KADW300001452011

IN THE COURT OF THE CIVIL JUDGE & JMFC,

KALAGHATAGI

PRESENT: Sri.G Sanjeev Kumar, MBA., LLB.,
Civil Judge & JMFC,
Kalaghatagi.

DATED THIS THE 28th DAY OF JULY, 2026

O.S.No.: 124/2011

PLAINTIFF/S:

Smt. Sairabanu W/o. Nazeersab Nesargi
Age: 42 years, Occ: Agriculture,
R/o. Gandhinagar,
Tq: Kalaghatagi, Dist: Dharwad.

2 Smt. Tairabanu W/o. Abdulgafar Savanur,

3 Sri. Shabir S/o. Ibrahimsab Dalal

4 Smt. Gousbi D/o. Ibrahimsab Dalal

5 Sri. Mehaboobsab S/o. Ibrahimsab Dalal
All Resident of Bazar Oni, Kalaghatagi.

(By Sri. N.S.U., Advocate)

V/s

DEFENDANT/S:

Sri. Davalsab S/o. Rustumsab Bepari,
Age: 38 years, Occ: Vegetable Merchant, R/o. Kalli Oni,
Kalaghatagi

(Def by Sri. N.M.I Adv)

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Date of Institution of the suit:	05.11.2011
Nature of the suit:	**Suir for Declaration and Consequential Relief of Permanent Injunction**
Date of commencement of recording of the evidence:	06.02.2015
Date of which the Judgment was pronounced:	28.07.2026
Total duration:	Years **14** Months **08** Days **23**

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Civil Judge & JMFC, kalaghatagi.

J U D G M E N T

This suit is filed by the Plaintiffs for the relief of Declaration of title with consequential relief of permanent injunction as against the Defendant concerning the suit property.

PART- A

1. Factual Trajectory of the plaintiff's case:

The case of the plaintiff is encapsulated as per below:

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(I) It is the case of the plaintiff that she, along with her brothers and sisters, has been in actual possession and enjoyment of the suit schedule property and has become the absolute owner thereof since the year 1996. It is further contended that one Sri Fakrusab Meboobsab Valikar executed a registered Gift Deed dated 06.02.1999 in favour of the plaintiff's mother in respect of the suit schedule property. Upon the demise of her mother, the plaintiff and her brothers and sisters succeeded to and inherited the suit schedule property and, consequently, their names came to be entered in the revenue records pertaining to the said property.

(ii) However, the defendants, having no manner of right, title or interest over the suit schedule property, started interfering with the plaintiff's peaceful possession and enjoyment thereof. It is further averred that the defendants made an unsuccessful attempt to get their names entered in the revenue records of the suit property before the revenue authorities. Thereafter, the defendants continued to obstruct and interfere with the plaintiff's possession of the suit schedule property. Though the plaintiff approached the elders of the locality and sought their intervention, and despite the advice tendered by such elders, the defendants persisted in their acts of interference. Left with no other efficacious remedy, the plaintiff has been constrained to institute the present suit against the defendants.

2. <u>Contentions raised by the Defendants in their Written Statement:</u>

The contentions raised by the defendants in their written statement are encapsulated as per below:

(i) The defendants have denied all the averments made in the plaint and have specifically contended that the Gift Deed alleged to have been executed by one Sri Fakrusab Mehboobsab Valikar in favour of the deceased Noorjahanbi W/o Ibrahimsab Dalal is itself the subject matter of challenge in O.S. No. 77/2011 pending before this Court. According to the defendants, despite being fully aware of the pendency of the said proceedings, the plaintiff has instituted the present suit by suppressing the said material fact with an intention to secure an unlawful advantage over the defendants.

(ii) The defendants have further contended that the entries made in the revenue records pertaining to the suit schedule property are illegal and without authority of law and that the revenue authorities have passed orders in favour of the plaintiff without jurisdiction. It is also contended that the suit is bad for non-joinder of necessary parties. On these grounds, the defendants have prayed for dismissal of the suit.

3. **Salient findings of this court in its Judgement dated: 20/12/2021**:

(I) This court had passed its judgement and Decree in this court on 20/12/2021 by decreeing the suit of the Plainitff and declaring the Plaintiff's title over the suit property against the Defendants with consequently restraining the defendants form interfering with the plaintiff's peaceful possession and enjoyment of the suit property.

4. <u>Salient findings of the first Appellate court in RA No. 13/2021 dated: 28/02/2022</u>:

The Defendants had preferred an Appeal before the Hon'ble Senior Civil Judge and JMFC, Kalghatagi in RA No. 13/2021 against the Judgement and Decree passed by this court on 20/12/2021. The salient findings of the Hon'ble Appellate court is encapsulated as per below:

(I) The Judgment and Decree of this court dated: 20/12/2021 was duly set aside.

(ii) The matter was remanded back to this court to frame issues about execution of the Gift Deed dated: 06/02/1999, as pleaded by the Plaintiff in the plaint.

(iii) This court was directed to decide about the aspect of impleading of Plaintiff No.3 who had died prior to the Institution of this suit.

5. **Final Arguments canvased by Learned Counsel for the Plaintiffs**:

Learned counsel appearing for the plaintiffs, **Sri N. S. Upadhya**, with considerable emphasis and vehemence, advanced the following submissions in support of the plaintiffs' case:

(I) It is contended that the parties to the present suit are governed by **Mohammedan Personal Law**, and therefore, the validity of the gift in question is required to be examined in the light of the principles governing *Hiba* under Muslim Law.

(ii) It is further submitted that the execution of the Gift Deed dated **06.02.1999** has not been specifically denied by the defendants in their written statement. According to the learned counsel, the pleadings disclose only vague and evasive denials, which do not amount to a specific traverse of the plaintiffs' assertions.

(iii) The learned counsel submits that the original Gift Deed dated **06.02.1999** was lost. After laying the necessary factual foundation regarding its loss, the plaintiffs sought permission to adduce secondary evidence, which came to be allowed by this Court. Pursuant thereto, a photocopy of the said Gift Deed was marked as **Ex.P-25**. It is argued that no objection was raised by the defendants at the time of its marking with regard to its admissibility.

(iv) It is contended that the plaintiffs have satisfactorily established the loss of the original document and have therefore fulfilled the conditions for leading secondary evidence. Placing reliance upon Sections **63(2) and 63(3) of the Indian Evidence Act**, it is argued that where the best evidence is unavailable for reasons recognised by law, secondary evidence is legally admissible.

(v) The learned counsel further submits that a **Mohammedan gift (Hiba)**, though reduced into writing, does not require compulsory registration by virtue of **Section 129 of the Transfer of Property Act, 1882**. In support of the said proposition, reliance is placed upon the decision of the Hon'ble Supreme Court in **Rasheeda Khatoon (D) through LRs. v. Ashiq Ali (D) through LRs., (2014) 10 SCC 459**.

(vi) It is further argued that, having regard to the recitals contained in **Ex.P-25**, the donor validly gifted the suit property in favour of the donee in accordance with the principles governing Mohammedan gifts recognised under **Section 129 of the Transfer of Property Act**. Consequently, the donee acquired absolute title to the suit property and was fully entitled to report the transfer (*Varadi*) before the revenue authorities.

(vii) Learned counsel submits that acceptance of a Mohammedan gift may either be express or implied. In the present case, **Ex.P-25** itself contains a clear recital by the donor that the donee had accepted the gift. The subsequent mutation of the revenue records in favour of the plaintiffs under **Ex.P-17** is also relied upon as a contemporaneous circumstance evidencing acceptance and recognition of the gift by the competent revenue authorities.

(viii) It is lastly contended that the written statement contains only general and evasive denials, without specifically disputing the execution or validity of the Gift Deed. Moreover, the defendants have not sought any declaratory relief challenging the Gift Deed. It is therefore argued that such vague denials attract the consequences contemplated under **Order VIII Rule 5 of the Code of Civil Procedure**, and the material averments of the plaint must be deemed to have been admitted.

(ix) On the aforesaid grounds, it is contended that the donee became the absolute owner of the suit property by virtue of the valid Mohammedan gift, and consequently, the plaintiffs, claiming through the donee, have established their lawful title to the suit schedule property. It is therefore prayed that the suit be decreed with costs.

6. **<u>Final Arguments canvased by Learned Counsel for the Defendants</u>**:

Learned counsel appearing for the defendants, **Sri N. M. Ingalagi** with considerable emphasis and vehemence, advanced the following submissions in support of the defendants' case:

(I) It is contended that the impugned Gift Deed is stated to have been executed on 06.02.1999. However, the averments contained in the plaint disclose material inconsistencies regarding the plaintiffs' possession of the suit property and the alleged transaction of gift.

(ii) It is further submitted that paragraph 10 of the plaint states that the gift was made on 06.04.1999, whereas the plaintiffs now rely upon Ex.P-25, which purports to evidence a gift dated 06.02.1999. According to the learned counsel, this discrepancy strikes at the very foundation of the plaintiffs' case.

(iii) Learned counsel submits that the suit has not been properly valued for the purpose of court fee. Placing reliance upon **Section 24(b) of the Karnataka Court Fees and Suits Valuation Act,** it is contended that the plaintiffs were required to value the suit on the prevailing market value of the property and pay ad valorem court fee accordingly. Since no proper valuation has been made, the suit is liable to fail on that ground as well.

(iv) It is further contended that Ex.P-25 is merely an unregistered photocopy purportedly attested by a Notary. In the absence of the original document, no relief can be granted on the basis of such a document. It is argued that

Ex.P-25 has no independent evidentiary value and that no proper foundation regarding the alleged loss of the original Gift Deed has been laid in the plaint.

(v) The learned counsel further submits that neither the attesting witnesses nor the scribe of Ex.P-25 has been examined before the Court. According to him, the non-examination of these material witnesses casts serious doubt upon the authenticity and execution of the alleged Gift Deed.

(vi) It is also contended that, apart from the present defendants, several other legal heirs whose names continue to find place in the RTC extracts have not been impleaded as parties to the suit. In the absence of such necessary parties, the suit suffers from non-joinder of necessary parties.

(vii) Learned counsel further submits that the very signature of the alleged donor appearing on **Ex.P-25** has been specifically disputed. In this regard, reliance is placed upon the cross-examination of **PW-1 dated 07.04.2025** and **PW-2 dated 19.04.2025**, wherein several elicited admissions are stated to have created serious doubts regarding the execution of the document and the identity of the person who drafted it.

