

KACN310012022016



Presented on : 02-11-2016
Registered on : 05-11-2016
Decided on : 04-06-2026
Duration : Years Months Days
09 07 02

**IN THE COURT OF THE SENOR CIVIL JUDGE AND
JMFC AT KOLLEGALA.**

Dated this the 04th day of June, 2026

PRESENT:

Smt. Sunitha, B.Com., L.L.M., PGDFcs
Senior Civil Judge and JMFC., Kollegal.

In O.S. No: 26/2016

Plaintiffs : 1. Syed Ismail Sha Khadri
S/o Shafi Khadri,
Aged about 45 years,

2. Syed Sulthan Sha Khadri
S/o Shafi Khadri,
Aged about 40 years,

Both are residing at
Peer Rasool Sha Khadri Darga,
Vadakehalla village,
M.M. Hills Road, Kollegal Taluk,
Chamarajanagar District.

(By Sri Prakash, Advocate)

Defendants :

1. C.K. Anwar Khan
S/o Late Abdul Kudus Khan,
Aged about 70 years,
2. Janab C.K. Riyan Khan
S/o Late Abdul Kudus Khan,
[Dead by LR's]
- 2a. Smt. Sharfunnisa
W/o Late C.K. Riyaz Khan,
Age: Major,
- 2b. C.K. Nayaz Khan
S/o Late C.K. Riyaz Khan,
Age: Major,
- 2c. C.K. Nasir Khan
S/o Late C.K. Riyaz Khan,
Age: Major,
- 2d. C.K. Nisar Khan
S/o Late C.K. Riyaz Khan,
Age: Major,
- 2e. C.K. Ansar Khan
S/o Late C.K. Riyaz Khan,
Age: Major,
- 2f. Sajida Khanur
D/o Late C.K. Riyaz Khan,
Age: Major,
- 2g. Famida Khanum
D/o Late C.K. Riyaz Khan,
Age: Major,

- 2h. Shabana Khanum
D/o Late C.K. Riyaz Khan,
Age: Major,

Plaintiff No. 2[a to h] are
residing at R/o Cowdalli village,
Kollegala Taluk,
Chamarajanagar District.

3. Janab C.K. Fayaz Khan
S/o Late A. Abdul Kudus Khan,
Aged about 74 years,
4. Janab Munavar Khan
S/o Late A. Abdul Kudus Khan,
[Since dead by LR's]
- 4a. Smt. Aaliya Saahim
W/o Late Munawar Khan,
Aged about 58 years,
- 4b. C.M. Asif Khan
S/o Late Munawar Khan,
Aged about 38 years,
- 4c. C.M. Asrar Khan
S/o Late Munawar Khan,
Aged about 36 years,
- 4d. C.M. Junaid Khan
S/o Late Munawar Khan,
Aged about 34 years,
- 4e. C.M. Mashood Khan
S/o Late Munawar Khan,
Aged about 32 years,

- 4f. C.M. Shaziya Khanum
D/o Late Munawar Khan,
Aged about 32 years,

Defendant No. 4[a to f] are
residing at Cowdalli village,
M.M. Hills Road, Hanur Taluk,
Chamarajanagar District.

5. Janab C.K. Mansoor Khan
S/o Late Abdul Kudus Khan,
Aged about 62 years,

6. Janab C.J. Vahid Khan
S/o Late Jafar Khan,
Aged about 78 years,

7. Janab C.K. Rahim Khan
S/o Late Jafar Khan,
Aged about 75 years,

Defendant No. 1, 3, 5 to 7 are
residing at Cowdalli village,
Kollegal Taluk,
Chamarajanagar District.

8. Janab Rafiya Khanum
S/o Late Abdul Khaleel,
Aged about 65 years,
R/o Madhuvanahalli village,
Kollegal Taluk,
Chamarajanagar District.

9. Janab Iqbal Hussain @ Basha
S/o Late M. Ibrahim,
Aged about 65 years,
R/o C# 304, 3rd B Cross,

Subhashnagar, N.R. Mohalla,
Mysuru.

(D1 to 4 By Sri M.S.M, Advocate)
(D2 & 4 LR's, D5 to 9 By Sri. M.A.I, Advocate)

Date of Institution : 02.11.2016
Nature of the suit : Declaration & injunction
Date of Commencement of recording of evidence : 09.08.2019
Date of Pronouncement of judgment : 04.06.2026
Total Duration : Year/s Month/s Day/s
09 07 02

KACN310010402017



Presented on : 16-09-2017
Registered on : 17-10-2017
Decided on : 04-06-2026
Duration : Years Months Days
08 07 19

In O.S. No: 43/2017

Plaintiffs : 1. Janab Peer Rasool Sha Khadri
Religious & Charitable
Welfare Trust [Regd.]
7/675, Eidgah Mohalla,
Kollegala.

Represented by its Manager
Trustee, Janab Anser Ali Khan
S/o Late Riyaz Khan,
Aged about 48 years,
R/o Cowdalli, Kollegala Taluk,
Chamarajanagar District.

2. Janab Ayub Ulla Khan
S/o Late C.J. Maqbul Khan,
Aged about 50 years,
R/o # 100 C, 4th Main,
Kanaka Nagara, Bengaluru South.
3. Janab C.M. Asrar Ali Khan
S/o Late Janb Munawar Khan,
Aged about 43 years,
R/o Cowdalli, Kollegala Taluk,
Chamarajanagar District.
4. Janab C.K. Mansoor Khan
S/o Late Abdul Khuddoos Khan,
Aged about 62 years,
R/o Cowdalli, Kollegala Taluk,
Chamarajanagar District.
5. Janab C.J. Waheed Khan
S/o Late Jaffar Khan,
Aged about 78 years,
R/o Cowdalli, Kollegala Taluk,
Chamarajanagar District.
6. Janab C.J. Rahemm Khan
S/o Late Jaffar Khan,
Aged about 65 years,
R/o Cowdalli, Kollegala Taluk,
Chamarajanagar District.

7. Janab Raiya Khanum
S/o Late Abdul Khallel,
Aged about 55 years,
R/o Madhuvanahalli,
Kollegala Taluk,
Chamarajanagar District.
8. Janab Iqbal Hussain @ Basha
S/o Late M. Ibrahim,
Aged about 65 years,
R/o C# 304, 3rd B Cross,
Subhashnagar, N.R. Mohalla,
Mysuru.

(By Sri M.A.I, Advocate)

V/s.

- Defendants** :
1. The Tahasildar
Kollegala Taluk, Kollegala,
Chamarajanagar District.
 2. The Deputy Commissioner
Chamarajanagar District,
Chamarajanagar.
 3. The Chief Secretary
Government of Karnataka,
Bengaluru.
 4. Syed Ismail Sha Khadri
S/o Shafi Khadri,
Aged about 47 years,
 5. Syed Sultan Sha Khadri
S/o Shafi Khadri,
Aged about 42 years,

Clubbed Judgment

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O.S. No. 26/2016
& O.S. No. 43/2017

Defendant No: 4 & 5 are
Residing at Vadakehalla village,
M.M. Hills Road, Kollegala Taluk,
Chamarajanagar District.

(D1 to 3 - DGP)
(D4 & 5 By Sri Prakash, Advocate)

Date of Institution : 16.09.2017
Nature of the suit : Declaration & injunction
Date of Commencement of
recording of evidence : 04.01.2019
Date of Pronouncement of
judgment : 03.06.2026
Total Duration : Year/s Month/s Day/s
08 07 18

(SUNITHA)
Senior Civil Judge & JMFC.,
Kollegala.

CLUBBED JUDGMENT:

In O.S. No: 26/2016:

This is a suit filed in OS No: 26/2016 by plaintiff No: 1 and 2 against defendants No: 1 to 9 for seeking relief as under:

a. Declare the plaintiffs are the successors on inheritance as distant kindered to deceased Peer Syed Rasool Sha Khadri in respect of suit schedule property.

b. Grant permanent injunction against the defendant No: 1 to 9 restraining them from interference over the religious functions and Dharma Bhodana acts of plaintiffs in and upon suit schedule property where holly darga is exist.

c. Consequently to pass an order with regard to the deed of gift [Hibanama] dated: 30-12-1998 and deed of trust dated: 02-11-2015 are void of the Schedule:

2. The brief facts of the plaintiffs case is as under:

The suit schedule properties consist of land bearing Sy. No: 42/P2 measuring 4.00 acres and Sy. No: 41/P3 measuring 4.00 acres situated at Vadakehalla Village, Kollegla Taluk, Chamarajanagar District. The plaintiffs submit that one Ameer Sha Khadri and Shafi Khadri the father of the present plaintiffs were own brothers. The Peer Syed Rasool Sha Khadri being the son of Ameer Sha Khadri became a Islamic Guru devoted to preaching Islamic Dharma, ethics, and spiritual teachings and conducting religious functions among members of the Muslim community. Originally Peer Syed Rasool Sha Khadri is belonging to Kolar District and earned recognition and reverence as a spiritual leader and saintly person among his followers and devotees.

3. The plaintiffs further submit that Peer Syed Rasool Sha Khadri later came to Vadakahalli Village with the noble intention of spreading Islamic teachings and carrying out religious and spiritual activities for the welfare of devotees. In recognition of his religious service and spiritual stature the 1st defendant who had himself become a devotee and follower of Peer Syed Rasool Sha Khadri and executed a registered Gift Deed dated: 03-09-1990 in favour of Peer Syed Rasool Sha Khadri in respect of land bearing Sy. No: 42/P2 measuring 4.00 acres situated at Vadakahalli Village. Thereafter Peer Syed Rasool Sha Khadri established a Darga upon the said property which gradually became a holy place attracting a large number of devotees from nearby villages and surrounding areas. As the number of visitors increased and the need for expansion arose, the Peer Syed Rasool Sha Khadri purchased the adjacent land bearing Sy. No: 41/P3 measuring 4.00 acres under a registered Sale Deed dated: 10-08-1998 from its previous owner Smt. Gundamma. Consequently Peer Syed Rasool Sha Khadri became the absolute owner in lawful possession and enjoyment of both the properties which together constitute the suit schedule properties.

4. It is further submitted that Peer Syed Rasool Sha Khadri continuously used the suit schedule properties for conducting spiritual, religious, and charitable activities connected with Islamic Dharma and ethics. He remained unmarried throughout his life and lived as a saintly person dedicated to religious service. Peer Syed Rasool Sha Khadri died in the year 2002 leaving behind no direct heirs or sharers except the present plaintiffs and other distant kindred who succeeded to the suit schedule properties by inheritance in accordance with law. During his lifetime Peer Syed Rasool Sha Khadri had also executed a Will dated: 17-11-1998 in favour of the plaintiffs. Though the original Will had been misplaced for some time it was recently recovered at Gumnam Sha, Mysore while cleaning activities of the Darga were being carried out for the Sandal (Gandothsava) festival.

5. The plaintiffs state that Peer Syed Rasool Sha Khadri had never executed any deed of conveyance, transfer, or settlement in favour of any other person in respect of the suit schedule properties during his lifetime. After his death the plaintiffs succeeded to the properties as lawful inheritors and have continued to remain in possession, enjoyment, and management of the suit schedule properties, while also carrying on the

religious and spiritual functions, preaching Islamic Dharma and ethics in the same manner as their predecessor Peer Syed Rasool Sha Khadri.

6. The plaintiffs further submit that the 1st defendant having already lost all rights and interests over Sy. No: 42/P2 by virtue of the registered Gift Deed dated: 03-09-1990 had no lawful claim over the suit schedule properties. Despite this without cancelling the said Gift Deed during the lifetime of Peer Syed Rasool Sha Khadri the 1st defendant instituted O.S No: 203/2012 before the Civil Judge (Junior Division) at Kollegala seeking relief of permanent injunction and possession against the present plaintiffs. The plaintiffs contested the suit by filing their written statement and ultimately the said suit came to be dismissed as not pressed by memo dated: 14-08-2014.

7. Thereafter the 1st defendant initiated another round of litigation in O.S. No: 01/16 before the Hon'ble District and Sessions Judge at Chamarajanagar along with his son Azgar Ali Khan and others against certain defendants and a trust known as "Peer Syed Rasool Sha Khadri Religious & Charitable Welfare Trust." In the said proceedings the 1st defendant falsely claimed rights over the suit schedule properties based on an alleged Gift

Deed (Hibanama) dated:30-12-1998 purportedly executed by Peer Syed Rasool Sha Khadri as well as a registered Trust Deed dated: 02-11-2015. The plaintiffs contend that both the alleged Hibanama and the Trust Deed are fabricated, concocted, unlawful, and not enforceable in law. The alleged Hibanama is stated to have been created on a ₹. 20/- stamp paper originally purchased by third parties for unrelated private transactions and later unlawfully altered. The plaintiffs further contend that the alleged Trust Deed was created only to cast a cloud over the title of the suit schedule properties and that no valid trust could exist in absence of a lawful author or founder.

8. The plaintiffs submit that the 1st defendant repeatedly failed to establish any lawful right, title, or interest over the suit schedule properties in both O.S. No: 203/2012 and O.S No: 01/16 and neither the alleged Hibanama nor the Trust Deed was ever proved in accordance with law. During pendency of the disputes, problem arose between the parties regarding possession of the properties leading the Tahasildar to initiate proceedings under Sections 145 and 146 of the CrPC. By an order dated: 05-10-2015 the Deputy Tahasildar of Ramapura Hobli through the Revenue Inspector Sri

Mahadevayya was appointed as Receiver of the suit schedule properties to maintain possession and administration until adjudication of title by the Civil Court.

