.2017 by way of confrontation as per Ex.D1. Ex.D10 is the certified copy of gift deed dated 24.12.2008 in respect of suit schedule B property. Ex.D2 & D3 are khatha certificate and

khatha extract of suit schedule properties. Ex.D4 to Ex.D6 are tax paid receipts. Ex.D7 is cremation report. Ex.D8 is certificate issued by Muslim burial ground to show that it is the defendant No.1, who performed the last rites of her father Rahman Khan.

11. PW1 in his cross-examination stated that in the year 2004 he completed his M.Sc. His father paid school fee up to B.Sc. In the year 2007 he was working in ICICI life insurance company. PW1 states that from the year 2004 till 2007 he was preparing for competitive examinations, but did not succeed. PW1 admitted that his father was having a shop in the name & style 'Bearing & Tools' and his father sold said shop. PW1 states that from the year 2004 to 2006 he was preparing for competitive examinations, but he was not spending any amount. PW1 admitted that in the year 2006 he married Zabina. It was a love marriage. PW1 denied that he had availed Rs.3.00 lakh from Fazlu promising him to provide a job. PW1 denied that those people called his father Rahman Khan and demanded the amount and threatened to hand over him to the police and after payment of money, they released him.

12. PW1 admitted that defendant No.1 has not married till today. PW1 admitted that from December-2018 till January-2019 his father was admitted in the hospital. PW1 admitted that he was not with his father during those days. PW1 denied that it is defendant No.1 who was taking care of and spending medical expenses of Rahman Khan. PW1 admitted that in the year 2009-10 he was working in Acom Finance Service Company.

PW1 denied that while he was staying in Sudhama Nagara, he had raised loan from 5 to 6 people and did not repay. PW1 denied that he was conducting tuition and availed money from the students promising rank. PW1 admitted that his father was having good relationship with defendant No.1. PW1 admitted that after the death of his father he had not got the dead body released from the hospital and he went to the masjid to see the dead body of his father. The relevant portion of cross-examination reads thus:

ದಿಃ 23.01.2019 ರಂದು ನನ್ನ ತಂದೆ ತೀರಿಕೊಂಡರು. ನನ್ನ ತಂದೆ ತೀರಿಕೊಂಡಾಗ ನಾನು ಆಸ್ಪತ್ರೆಗೆ ಹೋಗಿ ಹಣ ಕಟ್ಟಿ ಅವರ ಶವವನ್ನು ತೆಗೆದುಕೊಂಡು ಹೋಗಿರಲಿಲ್ಲ. ನಂತರ ನಾನು ಅಂತಿಮ ಸಂಸ್ಕಾರಕ್ಕೆ ಮಸೀದಿ ಬಳಿಗೆ ಹೋದೆನು. ನನ್ನ ತಂದೆಯ ಅಂತಿಮ ದರ್ಶನವನ್ನು ಮಸೀದಿಯಲ್ಲಿ ಪಡೆದೆನು.

PW1 has admitted that his marriage was love marriage. Advocate for plaintiff in the cross-examination of DW1 has suggested that this marriage was not as per the will & wish of his father Rahman Khan. Hence, it shows that admittedly plaintiff married with a girl against the wish of Rahman Khan. The advocate for plaintiff has admitted that Rahman Khan has executed two gift deeds in respect of suit schedule properties. The advocate for plaintiff has also admitted regarding affixing signatures by Rahman Khan and defendant No.2 on said gift deeds. The relevant portion of the cross-examination of DW1 made by advocate for plaintiff reads as under:

ನನ್ನ ತಂದೆಗೆ, ನಾನು, ನನ್ನ ತಾಯಿ ಮತ್ತು ನನ್ನ ತಮ್ಮನ ಮೇಲೆ ಸಮನಾದ ಪ್ರೀತಿ ಇತ್ತು ಎನ್ನುವುದು ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ನನ್ನ ತಂದೆ ಆತನ ಎರಡು

ಆಸ್ತಿಗಳ ಬಗ್ಗೆ ಎರಡು ದಾನಪತ್ರಗಳನ್ನು ಮಾಡಿದ್ದಾನೆ ಎನ್ನುವುದು ನಿಜ. ಆ ದಾನಪತ್ರಗಳನ್ನು 2008 ಮತ್ತು 2017 ರಲ್ಲಿ ಮಾಡಿರುತ್ತಾನೆ. ನಿಡಿ.10 ದಾನಪತ್ರ ಮಾಡುವಾಗ ನನ್ನ ತಂದೆಯ ಜೊತೆ ನಾನು ಮತ್ತು ನನ್ನ ತಾಯಿ ಹೋಗಿದ್ದೆವು. ನಿಡಿ.10 ದಾನಪತ್ರದ ಮೇಲೆ ನಾನು, ನನ್ನ ತಂದೆ ಮತ್ತು ನನ್ನ ತಾಯಿ ಸಹಿಗಳನ್ನು ಮತ್ತು ಸದರಿ ದಾನಪತ್ರ ತಯಾರಿಸಿದ ವಕೀಲರ ಸಹಿಯನ್ನು ಬಿಟ್ಟು ಬೇರೆ ಯಾರು ಕೂಡ ಸಹಿಗಳನ್ನು ಮಾಡಿಲ್ಲ ಎಂದರೆ ಸಾಕ್ಷಿ ನನಗೆ ಗೊತ್ತಿಲ್ಲ ಎನ್ನುತ್ತಾರೆ.

