

KAGD020002742012



IN THE COURT OF ADDL. SENIOR CIVIL JUDGE AND
J.M.F.C.,GADAG

DATED ON THIS THE 17th DAY OF JULY, 2026

Present:-

Smt. Padmashree. Ratnakar Patil,

B.A. LLB. (Spl)

Addl., Senior Civil Judge & JMFC., Gadag.

O.S.No.52/2012

PLAINTIFFS

- :1. Smt. Rahamatbi W/o. Abdulsalam,
Age: 63 years, Occ: Agriculture,
Housework,
R/o. Plot No.73, Ex-Serviceman
Colony, Bangalore Bypass Road,
Cowl Bazaar, Bellary.
2. Smt. Jamelabi W/o. Kashimsab
Tahasildar,
Aged about 60 years,
Occ: Agriculture & Housework,
R/o. Netaji Colony, Gokul Road,
Hubli.
3. Smt. Jainabbi W/o. Sikandarsab
Sindagi,
Age about 58 years, Occ:
Agriculture & Housework,
R/o. Settlement, Gadhinagar,
Gadag-Bettigeri at Bettigeri.

By Sri. M.R.H., Advocate)

//Versus//**DEFENDANTS**

- :1. Miyajan S/o. Mukthumsab
Abbigeri
Age about 55 years, Occ: Business
& Agriculture, R/o. Jawali Bazaar,
Near Tangakoot, (Tanga stand)
Gadag.
2. Mohammad Ghouse S/o.
Mukthumsab Abbigeri,
Aged about 53 years, Occ:
Agriculture & Business,
R/o. Jawali Bazaar, near
Tangakoot, (Tangastand) Gadag.
3. Noor Ahamed S/o. Mukthumsab
Abbigeri,
Aged about 50 years,
Occ: Agriculture & Business,
R/o. Jawali Bazaar, near
Tangakoot, (Tangastand) Gadag.
4. Smt. Yasmin Wife of ShaikAhamed
D/o. Fathima Bee
Aged about 48 years, Occ: Teacher,
resident of Elahi Colony,
Basavapatna Road, Gangavathi.
5. Mohammed Aneef, Son of
Mohammaed Ghouse
Aged 43 years, Occ: Teacher,
resident of Elahi Colony,
Basavapatna Road, Gangavathi.

- 6). Smt. Parveen wife of Babu Sab,
Aged about 49 years, Occ: House
wife, resident of Elahi Colony
Basavapatna Road, Gangavathi.
- 7). Smt. Mubeen Wife of Mohammed
Yusuff Ali,
Aged 35 years, House wife,
resident of Elahi Colony,
Basavapatna Road, Gangavathi.
- 8). Kum. Jabeen, D/o. Mohammaed
Ghouse
Aged 30 years, resident of Elahi
colony, Basavapatna Road,
Gangavathi.

(By Sri. M.H.Ph., Adv.)

Date of filing of suit	-	31.03.2012		
Nature of suit	-	Partition	and	separate possession.
Date of commencement of recording evidence	-	20.11.2012		
Date of judgment	-	17.07.2026		
Total duration	-	Year	Month	Days
		14	03	16

(Smt. P.R.Patil)
Addl. Senior Civil Judge &
J.M.F.C., Gadag.

J U D G E M E N T

The plaintiffs filed this suit for the relief of Partition and Separate Possession of their 1/10th share each in the suit properties.

2. Description of the suit properties

A). The suit properties are agricultural lands and house open site situated at Gadag village of Gadag Taluka as follows:

- 1). R.S.No.277/2 measuring 7 acres 3 guntas.
- 2). R.S.No.252/1 measuring 12 acre 30 guntas
- 3). R.S.No.590/1A measuring 6 acre 31 guntas
- 4). RS.No.643/1A measuring 5 acres 4 guntas
- 5). R.S.No.252/2E.

B). House and open site properties situated in Gadag City.