9. It is further submitted that despite repeated failures before Civil Courts the 1st defendant filed Criminal Revision Petition No: 35/2016 challenging the Tahasildar's order before the District and Sessions Judge at Chamarajnagar under Section 397 of Cr.P.C relying once again upon the disputed Trust Deed dated: 02-11-2015. According to the plaintiffs such petition is not maintainable unless and until the 1st defendant establishes lawful ownership before the competent Civil Court. The plaintiffs assert that they are the lawful successors and possessors of the suit schedule properties and continue to conduct religious and spiritual activities associated with the Darga and Islamic Dharma, while the Receiver appointed by the authorities merely supervises the property without interfering in the religious functions carried on by the plaintiffs.

10. The plaintiffs finally submit that the suit schedule properties do not fall within the scope of Section 92 of the CPC or any other statutory prohibition

and therefore the present suit has become necessary to protect their lawful possession, inheritance rights, and religious activities from the unlawful interference and fabricated claims of defendant No: 1 to 9. As such chosen to file this suit. The cause of action for the suit arose from the filing of O.S. No: 203/2012 the subsequent institution and dismissal of O.S. No:01/2016 and when an appointment of 10th defendant as receiver on 05-10-2015 and upon the filing of the Criminal Revision Petition all of which occurred within the jurisdiction of this Court. Hence prayed for decree the suit.

11. After putting appearance the defendant No: 2 to 9 filed their written statement denying all allegations in the plaint except those specifically admitted. They contended that the suit is not maintainable because the plaintiffs failed to implead Peer Syed Rasool Sha Khadri religious & Charitable Welfare Trust which according to them is the lawful owner and manager of the suit schedule property under a registered Trust Deed dated: 02-11-2015 . They asserted that defendant No: 2 to 9 are trustees of the Trust but the plaintiffs wrongly sued them in their individual capacity instead of as trustees. The defendants denied the plaintiffs' alleged relationship with late Peer Syed Rasool Sha Khadri and stated that the

plaintiffs produced no proof to establish heirship or possession. According to the defendants Peer Syed Rasool Sha Khadri was a Muslim spiritual preacher who settled in Kadalli village in 1984 and defendant No: 1 gifted 4 acres in Sy. No: 42/p2 to Peer Syed Rasool Sha Khadri through a registered gift deed dated: 03-09-1990 while another 4 acres in Sy. No: 41/P3 were purchased in Peer Syed Rasool Sha Khadri's name under a sale deed dated: 10-08-1998 for religious and charitable purposes. The defendants stated that the entire 8 acres contains a Dargah, Masjid, meeting hall, residential quarters, and graveyard used for public religious activities. They further contended that Peer Syed Rasool Sha Khadri having no legal heirs, orally gifted the property to Defendant No: 2 C.K Riyaz on 1-10-1998 and later executed a written Hibinama/Gift Deed dated: 30-12-1998 directing formation of a trust for administration of the property. After Peer Syed Rasool Sha Khadri's death on 19-01-2000 the property and religious activities were managed by Peer Syed Rasool Sha Khadri Welfare Association and later by the registered Trust formed in 2015. The defendants denied allegations that the Gift Deed and Trust Deed were fabricated and maintained that both documents were

genuine and lawfully executed. They also stated that previous suits including O.S. No: 203/2012 and O.S No: 01/2016 did not confer any rights on the plaintiffs and that O.S No: 01/2016 concerned management of the Trust property. The defendants further challenged the plaintiffs' possession and succession claims asserting that the plaintiffs never possessed or managed the property. They referred to proceedings under Section 145 Cr.P.C., wherein the Tahsildar appointed a receiver over the Dargah portion and alleged that the Tahsildar later unlawfully locked the entire property affecting religious ceremonies and agricultural activities. They stated that the Hon'ble Principal District and Sessions Court subsequently ordered restoration of possession to the Trust. Relying on principles of Mohammedan Law and judicial precedents relating to Wakf and mosques the defendants submitted that the property containing a Masjid and Dargah dedicated for public religious purposes cannot be treated as private property. On all these grounds the defendants prayed for dismissal of the suit.

12. Another suit in OS No: 43/2017 is filed in the name of trust Peer Syed Rasool Sha Khadri Religious & charitable welfare trust and plaintiff No: 2 to 8 (plaintiff

No: 4 is defendant No: 5, plaintiff No: 5 is defendant No: 6, plaintiff No: 6 is defendant No: 7, plaintiff No: 7 is defendant No: 8, plaintiff No: 8 is defendant No: 9 in OS 26/2016), against Tahasildar, Deputy Commissioner, Chief Secretary, (defendant No: 4 and 5 are, the plaintiff No: 1 and 2 in OS No: 26/2016) for the following relief:

1]. To declare that the Peer Syed Rasool Sha Khadri Religious & charitable welfare Trust (REGD), Kollegala, is the absolute owner of the plaint schedule property having right, title and interest over the same by the virtue of Hibanama/Gift Deed dated: 30-12-1998 executed by Peer Syed Rasool Sha Khadri in favour of C.K Riyaz khan and the subsequent execution of Peer Syed Rasool Sha Khadri Religious and Charitable Welfare Trust (Regd), Kollegala.

2]. To pass a judgment and decree of mandatory injunction directing the 1st defendant to break open the lock put up on the plaint schedule property except the portion of dargah within it and handover the vacant possession of the same to the plaintiffs trust.

13. The brief facts of the plaintiffs case is as under:

The plaintiff is a registered Religious & charitable Welfare trust represented by its Managing Trustee, C.K.

Riyaz Khan, who is authorized to institute the suit on behalf of the trust. The case concerns 8 acres property in Sy. Nos: 42/P2 and 41/P3 originally belonged to one Peer Syed Rasool Sha Khadri, a Muslim spiritual preacher who became widely known for his healing and spiritual practices after visiting Vadakehalli in 1986. Devotees, including C.K. Riyaz Khan's family invited Peer Syed Rasool Sha Khadri to settle there and portions of the property were gifted and purchased in his name through registered deeds between 1989 and 1998 for charitable activities. The property includes a dargah, masjid, meeting hall, residential quarters, graveyard, and agricultural land. According to the plaintiffs, Peer Syed Rasool Sha Khadri orally gifted the entire property to C.K. Riyaz Khan in 1998 and later executed a written Hibinama/Gift Deed expressing his wish that a trust be formed after his death to manage the property and religious activities. After Peer Syed Rasool Sha Khadri's death in 2000 the C.K. Riyaz Khan's family continued managing the property and eventually established the "Peer Syed Rasool Sha Khadri Religious & Charitable Welfare Trust (Regd.), Kollegala" in 2015. The trust claims uninterrupted possession, management, and cultivation of the property and states that all religious

ceremonies including annual Urus celebrations attended by thousands of devotees were conducted peacefully by the trustees.

14. The dispute arose when the Tahsildar invoking Section 145 Cr.P.C., appointed a receiver to the dargah portion of the property by an order dated: 05-10-2015 allegedly without notice, enquiry, mahazar, or proper legal procedure. The plaintiffs contend that the order was limited only to the dargah measuring 60 x 40 feet yet on 25-04-2016 the Tahsildar illegally extended his authority and locked the entire 8 acre property thereby obstructing religious functions, agricultural activities, and the devotees' right to worship. The trust challenged the Tahsildar's action before the Principal District and Sessions Judge who set aside the receiver appointment and directed restoration of possession to the trust. Consequently possession of the entire property was officially handed back to the trust in 2017. However third parties challenged that order before the Hon'ble High Court of Karnataka which upheld only the original order relating to the dargah portion but did not authorize dispossession of the trust from the entire property. The plaintiffs therefore allege that the Tahsildar misinterpreted the High Court's order and unlawfully

continued to interfere with the trust's possession and management of the whole schedule property including the masjid and agricultural land leading to the present suit. Therefore pray for decree the suit.

15. After putting appearance the defendants No: 4 and 5 filed (plaintiff No: 1 and 2 in OS No: 26/2016) their written statement, wherein they have denied almost all the allegations made by the plaintiffs and contended that the plaintiff trust is not validly represented by C.K. Riyaz Khan and his family members. They denied that 1st defendant gifted 4 acres in Sy.No: 42/P2 and purchased another 4 acres in Sy.No: 41/P3 in the name of Peer Syed Rasool Sha Khadri for spiritual purposes and further denied that the suit property consisting of dargah, mosque, meeting hall, residential quarters, and graveyard belongs to the plaintiff trust. The defendants asserted that Peer Syed Rasool Sha Khadri was illiterate always used his left thumb impression and never signed documents, hence the alleged Hibanama/Gift Deed relied upon by the plaintiffs is forged and fabricated. They claimed that after Peer Syed Rasool Sha Khadri's death, the defendant No: 4 constructed the structures on the property and continued the spiritual and social activities as per Peer Syed Rasool Sha Khadri's wishes under a Will

allegedly executed in favour of defendant No: 4 on 17-11-1998. According to the defendants the plaintiffs were never in possession of the property and possession was later handed over to the Government pursuant to court proceedings. They further contended that defendant No: 4 and his family conducted the Urus, sandal, and religious activities, not the plaintiffs. The defendants challenged the mutation entries, Court fee valuation, and maintainability of the suit asserting that the property belongs to defendant No: 4.

16. The defendants also narrated the history of the property stating that Peer Syed Rasool Sha Khadri originally came from Kolar District in 1986 with defendant No:4 and became spiritually influential among local people. They claimed that the plaintiffs voluntarily gifted 4 acres in Sy.No: 42/P2 to Peer Syed Rasool Sha Khadri through a registered gift deed dated: 03-09-1990 and Peer Syed Rasool Sha Khadri later purchased another 4.00 acres in Sy. No: 41/P3 from Gundamma under a registered sale deed dated: 10-08-1998. Thereafter Peer Syed Rasool Sha Khadri developed the dargah and religious institution, attracting devotees from various places. Before his death in 2000 Peer Syed Rasool Sha Khadri allegedly executed a Will in favour of

defendant No: 4, who thereafter continued managing the dargah. The defendants alleged that due to increasing income and popularity of the dargah, the plaintiffs attempted to take control of the property by creating false documents including the alleged Hibinama and the trust formed in 2015. They referred to earlier litigations including O.S No: 203/2012, O.S. No: 01/2016, Crl.R.P.No: 35/2016, Criminal Petition No: 908/2017 before the High Court, and O.S. No: 26/2016 filed by defendant No: 4 for declaration of title and stated that the present suit was filed without initially impleading them compelling them to seek impleadment under Order 1 Rule 10(2) CPC. Therefore on all these grounds prays for dismissal of the suit.

17. The defendant No: 1 the Tahsildar has filed a written statement contending that the suit is not maintainable and has denied the entire case of the plaintiffs. It is stated that as per the order of the High Court defendant No: 1 has been appointed as the Receiver of the Suit schedule property. It is further stated that the Tahsildar of Kollegala by an order dated: 29-07-2017, appointed the Deputy Tahsildar, Ramapura, as Receiver of the Suit schedule property and authorized her to represent the case.

18. It is further stated that in respect of the Suit schedule property, Criminal Revision Petition No: 35/2016 was filed against defendant No: 1 before the Hon'ble Principal District and Sessions Judge Court wherein an order was passed in favour of the petitioner and respondent on 24-12-2016. Against the said order the 1st plaintiff filed Criminal Petition No: 908/2017 before the High Court against the defendants. The said Court by an order dated: 10-07-2017 held as follows:

“The Criminal Petition is hereby allowed. The order dated: 24-12-2016 passed by the Principal District and Sessions Judge, Chamrajnagar in CrI.R.P. No: 35/2016 is hereby set aside and the order dated: 05-10-2015 passed by the Taluka Magistrate appointing the Receiver is hereby upheld. No order as to costs.”

19. In view of the said order defendant No: 1 has been appointed and is functioning as the Receiver of the Suit schedule property . It is further contended that in view of the filing of CrI.R.P. No: 908/2017 defendant No: 4 ought to have been made a party to the present suit. Therefore the suit is bad for non-joinder of a necessary party and as such the suit is not maintainable. Accordingly prayed for dismissal of the suit.

20. In view of clubbing the Suit filed in OS No: 43/2017 with OS No: 26/2016, issues are Recasted as under :

RECASTED ISSUES in O.S. No: 26/2016:

1. *Whether the plaintiffs prove that they are the distant kindered of Peer Syed Rasool Sha Khadri and they inherited the suit schedule property as successor -in -interest of Peer Syed Rasool Sha Khadri and they are in possession and enjoyment of suit schedule property as spiritual heads/disciples of Peer Syed Rasool Sha Khadri?*
2. *Whether the plaintiff prove that deceased Peer Syed Rasool Sha Khadri had executed and bequeathed the suit schedule property to the 1st plaintiff under a will dated: 17-11-1998?*
3. *Whether the plaintiffs are entitled for the relief of declaration and injunction as sought in the plaint?*
4. *Whether the plaintiff proves that deed of gift [Hibanama] dated: 30-12-1998 and deed of trust dated: 02-11-2015 relied by the defendant No: 2 to 9 in OS 43/2017 are void?*
5. *Whether the plaintiff proves that suit of the defendant No: 2 to 9 filed in OS 43/2017 (where defendant No: 2 to 9 are plaintiffs) is not maintainable as it hits under Section 92 of CPC?*
6. *What order or decree?*

21. My findings to the above issues are as under:

Issue No: 1 to 5: In the negative

Issue No: 6: As per final order for the following:

RECASTED ISSUES in O.S. No: 43/2017:

1. *Whether the defendant No: 2 to 9 (plaintiffs in OS 43/2017) prove that the Peer Syed Rasool Sha Khadri had legal competence to gift the suit schedule property in favour of C.K Riyaz khan (Plaintiff No: 2) under a oral gift and Hibinama on 30-12-1998 and by virtue of which they acquired valid right, title, interest and possession over the suit schedule property?*
2. *Whether the defendants No: 2 to 9 (plaintiffs in OS 43/2017) prove that the suit of the plaintiffs filed in OS No: 26/2016 is bad for non joinder of Peer Syed Rasool Sha Khadri Religious & charitable welfare trust (regd), Kollegala and its trustees?*
3. *Whether the defendant No: 2 to 9 are entitled for the relief of declaration that they are the absolute owner of Peer Syed Rasool Sha Khadri Religious & Charitable welfare trust (REGD), by virtue of Hibinama/Gift Deed dated: 30-12-1998 and the subsequent execution of Peer Syed Rasool Sha Khadri Religious and Charitable Welfare Trust (Regd), Kollegala?*
4. *Whether the defendant No: 2 to 9 are entitled for the relief of mandatory injunction directing the ,1st defendant in OS No: 43/2017 who is tahsildar to break open the*

lock put up on the plaint schedule property except the portion of dargah within it and handover the vacant possession of the same to the defendant No: 2 to 9 trust as sought in OS No: 43/2017?