(viii) It is argued that Ex.P-25 is in the nature of a Gift Deed and not merely a memorandum recording a past oral gift. It is further submitted that in the earlier round of litigation, the suit was decreed solely on the basis of revenue entries, and the present Gift Deed was never produced before the Court, thereby rendering the subsequent production of Ex.P-25 highly doubtful.

(ix) Learned counsel submits that the mutation entries were brought about merely on the basis of a Varadi. Although the revenue appeals came to be dismissed, such dismissal was solely on the ground of limitation and not on the merits of the plaintiffs' claim to title.

(x) It is further contended that if the transaction relied upon is in fact a Gift Deed, the same is compulsorily registrable under **Section 17 of the Registration Act, 1908**, and must also satisfy the requirements prescribed under **Section 123 of the Transfer of Property Act, 1882**. In the absence of registration, the document is inadmissible for proving the transfer of title.

(xi) Referring to Ex.P-17, learned counsel submits that the Varadi was submitted by the alleged donee and not by the donor. According to him, the conduct of the parties is inconsistent with the alleged gift transaction. It is also argued that there is no acceptable evidence to establish delivery of possession of the suit property to the donee, which is an essential ingredient of a valid Hiba under Mohammedan Law.

(xii) Learned counsel further submits that the revenue entries relied upon by the plaintiffs do not confer or create title. The plaintiffs must succeed on the strength of their own case and not on the alleged weakness of the defendants' case. It is further argued that the mere marking of a document in evidence does not dispense with the requirement of proving its execution and contents in accordance with law.

(xiii) It is lastly contended that a plain reading of Ex.P-25 does not disclose any recital evidencing acceptance of the gift by the donee, which is one of the indispensable requirements for the validity of a Mohammedan gift. According to the learned counsel, the absence of such acceptance renders the alleged gift legally unenforceable.

(xiv) Learned counsel further submits that the plaintiffs have led evidence beyond the scope of the pleadings, which is impermissible in law. It is a settled principle that no amount of evidence can be looked into on facts which have not been pleaded.

(xv) On all the aforesaid grounds, it is prayed that the suit be dismissed with costs.

7. Issues framed

Acting U/o 14 rule 1 of CPC and considering the materials on record, this court had framed the following issues for consideration:

ವಿವಾದಾಂಶಗಳು

1. ದಾವಾ ಸ್ವತ್ತಿಗೆ ತಾನೊಬ್ಬನೇ ಸಂಪೂರ್ಣ ಮಾಲೀಕನೆಂಬುದನ್ನು ವಾದಿಯು ರುಜುವಾತುಗೊಳಿಸುವರೆ?

2. ವಾದಿಯು ತಾನು ದಾವಾ ಸ್ವತ್ತಿನ ಕಬ್ಜಾ ವಹಿವಾಟಿಯನ್ನು ಹೊಂದಿರುತ್ತಾರೆಂಬುದನ್ನು ರುಜುವಾತು ಪಡಿಸುವರೇ?

3. ದಾವಾ ಸ್ವತ್ತಿನ ತನ್ನ ಕಬ್ಜಾ ವಹಿವಾಟಿಗೆ ಪ್ರತಿವಾದಿ ಹರಕತ್ ಮಾಡುತ್ತಿದ್ದಾರೆಂಬುದನ್ನು ವಾದಿಯು ರುಜುವಾತು ಪಡಿಸುವರೇ?

4. ವಾದಿಯು ದಾವೆಯಲ್ಲಿ ಕೋರಿರುವ ಪರಿಹಾರಕ್ಕೆ ಅರ್ಹರೇ?

5. ಶ್ರೀಮತಿ ನೂರಜಾನ್ ಬಿ ಕೋಂ ಇಬ್ರಾಹಿಂ ದಲಾಲ್ ಇವರಿಗೆ ಫಕ್ರುಸಾಬ ತಂದೆ ಮೆಹಬೂಬಸಾಬ ವಾಲೀಕಾರರವರು ದಿನಾಂಕಃ 06-02-1999 ರಂದು ದಾವಾ ಸ್ವತ್ತಿನ ಸಂಬಂಧವಾಗಿ ನೀಡಿರುತ್ತಾರೆ ಎಂದು ಆರೋಪಿಸಲಾಗಿರುವ ಮೌಖಿಕ ದಾನ (ಬಕ್ಷೀಸು) ಕಾನೂನು ಬದ್ಧ ಎಂಬ ಘೋಷಣಾತ್ಮಕ ಪರಿಹಾರ ಕೇಳದಿರುವ ಕಾರಣ ವಾದಿಯ ದಾವೆಯು ಅನೂರ್ಜಿತ ದಾವೆಯಾಗಿರುತ್ತದೆಂಬುದನ್ನು ಪ್ರತಿವಾದಿ ರುಜುವಾತುಗೊಳಿಸುವರೇ?

6. ವಾದಿಯು ದಾವಾ ಪರಿಹಾರಗಳನ್ನು ಕರ್ನಾಟಕ ನ್ಯಾಯಾಂಗ ಶುಲ್ಕಗಳು ಹಾಗೂ ದಾವೆಯ ಮೌಲ್ಯಮಾಪನ ಕಾಯಿದೆಯ ವಿಧಿಗಳಿಗೆ ಅನುಗುಣವಾಗಿ ಮೌಲ್ಯಮಾಪನ ಮಾಡಿರುವುದಿಲ್ಲ ಹಾಗೂ ದಾವಾ ಪರಿಹಾರಗಳ ಮೇಲೆ ಪಾವತಿ ಮಾಡಿರುವ

ನ್ಯಾಯಾಂಗ ಶುಲ್ಕ ಕೊರತೆಯಿಂದ ಕೂಡಿದೆ ಎಂಬುದನ್ನು ಪ್ರತಿವಾದಿ ರುಜುವಾತು ಪಡಿಸುವರೇ?

7. ವಾದಿಯು ದಾಖಲಿಸಿರುವ ಅವಶ್ಯ ಪಕ್ಷಕಾರರ ಕೊರತೆಯಿಂದ ಭಾದಿಸಲ್ಪಡುತ್ತಿದೆ ಎಂಬುದನ್ನು ಪ್ರತಿವಾದಿ ರುಜುವಾತು ಪಡಿಸುವರೇ?

8. ಯಾವ ಆದೇಶ/ಡಿಕ್ರಿ?

Additional Issue

1. Whether the impugned gift deed was duly executed by Fakruddin S/o Mehaboobsab Valikar on 6/2/1999 in favour of Smt. Noorjahan W/o Ibrahimsab Dalal, concerning the suit property?

8. Plaintiff's Evidence :-

Plaintif No.1 had examined himself as PW1 and had filed an affidavit in lieu of her examination-in-chief and two witnesses were examined as Pws.2 and 3 got marked Ex.P1 to Ex.P25. The detailed description of the documents are as per below:

Sl. No.	Description of Document	Exhibits
1	RTC of Sy.No.268/A/1	**Ex.P-1**

2	M R No.47/2006-07	**Ex.P2**
3	Certified copy of Order issued by the Deputy Commissioner, Dharwad	**Ex.P-3**
4	Copy of death certificate	**Ex.P-4**
5	Copy of death certificate	**Ex.P-5**
6	Photos	**Exs.P-7 to 12**
7	M.R No.4/2003-04	**Ex.P-13**
8	M R No.47/2006-07	**Ex.P-14**
9	Certified copy of order issued by the Land Tribunal Kalaghatagi	**Ex.P-15**
10	M.E No.3188	**Ex.P-16**
11	M E No.3722	**Ex.P-17**
12	R S No.268 for the year 2004-05	**Ex.P-18**
13	Copy of Gram Namone-8	**Ex.P-19**
14	Letter issued by the Village Accountant	**Ex.P-20**
15	2 Photos	**Exs.P-21 & 22**
16	2 CD	**Exs.P23 & 24**
17	Photo copy of Gift deed dated 06.02.1999	**Ex.P-25**

9. <u>Defendants' Evidence :-</u>

Defendant had examined himself as DW1 and had filed an affidavit in lieu of her examination-in-chief and got marked Ex.D1 to Ex.D24. The detailed description of the documents are as per below:

Sl. No.	**Description of Document**	**Exhibits**

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1	R S No.268/1A (sketch) issued by the Village Accountant	**Ex.D-1**
2	Tax paid receipts	**Exs.D2 to 14**
3	Certificate dated 18.07.2018 issued by the Village Accountant, Kalaghatagi	**Ex.D-15**
4	8 photos	**Exs.D-16 to 23**
5	One CD	**Ex.D-24**

10. <u>Findings on the Issues:-</u>

Heard the arguments of the plaintiffs and the Defendants and perused the materials on record. This Court had arrived at the following findings :-

Issue No.1 : In the **Affirmative**

Addl Issue No.1: In the **Affirmative**

Issue No.2 : In the **Affirmative**

Issue No.3 : In the **Affirmative**

Issue No.4 : In the **Affirmative**

Issue No.5 : In the **Negative**

Issue No.6 : In the **Negative**

Issue No.7 : In the **Negative**

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

<u>PART- B</u>

11. **<u>Issue No. 1 and Additional Issue No.1</u>**: These issues are raised casting burden on the Plaintiff to prove

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that she is the absolute owner of the suit property and that the impugned gift deed was duly executed by Fakruddin S/o Mehaboobsab Valikar on 6/2/1999 in favour of Smt. Noorjahan W/o Ibrahimsab Dalal, respectively**.** These issues are taken-up together for discussion as they are intrinsically related to each other.

12. In order to discharge the aforesaid burden, the plaintiff has examined herself as **PW-1** and has got marked **Ex.P-1 to Ex.P-25**. A perusal of the plaint averments as well as the testimony of PW-1 in her examination-in-chief affidavit makes it abundantly clear that the plaintiff asserts her title over the suit schedule property solely on the strength of the alleged Gift Deed dated **06.02.1999**. Thus, the said Gift Deed assumes pivotal significance in determining the claim of title set up by the plaintiff. It is, therefore, necessary to first examine **Ex.P-25**, which is the document relied upon by the plaintiff as evidencing the alleged gift.

. **13**. Ex.P-25 is a **photocopy** of the Gift Deed dated **06.02.1999**. The schedule appended thereto corresponds with the description of the suit schedule property. Admittedly, the original Gift Deed has not been produced before the Court. The plaintiff, however, filed an application seeking permission to adduce secondary evidence on the ground that the original document had been lost. The said application came to be allowed by this Court by order dated **19.12.2024**, whereupon the photocopy was received in evidence and marked as **Ex.P-25**.

