

**IN THE COURT OF SENIOR CIVIL JUDGE AND
JMFC, KALAGHATAGI**

PRESENT

**SRI. RAVINDRA L. HONOLE., B.A., LL.B. (Spl)
SENIOR CIVIL JUDGE & JMFC, KALAGHATAGI**

DATED THIS 09ND DAY OF JULY 2026

R.A. No.08/2023

APPELLANT:

1. Smt. Aminabi w/o Adamsab Yaligar,
(Sri. C.B.K., Adv)

Vs

RESPONDENTS:

1. Kamalsab R. Eliger @ Annigeri and others
(R-1,2,4, 11(a,b,d,e),3, 5 to 8: absent)
(R-6, 7, 11(c), 12, 13: Sri. M.M.C., Adv)

PARTIES TO IA NO.1

APPLICANT:

1. Mabusab s/o Gousemoddin @ Bashasab
Tahasildar

Vs

OPPONENTS:

1. Kamalsab R. Eliger @ Annigeri and others

ORDERS ON I.A .1

The applicant/proposed appellant has filed this application u/o 1 rule 10 of CPC for impleading him as party to the appeal.

2. This application is supported with affidavit of proposed appellant stating that appellant Smt.

Aminabi w/o Adamsab Eliger @ Annigeri expired on 12.02.2024 issueless. Her husband predeceased the appellant. During life time of appellant she was residing with him till her death. She has executed gift deed in his favour in the presence of attesting witnesses, therefore, he may be impleaded as appellant and permitted to proceed with the appeal. It is submitted that if the application is allowed no harm or loss would be caused to the respondents. On the other hand, he will be put to untold hardship and injury. Therefore, prays for allowing the application.

3. The proposed appellant relied on gift deed alleged to be executed by appellant Smt. Aminabi Annigeri. Enquiry is conducted on gift deed. In order to prove his contention appellant stepped into witness box and got examined two witnesses as PW.2 and 3. PW.2 was not subjected for cross examination, therefore, his evidence is discarded. The proposed appellant got marked Ex.P.1 to 5.

4. Heard.

5. The following points arise for my consideration as under:

1. Whether the proposed appellant proves that deceased Smt. Aminabi Annigeri executed gift deed in favour of proposed appellant and he is necessary party for effective adjudication of the matter in dispute between parties?

2. What order?

6. My findings on the above points are:

POINT No.1 : In the negative

POINT No.2 : As per the final order for the following:

REASONS

7. **POINT No.1** : Deceased Aminabi challenged this appeal against the order passed in FDP No.1/2017 dated 20.10.2022 on the file of Civil Judge, Kalaghatagi arising out of preliminary decree passed in O.S.No.76/2013. The grounds of appeal is the commissioner report is erroneous, illegal and prepared in collusion with respondents. The findings recorded by trial court is erroneous and liable to be set aside.

8. During pendency of appeal the appellant Smt. Aminabi Annigeri died. Thereafter the proposed appellant has filed this application claiming that

appellant has executed gift deed in his favour. By virtue of gift deed he was the owner of properties and he is necessary party to the appeal, therefore, prays for impleading him as appellant to the appeal.

9. In order to prove his contention the proposed appellant himself stepped into witness box and got examined as PW.1. In support of his case got marked documents. I have gone through the documents Ex.P.1 is the photo copy, Ex.P.2 is the certified copy of Adhar card of proposed appellant, Ex.P.3 is alleged gift deed written on paper sheet dated 12.01.2024, Ex.P.4 is the order sheet in FDP No.1/2017, Ex.P.5 is the order copy of FDP No.1/2017 dated 20.10.2022. The documents got marked by the proposed appellant i.e., Ex.P.5 order copy of FDP No.1/2017 disclose that the trial court has passed final order allotting Block I to the petitioner and Block No.II to the respondents as of their shares as shown in the hand sketch map, accordingly final decree has been ordered to be drawn. Further record shows that the appellant challenged the said order by filing review petition on the file of Civil Judge,

Kalaghatagi and as per order dated 19.07.2023 same was dismissed. Thereafter, appellant has filed this appeal. It shows that deceased Aminabi has not accepted allotment of share by court. Allotment of share does not itself of possession of parties.

10. The proposed appellant relied upon Ex.P.3 unregistered alleged gift deed dated 12.01.2024. I have gone through the document. It was written on document sheet. The contents of document shows that as per judgment and decree passed in O.S.No.76/2013 she has initiated final decree proceeding in FDP No.1/2017. Against the said order she has filed appeal. Further contents shows that as per judgment and decree she is entitled to 1/5th share in petition schedule properties, since they have no children the proposed appellant who is the son of brother of appellant was taking care of her and she was residing along with him, therefore, she has executed gift deed in favour of proposed appellant. Further contents shows that the possession of properties have been delivered to the proposed appellant. The said

document bears the thumb impression alleged to be belongs to Smt. Aminabi Annigeri. The said document is not signed by the scribe and it is not made clear who has identified thumb mark appearing on Ex.P.3.