5. *What order or decree?*

22. My findings to the above issues are as under:

Issue No: 1 to 4: In the negative

Issue No: 5: As per final order for the following:

23. Heard learned counsel for both parties and perused the material available on record.

24. In O.S. No: 26/2016 the plaintiff No: 1 himself examined as PW1 and the plaintiff No: 2 also examined as PW2, and got marked 46 documents as per Ex.P1 to 46 on their side. The defendants have not examined any witness nor got marked documents.

In O.S. No: 43/2017 the plaintiffs examined 4 witnesses as PW1 to 4 and got marked 14 documents as Ex.P1 to 14. The defendant no;1 examined as DW1 and got marked 13 documents as per Ex.D1 to 13. The document writer is examined as CW1.

REASONS:

25. Issue No: 1 in OS 26/2016: The plaintiffs in order to prove the case initially the plaintiff No: 1 was

examined himself as PW1 and relied as many as 46 documents. Wherein Ex.P1 is the family genealogy, Ex.P2 is the genecology certificate, Ex.P3 is the Gift deed dated: 03-09-1990, Ex.P4 is the sale deed dated: 10-08-1998, Ex.P5 and 6 are the RTC, Ex.P7 is the certified copy of order sheet in OS 01/2016, Ex.P8 is the certified copy of plaint in OS 01/2016, Ex.P9 is the certified copy of written statement in OS 01/2016, Ex.P10 to 12 are the memo filed in OS 01/2016, Ex.P13 is the certified copy of application filed under Section 151 of CPC in OS 01/2016, Ex.P14 is the certified copy of application filed under Order 1 Rule 10 (2) of CPC in OS 01/2016, Ex.P15 and 16 are the certified copies of objection filed in OS 01/2016, Ex.P17 & 18 are the certified copy of written argument filed by plaintiff in OS 01/2016, Ex.P19 is the certified copy of application under Order 1 Rule 10(2) of CPC in OS 01/2016, Ex.P20 is the certified copy of objection filed by plaintiff in OS 01/2016, Ex.P21 is the certified copy of objection filed by defendant in OS 01/2016, Ex.P22 is the certified copy of order passed on IA II in OS 01/2016, Ex.P23 is the certified copy of order passed on IA III in OS 01/2016, Ex.P24 is the certified copy of criminal revision petition filed under Section 397 of Cr.P.C, Ex.P25 is the application filed by the petitioner

under Section 397 of Cr.P.C. in Cr.Rev 35/2016, Ex.P26 and 27 are wall papers, Ex.P28 is the certified copy of plaint in OS 203/2012, Ex.P29 is the certified copy of application filed under Section 151 of CPC in 203/2012, Ex.P30 is the application filed under Order 39 Rule 1 and 2, Ex.P31 is the judgment passed in OS 203/2012, Ex.P32 is the certified copy of application filed under Section 148 of CPC in OS 203/2012, Ex.P33 is the certified copy of application filed under Section 148 of CPC in OS 203/2012, Ex.P34 is the certified copy of application filed under Section 151 of CPC in OS 203/2012, Ex.P35 is the certified copy of application filed under Section 151 of CPC in OS 203/2012, Ex.P36 is the certified copy of application filed under Section 151 of CPC in OS 203/2012, Ex.P37 is the certified copy of application filed under Order 39 Rule 1 and 2 of CPC in OS 203/2012, Ex.P38 is the certified copy of objection filed to Order 39 application in OS 203/2012, Ex.P39 is the certified copy of application filed under Order 39 Rule 1 and 2 of CPC in OS 203/2012, Ex.P40 is the certified copy of objection filed to Order 39 application in OS 203/2012, Ex.P41 is the application filed by plaintiff under Order 39 Rule 1 and 2 of CPC in OS 203/2012, Ex.P42 is the certified copy of objection filed to Order

39 application in OS 203/2012, Ex.P43 is the certified copy of judgment in OS 203/2012, Ex.P44 is the certified copy of application under Order 6 Rule 17 of CPC in OS 203/2012, Ex.P45 is certified copy of memo filed in OS 203/2012 seeking to dismiss the suit as not pressed., Ex.P46 is the original un-registered Will dated: 17-11-1998 executed by Peer syed Rasool Sha Khadri in favour of his brother Shafi khadri's son 1st plaintiff(marked through Sujatha Ali Khan, whose evidence discarded).

26. During the cross examination the PW1 deposed in substance that his grandfather's name was Ameer Sha Khadri and grandmother's name was Syed Gowsiya and that his grandfather had five children, among whom Peer Syed Rasool Sha Khadri was a fostered son. He admitted that Shafi Khadri is his father and stated that his father had six children, namely Syed Ibrahim Sha Khadri, Plaintiff No:1, Plaintiff No: 2, Syed Mohin Khadri, Dastagir and Syed Khadar sha khadri. He denied that Peer Syed Rasool Sha Khadri belonged to the Varangal community of Hyderabad but admitted that Peer Syed Rasool Sha Khadri was residing in Hyderabad. During cross-examination by defendant Nos: 2 to 9, PW1 admitted that in his chief affidavit he had not stated that

Peer Syed Rasool Sha Khadri was the fostered son of his grandfather. He denied that Ameer sha khadri was a disciple of Peer Syed Rasool Sha Khadri but admitted that Peer Syed Rasool Sha Khadri underwent an initiation ceremony and had come to Suit schedule property in the year 1986. He further admitted that defendant No:1 had gifted 4.00 acres of land to Peer Syed Rasool Sha Khadri but denied that defendant Nos: 2 to 9 had purchased another 4-00 acres in Peer Syed Rasool Sha Khadri's name. Voluntarily he stated that Peer Syed Rasool Sha Khadri himself purchased the said 4-00 acres from Gundamma in the year 1998 for ₹. 1,60,000/- and that at the time of registration he was at Kolar. He deposed that Ex.P1 was sworn by his younger brother Syed Khadar sha khadri and that Ex.P2 was issued on the basis of Ex.P1. PW1 further deposed that Peer Syed Rasool Sha Khadri had executed a Will prior to 1990, which he had seen earlier but was misplaced and later found by the Chairman in the Darga. He stated that the Will was in Urdu and English but admitted that he did not know the witnesses to the Will whether it was handwritten, typed or computerized, the document writer, the date of execution, or in whose favour it was executed. He further stated that he did not know what

Ex.P46 was and could not say where it was found. PW1 admitted that Ex.P2 mentioned him as the son of Syed Rehman sha Khadri though in reality he is the son of Shafi Khadri and admitted that the contents of Ex.P2 are incorrect. He further admitted that Ex.P2 mentions Peer Syed Rasool Sha Khadri as a fostered son and deposed that there is no trust called "Peer Syed Rasool Sha Khadri Trust."

27. The PW1 later due to alleged health issue did not step into the box to tender for cross examination and then 2nd plaintiff appeared and filed additional affidavit in lieu of chief examination. PW2 in his cross-examination stated that Ameer sha khadri was the adopted father of Peer Syed Rasool Sha Khadri and admitted that Peer Syed Rasool Sha Khadri was a disciple of Ameer sha khadri and had taken Deeksha. He further deposed that thereafter Peer Syed Rasool Sha Khadri came to Vadakahalli. He admitted that his father's name is Shafi khadri and that his father had six children. He also admitted that since childhood he and his brothers have been residing at Hyderabad and Kolar. He stated that he knows the first defendant and admitted that the first defendant gifted 4.00 acres in Sy.No: 42/P2 to Peer Syed Rasool Sha Khadri. However he denied that

remaining 4.00 acres of the Suit schedule property were purchased by defendants No:2 to 9. He admitted that at the time of execution of the sale deed in respect of another 4.00 acres he was aged about 13 years and deposed that the sale was made in the year 1998 for ₹. 1,00,000. He further deposed that during his lifetime Peer Syed Rasool Sha Khadri executed a Will and admitted that at the time of filing the suit he had knowledge of the said Will. However he stated that he could not say when he came to know of the Will or in which year he obtained it. He further deposed that he does not know when the Will was misplaced. He admitted that the GumNam Sha is under the control of the Wakf but denied that he and his family have no right over the Gum Nam Sha Darga. He stated that he has no document to show such right. He deposed that Peer Syed Rasool Sha Khadri came to Vadakahalli and affixed his thumb impression on the Will, but admitted that he does not know who signed the Will as witness. He further deposed that the Will was in Kannada and that he did not get it read over to him. He denied the suggestion that Peer Syed Rasool Sha Khadri had not executed any Will and that the Will relied upon by him was a created

document. He also denied the suggestion that his former advocate had created the Will.

28. In the further cross-examination by defendants No: 1 to 4, PW2 denied that Peer Syed Rasool Sha Khadri was brought by C.K Riyaz khan and his brother. He denied that the defendants are managing the Peer Syed Rasool Sha Khadri Welfare Association. He also denied that the first defendant executed a gift deed in favour of Peer Syed Rasool Sha Khadri on 30-12-1998 and denied that Peer Syed Rasool Sha Khadri had expressed willingness to form a welfare trust in the Suit schedule property. He further denied that since the day of Mauli came, the Suit schedule property has been in possession of the defendants and also denied that as per the wishes of Peer Syed Rasool Sha Khadri, the defendants formed a welfare association trust after his death. He denied that he and his brother do not belong to Peer Syed Rasool Sha Khadri and further denied that after formation of the trust they quarrelled with the defendants in an attempt to grab the property leading to registration of an attempt to murder case against them. He denied that the Tahsildar conducted proceedings under Section 145 of CrPC at that juncture, but admitted that the Tahsildar had taken possession of the Suit schedule property from

the defendants. He further denied that his brother by giving false information as per Ex.P1, obtained Ex.P2. He denied the suggestion that as per Ex.P1 and Ex.P2 they are the children of Syed Rehman sha khadri and also denied the suggestion that they falsely created Peer Syed Rasool Sha Khadri as their uncle in order to grab the Suit schedule property. However he admitted that the defendants' mother, nephew, brother-in-law and other relatives are buried in the Suit schedule property. He also admitted that the RTC and revenue records in respect of the Suit schedule property stands in the name of Peer Syed Rasool Sha Khadri.

29. In order to prove the relationship with the Peer Syed Rasool Sha Khadri though the plaintiffs have asserted that Ameer Sha khadri and Shafi Khadri were brothers and that Peer Syed Rasool Sha Khadri was the son or foster son of Ameer Sha Khadri, the evidence adduced in support of such genealogy is inconsistent and contradictory. The plaintiff No: 1 by examining himself as PW1 produced Ex.P1 genealogy affidavit and Ex.P2 genealogy certificate. Which are the only documents relied upon by the plaintiffs to establish relationship. However both PW1 and PW2 admitted during cross-examination that Ex.P2 incorrectly mentions the

parentage of PW1 and others as children of Syed Rehman Sha Khadri though in reality they are the children of Shafi Khadri. PW1 specifically admitted that the contents of Ex.P2 are wrong. Further PW1 initially described Peer Syed Rasool Sha Khadri as his uncle and later stated that Peer Syed Rasool Sha Khadri was the fostered son of his grandfather Ameer Sha Khadri.

30. PW2 also gave inconsistent versions by stating that Ameer Sha Khadri was the adopted father of Peer Syed Rasool Sha Khadri and that Peer Syed Rasool Sha Khadri was disciple of Ameer Sha khadri who had taken "Deeksha". These contradictory statements materially affect the credibility of the genealogy pleaded by the plaintiffs. No independent documentary evidence such as birth records, ration cards, school records, or any authentic genealogical material has been produced to conclusively establish the alleged blood relationship between the plaintiffs and Peer Syed Rasool Sha Khadri.

31. Further the plaintiffs themselves admitted that Peer Syed Rasool Sha Khadri was a spiritual leader and religious preacher who had settled at Vadakahalli for religious activities and that the suit schedule properties stood in the exclusive name of Peer Syed Rasool Sha

Khadri under Ex.P3 registered Gift Deed dated: 03-09-1990 relating to Sy.No: 42/P2 and Ex.P4 registered Sale Deed dated: 10-08-1998 relating to Sy.No: 41/P3. Ex.P5 and Ex.P6 RTC extracts also continue to stand in the name of Peer Syed Rasool Sha Khadri. Thus the title of Peer Syed Rasool Sha Khadri over the properties is not in dispute. However mere production of **Original Ex.P3 Gift deed and Ex.P4 Sale deed**, and mere proof of Peer Syed Rasool Sha Khadri's ownership does not automatically establish inheritance in favour of the plaintiffs unless lawful succession is independently proved.

