

**IN THE COURT OF THE CIVIL JUDGE AND JMFC.,  
AT: KALAGHATAGI.**

Present

**SRI. GANESHA N.**  
M.A., LL.B,  
Civil Judge and JMFC., Kalaghatagi.

**O.S.No.124/2011**

**Dated this 20<sup>th</sup> day of December 2021.**

**PLAINTIFFS**

- Smt. Sairabanu W/o. Nazeersab  
Nesargi, Age: 42 years,  
Occ: Agriculture,  
R/o, Gandhinagar, Tq: Kalaghatagi.  
Dist: Dharwad.
- 2 Sri. Tairabanu W/o. Abdulgafar  
Savanur, Age: Nil.
- 3 Sri. Shabir W/o. Ibrahimsab Dala  
Age: Nil.
- 4 Smt. Gousbi D/o. Ibrahimsab Dalal  
Age: Nil.
- 5 Sri. Mehaboobasab S/o. Ibrahimsab  
Dalal, age: Nil.

*(By Shri. N.S.U, Advocate)*

**V/s**

**DEFENDANT**

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

*(By Shri. A.S.K Advocate)*

Date of institution of suit : 05.11.2011

Nature of suit : Declaration & Perpetual  
Injunction

Date of commencement of : 29.11.2014  
recording of evidence

Date on which the judgment : 20.12.2021  
was pronounced

Total duration : Year/s Month/s Day/s  
10 01 15

**(GANESHA N.)**  
Civil Judge and JMFC.,  
Kalaghatagi.

### **JUDGMENT**

The plaintiffs have instituted the instant suit against defendant seeking relief of declaration to declare that they are the absolute owners of the suit schedule property and for perpetual injunction to restrain the defendant, his agents or servants from

interfering into their peaceful possession and enjoyment over the suit schedule property bearing R.S.No.268/A/1 measuring 1 acre out of 3 acres 24 guntas situated at Kalaghatagi village bounded:

|          |   |                                      |
|----------|---|--------------------------------------|
| East by  | : | Government Road                      |
| West by  | : | Remaining land in<br>R.S.No.268/A/1  |
| South by | : | Government lane                      |
| South by | : | Property belonged to father<br>Jacob |

**THE PLAINTIFFS' CASE IN CAMPENDIOUS:**

2. The plaintiffs are brothers and sisters and they have been in possession and enjoyment over the suit schedule property since 1996. The suit schedule property was originally belonged to one Fakrusab Mehaboobsab Walikar and he had gifted the same in favour of one Smt. Noorjan W/o. Ibrahimsab Dalal on 06.02.1999. After death of said Noorjan W/o. Ibrahimsab Dalal, the plaintiffs being her legal heirs have inherited the suit schedule property and they have

got changed the revenue documents into their names and they have been in peaceful possession and enjoyment. The defendant having no right, title and interest over the suit schedule property has been attempting to obstruct the possession of the plaintiffs over the suit schedule property and he also attempted to dispossess the plaintiffs from the suit schedule property. The RTS Appeal being filed by the defendant and his mother before the Assistant Commissioner, Dharwad came to be dismissed and a revision petition being filed by them before the Deputy Commissioner, Dharwad also dismissed and as such they being unsuccessful in their legal battle before the revenue Courts has started to interfere into the possession of the suit schedule property which constrained the plaintiffs to institute the present suit seeking relief of declaration and perpetual injunction.

3. On receipt of suit summons the defendant has appeared before the Court through his counsel and he has submitted his written statement.

**CASE OF THE DEFENDANT IN COMPENDIOUS:**

4. The defendant in his written statement has stated that suit of the plaintiffs is based on frivolous and vexatious grounds and it is not maintainable on the ground of mis-joinder and non-joinder of necessary parties. It is further stated that the mother of the defendant namely Rajabi W/o. Rustumsab Bepari has already instituted a suit in O.S.No.77/2011 before this Court claiming right over the suit schedule property and questioning the oral gift being made by the deceased Fakrusab S/o. Mehaboobsab Walikar in favour of deceased Smt. Noorjan W/o. Ibrahimsab Dalal, mother of the plaintiffs herein. It is further stated that the defendants therein who are the plaintiffs herein have appeared in the said suit and inspite of that the

plaintiffs have suppressed the facts regarding institution of suit in O.S.No.77/2011 in the present suit. It is further stated that during the pendency of suit in O.S.No.77/2011, the present suit is not maintainable as it is hit by principle of sub-Judice. It is further stated that the averments of plaint in respect of description of suit schedule property is incorrect. It is further stated that revenue entries being entered in the names of plaintiffs will not give any title to them or will not recognize the alleged gift. It is further stated that revenue documents have no sanctity under law in respect of transfer of title and as such there is no cause of action to institute the present suit. It is further stated that the plaintiffs have no right to claim reliefs sought in the present suit. It is further stated that the plaintiffs have instituted the present suit on false grounds and as such the suit has to be dismissed by imposing cost of Rs.1,00,000/-. Hence the defendant

prayed to dismiss the suit by imposing cost of Rs.1,00,000/-.