14. At this juncture, it becomes apposite to briefly advert to the legal position governing the admissibility of secondary evidence.

> *"Section 91 of the Indian Evidence Act embodies the well-settled* ***Best Evidence Rule****, which mandates that where the terms of a contract, grant or other disposition of property have been reduced into writing, the document itself constitutes the primary evidence of its*

contents. Sections 63 and 65 of the Evidence Act, however, carve out exceptions to this rule by permitting secondary evidence in circumstances recognised by law, including where the original document is lost or destroyed, subject to the party laying an adequate factual foundation for its non-production. Thus, the mere production of a photocopy does not dispense with the obligation of the party relying upon it to establish the circumstances entitling it to lead secondary evidence."

15. Reverting to the facts of the present case, Ex.P-25 has been received in evidence pursuant to the order dated **19.12.2024** passed by this Court. The consequence of the said order is only that the photocopy became admissible as a piece of secondary evidence. Such admission, however, does not by itself establish either the execution or the genuineness of the document. Those aspects continue to remain open to challenge and are liable to be tested on the touchstone of the evidence adduced during trial, particularly through cross-examination.

16. Accordingly, the short question that arises for consideration at this stage is **whether the defendants have effectively challenged the plaintiff's plea regarding the loss of the original document and the circumstances under which secondary evidence has been adduced.**

17. A careful perusal of the cross-examination of **PW-1 dated 19.04.2025** discloses that a substantial part of the cross-examination is directed towards **Ex.P-25** and the circumstances surrounding its production. An extract of the relevant portion of the cross-examination is reproduced herein below:

"ನಾನು 7 ನೇ ತರಗತಿಯ ವರೆಗೆ ಉರ್ದು ಭಾಷ್ಷೆಯಲ್ಲಿ ಕಲಿತಿದ್ದೇನೆ. ನಿಪಿ-25 ನ್ನು ಬರೆಯುವ ಕಾಲಕ್ಕೆ ನಾನು, ನನ್ನ ತಾಯಿ ಮತ್ತು ಪಕರುಸಾಬ ಇದ್ದರು. ಸದರಿ ಫಕರುಸಾಬರವರು ನಮ್ಮ ಚುರುಮರಿ ಬಟ್ಟಿಯಲ್ಲಿ ಕೆಲಸ ಮಾಡುತ್ತಿದ್ದರು ಎಂದರೆ ಸರಿ. ಫಕರುಸಾಬರವರು ಮದ್ಯವ್ಯಸನಿ ಎಂದರೆ ಗೊತ್ತಿಲ್ಲ. ನಿಪಿ-25 ಮೂಲ ದಾಖಲೆ ನಮ್ಮಲ್ಲಿ ಇಲ್ಲ ಎಂದರೆ ಸರಿ. ನಿಪಿ-25 ಬಿಟ್ಟು ಬೇರೆ ದಾಖಲೆ ಇಲ್ಲ

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ಎಂದರೆ ಸರಿ. ನಿಪಿ-25 ರ ಮೇಲೆ ಎಲ್ಲ ವ್ಯವಹಾರ ಮಾಡಿದ್ದೇವೆ ಎಂದರೆ ಸಾಕ್ಷಿಯು ತನ್ನ ತಾಯಿ ಮಾಡಿದ್ದಾರೆ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ನಿಪಿ-25 ರ ಮೂಲ ದಾಖಲೆಗಳನ್ನು ನನ್ನ ತಾಯಿ ಇರುವ ಕಾಲಕ್ಕೆ ಕಳೆದು ಹೋಗಿತ್ತು. ನಂತರ ಮೂಲ ದಾಖಲೆ ಸಿಗಲಿಲ್ಲ. ನಿಪಿ-25 ರ ಮೂಲ ದಾಖಲೆ ಕಳೆದು ಹೋದ ಬಗ್ಗೆ ದೂರು ಕೊಟಿಲ್ಲ ಮತ್ತು ಪತ್ರಿಕಾ ಪ್ರಕಟಣೆ ತೆಗೆದುಕೊಂಡಿಲ್ಲ. ನಿಪಿ-25 ರ ಮೂದಲ ಮತ್ತು 2 ನೇ ಪುಟದಲ್ಲಿನ ಫಕರುಸಾಬ ರವರ ಸಹಿಗಳಲ್ಲಿ ವ್ಯತ್ಯಾಸ ಇದೆ ಎಂದರೆ ಸಾಕ್ಷಿಯು ಅವರ ಕೈ ನಡಗುತ್ತಿತ್ತು ಆ ಕಾರಣ ವ್ಯತ್ಯಾಸ ಇದೆ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ನಿಪಿ-25 ರಲ್ಲಿ ಇರುವ ಮುದ್ರೆಯನ್ನು ನಮ್ಮ ವಕೀಲರು ಮತ್ತು ನನ್ನ ತಾಯಿ ಹಾಕಿಸಿರುತ್ತಾರ. ಸದರಿ ದಿನ ನಿಪಿ-25 ಕ್ಕೆ ನನ್ನ ತಮ್ಮ ಮತ್ತು ಶ್ರೀಕಾಂತ ಕಟಾವಕರ ರವರು ಸಹಿ ಮಾಡಿರುತ್ತಾರೆ. ನಿಪಿ-25 ರ ಮೂಲ ದಾಖಲೆಯನ್ನು ನನ್ನ ತಾಯಿಗೆ ಫಕರುಸಾಬರವರು ಬರೆದುಕೊಟ್ಟಿದ್ದಾರೆ ಎಂದು ಹೇಳಿರುವುದು ಸುಳ್ಳು ಎಂದರೆ ಸರಿಯಲ್ಲ. ದಾವಾ ಆಸ್ತಿಯಲ್ಲಿ ಪ್ರತಿವಾದಿ ಕಬ್ಜೆಯಲ್ಲಿ ಇದ್ದಾರೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ನಿಪಿ-25 ನ್ನು ವಕೀಲರ ಮುಖಾಂತರ ಬರೆಸಲಾಯಿತು ಎಂದು ಹೇಳಿರುವುದು ಸುಳ್ಳು ಎಂದರೆ ಸರಿಯಲ್ಲ. ನಿಪಿ-25 ನ್ನು ಬರೆದವರ ಸಹಿ ಇಲ್ಲ ಎಂದರೆ ಗೊತ್ತಿಲ್ಲ. ಪ್ರತಿವಾದಿಗೆ ತೊಂದರೆ ಕೊಡುವ ಉದ್ದೇಶದಿಂದ ನಿಪಿ-25 ನ್ನು ಸೃಷ್ಟಿ ಮಾಡಿ ನ್ಯಾಯಾಲಯಕ್ಕೆ ಸಲ್ಲಿಸಿದ್ದೇನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ಮೂಲ ದಾಖಲೆಯನ್ನು ಹೂಡುವ ಪ್ರಯತ್ನ ನಾನು ಮಾಡಿಲ್ಲ ಎಂದರೆ ಸರಿಯಲ್ಲ. ಸುಳ್ಳು ಸಾಕ್ಷ್ಯ ನುಡಿಯುತ್ತಿದ್ದೇನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ"

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18. Upon an analysis of the aforesaid cross-examination, it emerges that PW-1 has admitted that she, her mother and the Executant of ExP25 were present at the time of the execution of the document. She has further deposed that the original Gift Deed was subsequently lost. It has also been elicited that no police complaint was

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lodged, nor was any public notice issued regarding the loss of the original document. Further, PW-1 has stated that the executant's hands were trembling while affixing his signature to Ex.P-25. The defendants have also put a specific suggestion to PW-1 that Ex.P-25 is a fabricated and created document brought into existence only with an intention to harass the defendants, which suggestion has been categorically denied by PW-1.

19. The aforesaid elicited admissions undoubtedly furnish circumstances which the defendants seek to rely upon while assailing the genuineness and authenticity of Ex.P-25. However, insofar as the limited question regarding the admissibility of secondary evidence is concerned, the cross-examination does not elicit any material to demonstrate that the original Gift Deed is still in existence or that the plaintiff has deliberately withheld the same from the Court. Likewise, no suggestion has been made that the plea of loss of the original document is inherently false or malafide. The absence of a police complaint or newspaper publication regarding the alleged loss of the document may be a relevant circumstance while assessing the weight to be attached to Ex.P-25, but such omission, by itself, is not determinative of the plaintiff's entitlement to lead secondary evidence.

20. Thus, the cross-examination, though directed towards impeaching the credibility and genuineness of Ex.P-25, does not effectively demolish the factual foundation laid by the plaintiff for adducing secondary evidence. The question whether Ex.P-25 is genuine, whether it was duly executed, and whether it validly evidences the alleged gift are distinct issues, which are required to be independently examined on the basis of the entire evidence available on record and not merely on the question of its admissibility as secondary evidence.

21. **Now the next aspect that calls for consideration is; the genunity and credibility of ExP25**. **Consequently, the question that arises for**

consideration is Whether the impugned gift deed was duly executed by Fakruddin S/o Mehaboobsab Valikar on 6/2/1999 in favour of Smt. Noorjahan W/o Ibrahimsab Dalal?

22. Merely because Ex.P-25 has been admitted in evidence as a piece of secondary evidence it does not *ipso facto* establish its execution or genuineness. It is a settled proposition of law that **admissibility of a document and proof of its contents are two distinct concepts**. The burden still lies upon the plaintiff to establish that Ex.P-25 is a genuine document, that it was duly executed by the **Fakruddin S/o Mehaboobsab Valikar on 6/2/1999 in favour of Smt. Noorjahan W/o Ibrahimsab Dalal**.

23. In appreciating the genuineness of Ex.P-25, the Court is required to examine the intrinsic recitals contained therein, the oral evidence adduced by the parties, the surrounding circumstances attending its execution, and the conduct of the parties before and subsequent to the alleged transaction.

24. At the outset, it is pertinent to note that Ex.P-25 bears the date **06.02.1999** and contains a description of the property which substantially corresponds with the suit schedule property. The document also purports to record that the donor voluntarily transferred the suit property in favour of the donee. However, the mere existence of such recitals cannot, by themselves, be treated as conclusive proof of their truthfulness. The recitals must derive assurance from reliable oral and documentary evidence.