32. The plaintiffs further attempted to establish possession and continuation of spiritual activities after the death of Peer Syed Rasool Sha Khadri. However the evidence on record does not satisfactorily establish their exclusive possession or management over the suit schedule properties. On the contrary the evidence discloses serious disputes between the parties regarding administration and possession of the Darga and associated properties which ultimately led to proceedings under Sections 145 and 146 Cr.P.C. and appointment of Receiver by the Tahsildar. PW1 and PW2 admitted such proceedings and admitted that the Tahsildar had taken possession pursuant to the dispute. The evidence of DW1

and Ex.D1 to Ex.D9 further disclose that the Receiver had taken custody of the Darga and surrounding properties pursuant to orders of competent authorities. Thus the plaintiffs cannot be said to be in settled and exclusive possession of the suit schedule properties.

33. The oral evidence of PW1 and PW2 also discloses that both of them are permanently residing at Hyderabad and carrying on cloth business there. Their evidence does not disclose continuous residence, management, or exclusive administration of the Darga property at Vadakhalli after the death of Peer Syed Rasool Sha Khadri. On the other hand the materials on record reveal that religious activities in the Darga were being participated in by devotees and followers from different groups and that rival claims regarding management were pending between the parties for several years.

34. The plaintiffs also projected themselves as spiritual successors or disciples of Peer Syed Rasool Sha Khadri. However except their interested oral testimony no convincing material has been placed to show that Peer Syed Rasool Sha Khadri had publicly recognized them as spiritual heads or successors of the Darga. Even

according to PW1 and PW2 Peer Syed Rasool Sha Khadri remained a saintly person devoted to public religious activities and numerous devotees were associated with the institution. In such circumstances stronger and cogent evidence was necessary to establish exclusive succession and spiritual headship in favour of the plaintiffs which is absent in the present case.

35. Moreover the conduct of the plaintiffs in relying upon Ex.P46 alleged Will also creates doubt regarding their claim of inheritance. PW1 admitted ignorance regarding the execution, attesting witnesses, language, drafting, custody, and recovery of the Will. PW2 also admitted that he did not know when the Will was lost or recovered and that he had not got the Will read over to him. Such evidence weakens the plaintiffs' overall claim regarding succession through will.

36. Therefore though the plaintiffs have established that Peer Syed Rasool Sha Khadri was the owner of the suit schedule properties during his lifetime they have failed to prove by reliable and cogent evidence that they are the lawful distant kindred and legal successors of Peer Syed Rasool Sha Khadri under Mohammedan Law or that they inherited the suit schedule properties after

his death. They have also failed to prove their exclusive possession and enjoyment of the suit schedule properties as spiritual heads or disciples of Peer Syed Rasool Sha Khadri. Therefore **Issue No: 1 is answered in the Negative.**

37. Issue No. 2: The burden of proving of this issue purely lies upon the plaintiffs to establish due execution, attestation, genuineness, and testamentary capacity of the testator in the manner required under Sections 63 of the Indian Succession Act and 68 of the Indian Evidence Act. Though the plaintiffs produced Exp46 said to be the original unregistered Will, the evidence placed on record falls short of the mandatory legal requirements for proving a Will. None of the attesting witnesses to Exp46 has been examined before the Court. The plaintiffs themselves admitted in cross-examination that they do not know who drafted the Will, who attested it, when exactly it was executed, or under what circumstances it was discovered. PW1 categorically admitted that he does not know the contents of his affidavit, does not know whether the Will was handwritten, typed, or computerized, and further stated that he cannot even say where Exp46 was found. PW2 similarly admitted ignorance regarding the date of

execution, the witnesses to the document, and even stated that he had not got the Will read over to him. Such admissions create serious suspicion regarding the very existence and authenticity of Ex.P46.

38. Further the plaintiffs have taken inconsistent and contradictory stands regarding the Will. In the plaint it is alleged that the Will had been misplaced and later recovered during cleaning activities at Gumnam Sha Darga, whereas the oral evidence of PW1 and PW2 is vague and mutually inconsistent regarding the place and circumstances of recovery. PW1 stated the Will was in Urdu and English, whereas PW2 stated it was in Kannada. PW1 stated Peer Syed Rasool Sha Khadri executed the Will before 1990, whereas Ex.P46 bears the dated: 17-11-1998. PW2 stated Peer Syed Rasool Sha Khadri affixed thumb impression, while PW1 was unable to state whether Peer Syed Rasool Sha Khadri signed or thumb -marked the document. These contradictions strike at the root of the plaintiffs' case and render Ex.P46 wholly unreliable.

39. The evidence on record further discloses suspicious circumstances surrounding the alleged execution of the Will. The plaintiffs themselves admitted

that Peer Syed Rasool Sha Khadri was a spiritual leader who remained unmarried and dedicated his life to religious and charitable activities connected with the Darga. The suit schedule properties admittedly contain a Dargah, mosque, graveyard, religious structures, and facilities used by devotees and the public. In such circumstances the alleged bequest of the entire properties exclusively in favour of the 1st plaintiff without any satisfactory explanation appears unnatural and improbable. No convincing evidence is produced to show that Peer Syed Rasool Sha Khadri intended to exclude all others connected with the religious institution and confer absolute rights solely upon the plaintiffs.

40. More so the conduct of the plaintiffs also creates serious doubt regarding Ex.P46. Though the plaintiffs claim to have knowledge of the Will at the time of filing the suit the document was not acted upon for several years after the death of Peer Syed Rasool Sha Khadri in 2000. No mutation entries were effected on the basis of the alleged Will, no probate proceedings were initiated, and no any material documents were produced to show assertion of title under the Will. The RTC extracts Ex.P5 and Ex.P6 continued to stand in the name of Peer Syed Rasool Sha Khadri. The plaintiffs also failed

to explain satisfactorily why the alleged Will surfaced only during the pendency of litigations between the parties.

41. The evidence further shows that the genealogy itself is clouded with inconsistencies. Ex.P1 and Ex.P2 contain contradictory recitals regarding the parentage of the plaintiffs, and PW1 admitted that Ex.P2 incorrectly mentions him as son of Syed Rehman Sha Khadri though he is actually son of Shafi khadri. The plaintiffs also gave inconsistent versions regarding whether Peer Syed Rasool Sha Khadri was the adopted son, fostered son, or disciple of Ameer Sha Khadri. Such inconsistencies materially affect the credibility of the plaintiffs' overall case including the alleged testamentary succession.

42. It is well settled that where suspicious circumstances surround a Will, the propounder must remove all legitimate suspicions by clear, cogent, and satisfactory evidence. In the present case the plaintiffs have failed to examine attesting witnesses, failed to establish due execution and attestation, failed to explain contradictions regarding language, execution, custody, and recovery of the Will, and failed to dispel the suspicious circumstances surrounding Ex.P46. Consequently this Court holds that the plaintiffs have

failed to prove that deceased Peer Syed Rasool Sha Khadri executed and validly bequeathed the suit schedule properties in favour of the 1st plaintiff under the alleged Will dated: 17-11-1998. Therefore, **Issue No: 2 is answered in the Negative.**

43. Issue No: 3: In respect of this issue the burden lies upon the plaintiffs to establish that they are the lawful successors-in-interest of deceased Peer Syed Rasool Sha Khadri, that they are in lawful possession and enjoyment of the suit schedule properties and that the defendants are unlawfully interfering with their alleged rights so as to entitle them for declaration and permanent injunction.

44. Though the plaintiffs have contended that they are the distant kindred and successors of deceased Peer Syed Rasool Sha Khadri, the evidence adduced in support of such relationship is wholly inconsistent and unreliable. Ex.P1 genealogy affidavit and Ex.P2 genealogy certificate are the important documents relied upon by the plaintiffs. However during cross-examination PW1 admitted that ExP2 wrongly mentions him as the son of Syed Rehman Sha Khadri whereas in reality he is the son

of Shafi khadri. PW1 further admitted that the contents of Ex.P2 are incorrect. PW2 also admitted that as per Ex.P1 and ExP2 they are shown as children of Syed Rehman Sha khadri though their father is Shafi khadri. Such material contradictions strike at the root of the genealogy projected by the plaintiffs. Further the plaint averments state that Peer Syed Rasool Sha Khadri was the son of Ameer Sha Khadri, whereas in cross-examination PW1 and PW2 repeatedly described Peer Syed Rasool Sha Khadri as a fostered son or adopted son of Ameer Sha Khadri. No acceptable document has been produced to establish either adoption, foster relationship, or legal heirship under Mohammedan Law. Thereby the plaintiffs have failed to satisfactorily prove that they inherited the suit schedule properties as lawful successors of Peer Syed Rasool Sha Khadri.

45. The plaintiffs have also relied upon Ex.P46, the alleged unregistered Will dated: 17-11-1998. However the evidence relating to the said Will is highly doubtful. PW1 admitted that he does not know the contents of the Will, does not know who drafted it, does not know whether it was handwritten or typed, does not know the attesting witnesses, and even stated that he cannot say where Ex.P46 was found.

46. The PW2 also admitted ignorance regarding the execution, attestation and recovery of the Will. The plaintiffs themselves have taken contradictory stands regarding the language of the Will, one witness stating that it was in Urdu and English while another stated that it was in Kannada. No attesting witness to the Will has been examined as required under Section 68 of the Indian Evidence Act. Therefore the plaintiffs have utterly failed to prove due execution and attestation of Ex.P46 in accordance with law. Consequently no right can flow to the plaintiffs on the basis of the alleged Will.

47. Further the plaintiffs have failed to establish their lawful possession over the suit schedule properties. Ex.P3 and Ex.P4 unquestionably establish that Sy.No: 42/P2 and Sy.No: 41/P3 stood in the name of Peer Syed Rasool Sha Khadri during his lifetime and Ex.P5 and Ex.P6 RTCs also stand in his name. However after the death of Peer Syed Rasool Sha Khadri no mutation entries were effected in favour of the plaintiffs. No revenue records, tax paid receipts, electricity documents, cultivation records or independent evidence have been produced to show that the plaintiffs ever managed or possessed the suit schedule properties. On the contrary the evidence on record discloses continuous disputes

between the parties, initiation of proceedings under Sections 145 and 146 Cr.P.C., and appointment of Receiver by the Tahsildar. PW1 and PW2 admitted that the Tahsildar had taken possession of the schedule property from the defendants. Once a Receiver has taken custody of the property pursuant to judicial and executive proceedings the plaintiffs cannot claim exclusive possession so as to seek a decree of permanent injunction.

48. The plaintiffs have also sought declaration that the Hibanama dated: 30-12-1998 and Trust Deed dated 02-11-2015 are void. Though the plaintiffs have alleged fabrication they have not sought any expert opinion regarding signatures, handwriting or stamp paper alterations. However the burden to establish the validity of the Hibanama primarily rests upon the defendant No: 2 who rely upon it. Even assuming that the defendant No: 2 has not satisfactorily established the Hibanama, the plaintiffs cannot succeed merely on the weakness of the defence. The plaintiffs must stand on the strength of their own case. In the present matter they have failed to establish lawful succession, valid testamentary disposition, or lawful possession over the suit schedule properties.

49. The evidence further discloses that the suit schedule properties contain a Dargah, Masjid, graveyard and other religious structures used by the public for several years. Both parties admit that religious and charitable activities are being conducted in the property and that devotees from surrounding villages visit the Dargah. The materials on record also disclose formation of Peer Syed Rasool Sha Khadri Religious & Charitable Welfare Trust and management disputes relating to religious institutions. In such circumstances the plaintiffs' claim of exclusive private ownership and injunction against all defendants cannot be accepted in the absence of clear proof of title and possession. Therefore this Court holds that the plaintiffs are not entitled to the relief of declaration and permanent injunction as sought in the plaint. Consequently **Issue No: 3 is answered in the Negative.**

50. Issue No: 4: It is not in dispute that the suit schedule properties consisting of Sy: No: 42/P2 measuring 4 acres and Sy. No: 41/P3 measuring 4 acres originally stood in the name of Peer Syed Rasool Sha Khadri. ExP3 clearly establishes that defendant No: 1 executed a registered Gift Deed dated: 03-09-1990 in favour of Peer Syed Rasool Sha Khadri in respect of

Sy.No: 42/P2. Ex.P4 further establishes that Sy. No: 41/P3 was purchased under a registered Sale Deed dated: 10-08-1998 in the name of Peer Syed Rasool Sha Khadri. Ex.P5, Ex.P6 and Ex.D10, Ex.D11 RTC extracts consistently disclose the name of Peer Syed Rasool Sha Khadri in revenue records. Thus there is no dispute that Peer Syed Rasool Sha Khadri was the absolute owner in possession during his lifetime.

51. The specific contention of the plaintiffs is that the unregistered Hibanama dated: 30-12-1998 relied upon by defendant Nos: 2 to 9 is fabricated and created on stamp papers purchased in the names of third parties. The plaintiffs further contend that the Trust Deed dated: 02-11-2015 is also concocted and created only to grab the property. However except making such allegations, the plaintiffs have not produced cogent evidence to establish fabrication, forgery, impersonation, or fraudulent creation of Ex.P4/Hibanama. No handwriting expert has been examined. No scientific evidence is produced to disprove the signatures appearing on the Hibanama. The plaintiffs have not initiated any independent proceedings for cancellation of the said documents before the competent authority nor sought expert comparison of the disputed signatures.