5. Having regarded to the pleadings and other materials on records this Court has famed the following:

ವಿವಾದಾಂಶಗಳು

1. ದಾವಾ ಸ್ವತ್ತಿಗೆ ತಾನೊಬ್ಬನೇ ಸಂಪೂರ್ಣ ಮಾಲೀಕನೆಂಬುದನ್ನು ವಾದಿಯು ರುಜುವಾತುಗೊಳಿಸುವರೆ?
2. ವಾದಿಯು ತಾನು ದಾವಾ ಸ್ವತ್ತಿನ ಕಬ್ಬಾ ವಹಿವಾಟಿಯನ್ನು ಹೊಂದಿರುತ್ತಾರೆಂಬುದನ್ನು ರುಜುವಾತು ಪಡಿಸುವರೆ?
3. ದಾವಾ ಸ್ವತ್ತಿನ ತನ್ನ ಕಬ್ಬಾ ವಹಿವಾಟಿಗೆ ಪ್ರತಿವಾದಿ ಹರಕತ್ ಮಾಡುತ್ತಿದ್ದಾರೆಂಬುದನ್ನು ವಾದಿಯು ರುಜುವಾತು ಪಡಿಸುವರೆ?
4. ವಾದಿಯು ದಾವೆಯಲ್ಲಿ ಕೋರಿರುವ ಪರಿಹಾರಕ್ಕೆ ಅರ್ಹರೇ?
5. ಶ್ರೀಮತಿ ನೂರಜಾನ್ ಬಿ ಕೋಂ ಇಬ್ರಾಹಿಂ ದಲಾಲ್ ಇವರಿಗೆ ಫಕ್ರುಸಾಬ ತಂದೆ ಮೆಹಬೂಬಸಾಬ ವಾಲೀಕಾರರವರು ದಿನಾಂಕ: 06-02-1999 ರಂದು ದಾವಾ ಸ್ವತ್ತಿನ ಸಂಬಂಧವಾಗಿ ನೀಡಿರುತ್ತಾರೆ ಎಂದು ಆರೋಪಿಸಲಾಗಿರುವ ಮೌಖಿಕ ದಾನ (ಬಕ್ಷೀಸ್) ಕಾನೂನು ಬದ್ಧ ಎಂಬ ಘೋಷಣಾತ್ಮಕ ಪರಿಹಾರ ಕೇಳಿರುವ ಕಾರಣ ವಾದಿಯ ದಾವೆಯು ಅನುರ್ಜಿತ ದಾವೆಯಾಗಿರುತ್ತದೆಂಬುದನ್ನು ಪ್ರತಿವಾದಿ ರುಜುವಾತುಗೊಳಿಸುವರೆ?
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?

6. In order to prove their case, among the plaintiffs, the plaintiff No.1 was examined as PW1 and two witnesses namely Srikant Katwakar and Ramu Tahasildar were respectively examined as PWs2 and PW3 and Exs.P1 to 4 documents got marked.

7. In order to prove his case, the defendant himself was examined as DW1 and Exs.D1 to 24 documents got marked.

8. Heard arguments advanced by the learned counsels for the suit parties and this Court perused entire materials on record. Having heard arguments and having perusal of the entire materials on record, this Court answered Issue Nos.1 to 4 in the

Affirmative , Issue Nos.5 to 7 in the Negative and Issue No.8 as per the final order for the following:

**REASONS**

9. **Issue Nos.1 to 3:** Since these issues are interconnected with each other they are taken up together for determination to avoid repetition of facts and testimony of witnesses. The plaintiffs by contending that they are the absolute owners in possession and enjoyment of suit schedule property and defendant having no right over the suit schedule property has interfered into their possession and denied their title and also attempted to dispossess them, has instituted the present seeking relief of declaration of their title and for perpetual injunction. As rightly argued by the learned counsel for defendant and even as per the settled position of law the plaintiffs who approached the Court have to plead and prove their title and possession. As rightly relied upon by the learned

counsel for the defendant, the Hon'ble Supreme Court in **T K Mohammed Abubkar (dead) by LRs and others V/s P S M Ahmed Abdul Khadar and Others reported in (2009) 14 SCC 224** held that "in a case for suit for declaration of title and possession, burden lies on the plaintiff to plead particulars and pleadings are necessary to establish and the plaintiff has to make out his own case for declaration of title and possession and not on weakness in the title or possession of the defendant."