25. The plaintiff has examined herself as PW-1 and has consistently deposed that the Gift Deed was executed by **Fakruddin S/o Mehaboobsab Valikar in favour of the Plaintiffs' mother Smt. Noorjahan W/o Ibrahimsab Dalal** in the presence of the concerned persons and that the original document was subsequently lost. Nothing substantial has been elicited in her cross-examination to demonstrate that Ex.P-25 is a document recently brought into existence or that the photocopy has been manipulated. Though a specific suggestion has been put to PW-1 that Ex.P-25 is a fabricated document created only with an intention to harass the defendants, the said suggestion has been categorically denied. It is trite that a mere suggestion made during cross-examination does not constitute evidence unless it is substantiated by independent material.

26. The defendants have also relied upon the circumstance that no police complaint or newspaper publication was made regarding the alleged loss of the original document. As already observed, such omission may be a circumstance warranting careful scrutiny of the evidence, but it cannot, in isolation, lead to an irresistible conclusion that Ex.P-25 is fabricated or devoid of credibility.

27. Similarly, the elicitation that the donor's hands were trembling while affixing his signature is not, by itself, indicative of forgery or fabrication. At best, it is a circumstance requiring appreciation along with the entirety of the evidence. Unless supported by expert evidence or other cogent material impeaching the signature of the donor, such an elicitation cannot conclusively discredit the execution of Ex.P-25.

28. Therefore, the genuineness of Ex.P-25 cannot be accepted merely because it has been exhibited, nor can it be rejected solely because it is a photocopy. Its credibility has to be tested on the cumulative effect of the evidence on record, particularly with reference to whether the plaintiff has succeeded in proving the essential ingredients of a valid Mohammedan gift, namely, **(i) declaration of gift by the donor, (ii) acceptance of the gift by the donee, and (iii) delivery of possession**. It is, therefore, appropriate to examine each of these essential ingredients independently on the basis of the evidence available on record.

29. The next question that falls for consideration is whether the alleged Gift satisfies the requirements of a valid Mohammedan gift.

30. This Court is conscious of the fact that the defendants have not specifically challenged the execution or validity of **Ex.P-25** in their written statement by way of a categorical plea in alignment with the mandate prescribed under Order VI Rule 4 of CPC. Nevertheless, since the plaintiffs predicate their title to the suit schedule property entirely upon the alleged Gift Deed dated **06.02.1999**, this Court is duty-bound to independently examine whether the transaction evidenced by Ex.P-25 fulfils the essential ingredients of a valid Mohammedan gift. Such an enquiry becomes indispensable for determining the plaintiffs' claim of title over the suit schedule property.

31. It is well settled that a valid Mohammedan gift (*Hiba*) must satisfy three essential requirements, namely: **(i) a clear declaration of gift by the donor, (ii)**

acceptance of the gift by or on behalf of the donee, and (iii) delivery of possession of the subject matter of the gift to the donee. The absence of any one of these essential ingredients would render the gift legally unsustainable.

32. In order to ascertain whether the aforesaid requirements stand satisfied, it is necessary to examine the recitals contained in **Ex.P-25**. An extract of the second paragraph of Ex.P-25 is reproduced herein below:

"ಈ ಮೇಲ್ಕಂಡ ಚೆಕಬಂದಿಯಲ್ಲಿ ಬರತಕ್ಕಂತ ಜಮೀನು 1 ಎಕರೆ ಪತ್ರವನ್ನು ನಾನು ನನ್ನ ಆತ್ಮ ಸಂತೋಷದಿಂದ ಹಾಗೂ ಅಕ್ಕಲ್ ಹುಷ್ಟಾರಿಯಿಂದ ಮುಸ್ಲಿಂ ಧರ್ಮ ಸಂಪ್ರದಾಯದ ನಿಯಮಗಳಿಗೆ ಅನುಸಾರವಾಗಿ ಸದರ ಜಮೀನನ್ನು ದಾನ ರೂಪದಿಂದ ದಾನ ಕೊಡಲು ಇಚ್ವೆ ಹೊಂದಿದ್ದು, ನನ್ನ ಇಚ್ಛೆಗೆ ಅನುಗುಣವಾಗಿ ಸದರ ಜಮೀನನ್ನು ದಾನ ರೂಪದಿಂದ ಪಡೆದುಕೊಳ್ಳಲು ಸ್ವಂತ ಖುಷಿಯಿಂದ ಒಪ್ಪಿ ಕೊಂಡಿರುತ್ತೀರಿ ಹಾಗೂ ಸ್ವದಾನ ರೂಪದಿಂದ ಕೊಡುವ 1 ಎಕರೆ ಕ್ಷೇತ್ರದ ಜಮೀನನ್ನು ಅಪಸಾತನಲ್ಲಿ ಅಳತೆ ಮಾಡಿ ಕಲ್ಲು ನಿಲ್ಲಿಸಿ ಈ ದಿವಸ ನಿಮ್ಮ ಪ್ರತ್ಯಕ್ಷ ಕಬ್ಜೆಗೆ ಹಸ್ತಾಂತರ ಮಾಡಿದ್ದನ್ನು ನೀವು ತೆಗೆದುಕೊಂಡು ನಿಮ್ಮ ಪ್ರತ್ಯಕ್ಷ ಕಬ್ಜೆಯ ಅಧಿಕಾರವನ್ನು ಸದರ ಕ್ಷೇತ್ರದ ಮೇಲೆ ಚಲಾಯಿಸಿರುತ್ತೀರಿ."

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33. A plain reading of the aforesaid recital discloses that the donor unequivocally expressed his intention to gift the suit schedule property in favour of the donee, namely,

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the plaintiffs' mother. The recital further records that the donee accepted the said gift and that possession of the suit schedule property was simultaneously delivered to her. Thus, on the face of the document, Ex.P-25 contains recitals touching upon all the three essential constituents of a valid Mohammedan gift.

34. It is also pertinent to note that during the course of the cross-examination of PW-1, the defendants have not substantially confronted or impeached the aforesaid recitals. No specific suggestion has been put to PW-1 disputing the recital relating to the donor's declaration of gift, the donee's acceptance thereof, or the delivery of possession as recorded in Ex.P-25. Though the defendants have generally alleged that Ex.P-25 is a fabricated document, they have not elicited any material in the cross-examination to specifically discredit these recitals. In the absence of any effective challenge directed towards these material recitals, they assume considerable evidentiary significance while appreciating the validity of the alleged gift.

35. Further, in order to establish the due execution of **Ex.P-25**, the plaintiffs have examined **PW-2**, who claims to be one of the attesting witnesses to the Gift Deed. In paragraph No. 3 of his examination-in-chief affidavit, PW-2 has categorically deposed that **Fakrusab**, the alleged donor, executed the Gift Deed dated **06.02.1999** in favour of the plaintiffs' mother, **Smt. Noorjahan**, in his presence and in the presence of three other attesting witnesses. PW-2 has further identified his signature appearing on Ex.P-25, which has been marked as **Ex.P-25(a)**. He has also identified the signatures of the donor, Fakrusab, which have been marked as **Ex.P-25(b), Ex.P-25(c) and Ex.P-25(d)**.

36. The cross-examination of PW-2, however, is found to have been directed predominantly towards the circumstances relating to the drafting and preparation of Ex.P-25 rather than its execution. An extract of the relevant portion of the cross-examination dated **19.04.2025** is reproduced herein below:

"ನಾನು ಬಿ.ಕಾಂ . ಪದವಿದರ, ಅರಳಿ ವಕೀಲರು ಕಲಘಟಗಿ ತಾಲೂಕಿನವರು ಅಲ್ಲ ಎಂದರೆ ಸರಿ, ನಿಪಿ25 ರ ಮೂಲ ದಾಖಲೆಯನ್ನು ಅರಳಿ ವಕೀಲರು ತಯಾರು ಮಾಡಿದರು. ಅರಳಿ ಅಕೀಲರು ಮಾಡಿಸಿರುವುದು ಸತ್ಯವೋ ಅಥವಾ ನನ್ನ ಮುಖ್ಯ ವಿಚಾರಣೆಯಲ್ಲಿ ಹೇಳಿರುವ ಹಾಗೆ ಆರ್ ಎಸ್ ಉಡುಪಿ ವಕೀಲರು ಮಾಡಿಸಿರುವುದು ಸತ್ಯವೋ ಎಂದರೆ ಸಾಕ್ಷಿಯು ಇಬ್ಬರು ಸೇರಿ ಮಾಡಿದ್ದಾರೆ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ನಿಪಿ25 ತಯಾರು ಮಾಡಿದ ಸಮಯ ಗೊತ್ತಿಲ್ಲ. ನಿಪಿ25(ಬಿ), (ಸಿ) ಮತ್ತು (ಡಿ)ಗಳ ಮಧ್ಯೆ ವ್ಯತ್ಯಾಸ ಇದೆ ಎಂದರೆ ಸರಿ. ಅರಳಿ ವಕೀಲರ ಮತ್ತು ಆರ್ ಎಸ್ ಉಡುಪಿ ವಕೀಲರ ಸಹಿಗಳು ನಿಪಿ25 ರಲ್ಲಿ ಇಲ್ಲ. ನಿಪಿ25 ರಲ್ಲಿರುವ ನೋಟರಿ ಮುದ್ರೆಯನ್ನು ಎಲ್ಲಿ ಮತ್ತು ಯಾರು ಹಾಕಿದರು ಎಂದು ಗೊತ್ತಿಲ್ಲ. ನಿಪಿ25 ರಲ್ಲಿ ಖಾಸಿಮಸಾಬ ಬುಡನಖಾನ ಮತ್ತು ಎಸ್ ಐ ದಾಲಾಲ ರವರ ಸಹಿಗಳು ಇವೆ. ಖಾಸಿಮಸಾಬ ಬುಡನಖಾನ ಮತ್ತು ಎಸ್ ಐ ದಾಲಾಲರವರ ಸಹಿಗಳನ್ನು ಬೇರೆ ಕಡೆ ನೋಡಿಲ್ಲ. ಫಕರುಸಾಬರವರು ನೂರಜಾನ ರವರ ಮನೆಯಲ್ಲಿ ಕೆಲಸ ಮಾಡಿಕೊಂಡು ಇದ್ದರು ಎಂದರೆ ಸರಿ. ಫಕರುಸಾಬರವರು ಮದ್ಯವ್ಯಸನಿ ಎಂದರೆ ಗೊತ್ತಿಲ್ಲ. ಫಕರುಸಾಬರವರಿಗೆ ವಯಸ್ಸಾಗಿದ್ದ ಕಾರಣ ಅವರಿಗೆ ಮಾಡುವ ಕೆಲಸದ ಅರಿವು ಇರಲಿಲ್ಲ ಎಂದರೆ ಗೊತ್ತಿಲ್ಲ. ನನಗೆ ಯಾವುದೇ ವಿಚಾರ ಗೊತ್ತಿಲ್ಲದೇ ಇದ್ದರು ಸಹ ವಾದಿಗೆ ಸಹಾಯ ಮಾಡುವ ಉದ್ದೇಶದಿಂದ ಸುಳ್ಳು ಸಾಕ್ಷ್ಯ ನುಡಿಯುತ್ತೇನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ನಿಪಿ25 ರ ಸಂಗತಿಗಳನ್ನು ನಮಗೆ ಓದಿ ಹೇಳಿದರು. ಸುಳ್ಳು ಸಾಕ್ಷ್ಯ ನುಡಿಯುತ್ತಿದ್ದೇನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ."