52. On the contrary the defendants in O.S. No: 43/2017 examined PW1 C.K Riyaz Khan, PW2 attesting witness, and CW1 document writer in support of the Hibinama. CW1 specifically deposed that he drafted Ex.P4/Hibanama and identified the signatures of Peer Syed Rasool Sha Khadri and attesting witnesses. Though lengthy cross-examination was conducted nothing substantial has been elicited to completely discredit his testimony.

53. Further the plaintiffs themselves have taken inconsistent stands regarding Peer Syed Rasool Sha Khadri's literacy, execution of documents, and mode of affixation of signatures or thumb impressions. While contending that Peer Syed Rasool Sha Khadri never executed the Hibinama, they simultaneously rely upon Ex.P46 alleged Will dated: 17-11-1998 said to have been executed by the same Peer Syed Rasool Sha Khadri. PW1 and PW2 have admitted in cross-examination that they do not know the contents, scribe, attesting witnesses, or circumstances of execution of the Will. PW1 even admitted that Exp2 genealogy certificate contains incorrect particulars regarding his parentage. Such inconsistencies materially affect the credibility of the plaintiffs' case.

54. More so the evidence on record discloses that defendant Nos: 2 to 9 and their family members were actively associated with the institution and administration of the Darga for several years. PW1 C.K Riyaz khan deposed that religious activities, constructions, and management were being carried out under Peer Syed Rasool Sha Khadri Welfare Association and subsequently under the registered Trust. Electricity bills and water bills produced at Ex.P7 and Ex.P8 series stand in the name of Peer Syed Rasool Sha Khadri Khadri and relate to structures existing in the schedule properties. The evidence also discloses that criminal proceedings under Sections 145 and 146 Cr.P.C. were initiated due to disputes regarding possession between rival groups, ultimately resulting in appointment of the Tahsildar as Receiver. Such circumstances probabalize that defendant Nos: 2 to 9 were asserting management and possession much prior to institution of the present suit.

55. The plaintiffs have also contended that no valid Trust could have been formed in the absence of lawful transfer of property by Peer Syed Rasool Sha Khadri. However, Ex.D1 in O.S. No: 43/2017 shows that Peer Syed Rasool Sha Khadri Religious & Charitable Welfare

Trust was in fact registered. Whether such Trust ultimately acquires lawful title over the suit schedule properties depends upon proof of the Hibinama. Mere registration of the Trust does not automatically establish title however, it equally cannot be declared void merely on the basis of allegations unsupported by satisfactory evidence.

56. It is further significant that the plaintiffs have not sought cancellation of the Trust registration before any competent forum under the provisions governing public trusts. They have also not examined any official from the Registration Department to establish illegality in registration of the Trust Deed dated: 02-11-2015. In absence of such substantive evidence, this Court cannot grant a declaration that the Trust Deed itself is void ab initio.

57. At the same time this Court observes that the defendants have also not produced a registered conveyance transferring title, from Peer Syed Rasool Sha Khadri in favour of the Trust. The alleged Hibinama is admittedly unregistered. Though Mohammedan Law recognizes oral gift subject to proof of declaration, acceptance, and delivery of possession, the evidence

regarding actual transfer and exclusive possession remains disputed. Revenue records admittedly continue in the name of Peer Syed Rasool Sha Khadri. Therefore while the defendants may not have conclusively established absolute title solely on the basis of Ex.P4/Hibanama and subsequent Trust Deed, that circumstance by itself does not enable the plaintiffs to obtain a declaration that those documents are void. Accordingly this Court holds that the plaintiffs in O.S. No: 26/2016 have failed to prove that the alleged Hibanama dated: 30-12-1998 and Trust Deed dated: 02-11-2015 are void, fabricated. Hence, **Issue No: 4 is answered in the Negative.**

58. Issue No: 5: The contention of the plaintiffs that the suit in O.S. No: 43/2017 filed by defendant Nos: 2 to 9 is barred under Section 92 of the CPC.

59. Section 92 CPC applies only to suits concerning a public charitable or religious trust where the relief sought relates to administration of the trust, such as removal or appointment of trustees, settlement of scheme, rendition of accounts, directions regarding management of trust property or similar reliefs enumerated under the section. For applicability of

Section 92 CPC three essential conditions are required. Firstly existence of a public trust of religious or charitable nature. Secondly allegation of breach of trust or necessity for court directions regarding administration of such trust. Thirdly the suit must seek one or more of the reliefs specifically contemplated under Section 92 CPC.

60. In the present case the pleadings and reliefs sought in O.S. No: 43/2017 disclose that the plaintiffs therein namely Peer Syed Rasool Sha Khadri Religious & Charitable Welfare Trust and its trustees have primarily sought declaration of title over the suit schedule property on the basis of alleged oral gift and Hibanama dated: 30-12-1998 said to have been executed by Peer Syed Rasool Sha Khadri in favour of C.K. Riyaz Khan, followed by formation of the trust under the registered Trust Deed. They have further sought a consequential relief of mandatory injunction directing the Tahsildar to remove the lock and restore possession of the property except the dargah portion. Thus, the dispute raised in O.S. No: 43/2017 is substantially a dispute relating to title, possession, and validity of documents between rival claimants over the suit schedule property and not a suit instituted for administration of a public trust or for any relief enumerated under Section 92 CPC.

61. Further defendant Nos: 2 to 9 in O.S. No; 26/2016 have not sought removal of trustees, settlement of scheme, accounts, appointment of new trustees, or any direction concerning internal administration of the alleged trust. The suit is essentially adversarial in nature between two rival groups each claiming ownership and management rights over the Dargah property. The Hon'ble High Court in its judgment ,relied upon by the plaintiffs in W.P. No: 203194/2022 also clarifies that where the suit is between rival parties claiming rights over trust property and the relief sought is declaration and injunction Section 92 CPC is not attracted merely because a charitable or religious trust is involved.

62. Moreso in O.S. No: 43/2017 the trust itself is the plaintiff asserting independent title and possession based on Hibanama and subsequent trust deed. The cause of action pleaded therein arises from alleged interference by the Tahsildar and rival claimants pursuant to proceedings under Sections 145 and 146 Cr.P.C. Therefore the nature of the suit cannot be construed as one instituted under Section 92 CPC requiring leave of the Court. Merely because the suit schedule property contains a Dargah, Masjid, graveyard, and religious structures the bar under Section 92 CPC

does not automatically apply unless the suit pertains to administration of a public religious trust in the manner contemplated under the provision. Therefore this Court is of the opinion that the plaintiffs in O.S. No: 26/2016 have failed to establish that O.S. No: 43/2017 is barred under Section 92 CPC. Hence, **Issue No: 5 is answered in the Negative.**

63. Issue No: 1 in O.S. 43/2017: The plaintiff No: 1 in order to prove the case examined himself as PW1 and relied as many as 14 documents. Wherein Ex.P1 is the declaration of registered public Peer Syed Rasool Sha Khadri Religious & Charitable Welfare Trust (regd), Ex.P2 is the certified copy of order passed in criminal petition No: 908/2017 by the High Court of Karnataka, Ex.P3 is the certified copy of order passed on Crl.R.P. 35/2016, Ex.P4 is the un registered Gift deed (Hibanama) executed by Peer Syed Rasool Sha Khadri in favour of C.K Riyaz Khan president of Peer Syed Rasool Sha Khadri welfare Assn, Kollegala, Ex.P5 is the voter card, Ex.P6 is the voter card, Ex.P7 (1 to 40) Electricity bills, Ex.P8 (1 to 39) are the water bills, Ex.P9 is the complaint copy, Ex.P10 (1 to 3), Ex.P11 (1 to 3) are the postal acknowledgments, these documents marked on 06-03-2020.

64. During the cross examination by Defendant Nos: 4 and 5, PW1 deposed that Ex.P4 Hibanama was executed by Peer Syed Rasool Sha Khadri. He stated that Peer Syed Rasool Sha Khadri made the gift during his lifetime and that at the time of execution of the Hibanama no Darga existed. He further deposed that there was an electricity connection at the time of execution of the Hibanama and that Peer Syed Rasool Sha Khadri was signing documents at that time, though earlier he used to affix his thumb impression. According to him after treatment Peer Syed Rasool Sha Khadri became capable of signing and had been signing since 1998. He specifically denied that Peer Syed Rasool Sha Khadri purchased property from Gundamma on 10-08-1998, asserting he himself purchased the property in Peer Syed Rasool Sha Khadri 's name though he admitted he had no documents to prove payment of sale consideration. He stated that Sy.Nos: 42/P2 and 41/P3 are adjacent lands and that the Hibanama directed him to form and manage a religious and welfare trust. He further deposed that defendant Nos: 4 and 5 had never visited Peer Syed Rasool Sha Khadri during his lifetime and that he did not know defendant No: 4.

65. PW1 further stated that the Peer Syed Rasool Sha Khadri referred to in the Hibanama was his Mauli. He denied filing O.S. No: 203/2012 or O.S. No: 01/2016 and stated that he was unaware whether 1st defendant had filed those suits, though he admitted that the suits were later withdrawn. He denied allegations that the Hibanama was fabricated on stamp papers purchased in the names of Dr. Basavanna and Shailaja and stated that one Venkatesh a document writer prepared Ex.P4. He admitted that Ex.P1 mentions "Peer Syed Rasool Sha Khadri Welfare Trust," which was formed on 07-11-2015, and that the trustees are his relatives. He stated that since 1998 after the Hibanama, he had been managing the suit schedule property, but later people from Hyderabad created disturbances resulting in registration of the trust. He also deposed that the Tahsildar had seized the property. He stated that since he was unaware of O.S. No: 203/2012 and O.S. No: 01/2016 he did not produce the Hibanama before the Court in those proceedings.

66. The PW1 denied suggestions that Peer Syed Rasool Sha Khadri did not know how to sign or read and write and denied that Peer Syed Rasool Sha Khadri's signatures on the Hibanama were forged after his death

because he had used thumb impressions in the sale deed from Gundamma. He also denied that only a small house existed at the time of the Hibanama and denied having no rights over the Suit schedule property. He stated that he has five brothers and admitted that 1st defendant, his brother, was not made a party to the suit. He denied longstanding disputes and litigations between himself and 1st defendant and denied filing complaints before the Tahsildar regarding the Darga. He denied suggestions that 1st defendant had gifted Sy.No: 42/P2 measuring 4 acres to Peer Syed Rasool Sha Khadri. He admitted that the Darga property belonged to Peer Syed Rasool Sha Khadri and also admitted that Peer Syed Rasool Sha Khadri had not executed any registered gift deed or sale deed in favour of anyone, while volunteering that Peer Syed Rasool Sha Khadri had executed a Hibanama. He denied creating a trust deed to grab the Suit schedule property along with his family members and denied that Ex.P4 was fabricated or altered. He further denied that the legal heirs of Peer Syed Rasool Sha Khadri were entitled to the Suit schedule property, asserting that Peer Syed Rasool Sha Khadri had no legal heirs. He denied that they were neither owners nor trustees. However he admitted that the revenue records pertaining to the Suit

schedule property still stands in the name of Peer Syed Rasool Sha Khadri. He also admitted that Defendant Nos: 4 and 5 had filed Criminal Petition No: 908/2017 before the High Court wherein the order appointing the Tahsildar as receiver was upheld.

67. The Sri.C.K Riyaz Khan/PW1 during the cross examination by defendant No: 1 to 3 dated: 06-03-2020 deposed that the electricity bills and receipts are standing in the name of Peer Syed Rasool Sha Khadri. He admitted anticipating that there would be galata sought police protection. During the Cross examination by defendant No: 4 and 5 he denied when he was in possession of suit schedule property for 6 months he stolen bills and produced the same. He denied Iqbal Hussain gave complaint to SP and Iqbal himself paid the electricity bills.

68. In Support of the case examined Jaman Iqbal Hussain @ Basha as PW2 and relied Ex.P12 is the legal notice to the Tahsildar, Ex.P12(a) is the postal receipt, Ex.P13 is the legal notice to Prl. Secretary to Commissioner of Revenue Department, Ex.P13(a) is the Postal Receipt, Ex.P14 is the legal notice dated to Tahasildar, Deputy Tahsildar, and Deputy Commissioner.

69. During cross-examination PW2 deposed that the Suit schedule property belonged to Mauli, whom he had known since 1986. He stated that defendant Nos: 4 and 5 had quarrelled with the plaintiffs though he was unaware whether any police complaint had been filed regarding the same. He further stated that a receiver had been appointed for the Suit schedule property for that reason. He denied the suggestion that the plaintiffs had no ownership over the suit schedule property or that the receiver was appointed because neither the plaintiffs nor defendant Nos: 4 and 5 had ownership over it.

70. In the cross-examination by defendant Nos: 4 and 5 the witness stated that if any plaintiff trust existed at Kollegala in the year 2015, the same should be asked of the plaintiffs. He admitted that he had married 1st defendant's sister and denied the suggestion that he became a disciple of Peer Syed Rasool Sha Khadri because his wife had recovered from illness. According to him, his Mauli had cured his wife's health problem. He deposed that he did not know in whose name the stamp paper for ExP4 was purchased, nor whether the Mauli affixed a signature or thumb impression. However he confirmed that he had signed Ex.P4 and that his Mauli had executed a will in his presence, for which he also

signed as witness. He stated that Mauli earlier had no strength in his right hand but after treatment regained the ability to sign, though he did not know when the weakness began or when he recovered. He denied the suggestion that the year “1998” mentioned in Ex.P4 was corrected and that the correct year was 1997. He further deposed that 1st defendant, his brother-in-law, had also signed ExP4. He denied the allegation that he and his family members had fabricated Ex.P4, stating that he signed only because the Mauli asked him to do so.