On careful reading of the above said suggestions made by the advocate for plaintiff, plaintiff has admitted that father of defendant No.1 and her mother defendant No.2 all of them went to the Sub-Registrar's office and affixed their signatures on the gift deeds.

13. Advocate for plaintiff argued that suit schedule properties are in joint possession & enjoyment of plaintiff and defendant Nos.1 & 2 in which plaintiff is having 4/7th share. The gift deeds are got created by defendant No.1. Hence, prayed to decree the suit by awarding 4/7th share to plaintiff.

14. Advocate for defendant No.1 argued that plaintiff was involved in cheating the people while he was doing insurance business and while he was taking tuition and also while he was in Sudhama Nagara and all the time Rahman Khan, father of plaintiff, was settling the dues of the people and releasing plaintiff from those difficulties. Due to the fraudulent activities plaintiff destroyed the reputation & prestige of Rahman Khan in the society. Rahman Khan sold his shop, which was the source of his income only to satisfy the unlawful demands made by plaintiff and to settle the amounts raised by plaintiff by

misappropriating. Under these circumstances, Rahman Khan in order to save his property and out of love & affection on his daughter i.e., defendant No.1, he has gifted suit schedule A property in the year 2008 and schedule B property in the year 2017.

15. Plaintiff has admitted regarding execution of gift deeds by Rahman Khan in favour of defendant No.1. It is not in dispute that Rahman Khan was having love & affection towards defendant No.1. It is also not in dispute that plaintiff married against the wishes of his father. Under these circumstances, it is common that to save the property Rahman Khan executed gift deeds in favour of his daughter i.e., defendant No.1. In Mohammedan Law, there is no ancestral or joint family concept and the property is deemed to be the self-acquired property of Rahman Khan. He was having every right to dispose his property as per his will & wish. Looking to the facts & circumstances of the case, the defence taken by defendant No.1 is more probable. Accordingly, I answer **Issue Nos.1 to 3 & 7** in the **Negative** and **Issue No.4** in the **Affirmative**.

16. ISSUE Nos.5 & 6 : Defendant No.1 has taken contention that suit is barred by law of limitation and plaintiff has not paid the proper court-fee. As per defendant No.1, her father Rahman Khan gifted suit schedule A property on 24.12.2008 and suit schedule B property on 12.10.2017 by way of registered gift deeds.

17. It is the contention of defendant No.1 that after gift of said properties by Rahman Khan in favor of defendant No.1, plaintiff is not in possession of the schedule properties. As such, Court-fee paid by plaintiff under Section 35(1) of Karnataka Court-fee & Suit Valuation Act is not proper. Plaintiff is required to pay the Court-fee on the market value of said properties, as he is not in possession of suit schedule properties.

18. It is the specific case of plaintiff that defendant No.1 got created the registered gift deeds from their father Rahman Khan and said gift deeds are not binding on the share of plaintiff. On 13.10.2022 plaintiff issued notice to defendants seeking partition in the suit schedule properties, when he came to know about the registered gift deeds. Hence, cause of action arose in the year 2022 and the suit is filed within time. Further, it is case of plaintiff that he is in joint possession & enjoyment of suit schedule properties. Hence, the Court-fee paid by him is proper.

19. On perusal of cross-examination, defendant No.1/DW1 not gave stress on these two issues. During the arguments, defendant No.1 not stressed on these issues. Looking to the facts & circumstances of the case, the Court is of the considered opinion that defendant No.1 has failed to prove these issues. Accordingly, I answer **Issue Nos.5 & 6** in the **Negative**.

20. **ISSUE No.8** : In view of the aforesaid discussions, I proceed to pass the following : -

ORDER

The suit is dismissed with costs.

Draw decree accordingly.

*Dictated to Senior Sheristedar (now under instructions to continue the work as Stenographer Grade I) directly on computer, computerized by him, revised, corrected by me and then pronounced in the open Court on this the **1st day of July 2026.***

(B.P. DEVAMANE)
I Addl. City Civil And
Sessions Judge (CCH-02),
Bengaluru City.

ANNEXURE**WITNESSES EXAMINED ON BEHALF OF PLAINTIFF :**

PW1 : Khadir Khan
PW2 : Zafrullah Khan

DOCUMENTS MARKED ON BEHALF OF PLAINTIFF :

Ex.P1 : Genealogy
Ex.P2 : Death certificate
Ex.P3 : Certified copy of settlement deed
Ex.P4, P6 : Encumbrance certificates

Ex.P5 : BBMP endorsement
Ex.P7 : Property tax receipt
Ex.P8 : Notice
Ex.P9, 10 : Postal receipts (2)
Ex.P11, 12 : RPAD cover & acknowledgment

WITNESSES EXAMINED ON BEHALF OF DEFENDANTS :

DW1 : Ms. Noor Fathima

DOCUMENTS MARKED ON BEHALF OF DEFENDANTS :

Ex.D1 : Certified copy of gift deed dt. 12.10.2017
Ex.D2 : Khatha certificate
Ex.D3 : Khatha extract
Ex.D4 to D6: Tax paid receipts (3)
Ex.D7 : Cemetery report
Ex.D8 : Burial ground certificate
Ex.D9 : Cause of death certificate

I Addl. City Civil &
Sessions Judge (CCH - 02),
Bengaluru City.