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37. A careful scrutiny of the aforesaid cross-examination reveals that no substantial challenge has been directed towards the testimony of PW-2 insofar as the execution of Ex.P-25 is concerned. The defendants have neither disputed the authenticity of the signature identified by PW-2 as his own nor suggested that he was not present at the time of execution of the document. Likewise, no questions have been put to him to impeach his assertion that he personally witnessed the donor executing Ex.P-25 or to test the veracity of his account of the execution. His evidence regarding the execution of Ex.P-25 has, therefore, remained substantially unshaken in cross-examination.

38. It is trite that where a witness deposes to a material fact and the opposite party fails to confront him on that aspect during cross-examination, such omission assumes significance while appreciating the evidentiary value of his testimony. In the present case, although the defendants have sought to cast doubt upon the authenticity of Ex.P-25 as a whole, they have not effectively impeached the testimony of PW-2 concerning the execution and attestation of the document. Consequently, the testimony of PW-2, to the extent it relates to the execution of Ex.P-25, inspires confidence and constitutes a relevant circumstance in support of the plaintiffs' case.

39. The plaintiffs have also examined **PW-3**, who claims to have personal knowledge of the execution of **Ex.P-25** as well as the delivery of possession of the suit schedule property in favour of the plaintiffs' mother pursuant to the said gift. In his examination-in-chief affidavit, PW-3 has categorically deposed that he personally witnessed the transaction of gift and was aware of the circumstances under which the donor executed Ex.P-25 and delivered possession of the suit property to the donee.

40. A careful perusal of the cross-examination of PW-3 reveals that no effective challenge has been directed towards his testimony insofar as it relates to the execution of Ex.P-25 or the transaction embodied therein. The defendants have not confronted PW-3 with any suggestion disputing his presence at the time of the transaction, nor have they questioned his assertion that he personally witnessed the execution of the Gift Deed and the delivery of possession. Equally, no attempt has been made to impeach his personal knowledge of the transaction or to discredit his version by eliciting any material contradictions or inconsistencies.

41. The absence of any substantial cross-examination on these material aspects assumes significance. It is a well-settled principle of evidence that where a witness has deposed to a material fact and the opposite party fails to challenge such testimony in cross-examination, the Court is ordinarily entitled to attach due weight to that uncontroverted portion of the evidence. Consequently, the testimony of PW-3, insofar as it relates to the execution of Ex.P-25 and the attendant transaction of gift, has remained substantially unshaken and lends corroborative support to the version advanced by the plaintiffs.

42. Upon a cumulative appreciation of the entire oral and documentary evidence on record, this Court is of the considered opinion that the plaintiffs have succeeded in establishing the due execution of **Ex.P-25**. The testimony of **PW-1** regarding the execution of the Gift Deed and the subsequent loss of its original has remained materially consistent. The evidence of **PW-2**, an attesting witness to the document, directly proves the execution of the Gift Deed by the donor and identifies both his own signature and those of the donor appearing on Ex.P-25. Significantly, the defendants have failed to effectively challenge the testimony of PW-2 on the material particulars relating to the execution of the document. Likewise, the evidence of **PW-3**, who claims to have personally witnessed the transaction of gift and the delivery of possession, has remained substantially uncontroverted and furnishes independent corroboration to the plaintiffs' version.

43. The defendants have sought to impeach Ex.P-25 principally on the ground that it is a photocopy, that the original document was not produced and that no police complaint or public notice was issued regarding its loss. However, as already discussed, these circumstances, though relevant for appreciation of evidence, do not, by themselves, render the document unreliable or fabricated.

Except putting suggestions to the witnesses, which have been categorically denied, the defendants have not produced any positive or cogent evidence to probabilise their plea that Ex.P-25 is a concocted or fabricated document. Mere suggestions made in the course of cross-examination, unsupported by independent evidence, cannot displace otherwise cogent and consistent oral testimony.

44. Equally significant is the fact that the defendants have not specifically pleaded any particulars of fraud, fabrication or forgery in respect of Ex.P-25 as mandated under **Order VI Rule 4 of the Code of Civil Procedure**. Their written statement contains only general and omnibus denials without disclosing the material facts constituting the alleged invalidity of the Gift Deed. Such vague pleadings cannot be permitted to dilute the evidentiary value of the positive evidence adduced by the plaintiffs, particularly when the execution of the document has been spoken to by an attesting witness and another independent witness whose testimony has remained substantially unshaken.

45. Further, the recitals contained in Ex.P-25 disclose the three essential constituents of a valid Mohammedan gift, namely, **a declaration of gift by the donor, acceptance thereof by the donee and delivery of possession of the subject matter of the gift**. These recitals receive corroboration from the oral evidence of PW-1, PW-2 and PW-3. The defendants have not elicited any material contradiction in their cross-examination so as to create a reasonable doubt regarding the existence of these essential ingredients. In the absence of any convincing rebuttal, this Court finds no reason to discard either the recitals contained in Ex.P-25 or the oral testimony supporting the same.

46. It is trite that a civil case is required to be decided on the touchstone of **preponderance of probabilities** and not on proof beyond reasonable doubt. Judged on the aforesaid standard, the evidence adduced by the plaintiffs inspires confidence and outweighs the bare denials and unsupported suggestions put forth by the defendants. Consequently, this Court is satisfied that the plaintiffs have successfully established that **Fakruddin S/o Mehaboobsab Valikar** validly executed the Gift Deed dated **06.02.1999** in favour of **Smt. Noorjahan W/o Ibrahimsab Dalal**, thereby conveying the suit schedule property in accordance with the principles governing a valid *Hiba* under Mohammedan Law. As the plaintiffs trace their title through the said donee, their claim of ownership over the suit schedule property consequently stands established. Accordingly, **Issue No.1** and **Additional Issue No.1** are answered **in the Affirmative.**

47. Issue No.2: This issue is raised casting burden on the Plaintffs to prove that, they are in possession and enjoyment of the suit property.

48. In order to discharge the aforesaid burden, the plaintiffs have relied upon documentary evidence marked as **Ex.P-1 to Ex.P-3, Ex.P-13 and Ex.P-25**. **Ex.P-1**

comprises the RTC extract relating to the suit schedule property. **Ex.P-2** is the relevant mutation register extract, while **Ex.P-3** is the certified copy of the order passed by the Deputy Commissioner. **Ex.P-13** is another mutation register extract reflecting the subsequent revenue entries. The plaintiffs have also placed substantial reliance upon **Ex.P-25**, the Gift Deed dated **06.02.1999**, which forms the foundation of their claim of title and, consequently, their claim of possession over the suit schedule property.

49. A careful scrutiny of the cross-examination of PW-1 reveals that the defendants have principally questioned her personal knowledge regarding the contents of the aforesaid documents. However, no material has been elicited to impeach the authenticity of the revenue records or to demonstrate that the entries reflected therein are fabricated or otherwise unreliable. Likewise, nothing substantial has emerged in the cross-examination so as to discredit the evidentiary value of Ex.P-25, which has already been discussed while answering Issue No.1 and Additional Issue No.1.

50. Significantly, PW-1 has categorically deposed that the suit schedule property had been entrusted for cultivation to one **Ramu**, who has been cultivating the same through his brother on behalf of the plaintiffs. This testimony clearly indicates that the plaintiffs were not claiming physical cultivation by themselves but were asserting **constructive possession** through a cultivator acting on their behalf. It is well settled that possession in law need not always be actual or physical; constructive possession through an agent, tenant, caretaker or cultivator is equally recognised, provided such possession is established by acceptable evidence.

51. It is pertinent to note that the aforesaid testimony of PW-1 has remained substantially unchallenged. No specific suggestion has been put to PW-1 disputing the entrustment of cultivation to Ramu, nor has any material contradiction been elicited to discredit this aspect of her evidence. The failure to effectively confront the witness on a material assertion lends due assurance to her testimony.

52. On the other hand, the defendants have produced **Ex.D-12 to Ex.D-15**. Ex.D-12 to Ex.D-14 are tax paid receipts, some standing in the name of the original owner, **Fakrusab**, and others in the name of Defendant No.1. **Ex.D-15** is a certificate issued by the Village Accountant stating that the suit schedule property belongs to the defendants.

53. However, these documents, either individually or collectively, do not conclusively establish the defendants' possession over the suit schedule property. It is trite that payment of land revenue or property tax is primarily a fiscal arrangement between the revenue authorities and the person making such payment. Such receipts neither create nor extinguish title, nor do they conclusively establish possession. Likewise, the certificate issued by the Village Accountant is only an administrative endorsement and is not a document of title. It cannot prevail over the substantive oral and documentary evidence adduced before a competent civil court, particularly when the plaintiffs have succeeded in establishing the validity of the Gift Deed under which they trace their title.

54. Further, the revenue records produced by the plaintiffs disclose that their names have been entered in the revenue records pursuant to the mutation proceedings. Although revenue entries by themselves do not confer title, they constitute a relevant piece of evidence regarding possession and enjoyment, especially when read in conjunction with the proved title of the plaintiffs. In the present case, the plaintiffs' documentary evidence, coupled with the unshaken testimony of PW-1 regarding cultivation through Ramu, probabilises their case of continued possession over the suit schedule property.