71. The witness further stated that according to their religion a dargah is constructed after the death of a Mauli and that the dargah situated in the Suit schedule property belonged to his Mauli. He stated that no tomb existed in 1998 because the Mauli died only in the year 2000. He described the Suit schedule property in 1996 as containing Mauli’s house, pigeon houses, and 3–4 buildings for devotees. According to him about 4 acres were purchased collectively by their family members and given to the Mauli. He admitted that the trust formed by them consisted only of family members and that outsiders were not included. He also stated that he had no knowledge regarding the formation of religious trusts or the case filed by 1st defendant in the year 2016.

72. He denied the suggestion that defendant Nos: 4 and 5 had approached the High Court and on their requisition, a receiver was appointed. He also denied the allegations that Ex.P4 was created to grab the entire income of the dargah or that the plaintiffs had falsely created a trust and unlawfully taken possession of the dargah.

73. Another witness H.A Abdul Raheem examined as PW3. During cross-examination, he deposed that he had known Peer Syed Rasool Sha Khadri and remained in contact with him until his death. He denied that the Suit schedule property belonged to their Mauli. He further deposed that Gundamma had sold 4 acres in Sy.No: 42/P2 to Peer Syed Rasool Sha Khadri and admitted that 1st defendant had gifted 4 acres in Sy.No: 42/P2 to Mauli. According to him the Mauli enjoyed those properties during his lifetime. Though he denied frequent quarrels between the plaintiffs and defendants No.4 and 5, he admitted that police complaints had been filed and that to maintain peace the Government had appointed the Tahsildar as receiver. He asserted that the plaintiffs had rights over the Suit schedule property and admitted that the Suit schedule property is presently in the custody of the Tahsildar.

74. During further cross-examination by defendants No: 4 and 5 he stated that 1st defendant gifted the property to Mauli due to benefits received from him and that the Mauli was capable of signing properly. He denied that Mauli was illiterate. According to him the present suit arose because there was substantial money in the Suit schedule property. He estimated Mauli's age to be 50-55 years when he first saw him and stated that Gundamma had been paid ₹. 1,60,000/-.

75. In further cross-examination, the witness stated that his grandfather had five children and that Ameer Sha Khadri was the adoptive father of Peer Syed Rasool Sha Khadri, who succeeded him as Mauli. He admitted that his own father's name is Shafi khadri and that his father had six children. He denied that the plaint omitted to mention of Peer Syed Rasool Sha Khadri being Ameer Sha Kadhri's adopted son. He admitted that defendant No: 1 had gifted 4 acres in Sy.No: 42/P2 to Peer Syed Rasool Sha Khadri and stated that the sale transaction took place in 1998 when he was aged about 13 years. He further deposed that Peer Syed Rasool Sha Khadri had executed a Will during his lifetime and admitted having knowledge of it at the time of filing the suit, although he could not say when he obtained or lost it. He admitted

that Gumnam Sha comes under the control of the Wakf Board and that a committee constituted by the Wakf Board manages it. He however denied that his family had no rights over the darga despite admitting that he possessed no documents to establish such rights. He could not state the date of execution of the Will, the value of the stamp paper or the names of all signatories, though he stated that the Will was in Kannada and that one Buddi of MM Hills had signed it. He denied suggestions that the Will was fabricated after institution of the suit, created by his former advocate and denied that the trust was intentionally not made a party.

76. During cross-examination by defendants No: 1 to 4, PW3 denied that C.K Riyaz khan and his brothers had brought Peer Syed Rasool Sha Khadri to the Suit schedule property in 1986 or that the defendants had made administration in the institution in the name of Peer Syed Rasool Sha Khadri Welfare Association. He denied execution of a gift deed dated: 30-12-1998 by defendant No: 1 in favour of Peer Syed Rasool Sha Khadri and also denied that the trust was formed for charitable purposes or that the defendants had managed the administration during Mauli's lifetime. He further denied that yearly poojas were conducted by the defendants

under Mauli's instructions or that the Suit schedule property had always remained in their possession. However he admitted that he and his followers had assisted the defendants' relatives, resulting in registration of criminal case for attempt to murder. He admitted that after proceedings under Section 145 of Cr.P.C. the Tahsildar prepared a mahazar and took possession of the Suit schedule property from the defendants. He also admitted that as per Ex.P1 and Ex.P2, he and his brothers were shown as children of Syed Rehman Sha Khadri, though he denied that the genealogy was fabricated to claim Peer Syed Rasool Sha Khadri as their uncle. He admitted that a graveyard existed behind the 8 acres of land and that the defendants' relatives were buried there. He also admitted that the RTC and revenue records of the Suit schedule property stood in the name of defendant No: 4. He denied suggestions that the plaintiffs were strangers to Mauli's family or that the suit had been filed only to harass the defendants and grab the Suit schedule properties.

77. The one more witness examined as PW4. During the cross examination he deposed that in 1998, his sister-in-law Gundamma sold the property bearing Sy.No: 41/P3 to Peer Syed Rasool Sha Khadri. He further

stated that he does not know anything about Sy.No: 42/P2. According to him, Peer Syed Rasool Sha Khadri remained in possession of the said property till his death and he is unaware whether Peer Syed Rasool Sha Khadri subsequently disposed of the property in any manner. He also deposed that he has no knowledge regarding the quarrel that allegedly took place between the plaintiffs and defendant No: 4 and 5 or about the filing of any police complaint. Regarding the appointment of a receiver he stated that he came to know about it through the police.

78. In the cross-examination by defendant No: 4 and 5, PW4 stated that he had seen Peer Syed Rasool Sha Khadri. He deposed that he was present when a sum of ₹. 1,00,000/- was paid to Gundamma, and that Anwar khan, and Riyaz Khan had paid the amount to her, while Peer Syed Rasool Sha Khadri himself had not paid any amount directly. He further stated that an additional sum of ₹. 60,000/- was later paid to Gundamma, making the total sale consideration ₹. 1,60,000/-, which was acknowledged by her in the sale deed.

79. The Deputy Tahsildar, examined herself as Dw1 and produced Ex.D1 to Ex.D13. Wherein Ex.D1 and Ex.D2 are memorandums issued by the Tahsildar

appointing her as Receiver pursuant to the High Court order. Ex.D3 is the memorandum appointing the Litigation Conducting Officer. Ex.D4 is the letter issued by the Deputy Tahsildar, Ramapura, to the Tahsildar, Kollegala. Ex.D5 is the mahazar regarding taking possession of the Suit schedule property along with constructions pursuant to the High Court order. Ex.D6 is the covering letter submitted by the Deputy Tahasildar, Ramapura, to the Tahsildar regarding receipt of the Revenue Inspector's report. Ex.D7 is the report of the Revenue Inspector regarding the existing structures in the Suit schedule property. Ex.D8 is the report of the Village Accountant. Ex.D9 is the mahazar. Ex.D10 and Ex.D11 are RTCs pertaining to Sy.No: 41/P3 and Sy.No: 42/P2 respectively, standing in the name of Peer Syed Rasool Sha Khadri. Ex.D12 is the letter issued by the Sub-Registrar seeking an Encumbrance Certificate from the Tahsildar. Ex.D13 is the Encumbrance Certificate standing in the name of the Tahsildar.

80. During the cross-examination, DW1 deposed that to show her appointment as Receiver and Litigation Conducting Officer she has produced Ex.D1 and Ex.D2. She admitted that in Ex.D1 and Ex.D2 the measurement of the dargah is not mentioned. She further deposed that

she went to Vadakehalli Dargah and locked it, and admitted that on the basis of Ex.D1 and Ex.D2 she locked the dargah. She admitted that there are vacant places surrounding the dargah and further admitted that as per Ex.D1 and Ex.D2 she was required to take control only of the dargah. She denied the suggestion that she was not appointed as Receiver for the remaining lands apart from the dargah. She admitted that including the dargah, she had taken control over the mosque, dining place, kitchen, dome and the entire 8 acres of land. She denied the suggestion that by influencing one party she misused her power and took possession of the entire property. She further deposed that she locked only the dargah and not the remaining lands. Though she denied the suggestion that she was Receiver only for the dargah and not for the other lands. She deposed that she was Receiver for the dargah and the lands coming within the survey number. She admitted that Ex.D1 and Ex.D2 specifically ordered her to act as Receiver only for the dargah and not for the entire 8 acres. She also admitted that in ExD4 and ExD5 she had mentioned taking possession of and locking both the dargah and other lands. She deposed that initially she had put locks to all portions, but later as per the instructions of the

Tahsildar she retained the lock only on the dargah. She further admitted that though Ex.D4 and Ex.D5 disclose taking custody of the dargah and other lands, she had not filed any application before the Tahsildar seeking modification of the order. She denied the suggestion that due to her irresponsible conduct people were prevented from offering namaaz and burying dead bodies in the surrounding area and further denied misusing her powers.

81. CW1, the document writer, deposed that he drafted Ex.P4 and signed it as Ex.P4(b), which was executed by Peer Syed Rasool Sha Khadri in favour of C.K Riyaz khan. He identified the signature of the plaintiff on Ex.P4(a) and also identified the signatures of the attesting witnesses, namely PW2 and 1st defendant, marked as Ex.P4(c) and Ex.P4(d). Further, he identified the signatures of Peer Syed Rasool Sha Khadri marked as Ex.P4(e1) to Ex.P4(e7).

82. During cross-examination, he stated that the stamp paper for Ex.P4 was brought by Peer Syed Rasool Sha Khadri Mauli and not by Shailaja. He denied the suggestion that the date in Ex.P4 was overwritten. He further deposed that apart from Ex.P4, he had not

prepared any other document for Peer Syed Rasool Sha Khadri. He admitted that before preparing Ex.P4, he did not notice that the stamp paper stood in the name of Shailaja. He stated that Peer Syed Rasool Sha Khadri did not know how to write, but denied the suggestion that Peer Syed Rasool Sha Khadri used to affix his thumb impression. He also denied the suggestion that he created Ex.P4 by using unused stamp papers available with him. He deposed that documents should normally be drafted only in the name of the person who purchased the stamp paper. He further denied the allegation that, in collusion with C.K Riyaz Khan and his family members he had created Ex.P4.

83. The burden to establish that Late Peer Syed Rasool Sha Khadri validly transferred the suit schedule properties bearing Sy. No: 42/P2 and 41/P3 totally measuring 8 acres in favour of C.K.Riyaz Khan by way of a valid Hiba under Mohammedan Law and further that such transfer conferred lawful title and possession upon the Trust subsequently constituted is lies upon the plaintiffs. It is not in dispute that Sy.No: 42/P2 measuring 4 acres was conveyed in favour of Peer Syed Rasool Sha Khadri under registered Gift Deed dated: 03-09-1990 executed by 1st defendant as per Ex.P3 in

O.S. No: 26/2016 and that Sy.No: 41/P3 measuring 4 acres was purchased in the name of Peer Syed Rasool Sha Khadri under registered Sale Deed dated:10-08-1998 as per Ex.P4 in O.S. No: 26/2016. RTC extracts at Ex P5 and Ex.P6 and also Ex.D10 and Ex.D11 consistently disclose the name of Peer Syed Rasool Sha Khadri in revenue records. Thereby the material on record clearly establishes that Peer Syed Rasool Sha Khadri was the owner and possessor of the suit schedule properties during his lifetime.

84. However mere proof of ownership of Peer Syed Rasool Sha Khadri is insufficient to establish a valid Hiba in favour of C.K Riyaz Khan. Under Mohammedan Law a valid Hiba requires three essential ingredients, namely declaration of gift by donor, acceptance by donee, and delivery of possession. The plaintiffs in O.S. No: 43/2017 rely mainly upon Ex.P4 therein, namely the unregistered Hibanama dated: 30-12-1998, along with oral evidence of PW1 C.K Riyaz khan, PW2 attesting witness and CW1 document writer. Though Mohammedan Law recognizes oral gifts without registration the execution and genuineness of such document must nevertheless be proved through cogent and reliable evidence.

85. In the present case serious suspicious circumstances surround Ex.P4 Hibanama. Firstly, the document is admittedly unregistered though it purports to transfer immovable property measuring 8 acres containing religious institutions and structures. Secondly, PW1 C.K Riya khan himself admitted during cross-examination that the revenue records continue to stand in the name of Peer Syed Rasool Sha Khadri and no mutation was effected in his favour or in favour of the Trust pursuant to the alleged Hiba. Thirdly, there are material inconsistencies regarding the manner in which Peer Syed Rasool Sha Khadri used to execute documents. Defendant Nos: 4 and 5 consistently contended that Peer Syed Rasool Sha Khadri was illiterate and used only thumb impression. In Ex.P4 sale deed of Sy.No: 41/P3, Peer Syed Rasool Sha Khadri is shown to have affixed thumb impression. PW1 attempted to explain this inconsistency by stating that after treatment Peer Syed Rasool Sha Khadri later became capable of signing from 1998 onwards at his cross-examination dated: 22.11.2019 at page No: 2. PW2 also gave a similar explanation. However no independent evidence whatsoever is produced to establish such medical condition or subsequent recovery. The explanation

appears to be an afterthought intended to support the signature found in Ex.P4 Hibanama.