10. The PW1 in her examination-in-chief reiterating the averments of plaint has deposed that she and rest of the plaintiffs are children of Noorjan who was gifted with suit schedule property by one Fakrusab S/o. Mehaboobsab Walikar on 06.02.1999 and upon her death they being legal heirs have succeeded to the

suit schedule property and they become absolute owners in possession and enjoyment.

11. As per the contention of the plaintiffs, one Fakrusab S/o. Mehaboobsab Walikar was the owner of suit schedule property. The Exs.P1 and 2 go to demonstrate that the property bearing Sy.No.268/A/1 has been standing in the names of plaintiffs, defendant and other descendants. As manifested from the Ex.P1, one acre of land in Sy.No.268/A/1 is standing in the name of plaintiffs and rest of the portion is standing in the names of defendant and other descendants of Fakrusab. The DW1 in his cross examination by deposing as "ಆರ ಎಸ ನಂ. 268/ಎ/1 ನೆಡ್ಡರ ಮೂಲ ಮಾಲಿಕರು ಫಕ್ರುಸಾಬ ಅಂದರೆ ಸರಿ", has categorically admitted that the suit schedule survey number property was originally belonged to Fakrusab and he was absolute owner in possession of the same. The DW1 has further deposed

in his cross examination that 3 acres 24 guntas of land in Sy.No.268/A/1 was granted for Walikar profession being carried out by Fakrusab. The learned counsel for defendant has suggested the PW1 in her cross examination as "ಫಕ್ರುಸಾಬ ತಂದೆ ಮೆಹಬೂಬಸಾಬರವರು ದಾವಾ ಆಸ್ತಿಗಳನ್ನು ವಾಲಿಕಾರಿಕೆ ಮಾಡುತ್ತಿದ್ದ ಮೇರೆಗೆ ಅವರಿಗೆ ರೈತನಾತೆ ಸಾಗುವಳಿ ಮಾಡುತ್ತಿದ್ದರು ಅಂದರೆ ಗೊತ್ತಿಲ್ಲ. ರೈತನಾತೆಯಿಂದ ಸಾಗುವಳಿ ಮಾಡುತ್ತಿದ್ದ ಸಲುವಾಗಿ ಅವರಿಗೆ ಭೂ ನ್ಯಾಯ ಮಾಡಲಿಯಿಂದ ಮಂಜೂರಾಗಿದೆ ಅಂದರೆ ನನಗೆ ಗೊತ್ತಿಲ್ಲ." The defendant in his written statement has admitted entire fact regarding description and existence of suit schedule property. The revenue documents of suit schedule property also demonstrate that the property has been acquired from ancestors. Thus there is no dispute of fact that the proeprty bearing Sy.No.268/A/1 measuring 3 acres 24 guntas was granted in favour of Fakrusab S/o. Mehaboobsab Walikar and he was the absolute owner in possession of the same.

12. The plaintiffs have been claiming their ownership over 1 acre of land out of 3 acres 24 guntas in Sy.No.268/A/1. The Exs.P1 and 2 clearly demonstrate that in the year 2006-07 the revenue documents were separately entered in the names of plaintiffs in respect of 1 acre land is concerned which is the suit schedule property herein. Though the defendant and his ancestors have preferred an appeal and revision before the Revenue Courts challenging the entry being entered in the names of plaintiffs have become unsuccessful. The Ex.P17 is the entries which were entered on 11.02.2000. The Ex.P17 goes to demonstrate that 1 acre of land out of 3 acres 24 guntas was gifted by the Fakrusab Walikar in favour of Smt. Noorjan W/o. Ibrahimsab Dalal and possession of gifted 1 acre of land was delivered to the Noorjan and on the basis of her possession and on the basis of gift

being made in her favour revenue documents got accepted into her name in respect of 1 acre of land.