55. In a civil proceeding, the question of possession is to be adjudged on the touchstone of **preponderance of probabilities**. Upon a cumulative appreciation of the entire evidence on record, this Court is of the considered view that the plaintiffs have succeeded in establishing that they were in lawful and constructive possession and enjoyment of the suit schedule property as on the date of institution of the suit. The defendants have failed to produce cogent and convincing evidence sufficient to rebut the plaintiffs' case or to establish their own exclusive possession. Accordingly, **Issue No.2 is answered in the Affirmative.**

56. <u>Issue No.3</u>: This issue is raised casting burden on the Plaintiffs to prove that the Defendant was causing unlawful interference with the Plaintiffs possession and enjoyment of the suit property.

57. In order to discharge the aforesaid burden, the plaintiffs have examined **PW-1**, who has categorically deposed in her examination-in-chief affidavit that the defendants, along with their associates, had attempted to interfere with the plaintiffs' peaceful possession and enjoyment of the suit schedule property. In support of the said testimony, the plaintiffs have relied upon **Ex.P-3**, being the certified copy of the order passed by the Deputy Commissioner, and **Ex.P-6 to Ex.P-12**, being the photographs depicting the suit schedule property.

58. A perusal of **Ex.P-3** discloses that the defendants had carried the mutation proceedings in appeal before the Deputy Commissioner by challenging the order passed by the Assistant Commissioner. The said appeal came to be dismissed. Though the dismissal of the revenue appeal does not, by itself, establish the plaintiffs' title, it is nevertheless a relevant circumstance reflecting the subsisting dispute between the parties in respect of the suit schedule property. Significantly, the existence and outcome of the said proceedings have not been disputed by the defendants.

59. Further, the testimony of PW-1 regarding the acts of interference has remained substantially unshaken in cross-examination. Nothing worthwhile has been elicited to discredit her assertion that the defendants attempted to interfere with the plaintiffs' possession over the suit schedule property.

60. It is also apposite to advert to the evidence of **DW-1**. During his cross-examination dated **10.07.2019**, **Ex.P-6 to Ex.P-12** were confronted to him. The relevant portion of the cross-examination is reproduced herein below:

"ಈಗ ಒಂದು ಛಾಯ ಚಿತ್ರವನ್ನು ತೋರಿಸಿದ್ದು ಅದನ್ನು ನಿಪಿ-8 ಅಂತ ಗುರುತಿಸಲಾಯಿತು. ನಿಪಿ-8 ರಲ್ಲಿ ನಾನು ಮೇಲೆ ಸಾಕ್ಷ್ಯದಲ್ಲಿ ಹೇಳಿದ ಚಹಾದ ಅಂಗಡಿ ಇರುತ್ತದೆ. ಈಗ ಇನ್ನೊಂದು ಛಾಯಾಚಿತ್ರವನ್ನು ನೋಡಿದ್ದು ಅದನ್ನು ನಿಪಿ-9 ಅಂತ ಗುರುತಿಸಲಾಯಿತು. ಸದರಿ ಪೋಟೊದಲ್ಲಿ ಸಿಮೆಂಟನ ಮನೆ ನಮ್ಮ ಮನೆಯಾಗಿರುತ್ತದೆ ಮತ್ತು ಬಿದ್ದ ಮನೆ ಪಚೆಕ್ರುಸಾಬರವರ ಮನೆ ಇರುತ್ತದೆ ಅಂದರೆ ಸರಿ.ಸಾಕ್ಷಿಯು ಮುಂದುವರೆದು ಬಿದ್ದ ಮನೆಯಲ್ಲಿ ನಮ್ಮ ಅಜ್ಜ, ಅಜ್ಜಿ ಇರುತ್ತಿದ್ದರು. ಈಗ ಇನ್ನೊಂದು ಛಾಯಾಚಿತ್ರವನ್ನು ನೋಡಿದ್ದು ಅದನ್ನು ನಿಪಿ-10 ಅಂತ ಗುರುತಿಸಲಾಯಿತು. ಸದರಿ ಪೋಟೊದಲ್ಲಿ ನಮ್ಮ ಮನೆಯು ಇರತ್ತದೆ ಅನ್ನುವುದು ಸರಿ. ಸಾಕ್ಷಿ ಮುಂದುವರೆದು ಸದರಿ ಪೋಟೊಯನ್ನು ತಗೆಯುವ ವಿಷಯಕೋಸ್ಕರ ಜಗಳ ಆಗಿದ್ದು. ನಾನು ಮನೆಯಲ್ಲಿ ಇಲ್ಲದೇ ಇರುವಾಗ ಪೋಟೊವನ್ನು ವಾದಿಯು ತೆಗೆದುಕೊಂಡು ಹೋಗಿರುತ್ತಾಳೆ. ಈಗ ಇನ್ನೊಂದು ಛಾಯಾಚಿತ್ರವನ್ನು

ನೋಡಿದ್ದು ಅದನ್ನು ನಿಪಿ-11 ಅಂತ ಗುರುತಿಸಲಾಯಿತು. ಸದರಿ ಪೋಟೊದಲ್ಲಿ ತೋರಿಸಿದ ಜಮೀನು ದಾವಾ ಆಸ್ತಿ ಆಗಿರುತ್ತದೆ ಅನ್ನುವುದು ಸರಿ. ನಿಪಿ-9 ರ ಪೋಟೊವನ್ನು ತೋರಿಸಿ ಸದರಿ ಪೋಟೊದಲ್ಲಿ ದಾವಾ ಆಸ್ತಿಯಲ್ಲಿ ಕೃಷಿ ಚಟುವಟಿಕೆಯನ್ನು ಮಾಡಿಲ್ಲದ ಸ್ಥಿತಿಯಲ್ಲಿ ಇರುತ್ತದೆ ಅಂದರೆ ಸರಿ. ಆದರೆ ಸಾಕ್ಷಿಯು ಮುಂದುವರೆದು ಈಗ ನಾವು ಮಾಡುತ್ತೇವೆ. ನಿಪಿ-8 ನ್ನು ತೋರಿಸಿದ್ದು ಜಮೀನಿನ ಮುಂದೆ ಕಂಟಿ ಬೆಳೆದಿರುತ್ತದೆ ಅನ್ನುವುದು ಸರಿ. ಸದರಿ ಜಮೀನು ದಾವಾ ಆಸ್ತಿ ಆಗಿರುತ್ತದೆ ಅನ್ನುವುದು ಸರಿ. ನಿಪಿ-8 ರಲ್ಲಿ ಯಾವುದೇ ಕೃಷಿ ಚಟುವಟಿಕೆ ಮಾಡಿರುವುದು ಕಂಡು ಬರುವುದಿಲ್ಲ ಅಂದರೆ ನಾವು ಇಲ್ಲದೇ ಇರುವಾಗಿ ಸದರಿ ಪೋಟೊಗಳನ್ನು ತೆಗೆದಿರುತ್ತಾರೆ. ಆದರೆ ನಾವು ದಾವಾ ಆಸ್ತಿಯನ್ನು ಮಾಡುತ್ತೇವೆ. ಈಗ ಇನ್ನೊಂದು ಛಾಯಾಚಿತ್ರವನ್ನು ನೋಡಿದ್ದು ಅದನ್ನು ನಿಪಿ-12 ಎಂದು ಗುರುತಿಸಲಾಯಿತು. ಸದರಿ ಪೋಟೊದಲ್ಲಿ ನಮ್ಮ ಮನೆ ಕಾಣುತ್ತದೆ ಅನ್ನುವುದು ಸರಿ. ಸಾಕ್ಷಿಯು ಮುಂದುವರೆದು ನಾವು ಇಲ್ಲದೇ ಇರುವ ಸಮಯದಲ್ಲಿ ಪೋಟೊ ತೆಗೆದಿರುತ್ತಾರೆ. ನಿಪಿ-11 ರಲ್ಲಿ ಬುರ್ಕ ಹಾಕಿಕೊಂಡಿರುವ ಹೆಣ್ಣು ಮಗಳು ಯಾಸ್ಮಿನದಳ ಆಗಿರುತ್ತಾರೆ ಅಂದರೆ ನನಗೆ ಗೊತ್ತಾಗುವುದಿಲ್ಲ. ಕಲರ್ ಸೀರೆಯನ್ನು ಹಾಕಿಕೊಂಡಿರುವ ಹೆಣ್ಣು ಮಗಳೇ ವಾದಿ ಆಗಿರುತ್ತಾ ಅಂದರೆ ಸರಿಯಲ್ಲ. ನಿಪಿ-11 ರಲ್ಲಿ ಬೀಜವನ್ನು ಹಾಕುತ್ತಿದ್ದಾರೆ ಅನ್ನುವುದು ಸರಿ. ಸಾಕ್ಷಿಯು ಮುಂದುವರೆದು ನಾವು ಇಲ್ಲದೇ ಇದ್ದಾಗ ಬಂದು ಪೋಟೊವನ್ನು ತೆಗೆದುಕೊಂಡು ಹೋಗಿರುತ್ತಾರೆ. ವಾದಿಯು ಛಾಯಾಚಿತ್ರದಲ್ಲಿ ಇದ್ದರೂ ಸಹ ನನಗೆ ಗೊತ್ತಾಗುತ್ತಿಲ್ಲ ಅಂತ ಸುಳ್ಳು ಸಾಕ್ಷ್ಯ ನುಡಿಯುತ್ತಿದ್ದೇನೆ ಅಂದರೆ ಸರಿಯಲ್ಲ. ಸದರಿ ಛಾಯಾಚಿತ್ರಗಳಲ್ಲಿ ವಾದಿಯೇ ಜಮೀನನ್ನು ಸಾಗುವಳಿ ಮಾಡುತ್ತಿದ್ದಾಳೆ ಮತ್ತು ಬೀಜವನ್ನು ಬಿತ್ತುತ್ತಿದ್ದಾಳೆ ಅಂದರೆ ನಾವು ಇಲ್ಲದ ಇರುವ ಸಮಯದಲ್ಲಿ ಪೋಟೋ ತೆಗೆದುಕೊಂಡು ಹೋಗಿರುತ್ತಾರೆ ನಾವು ಸಾಗುವಳಿ ಮಾಡುತ್ತಿದ್ದೇವೆ. ನಾವು ಹಾಜರು ಪಡಿಸಿದ ಪೋಟೋಗಳಲ್ಲಿ ನಮ್ಮ ಮನೆ ಇರುವುದು ಅದರಲ್ಲಿ ಬಂದಿಲ್ಲ ಅಂದರೆ ಸರಿ. ನಾವು ಹೊಲದ ಪೋಟೋಗಳನ್ನು ತೆಗೆದಿರುತ್ತೇವೆ. ನಾವು ಹೊಲದ ಪೋಟೋವನ್ನು ತೆಗೆದಿದ್ದೇವೆ. ಆದರೆ ಮನೆಯ ಪೋಟೋವನ್ನು ತೆಗೆದಿಲ್ಲ. ನಾವು ಕೇವಲ 2 ಎಕರೆ 24 ಗುಂಟೆ ಜಮೀನಿನ ಸಾಗುವಳಿ ಮಾತ್ರ ಮಾಡುತ್ತಿರುವುದರಿಂದ ಕೇವಲ ಅಷ್ಟೇ ಜಮೀನಿನ ಸಾಗುವಳಿ ಮಾಡುತ್ತೇವೆ. ದಾವಾ ಆಸ್ತಿಯಿಂದ 1 ಎಕರೆ ಜಮೀನಿನ ಪೋಟೊವನ್ನು ಹಾಜರು ಮಾಡಿಲ್ಲ ಅಂದರೆ ಸರಿಯಲ್ಲ. ನಾವು ಹಾಜರುಪಡಿಸಿರುವ ಪೋಟೋಗಳಲ್ಲಿ ತಾರ್ ರಸ್ತೆ ಕಾಣುವಂತೆ ಪೋಟೋ ತೆಗೆದಿಲ್ಲ