86. Further Ex.P4 suffers from suspicious features. PW1 admitted that no registered gift deed or conveyance was executed by Peer Syed Rasool Sha Khadri in favour of anybody and volunteered that only Hibanama was executed. PW2 admitted ignorance regarding in whose name the stamp paper was purchased. Evidence on record further discloses suggestions that the stamp paper originally stood in the name of third parties i.e Shailaja and Dr.Basavanna. Though CW1 document writer denied fabrication and identified signatures, his evidence alone is insufficient to dispel the suspicious circumstances especially when he admitted that generally documents are to be written in the name of the stamp purchaser and that he had not verified the particulars properly. Moreso PW1 admitted that the Trust was formed only in the year 2015, nearly fifteen years after Peer Syed Rasool Sha Khadri's death, though according to him management was allegedly transferred in 1998 itself. Such long delay in asserting title creates serious doubt regarding the genuineness of the alleged transfer.

87. The conduct of the parties also assumes significance. If really C.K Riyaz khan/2nd defendant had become absolute owner in possession under Hibanama in 1998, there was no explanation why the properties continued in Peer Syed Rasool Sha Khadri's name in revenue records, electricity connections and public records. Ex.P7 and Ex.P8 electricity and water bills stand in the name of Peer Syed Rasool Sha Khadri only. No public document evidencing transfer of management or ownership to C.K Riyaz khan prior to disputes has been produced.

88. Admittedly, the 1st defendant, C.K. Anwar Khan, gifted 4 acres of land in Sy. NoL 42/P2 20 to Peer Syed Rasool Sha Khadri on 03-09-1990. If Peer Syed Rasool Sha Khadri had genuinely intended to gift the property back, it ought to have been reconveyed to C.K. Anwar Khan himself. However, under the alleged gift deed dated: 30-12-1998, the property was instead, gifted to C.K. Riyaz Khan, the brother of C.K. Anwar Khan.

89. Further, although C.K Anwar Khan appeared through counsel in O.S. No: 26/2016 he did not file his written statement and did not contest the suit. Moreover he was not made as a party in O.S. No: 43/2017. No explanation has been offered for this omission.

90. According to C.K. Riyaz Khan, in the gift deed allegedly executed by Peer Syed Rasool Sha Khadri, C.K. Anwar Khan signed as an attesting witness. However, C.K. Anwar Khan has not been examined before the Court. He is the most competent person to depose whether the suit schedule property was gifted to C.K. Riyaz Khan in his presence and whether he attested the document. Despite his appearance through counsel in O.S. No: 26/2016, he neither actively contested the suit nor stepped into the witness box.

91. Furthermore, if the gift in favour of C.K Anwar Khan was genuine, the original gift deed dated: 03-09-1990 and the sale deed dated 10-08-1998 ought to have been produced by the plaintiffs in O.S. No: 43/2017. However, these documents were produced by Defendant Nos: 4 and 5 in O.S. No: 43/2017. No explanation has been provided as to how these original documents came into their custody.

92. Additionally no reason has been assigned as to why C.K. Anwar Khan, who is admittedly alive was neither made a party to the alleged trust nor made as a party in O.S. No: 43/2017. It appears that he has been completely kept out of the proceedings.

93. All these circumstances create serious doubt regarding the genuineness of the alleged gift deed dated: 30-12-1998. Further, the signature of C.K. Anwar Khan appearing on Ex.P3 in O.S. No: 26/2016 does not match his signatures found on Ex.P4 in O.S. No: 43/2017, thereby raising additional suspicion about the authenticity of the documents relied upon by the plaintiff.

94. Even the alleged Trust Deed came into existence only after disputes arose between the parties. Further PW1 admitted that trustees of the Trust are all his relatives and no independent devotees or public members were included thereby strengthening the contention of Defendant Nos: 4 and 5 (plaintiff no;1 and 2 in OS 26/2016) that the Trust was subsequently created to assert control over the institution and properties.

95. It is also pertinent to note that contradictory stands are taken regarding the nature of possession. PW1 admitted that Tahsildar had taken possession of the property pursuant to proceedings under Section 145 Cr.P.C. and that receiver proceedings arose because of disputes between rival claimants. PW2 and PW3 also admitted existence of disputes and appointment of

receiver. Such evidence itself demonstrates that exclusive and peaceful possession of the plaintiffs in O.S. No: 43/2017 was not established. The High Court order produced at Ex.P2 only restored the Tahsildar's appointment as receiver and does not declare title of the Trust. Therefore the said proceedings cannot be treated as proof of lawful ownership of the plaintiffs.

96. The oral evidence of PW1, PW2 and PW3 also suffers from inconsistencies. PW1 stated that defendant No: 4 was unknown to him during Peer Syed Rasool Sha Khadri's lifetime, whereas other materials indicate continuing disputes and interactions. PW2 admitted that he had no knowledge regarding formation of trust and many affairs connected to the institution. PW3 admitted that because there was "lot of money" in the institution disputes arose. These admissions weaken the credibility of the plaintiffs' version. On the other hand the evidence consistently establishes, only that Peer Syed Rasool Sha Khadri owned and managed the properties during his lifetime and that after his death rival claims arose regarding succession and management.

97. More importantly there is no satisfactory evidence proving delivery of possession by Peer Syed

Rasool Sha Khadri to C.K Riyaz khan pursuant to the alleged Hiba. The evidence rather indicates that the Dargah and associated properties were being used by devotees and the public continuously and subsequently came under receiver's custody owing to rival claims. In absence of convincing proof regarding declaration, acceptance and delivery of possession, the essential ingredients of a valid Hiba are not established **irrespective of the fact that receiver had taken a possession from the defendants, she had not stated specifically that she had taken possession from C.K. Riyaz Khan. It is only suggested to PW3 in the cross-examination dated: 12.01.2026 that "ತಹಶೀಲ್ದಾರ್ ಪೈಸೀಡಿಂಗ್ ಮಾಡಿ ಕಾನೂನಿನಂತೆ ಮಹಜರ್ ಮಾಡಿ ಪ್ರತಿವಾದಿಗಳಿಂದ ದಾವಾ ಸ್ವತ್ತಿನ ಸ್ವಾಧೀನ ತೆಗೆದುಕೊಂಡರು ಎಂದರೆ ಸರಿ". No specific suggestion is made that possession is taken from plaintiff No: 2 C.K. Riyaz Khan.**

98. Therefore, though the plaintiffs in O.S. No: 43/2017 have succeeded in proving that Peer Syed Rasool Sha Khadri owned the suit schedule properties during his lifetime and that religious activities were conducted therein they have failed to satisfactorily prove that Peer Syed Rasool Sha Khadri legally and validly gifted the entire suit schedule properties to C.K Riyaz

Khan under oral Hiba and Hibanama dated: 30-12-1998 or that by virtue thereof they acquired lawful right, title, interest and exclusive possession over the suit schedule properties. Therefore, **Issue No: 1 is answered in the Negative.**

99. Issue No: 2: The burden lies upon defendant Nos: 2 to 9 in O.S. No: 26/2016, who are the plaintiffs in O.S. No: 43/2017, to establish that the suit filed in O.S. No: 26/2016 is liable to fail for non-joinder of necessary parties, namely the “Peer Syed Rasool Sha Khadri Religious & Charitable Welfare Trust (Regd.)”, Kollegala and its trustees. It is their specific contention that the trust is the lawful owner and administrator of the suit schedule property by virtue of the alleged Hibanama dated: 30-12-1998 and the subsequent Trust Deed dated: 02-11-2015, and therefore any adjudication regarding title, possession, management, or religious activities concerning the suit schedule property cannot be made in absence of the trust.

100. In order to appreciate the said contention it is necessary to examine the nature of relief sought in O.S. No: 26/2016. The plaintiffs therein have sought declaration that they are the distant kindred and successors-in-interest of deceased Peer Syed Rasool Sha

Khadri and further sought declaration that the alleged Hibinama dated: 30-12-1998 and Trust Deed dated: 02-11-2015 are void and not binding. Thus the very foundation of the plaintiffs' claim is a direct challenge to the validity and legality of the trust and the documents under which defendant Nos: 2 to 9 claim rights over the suit schedule property. Therefore the question arises whether the trust itself was a necessary party to such adjudication.

101. The evidence on record discloses that Ex.P1 in O.S. No: 43/2017 is the declaration of registered public trust namely "Peer Syed Rasool Sha Khadri Religious & Charitable Welfare Trust (Regd.)" Kollegala, wherein C.K Riyaz Khan is shown as author/managing trustee and plaintiff Nos: 2 to 8 therein are the trustees. It is further admitted by PW1/C.K Riyaz khan during cross-examination that, the trust was formed only in the year 2015 and that all trustees are his own relatives and family members. PW2 also admitted that no outsiders were included in the trust and only family members were made trustees. Thus the trust is represented entirely through the very same individuals who are already arrayed as defendant Nos: 2 to 9 in O.S. No: 26/2016. Therefore the persons who claim interest under the trust

are already before the Court in their individual and representative capacities.

102. Further the plaintiffs in O.S. No: 26/2016 have specifically challenged the very creation and legality of the trust itself by contending that the Hibanama and trust deed are fabricated and concocted documents. When the validity of the trust itself is under challenge, the trustees who claim under such trust are competent to defend the proceedings. Mere non-arraying of the trust as a separate juristic entity is not fatal when all the trustees and persons claiming through the trust are already parties before the Court. The law relating to non-joinder requires that a suit becomes bad only when a necessary party, in whose absence no effective decree can be passed is omitted. In the present case any declaration regarding validity or invalidity of the Hibanama and trust deed can effectively be adjudicated in the presence of defendant Nos: 2 to 9, who are stated to be the trustees and beneficiaries of the alleged trust.

103. Moreover the evidence further reveals that the revenue records such as RTC i.e Ex.P5, Ex.P6, Ex.D10 and Ex.D11 continue to stand in the name of Peer Syed Rasool Sha Khadri and not in the name of the trust.

PW1/C.K Riyaz khan himself admitted that no registered gift deed or sale deed was executed by Peer Syed Rasool Sha Khadri in favour of any person and volunteered that only the Hibanama was executed. The alleged Hibanama under Ex.P4 in O.S. No: 43/2017 is an unregistered document written on stamp paper standing in the name of third parties, namely Shailaja and Dr. Basavanna and serious disputes exist regarding its execution and the signature of Peer Syed Rasool Sha Khadri. Therefore the very existence of lawful title in favour of the trust remains disputed and unestablished. Until such title is conclusively proved the trust cannot claim an independent status so as to render the suit defective for non-joinder.

104. The contention of defendant Nos: 2 to 9 that the suit is bad for non-joinder also loses force because they themselves actively contested O.S. No: 26/2016 on merits, led evidence, produced documents, and sought declaration of title in O.S. No: 43/2017. No prejudice is shown to have been caused due to non-impleading of the trust separately. In the present case the trustees who represent the trust are already before the Court and have fully contested the proceedings.

105. The present dispute is essentially one relating to rival claims of inheritance, title, possession, validity of Hibanama, and management rights over the suit schedule property. The plaintiffs in O.S. No: 26/2016 are not seeking removal of trustees, rendition of accounts, or administration of a public trust. Hence the dispute is maintainable as an ordinary civil suit inter se between rival claimants. Therefore having regard to the pleadings, oral evidence, and documentary evidence on record, this Court is of the opinion that defendant Nos: 2 to 9 have failed to establish that O.S. No: 26/2016 is bad for non-joinder of “Peer Syed Rasool Sha Khadri Religious & Charitable Welfare Trust (Regd.), Kollegala” and its trustees. Since all trustees are already parties to the proceedings and effective adjudication can be made in their presence, the objection regarding non-joinder is unsustainable. Therefore, **Issue No: 2 is answered in the Negative.**

106. Issue No: 3: The burden lies heavily upon the plaintiffs in O.S. No: 43/2017 to establish that deceased Peer Syed Rasool Sha Khadri had validly transferred the suit schedule properties measuring 8 acres in Sy.No: 42/P2 and 41/P3 in favour of C.K Riyaz Khan under a valid Hiba/Hibanama dated: 30-12-1998 and that

consequently the Peer Syed Rasool Sha Khadri Charitable Welfare Trust became absolute owner thereof. The plaintiffs rely mainly upon Ex.P4, the alleged unregistered Hibanama, coupled with Ex.P1 Trust Deed. The admitted position on record is that Sy.No: 42/P2 measuring 4 acres stood in the name of Peer Syed Rasool Sha Khadri under registered Gift Deed dated: 03-09-1990 executed by 1st defendant and Sy.No: 41/P3 measuring 4 acres stood in the name of Peer Syed Rasool Sha Khadri under registered Sale Deed dated: 10-08-1998 executed by Gundamma. RTC extracts at Ex.P5, P6 in O.S. 26/2016 and Ex.D10 and D11 clearly disclose that revenue records continuously stood in the name of Peer Syed Rasool Sha Khadri. Therefore the foundational title admittedly vested with Peer Syed Rasool Sha Khadri alone.