13. In order to prove the alleged gift being made by the Fakrusab Walikar in favour of Noorjan, the plaintiffs have examined two witnesses who are examined as PWs.2 and 3. The PWs.2 and 3 in their respective examination-in-chief have deposed that suit schedule property was belonged to Fakrusab Walikar and he gifted the suit schedule property in favour of his mother's sister namely Smt. Noorjan on 06.02.1999 and declaration of gift was made by Fakrusab in their presence and the Noorjan was also accepted the gift. Though the learned counsel for defendant has cross examined the PWs.2 and 3 at length, nothing has been elicited from their mouths contrary to the contents of their examination-in-chief and also contrary to the alleged gift.

14. The PW2 in his cross examination has deposed that he signed the affidavit on the advise of counsel for the plaintiffs. Such statement of PW2 will not hider the credence of evidence. Though the PW3 has deposed that he is 10 years younger than Fakrusab, same will not affect his testimony as in order to depose before the Court knowledge of fact is necessary but not indifference of age between executant and witnesses.

15. The suit which was instituted by one Ashabi in O.S.No.77/2011 challenging the alleged gift being made in favour of Noorjan by the Fakrusab Walikar, came to be dismissed. Except hand sketch, Tax paid receipts and photographs, the defendant has not produced any documents before the Court. The PWs.2 and 3 have clearly deposed regarding declaration and acceptance of gift dated 06.02.1999. The Ex.P17 clearly demonstrate that revenue documents got changed into

the name of Donee in respect of 1 acre of land and subsequently her name has been entered on the basis of gift being made by the Fakrusab Walikar. The revenue documents and oral testimony of PWs.2 and 3 clearly fortifies the declaration and acceptance of gift dated 06.02.1999 made by the Fakrusab Walikar in favour of Noorjan, the mother of plaintiffs.

16. Under Muslim law oral gift is permissible. Learned Counsel for suit parties have vehemently argued in respect of settled position of law pertaining to legality of oral gift under Muslim law. According to the orthodox Muslim jurisprudence the term gift or hiba is identified with absolute and unconditional transfer of ownership of any property without any return for indefinite period, and anything less than absolute and unconditional transfer is not acceptable. But this orthodox view of gift has been consistently maintained, one reason being that the Prophet never liked the idea

of imposition of condition to a gift. The Prophet approved of amrees (life grant) but held the condition annexed to them by the grantor to be void. Sec.129 of Transfer of Property Act saves gift made by Mohammadan from compulsory registration. The Hon'ble High Court of Karnataka in **B Jan V/s G M Basheer reported in ILR 2002 Kar 369** held that "registration of gift made by Mohammadan is not compulsory. The Hon'ble Supreme Court in **Hafeeza Bibi and Others V/s Shaikh Fareed (dead) by LRs and others** held that " can it be said that because a declaration is reduced to writing, it must have been registered? we think not."

17. The Hon'ble Supreme Court in **Rasheeda Khatoon (dead) by LRs V/s Ashiqali (dead) by LRs reported in (2014) 10 SCC 459** held that "oral gift under Muslim Law is valid and its essential requisites

are 1. Declaration of gift by donor; 2. Acceptance of gift, express or implied, by donee; 3. Delivery of possession by donor and taking of actual possession or constructive possession of gifted property by donee."

The PWs.1 to 3 have categorically deposed regarding gift being made by the Fakrusab in favour of Noorjan. The revenue documents particular the Ex.P17 clearly fortifies the factum of gift being made in favour of Noorjan. The witnesses of plaintiffs have deposed that the Fakrusab have declared of his intention to gift the suit schedule property in favour of Noorjan. The documents produced by the plaintiffs clearly demonstrate that the mother of plaintiffs have accepted the gift made by son of his sister and she came into possession of the suit schedule property. The exclusive possession of the mother of the plaintiffs over the suit schedule property was being recognized by the entries in the revenue records and since then the revenue

documents of the suit schedule property have been showing the possession of the suit schedule property is at the hands of Noorjan and subsequently of plaintiffs.

18. Thus over all evidence on record both documentary and oral clearly corroborates with the contents of plaint and proves that the suit schedule survey number property was granted in favour of Fakrusab by the Government as he was working as Walikar and thereafter he gifted 1 acre of land which is the suit schedule property herein in favour of one Noorjan who is sister of his mother and thereafter the plaintiffs being children of Noorjan have succeeded to the suit schedule property and as such the plaintiffs have become absolute owners of suit schedule property and they are in possession and enjoyment of the same.

19. The defendant in his written statement has denied the ownership of the plaintiffs over the suit

schedule property. The defendant also contended that the plaintiffs have not produced sufficient documents to prove their possession. The defendant also contended that he is paying revenue to the Government. All these contentions of the defendant sans documentary evidence and as such inference can be drawn that the defendant has been interfering into possession of the plaintiffs over the suit schedule property. Thus this Court answered Issue Nos.1 to 3 in the **Affirmative**.