SANJEEV KUMAR G Digitally signed by SANJEEV KUMAR G Date: 2026.07.28 12:20:40 +0530

ಅಂದರೆ ಸರಿ. ಸಾಕ್ಷಿಯು ಮುಂದುವರೆದು ನಾನು ಕೇವಲ ನಮ್ಮ ಜಮೀನಿನ ಪೋಟೋ ಮಾತ್ರ ತೆಗೆದಿರುತ್ತೇವೆ."

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61. A careful reading of the aforesaid cross-examination reveals that DW-1 has admitted that the property depicted in **Ex.P-9** is the suit schedule property. He has further not disputed that the photographs marked as **Ex.P-6 to Ex.P-8** and **Ex.P-11 and Ex.P-12** pertain to the suit schedule property. He has also admitted that the house and tea stall shown in the said photographs are situated in the suit schedule property, though he claims the same to belong to him.

62. As already held while answering **Issue Nos.1 and 2**, the plaintiffs have succeeded in establishing their title and lawful possession over the suit schedule property. Consequently, the defendants' assertion of ownership over the structures standing on the property remains unsupported by any cogent evidence. The admissions elicited from DW-1, read in conjunction with the testimony of PW-1 and the documentary evidence on record, probabilise the plaintiffs' case that the defendants have been asserting hostile rights over the suit schedule property and have attempted to disturb the plaintiffs' peaceful possession.

63. In a suit for permanent injunction, it is not necessary for the plaintiffs to establish actual dispossession. It is sufficient if the evidence demonstrates a real and tangible threat of unlawful interference with their lawful possession. The evidence discussed above clearly establishes that the defendants have asserted rights adverse to the plaintiffs and have interfered, or have attempted to interfere, with the plaintiffs' peaceful possession and enjoyment of the suit schedule property.

64. Accordingly, this Court is of the considered opinion that the plaintiffs have successfully discharged the burden cast upon them in proving unlawful interference on the part of the defendants. **Hence, Issue No.3 is answered in the Affirmative**.

65. **<u>Issue No.5</u>**: This issue is raised casting burden on the Defendant to prove tha the suit for declaration of title is not maintainable in the absence of seeking relief to declare that the ipugned gift deed dated 6/2/1999 is valid under law.

66. The defendants have contended that since the plaintiffs trace their title through the Gift Deed dated **06.02.1999**, the present suit is not maintainable without seeking an independent declaration regarding the validity of the said Gift Deed. According to the defendants, the plaintiffs ought to have sought a declaration validating the Gift Deed before seeking declaration of title over the suit schedule property.

67. This contention, in the considered opinion of this Court, is devoid of merit.

68. At the outset, it is pertinent to note that **the plaintiffs have not approached this Court seeking enforcement of the Gift Deed as an independent cause of action**. On the contrary, the plaintiffs have instituted the present suit seeking a declaration of their title over the suit schedule property and consequential relief of permanent injunction. The Gift Deed dated **06.02.1999** has merely been relied upon as the **source of title** through which the plaintiffs claim succession to the suit schedule property. Therefore, the validity and due execution of the Gift Deed arise only as an **incidental issue** for adjudication while deciding the principal relief of declaration of title.

69. It is well settled that in a suit for declaration of title, the Court is competent to examine every link in the chain of title relied upon by the plaintiff. If the plaintiff traces title through a sale deed, gift deed, partition deed or any other instrument, the Court necessarily has to examine the legality, validity and evidentiary worth of such document while adjudicating the relief of declaration. Such examination does not require the plaintiff to seek a separate declaratory relief declaring the very document to be valid, unless the plaintiff himself seeks to avoid or set aside an adverse instrument or unless the law specifically mandates such a relief.

70. In the present case, this Court has already undertaken an elaborate examination of **Ex.P-25** while answering **Issue No.1** and **Additional Issue No.1**. Upon appreciation of the oral and documentary evidence, this Court has recorded a categorical finding that the plaintiffs have successfully established the due execution of the Gift Deed dated **06.02.1999** and that the transaction satisfies the essential ingredients of a valid *Hiba* under Mohammedan Law. Once such a finding has been returned in the present proceedings, no separate declaratory relief declaring the Gift Deed to be valid survives for consideration.The relief claimed by the plaintiffs substantially encompasses adjudication of their source of title, and the validity of the Gift Deed stands examined as an integral component of the adjudication of title itself.

71. Accordingly, this Court is of the considered opinion that the defendants has failed to discharge the burden cast upon him in establishing that the present suit is not maintainable for want of a separate declaratory relief regarding the validity of the Gift Deed dated **06.02.1999**. The contention is, therefore, liable to be rejected. **Hence, Issue No.5 is answered in the Negative.**

72. Issue No.6: This issue casts the burden upon the defendants to prove that the valuation adopted by the plaintiffs for the purpose of the suit is incorrect and that the court fee paid thereon is not in conformity with the provisions of the **Karnataka Court Fees and Suits Valuation Act, 1958**.

73. The defendants have taken a specific contention in their written statement that the suit has not been properly valued and that the plaintiffs ought to have valued the suit on the prevailing market value of the suit schedule property by paying ad valorem court fee under the provisions of the Karnataka Court Fees and Suits Valuation Act, 1958. Similar contentions have also been urged during the course of final arguments.

74. However, a careful scrutiny of the evidence on record reveals that the defendants have not produced any oral or documentary evidence in support of the said contention. Neither during the cross-examination of PW-1 nor through the evidence of DW-1 has any material been brought on record to demonstrate that the valuation adopted by the plaintiffs is contrary to the provisions of the Karnataka Court Fees and Suits Valuation Act, 1958. The defendants have also not produced any document indicating the market value of the suit property or any material to establish that the court fee paid is deficient.

75. It is trite that an objection relating to court fee or valuation cannot be sustained merely on the basis of a bald pleading or oral submission. The party raising such an objection bears the burden of establishing, by cogent material, that the valuation adopted by the plaintiff is contrary to the provisions of the statute. Mere assertion, without supporting evidence, is insufficient to discharge such burden.

76. In the present case, the plaintiffs have valued the suit and paid the court fee in accordance with the reliefs claimed in the plaint. Except making a general allegation that the suit ought to have been valued differently, the defendants have failed to specify the provision of the Karnataka Court Fees and Suits Valuation Act under which the valuation adopted by the plaintiffs is alleged to be erroneous. No acceptable evidence has been placed before this Court to demonstrate either the alleged undervaluation of the suit or the insufficiency of the court fee paid thereon.

77. It is pertinent to note that the plaintiffs have sought a declaration of their title to the suit schedule property coupled with the consequential relief of permanent injunction on the assertion that they are in lawful possession thereof. Such a suit squarely falls within the ambit of **Section 24(b) of the Karnataka Court Fees and Suits Valuation Act, 1958**, which governs suits for a declaratory decree with consequential relief where the plaintiff is in possession of the property. The valuation adopted by the plaintiffs is, therefore, in consonance with the said statutory provision.

78. The defendant has merely contended that the plaintiffs ought to have valued the suit on the prevailing market value of the property. However, no provision of the Karnataka Court Fees and Suits Valuation Act, 1958 has been pointed out by the defendant to demonstrate that Section 24(b) is inapplicable to the facts of the present case. No evidence has also been adduced to establish that the valuation made by the plaintiffs is contrary to law or that the court fee paid is deficient. In the absence of any such material, the objection regarding valuation and court fee cannot be sustained.

79. Accordingly, this Court holds that the suit has been properly valued under **Section 24(b) of the Karnataka Court Fees and Suits Valuation Act, 1958**, and that the defendants have failed to discharge the burden cast upon them under this issue. Hence, **Issue No.6 is answered in the Negative.**

80. Issue No.7: This issue is raised casting burden on the Defendant to prove that the suit is barred by non-joinder of necessary parties.

81. In order to discharge the aforesaid burn den, the defendant has examined himself as DW-1 and has filed an affidavit in lieu of his examination-in-chief. In paragraphs 4 and 5 of the said affidavit, DW-1 has merely asserted that the plaintiffs have failed to implead the necessary parties to the suit and, on the other hand, have impleaded him though, according to him, he is not a necessary party to the proceedings. On the basis of the said assertion, it is contended that the suit is liable to be dismissed for non-joinder of necessary parties.

82. However, a careful scrutiny of the evidence on record reveals that the said contention is wholly devoid of particulars. Except making a bald and sweeping assertion in his examination-in-chief affidavit, DW-1 has neither identified the persons who are alleged to be necessary parties nor disclosed the nature of their interest in the suit schedule property. Equally, no evidence has been adduced to establish that, in the absence of such persons, no effective or executable decree can be passed by this Court.

83. It is well settled that a **necessary party** is one in whose absence no effective and complete adjudication of the dispute can be made. The burden of proving that a suit is bad for non-joinder squarely rests upon the party raising such an objection. A mere plea of non-joinder, unsupported by material particulars or evidence identifying the alleged necessary parties and the necessity of their presence, is insufficient to sustain such an objection.