107. However the plaintiffs in O.S. 43/2017 have failed to establish that such title was legally divested from Peer Syed Rasool Sha Khadri and vested in C.K Riyaz khan or the Trust. Firstly, Ex.P4 is admittedly an unregistered document alleged to evidence a Hiba. Though under Mohammedan Law an oral gift is permissible, the essential ingredients namely declaration of gift, acceptance by donee and delivery of possession

must be strictly proved. Mere production of an unregistered writing is insufficient unless the factum of valid Hiba is independently established through cogent evidence. In the present case material contradictions and suspicious circumstances surround Ex P4. The document is executed on stamp papers admittedly not purchased in the name of Peer Syed Rasool Sha Khadri or C.K. Riyaz Khan, but in the names of third parties namely Shailaja & Dr. Basavanna. CW1 the document writer admitted that ordinarily a document must be prepared in the name of the stamp purchaser yet he failed to explain satisfactorily how the stamp papers of strangers came to be used. The evidence of PW1 C.K Riyaz Khan and PW2 is inconsistent regarding the execution, date and circumstances of the alleged Hibanama. Corrections in the date appearing as 1998 in the place of 07.11.1997 in the stamp paper which purchased from Mysore District Treasury also remain unexplained. Further serious doubt arises regarding the capacity and manner of execution by Peer Syed Rasool Sha Khadri. Defendants in O.S. 43/2017 consistently contended at para 5 of the plaint, that Peer Syed Rasool Sha Khadri was illiterate and used only thumb impression. Ex.P4 however bears signatures alleged to be

of Peer Syed Rasool Sha Khadri. PW1 C.K Riyaz khan attempted to explain that after treatment Peer Syed Rasool Sha Khadri started signing from 1998 onwards. But no independent documentary evidence such as prior admitted signatures of Peer Syed Rasool Sha Khadri is produced to substantiate the same. On the contrary, evidence on record shows that in the registered Sale Deed dated: 10-08-1998 executed by Gundamma in favour of Peer Syed Rasool Sha Khadri thumb impression was used. Thus the sudden appearance of signatures in Ex.P4 creates grave suspicion regarding genuineness of the document.

108. Moreso, the conduct of the plaintiffs in O.S. 43/2017 also weakens their case. Though several litigations were initiated earlier including O.S. No: 203/2012 and O.S. No: 01/2016, the alleged Hibanama was not produced at the earliest point of time. PW1 admitted that despite pendency of earlier proceedings the Ex.P4 was not relied upon earlier on the ground that he was unaware. Such explanation appears unnatural because Ex.P4 forms the sole foundation of the Trust's claim. If really Peer Syed Rasool Sha Khadri had gifted the entire property and directed formation of a trust the same would ordinarily have been asserted from inception.

109. Further the Trust itself came into existence only in the year 2015 under Ex.P1, nearly fifteen years after the death of Peer Syed Rasool Sha Khadri in 2000. Except interested testimony of trustees and close relatives, no independent evidence is produced to establish that the Trust continuously managed the institution from the lifetime of Peer Syed Rasool Sha Khadri. The trust deed also consists predominantly of family members of C.K. Riyaz Khan which supports the defence contention (defendant No. 4 and 5) that the trust was subsequently created to assert control over the Dargah property.

110. The oral evidence also discloses that the suit schedule property contains Dargah, mosque, graves, religious structures and public religious activities attended by numerous devotees. Even PW1 and PW2 admitted existence of graveyards and public religious functions. The evidence further establishes that disputes regarding possession became so serious that proceedings under Sections 145 and 146 Cr.P.C. were initiated and the Tahsildar was appointed Receiver. Ex D5 mahazar and evidence of DW1 establish that possession was ultimately taken over by the Revenue Authorities pursuant to orders of the High Court. Therefore exclusive

possession of the Trust over the entire 8 acres has not been satisfactorily proved.

111. It is also significant to note that no mutation entries or revenue records stand in the name of the Trust. Even PW1 C.K. Riyaz Khan admitted that RTCs continue in the name of Peer Syed Rasool Sha Khadri. Though reference is made to proposed mutation proceedings, no final mutation or title document in favour of the Trust is produced. In a suit seeking declaration of absolute ownership such absence of title documents assumes considerable importance.

112. The plaintiffs further failed to establish legal succession from C.K. Riyaz Khan individually to the Trust. Even assuming Ex.P4 created some form of management authority in favour of C.K Riyaz Khan or Peer Syed Rasool Sha Khadri Welfare Association, the same does not automatically confer ownership upon the subsequently registered Trust unless lawful transfer is established. Ex.P4 itself does not amount to a registered conveyance creating title in favour of the Trust.

113. On overall appreciation of evidence, this Court finds that Ex.P4 Hibanama is surrounded by suspicious circumstances, suffers from inconsistencies regarding

execution and possession, and has not been proved in accordance with law. Consequently, the plaintiffs in O.S. No: 43/2017 have failed to prove that Peer Syed Rasool Sha Khadri validly gifted the suit schedule properties to C.K Riyaz Khan or that the Peer Syed Rasool Sha Khadri Religious & Charitable Welfare Trust, Kollegala acquired absolute ownership thereunder. Mere management of religious activities or participation in administration of the Dargah does not confer proprietary title over the suit schedule property. Therefore **Issue No: 3 is answered in the Negative.**

114. Issue No: 4: In order to succeed for such relief, the plaintiffs are required to establish their lawful possession and entitlement over the suit schedule property on the date of suit and further prove that the Tahsildar was unlawfully withholding possession beyond the scope of authority conferred under the proceedings initiated under Sections 145 and 146 Cr.P.C. In the present case the plaintiffs in O.S. No: 43/2017 rely mainly upon Ex.P1 Trust Deed dated: 07-11-2015 and Ex.P4 unregistered Hibanama/Gift Deed dated: 30-12-1998 said to have been executed by Peer Syed Rasool Sha Khadri in favour of C.K Riyaz Khan. The plaintiffs contend that after execution of the Hibanama,

Peer Syed Rasool Sha Khadri desired constitution of a welfare trust and accordingly the “Peer Syed Rasool Sha Khadri Religious & Charitable Welfare Trust, Kollegala” was formed in the year 2015. They further contend that the Tahsildar exceeded his authority by locking the entire 8 acres though the order under Section 145 Cr.P.C. pertained only to the Dargah portion. However the evidence on record does not satisfactorily establish the lawful entitlement of the plaintiffs to seek restoration of possession of the entire suit schedule property.

115. Firstly the Ex.P4 the very foundation of the plaintiffs’ claim is an unregistered document relating to immovable property measuring 8 acres. Though Mohammedan law recognizes oral gift (Hiba) the essential ingredients of a valid Hiba namely declaration, acceptance, and delivery of possession must be proved through cogent and convincing evidence. In the present case serious doubts arise regarding ExP4. The stamp paper admittedly stands in the name of third parties. Corrections are found in the stamp paper in respect of issuance of date. PW1 admitted that revenue records continue in the name of Peer Syed Rasool Sha Khadri. No mutation was ever effected in favour of C.K Riyaz Khan or the Trust. No independent documentary

evidence is produced to establish delivery of possession pursuant to the alleged Hibanama. Further the PW1 admitted that no registered conveyance deed was executed by Peer Syed Rasool Sha Khadri in favour of anybody. The evidence of PW2 and CW1 is also inconsistent regarding the execution, preparation, and nature of the document.

116. Secondly, the Trust itself came into existence only in the year 2015 nearly fifteen years after the death of Peer Syed Rasool Sha Khadri and after initiation of the proceedings in O.S. No: 203/2012. Except the interested testimony of trustees and relatives no independent material is produced to establish continuous exclusive possession of the Trust over the entire 8 acres. On the contrary, Ex.D10 and Ex.D11 RTC extracts continue to stand in the name of Peer Syed Rasool Sha Khadri. Even according to the plaintiffs, proceedings under Sections 145 and 146 Cr.P.C. were initiated due to serious disputes and breach of peace between rival claimants. The very appointment of Receiver indicates that possession was disputed and uncertain.

117. Thirdly the evidence of DW1 clearly discloses that pursuant to the orders of the High Court in Criminal Petition No: 26/2016 the Tahsildar was functioning as

Receiver over the disputed property. Though DW1 admitted certain ambiguity regarding the extent of property covered under the Receiver order she specifically stated that possession was taken pursuant to official proceedings and mahazar. Ex.D1 to Ex.D9 substantiate that the Tahsildar acted in execution of orders passed by competent authorities and not in an individual or unauthorized manner. So long as the Receiver order remains operative and when the plaintiffs failed to prove the title and ownership, specially by the 2nd defendant, this Court cannot direct restoration of possession through mandatory injunction in favour of one rival claimant without conclusively determining title. Further the plaintiffs themselves admit existence of Dargah, mosque, graveyard, and public religious activities over the suit schedule property. The evidence also discloses that devotees and members of the public have been using the property for religious purposes for several years. Therefore, the plaintiffs cannot seek exclusive possession of the entire property merely on the basis of the disputed Hibinama and Trust Deed.

118. Moreso mandatory injunction is an equitable and discretionary relief. Such relief can be granted only when the plaintiff establishes a clear legal right and

unlawful interference by the defendant. In the present case the plaintiffs have failed to establish clear and undisputed title or lawful exclusive possession over the entire suit schedule property. The evidence on record rather demonstrates existence of long-standing rival claims, pending litigations, and receiver proceedings. Hence this court is of the opinion that the plaintiffs are not entitled to seek direction against the Tahsildar to break open the lock and deliver possession of the property. Accordingly, **Issue No: 4 is answered in the Negative.**

119. Issue No: 6 & 5: In view of answering issue No: 1 to 5 & issue No: 1 to 4, I proceed to pass the following:

ORDER:

The suit of the plaintiffs filed in O.S.
No: 26/2016 is hereby dismissed.

The suit of the plaintiffs filed in O.S.
No: 43/2017 is dismissed.

Parties have to bear their respective
cost.

Draw Common decree accordingly.

(Dictated to the Stenographer directly on the Computer, typed by her, corrected and then pronounced by me in the Open Court on this the 04th day of June, 2026).

(SUNITHA)

Senior Civil Judge & JMFC.,
Kollegala.

Note: A copy of this judgment passed in O.S No. 43/2017 shall be kept in O.S. No. 26/2016].

ANNEXURE

In O.S. No: 26/2016

List of witnesses examined for the plaintiffs:

PW1 : Syed Ismail Sha Khadri
PW2 : Syed Sulthan Sha Khadri

List of documents marked on behalf of the plaintiff:

Ex.P1 : Genealogy tree
Ex.P2 : Genealogy certificate
Ex.P3 : Gift deed
Ex.P4 : Sale deed
Ex.P5, 6 : RTCs
Ex.P7 : Certified copy of order sheet in OS 01/2016
Ex.P8 : Certified copy of petition in OS 01/2016
Ex.P9 : Certified copy of WS in OS 01/2016
Ex.P10 to 12 : Certified copies of memo in OS 01/2016
Ex.P13, 14 : Certified copies of IA in OS 01/2016
Ex.P15, 16 : Certified copies of WS to IA in OS 01/2016
Ex.P17, 18 : Certified copies of WA in OS 01/2016
Ex.P19 : Certified copy of application

Ex.P20, 21	:	Certified copy of objections
Ex.P23	:	Certified copy of order passed on IA II
Ex.P23	:	Certified copy of order passed on IA III
Ex.P24	:	Certified copy of criminal revision petition
Ex.P25	:	Application filed by the petitioner in Cr. Rev. 35/2016
Ex.P26, 27	:	Wall papers
Ex.P28	:	Certified copy of plaint in OS 203/2012
Ex.P29	:	Certified copy of application in OS 203/2012
Ex.P30	:	Application filed under Order 39 Rule 1 & 2
Ex.P31	:	Judgment passed in OS 203/2012
Ex.P32 to 37	:	Certified copies of applications
Ex.P38	:	Certified copy of objection
Ex.P39	:	Certified copy of application
Ex.P40	:	Certified copy of objection
Ex.P41	:	Application filed by plaintiff
Ex.P42	:	Certified copy of objection
Ex.P43	:	Certified copy of judgment
Ex.P44	:	Certified copy of application
Ex.P45	:	Certified copy of memo
Ex.P46	:	Original un-registered Will
Ex.P46[a]	:	Signature

List of witnesses examined for the defendants: - Nil -

List of documents marked on behalf of the defendants: - Nil -

In O.S. No: 43/2017

List of witnesses examined for the plaintiffs:

PW1	:	C.K. Riyaz Khan
PW2	:	Janab Iqbal Hussain @ Bhasha
PW3	:	H.B. Abdul Raheem
PW4	:	Puttappa Tammadi

List of documents marked on behalf of the plaintiff:

Ex.P1	:	Declaration of registered trust
Ex.P2	:	Certified copy of order passed in criminal petition No: 908/2017
Ex.P3	:	Certified copy of order passed on CrI.R.P. 35/2016
Ex.P4	:	Un registered Gift deed
Ex.P5, 6	:	Voter cards
Ex.P7	:	Electricity bills
Ex.P8	:	Water bills
Ex.P9	:	Complaint copy
Ex.P10	:	Postal receipts
Ex.P11	:	Postal acknowledgments
Ex.P12	:	Legal notice to the Tahsildar
Ex.P12(a)	:	Postal receipt
Ex.P13	:	Legal notice
Ex.P13(a)	:	Postal Receipt
Ex.P14	:	Legal notice
Ex.P14[a to c]	:	Postal receipts

List of witnesses examined for the defendants:

DW1	:	Smt. Surekha
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List of documents marked on behalf of the defendants:

Ex.D1 to 3	:	Memorandums
Ex.D4	:	Letter issued by the Deputy Tahsildar, Ramapura
Ex.D5	:	Mahazar
Ex.D6	:	Covering letter
Ex.D7	:	Report of the Revenue Inspector
Ex.D8	:	Report of the Village Accountant.
Ex.D9	:	Mahazar
Ex.D10, 11	:	RTCs

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Ex.D12 : Letter issued by the Sub-Registrar
Ex.D13 : Encumbrance Certificate

List of witnesses examined as Court Commissioner:

CW1 : N. Venkatesh

(SUNITHA)
Senior Civil Judge & JMFC.,
Kollegala.