20. **Issue No.5**. The defendant has contended in his written statement that suit of the plaintiff is not maintainable as they have not sought relief of declaration to declare that oral gift allegedly being made by the Fakrusab Walikar in favour of Noorjan on 06.02.1999 is valid.

21. The plaintiffs have sought relief of declaration to declare that they are the absolute owners

of suit schedule property. The averments of plaint clearly shows that their title clearly rests on the oral gift being made by Fakrusab Walika in favour of their mother. Thus seeking relief of declaration to declare their title is sufficient. Seeking relief of declaration to declare that the oral gift is valid is not necessary. Thus the contention of the defendant that in the absence of relief of declaration to declare the validity of oral gift, the suit is not maintainable holds no water. Thus this Court answered Issue No.5 in the **Negative**.

22. **Issue No.6:** The defendant has contended that Court fee paid by the plaintiffs is in sufficient. The plaintiffs have instituted the suit seeking relief of declaration of their title and for perpetual injunction. The suit schedule property is an agricultural land. The plaintiffs have valued the suit Under Sec.7(2) and 24(d) of Karnataka Court Fee and Suit Valuation Act 1958.

The plaintiffs have paid Court Fee of only Rs.25/-. The value of subject matter is of Rs.1,000/-. Therefore the Court Fee paid by the plaintiffs is not sufficient as they have sought relief of both declaration and perpetual injunction. Therefore the plaintiffs have to pay Rs.25/- for the relief of perpetual injunction as per Sec.26(c) of Karnataka Court Fee and Suit Valuation Act 1958. Thus this Court answered Issue No.6 in the **Affirmative.**

23. **Issue No.7:** Initially the suit was instituted by plaintiff No.1. Subsequently the brothers and sisters of plaintiff No.1 have been impleaded into the suit as additional plaintiffs. The defendant also contended in the cross examination of PW1 that since Noorjan was having six children namely Tahira Begum, Sahira Banu, Shabbir, Muktumbi, Gousebi and Mahaboobali, suit is bad for non-joinder of necessary parties. Since the children and grand children of Noorjan have come

on record as additional plaintiffs, the contention of the defendant that suit is bad for non-joinder of necessary parties cannot be accepted. Thus this Court answered Issue No.7 in the **Negative**.

24. **Issue No.4**: Since the plaintiffs have successfully proved their title and possession over the suit schedule property and interference by the defendant, they are entitled for relief of declaration and perpetual injunction. Thus this Court answered Issue No.4 in the **Affirmative**.

25. **Issue No.8**: In view of discussion made on Issue Nos.1 to 7, this Court proceeds to pass the following:

### **ORDER**

The suit of the plaintiffs is hereby decreed with costs.

The plaintiffs are hereby declared as absolute owners of suit schedule property.

The defendant is hereby perpetually restrained from interfering into peaceful possession and enjoyment of the plaintiffs over the suit schedule property.

The plaintiffs shall pay Rs.25/- as deficit Court fee within one month.

Draw decree accordingly.

*(Dictated to the Stenographer, directly to the Computer and corrected and pronounced by me in the open court on this the 20th day of December 2021)*

**(Ganesha N.)**

Civil Judge and JMFC.,  
Kalaghatagi.

**ANNEXURE**

**LIST OF WITNESSES EXAMINED ON BEHALF OF**

**PLAINTIFF:**

P.W.1 : Sairabanu Nesargi  
P.W.2 : Srikanth Katwakar  
P.W.3 : Ramu Tahasildar

**LIST OF DOCUMENTS EXHIBITED ON BEHALF OF  
PLAINTIFF:**

Ex.P1 : Property extract  
Ex.P2 : Extract of Mutation Entry  
Ex.P3 : Certified copy of Order in RTS RA  
Cr.No.10-2008/09.  
Ex.P4 : Extract of Death certificate  
Ex.P5 : Extract of Death certificate  
Exs.P6 to 12 : Copies of Photo

**LIST OF WITNESSES EXAMINED ON BEHALF OF  
DEFENDANT:**

D.W.1 : Davalsab Rustumsab Bepari

**LIST OF DOCUMENTS EXHIBITED ON BEHALF OF  
DEFENDANTS:**

Ex.D1 : Map  
Exs.D2 to 14: Tax paid receipts  
Exs.D15 : Certificate  
Exs.D16 to 23 : Copies of photo  
Ex.D24 : C.D

Civil Judge and JMFC,  
Kalaghatagi.