84. In the present case, the defendant has neither produced any documentary evidence nor elicited any material during the cross-examination of the plaintiffs' witnesses to demonstrate that any person, other than the parties already on record, possesses such a legal interest in the suit schedule property that his or her presence is indispensable for an effective adjudication of the dispute. The defendant has also failed to establish as to how the absence of any such person would render the decree ineffective or inexecutable.

85. On the contrary, the controversy involved in the present suit relates to the plaintiffs' claim of title through the Gift Deed dated **06.02.1999** and the alleged interference by the defendant. The questions arising for determination can be effectively and completely adjudicated between the parties presently before the Court. In the absence of any cogent material demonstrating prejudice or failure of justice on account of non-impleadment of any other person, the objection regarding non-joinder cannot be sustained.

86. Accordingly, this Court is of the considered opinion that the **defendant has failed to discharge the burden cast upon him** to prove that the suit is bad for non-joinder of necessary parties. **Hence, Issue No.7 is answered in the Negative.**

87. Issue No.4: This issue is raised to discuss regarding the Plaintiffs entitlement for the relief of declaration of title of the suit property with consequential relief of permanent injunction as against the Defendant .

88, While answering **Issue No.1** and **Additional Issue No.1**, this Court has, upon an elaborate appreciation of the oral and documentary evidence, held that the plaintiffs have successfully established the due execution of the Gift Deed dated **06.02.1999 (Ex.P-25)** by **Fakruddin S/o Mehaboobsab Valikar** in favour of **Smt. Noorjahan W/o Ibrahimsab Dalal**. This Court has further held that the transaction embodied in Ex.P-25 satisfies all the essential ingredients of a valid *Hiba* under Mohammedan Law, namely, declaration of gift by the donor, acceptance by the donee and delivery of possession. Consequently, it has been held that the plaintiffs, claiming through the said donee, have established their lawful title to the suit schedule property.

89. While answering **Issue No.2**, this Court has further recorded a finding that the plaintiffs were in lawful and constructive possession and enjoyment of the suit schedule property as on the date of institution of the suit. The oral testimony of PW-1, coupled with the revenue records and other documentary evidence produced by the plaintiffs, has been found sufficient to establish their possession. The defendant, on the other hand, has failed to produce any cogent evidence capable of dislodging the plaintiffs' case.

90. Further, while answering **Issue No.3**, this Court has held that the plaintiffs have successfully established that the defendant interfered with, or attempted to interfere with, their peaceful possession and enjoyment of the suit schedule property. The admissions elicited from DW-1, coupled with the documentary evidence produced by the plaintiffs, clearly establish a real and tangible threat to the plaintiffs' lawful possession, thereby entitling them to seek protection by way of a decree of permanent injunction.

91. Equally significant is the fact that the objections raised by the defendant regarding the maintainability of the suit, improper valuation and court fee, and non-joinder of necessary parties have all been negatived while answering **Issue Nos.5, 6 and 7**, respectively. The defendant has failed to establish any legal impediment disentitling the plaintiffs from obtaining the reliefs sought in the plaint.

92. It is a settled principle that where a plaintiff succeeds in proving his title and possession over the suit property and further establishes unlawful interference by the defendant, he becomes entitled not only to a declaration of his title but also to the consequential relief of permanent injunction restraining the defendant from interfering with his peaceful possession. The evidence adduced in the present case satisfies all these requirements.

93. Therefore, upon a cumulative consideration of the findings recorded on the foregoing issues, this Court is of the considered opinion that the plaintiffs have successfully established their entitlement to the relief of **declaration declaring them as the absolute owners of the suit schedule property** and to the consequential relief of **permanent injunction** restraining the defendant, his agents, servants, or anybody claiming through or under him from interfering with the plaintiffs' peaceful possession and enjoyment of the suit schedule property. **Accordingly, Issue No.4 is answered in the Affirmative.**

94. <u>Consideration of the Rival Contentions:</u>

(I) This Court has bestowed its anxious consideration to the elaborate submissions advanced by the learned counsel appearing for the respective parties. The oral and documentary evidence available on record has been carefully scrutinised in the light of the rival pleadings, the applicable statutory provisions and the settled principles governing appreciation of evidence in civil proceedings.

(ii) The principal contention advanced on behalf of the plaintiffs is that the suit schedule property was validly gifted by Fakruddin S/o Mehaboobsab Valikar in favour of Smt. Noorjahan W/o Ibrahimsab Dalal under Mohammedan Law by way of a valid *Hiba* dated 06.02.1999, and that Ex.P-25, though produced as secondary evidence, satisfactorily establishes the said transaction. It is further contended that the ingredients of a valid Mohammedan gift, namely declaration by the donor, acceptance by the donee and delivery of possession, stand established from the recitals contained in Ex.P-25, the oral evidence of PW-1, PW-2 and PW-3, and the subsequent mutation entries. Reliance has also been placed upon Section 129 of the Transfer of Property Act, 1882, the provisions relating to secondary evidence under the Indian Evidence Act, and the decision of the Hon'ble Supreme Court in *Rasheeda Khatoon (D) through LRs. v. Ashiq Ali (D) through LRs.*, (2014) 10 SCC 459.

(iii) Per contra, the defendant has assailed the plaintiffs' claim by contending that Ex.P-25 is merely an unregistered photocopy having no evidentiary value; that the alleged Gift Deed suffers from discrepancies regarding its date and execution; that no proper foundation was laid for adducing secondary evidence; that the document has not been proved in accordance with law; that the suit is bad for non-joinder of necessary parties and improper valuation; that the Gift Deed required compulsory registration; that the plaintiffs have failed to establish acceptance of the gift and delivery of possession, which are indispensable ingredients of a valid *Hiba*; that the revenue entries do not confer title; and that the plaintiffs have travelled beyond their pleadings.

(iv) The aforesaid rival submissions have been examined in detail while answering the respective issues framed for determination. While adjudicating **Issue No.1 and Additional Issue No.1**, this Court has considered the entire controversy relating to the admissibility of secondary evidence, the due execution and genuineness of Ex.P-25, the legal requirements governing a valid Mohammedan gift, the effect of non-registration, the evidentiary value of the testimony of PW-1, PW-2 and PW-3, and the objections raised by the defendant regarding the authenticity of the Gift Deed. Upon such appreciation, this Court has recorded a finding that the plaintiffs have successfully established the due execution of Ex.P-25 and that the transaction satisfies all the essential ingredients of a valid *Hiba* under Mohammedan Law.

(v) Similarly, while answering **Issue Nos.2 and 3**, this Court has examined the rival contentions relating to possession, mutation entries, revenue proceedings, delivery of possession and alleged acts of interference. Upon appreciation of the oral and documentary evidence, this Court has concluded that the plaintiffs have established their lawful possession over the suit schedule property and that the defendant has unlawfully interfered with such possession.

(vi) The objections raised by the defendant regarding the maintainability of the suit, the necessity of seeking a separate declaration regarding the validity of the Gift Deed, improper valuation and court fee, and non-joinder of necessary parties have also been independently considered while answering **Issue Nos.5, 6 and 7**. For the reasons recorded therein, each of those objections has been found to be devoid of merit.

(vii) Accordingly, all the submissions canvassed by the learned counsel for both parties stand answered by the findings recorded on the respective issues as per herein above.

95. <u>Issue No.4:</u> For the forgoing reasons, this Court is inclined to pass the following**:**

<u>ORDER</u>

This suit instituted by the plaintiffs is hereby **decreed with costs**.

It is declared that the plaintiffs are the absolute owners in lawful possession and enjoyment of the suit schedule property by virtue of succession to the valid Mohammedan Gift (Hiba) dated **06.02.1999** executed by **Fakruddin S/o Mehaboobsab Valikar** in favour of their mother **Smt. Noorjahan W/o Ibrahimsab Dalal**.

The defendant, his men, agents, servants, representatives, or any

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person claiming through or under him are hereby **permanently restrained** from interfering with the plaintiffs' peaceful possession and enjoyment of the suit schedule property.

Office is hereby directed to draw decree accordingly.

Accordingly, this suit shall stand disposed.

(Dictated to Adalat Ai, auto transcribed by Adalat Ai formatted by Stenographer corrected by me and then pronounced by me in the open court on this **28th day of July, 2026**)

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Date: 2026.07.28 12:30:18 +0530

(G. Sanjeev Kumar)
Civil Judge & JMFC,
Kalaghatagi,

A N N E X U R E

List of witnesses examined on behalf of Plaintiffs:

PW.1	:	Smt. Sairabanu Nazeerahmed Nesargi
PW.2	:	Srikant Surendra Katwakar
PW.3	:	Ramu Govindappa Tahasildar

List of documents marked on behalf of plaintiffs;

Ex.P1	:	RTC of Sy.No.268/A/1
Ex.P2	:	M R No.47/2006-07
Ex.P3	:	Certified copy of order issued by the Deputy Commissioner, Dharwad
Ex.P4	:	Copy of death certificate

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Ex.P5	:	Copy of death certificate
Exs.P6 to 12	:	Photos
Ex.P13	:	M R No.4/2003-04
Ex.P14	:	M R No.47/2006-07
Ex.P15	:	Certified copy of order issued by the Land Tribunal Kalaghatagi
Ex.P16	:	M E No.3188
Ex.P17	:	M E No.3722
Ex.P18	:	R S No.268 for the year 2004-05
Ex.P19	:	Copy of Gram Namone-8
Ex.P20	:	Letter issued by the Village Accountant
Exs.P21 & 22	:	2 Photos
Exs.P23 & 24	:	2 C D
Ex.P25	:	Photo copy of Gift deed dtd 06.02.1999
Ex.P25 (a) to (d)		Signatures

<u>List of witnesses examined on behalf of Defendants:</u>

DW.1 : Davalsab S/o. Rustumsab Bepari,

<u>List of documents marked on behalf of Defendants:</u>

Ex.D1	:	R S No.268/1A (Sketch) issued by the Vilalge Accountant
Exs.D2 to 14	:	Tax paid receipts
Ex.D15	:	Certificate dated 18,07.2018 issued by the Village Accountant Kalaghatagi

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Exs.D16 to 23	:	8 Photos
Ex.D24	:	One CD

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(G. Sanjeev Kumar)
CIVIL JUDGE & JMFC,
KALAGHATAGI,