11. The contents of alleged gift deed Ex.P.3 are contrary to the documents on record. Appellant Smt. Aminabi has not accepted her share in the petition schedule properties and aggrieved by the order of trial court she has preferred appeal against the said order. Admittedly possession of properties have not been determined and handed over to the parties as per order passed in FDP No.1/2017. To the contrary the contents of alleged gift deed shows that possession of properties have been handed over to the proposed appellant who is claiming right under gift deed. As per order of court, Block No.I as shown in the commissioner report was allotted to the share of the petitioner (Aminabi). I have gone through the commissioner report wherein it was specifically shown that Block No.I property measuring 40 Sq. meters in petition schedule properties has been allotted to the

share of petitioner. No possession was delivered to the Aminabi as per report. Therefore, the contents of alleged gift deed and the description of properties gifted to the proposed appellant is appears to be false and no actual possession of properties have been delivered as per final decree proceedings.

12. I have also gone through the oral evidence of PW.1 wherein he deposed that gift deed was written by Advocate at Hubballi and he was not signed the gift deed, which creates doubt about genuineness of document. He admits that the witness to the gift deed are residents of Annigeri and suit property situated at Mishrikoti. Deceased Aminabi was resident of Mishrikoti village, Kalaghatagi taluk. No records to show that she was residing at Annigeri. Ex.P.3 is unregistered gift deed and to write said document there is no need to get for Hubballi. It should have been written at Home where she was residing. He stated that he was given information to write gift deed. Later on he deposed that as per information given by Aminabi he furnished information to write gift deed. It

is asked that at the time of writing what documents have been seen and he answered that she know every thing. Admittedly, deceased Aminabi rustic uneducated villager and she has no knowledge of number of properties, extent of properties, then how it can be believed that she has given information for writing alleged gift deed. Admission given by the PW.1 itself shows that he has given information for writing gift deed, who is beneficiary under gift deed right got created document to get share of property belonged to Aminabi. In further cross examination PW.1 admits that at the time of writing gift deed suit was pending and in the suit there was order for allotting $\frac{1}{2}$ guntas of land. He admits that there was no decision which portion of property fallen to the share of Aminabi. He deposed that surveyor went to the spot for three time but he was not measured the property. From this it is crystal clear that as per final decree proceeding no possession of property has been delivered and inspite of it alleged gift deed has came into force which creates doubt about genuineness of document.

13.In further cross examination PW.1 denied that thumb impression is not belongs to Aminabi and it was created for his benefit. It is admitted that thumb impression of Aminabi has been identified but the person who has identified has not signed the document. It appears that later on it was identified but scribe has not put his signature. It is denied that Ex.P.3 is created and concocted document to grab the share of respondents. The oral evidence of PW.1 who is beneficiary and given information for preparing gift deed creates doubt of genuineness of Ex.P.3.

14.I have also gone through the oral evidence of PW.3 Imamsab Darwan. In his examination-in-chief deposed that he know the proposed appellant and Aminabi. He deposed that property No.---- situated at Mishrikoti village belongs to Aminabi Eligar and she was in possession and enjoyment of said property. It is stated that proposed appellant bear the expenses of food, medical expenses and litigation expenses of Aminabi. The said Mabubsab has taken care of Aminabi, therefore, she has executed gift deed on

12.01.2024 at Hubballi, court complex in their presence. As per information given by the Aminabi gift deed has been written by Advocate and after preparing document it was read over and accepting the same Aminabi put her signature. Along with him one Hasansab Chitwad also put signature as witness to the gift deed. He identified his signature marked at Ex.P.3(b). In the cross examination admits that he has not seen suit property and same is situated at Mishrikoti and he do not know boundaries of said property. It is admitted that Aminabegum had no children. He deposed that at the time of writing gift deed Aminabegum went to Hubballi. It is denied that there is no relationship between Mehaboobsab and Aminabegum. He denied that Aminabegum residing at Mishrikoti during her last days and respondents have taken care of her. It is denied that Aminabi has not executed gift deed in favour of Mabusab Tahasildar and it was created document. It is denied that Aminabi has no intention to execute gift deed. He denied that in order to help the Mabusab deposing false evidence.

15. PW.3 identified his signature appearing on Ex.P.3 but he has not identified thumb impression of Aminabi. The oral evidence of PW.3 is contrary to the evidence of PW.1. In the cross examination PW.1 himself admits that he was given information for preparing gift deed and to the contrary PW.3 deposed that Aminabi has given information to the Advocate which is not believable. It is pertinent to note that PW.3 has no knowledge about suit property. In his examination-in-chief itself the property number was kept blank. PW.3 had no knowledge about suit property and he has not seen property, deposing evidence to support proposed appellant. His evidence is not supported with documentary evidence and same is not believable and not acceptable. The evidence of PW.3 is contrary to contents of Ex.P.3 and same is not sufficient to prove gift deed.

16. Another witness examined by the proposed appellant to prove the gift deed by name Hasansab Chittawad who is examined as PW.2 has not subjected for cross examination. His evidence is not helpful to

prove the case of the proposed appellant. The scribe of the document who is stated to be the Advocate has not signed the document. PW.1 and 3 have categorically deposed that Ex.P.3 was prepared by Advocate as per information given by deceased Aminabi. The scribe of document is material witness who has not signed the document and he was not examined by the proposed appellant which creates doubt about genuineness of Ex.P.3. In order to remove the cloud on the document and suspicious circumstances the author of the document has not been examined shows that Ex.P.3 is created and concocted document.

17. Another check for genuineness alleged gift deed is as per Ex.P.3 deceased Aminabi bequeathed her entire 1/5th share in petition schedule properties. As per Mohammedan law, a Mohammedan can bequeath up to 1/3rd of their estate. A Mohammedan cannot bequeath entire estate, which invalidates the gift.

18. Gift deed got marked by the proposed appellant is unregistered document and written on

insufficiently stamped paper. Document sheet alleged to gift deed does not bears date, name of purchaser, place. This aspect also shows that after death of Aminabi same right have been created in collusion with witnesses. No doubt gift under Mohammedan is not compulsory registrable document, but when the document is reduced before writing it is compulsory registrable. On this count also alleged gift deed is void and inadmissible document.

19. In view of decision of Hon'ble Supreme Court of India reported in **(2009) 6 SCC 160 in the case of Abdul Rahim Vs. S.K. Abdul Zabbar**, the Hon'ble Supreme Court held that, "In order to make a valid and complete gift under Mohammedan the following conditions are to be fulfilled.

(a) The doner should be sane and major and must be the owner of property which he is gifting.

(b) The thing gifted should be in existence at the time of Hiba.

(c) If the thing gifted as divisible, it should be separate and made distinct.

(d) The thing gifted should be such property to benefit from which is lawful under the Sheriyat.

(e) The thing gifted should not be accompanied by things not gifted i.e., should be free from things which have not been gifted.

(f) The thing gifted should come in the possession of done himself, or of his representative, guardian or executor.

20. In the present case on hand, alleged gifted properties are divisible and divisions are made but they have not been separated and made distinct. Deceased Aminabi was not put into possession of suit properties, therefore, execution of alleged gift deed in favour of proposed appellant is void. The valid conditions of gift about possession of property is not with donee and she cannot gift the properties to the donor. Transfer of possession under the Muslim law is necessary for transferring complete ownership. In the present case on hand, the possession of property was not transferred to the proposed appellant(Mabusab Tahasildar) and he was not put into possession of properties. Therefore, the conditions of valid gift under Mohammedan law is not fulfilled and gift is not valid and complete and same is void.

21. As per Sec. 17 of Indian Registration Act, 1908, the immovable property value which exceeds more than Rs.100/- is compulsory registrable document. In the present case on hand, Ex.P.3 is unregistered document and written on insufficiently stamped paper which is not admissible under law. By virtue of Ex.P.3 the proposed appellant Mabubsab will not get any right over the property.

22. The proposed appellant has failed to prove the genuineness of gift deed. The appellant has failed to remove the cloud on the alleged gift deed by examining scribe of the document. The said document is suspicious and created document and same is not admissible under law. Ex.P.3 is unregistered, created and concocted document and same is void, it will not give or confer any right, title in favour of proposed appellant.

23. The intention of donee for execution of gift deed in respect of suit properties has not been proved by adducing cogent and convenient evidence. During pendency of appeal said document is reduced into

writing which creates doubt about genuineness of document. As on the date of execution of alleged gift deed, Aminabi was not residing at Hubballi and there is answer from the proposed appellant or witness, why document has been reduced at Hubballi. If there was intention of execution of gift deed it could have been registered and there is no embargo to register the document. The place of document reduced into writing and persons who are present at the time of document also suspicious. Presence of Aminabi at the relevant time is also doubtful. These all circumstances creates doubt about genuineness of alleged gift deed and no effort has been made to prove the said document as per procedure prescribed under law.

24. The proposed appellant has failed to prove that he was necessary party to the proceedings by virtue of gift deed alleged to be executed by deceased Aminabi. The proposed appellant is no way concerned to suit property or respondents. Accordingly, I have answered point No.1 in the negative.

25. **POINT No.2**: As discussed above, I proceed to pass the following:

O R D E R

The I.A.No. 1 filed by the proposed appellant Mabusab Tahasildar u/o 1 rule 10 CPC is hereby dismissed.

(Dictated to stenographer directly on computer, typed by him, then corrected, printed and pronounced in the open court on this **09th day of July 2026**)

(R.L.Honole)
SR.CIVIL JUDGE & JMFC,
KALAGHATAGI