- i) Gadag CTS No.1773, measuring 144 Square meters.
- ii) Gadag CTS NO.1783/1A measuring 176.00 Square meters.

iii) Movable properties as detailed herein below:

- i) Gold ornaments about 100 tola, worth Rs.20,00,000/-.
- ii) Silver ornaments worth Rs.8,00,000/-.
- iii) Furniture's worth Rs.50,000/-.
- iv) Household utensils worth Rs.50,000/-.
- v) Agricultural implements worth Rs.50,000/-.
- vi) Four bullocks worth Rs.50,000/-.

3. Brief facts of the case of the plaintiffs is as follows:-

It is the case of plaintiffs that, one Miyan Sab S/o. Mukthum Sab was the grand father of plaintiffs and defendant no.1 to 3 and great grand father of defendant no.4 to 8. The said Miyan Sab had two sons by name Mukthum Sab and Chandasab. The said Chandasab died unmarried issueless. The plaintiffs and defendant no.1 to 3 are the children of Mukthum Sab. The defendant no.4 to 8

are the children of late Smt. Fathima Bee who is daughter of Maktum Sab and who was the eldest sister of plaintiffs. The suit properties are originally belonging to grand father of plaintiffs and defendant no.1 to 3 i.e. Miyan Sab. After the death of said Miyan Sab the property inherited by his sons i.e. Maktum Sab and Chandasab. After the death of Mukthum Sab and Chandasab, plaintiffs and defendants are inherited the suit properties.

4. The plaintiffs further submits that, the plaintiffs and defendants are tenants in common to the suit properties. There is no partition or division in the suit schedule properties in any manner in between the plaintiffs and defendants. The defendants no.1 to 3 being the sons of late Mukthum Sab have managed to get their names mutated to the suit schedule properties under the garb that the daughters of Mukthum Sab have relinquished their share in favour of defendant no.1 to 3. But the said daughters never given up their share in the suit schedule

properties. The plaintiffs approached to the defendant no.1 to 3 on many occasions and requested them to partition the suit schedule properties by metes and bounds and allot their separate 1/10th share each. But defendants have denied to allot the share of plaintiffs in the suit schedule properties. Therefore, plaintiffs filed this suit.

5. After filing the suit, suit summons has been issued to the defendants. Defendant no.1 to 3 appeared through their counsel and filed written statement. Defendant no.4 to 8 placed Ex-parte in this case. Defendant no.1 to 3 filed their written statement on 21.02.2013.

6. The brief facts of the case of defendant no.1 to 3:

The defendant no.1 to 3 filed written statement on 21.02.2013. The defendant no.1 to 3 admitted the relationship and genealogy stated in the para no.2 and 3 of the plaint. It is also admitted that the Miyan Sab had two sons by name Mukthum Sab and Chandasab. Further it is admitted that one son of Mukthum Sab by name

Mohammed Haneef died unmarried and issueless on 08.08.2009. Other pleadings of plaintiffs specifically denied by the defendant no.1 to 3. Further it is contended that the plaintiffs ought to have filed for declaratory relief about ownership. On these grounds prayed to dismiss the suit of the plaintiffs.

7. In this case the counsel for defendants filed written statement by taking defense on 22.02.2024. This court taken the said written statement on the file and framed the issues. Challenging the said order of this court, the plaintiffs preferred an appeal before the Hon'ble High Court of Karnataka. The Hon'ble High Court of Karnataka allowed the writ petition filed by the plaintiff bearing WP No.104179/2024(GMCPC) date of disposal 05.02.2026 with direction that this court considered the written statement of defendant no.1 to 3 filed on 21.02.2013 and after taking the evidence of both side dispose of the case. On the direction of the Hon'ble High Court, this court considered the written

statement filed by the defendants on 21.02.2013 and framed the issues on 11.03.2026.

I S S U E S

1. Whether plaintiffs prove that plaintiffs and defendants are tenants in common to the suit schedule properties?
2. Whether plaintiffs prove that Chandasab died issueless?
3. Whether plaintiffs prove that daughters of Muktumsab given up their share over the suit schedule properties?
4. Whether the plaintiffs are entitled 1/10th share in the suit schedule properties and defendant No.1 to 3 entitled 2/10th share and defendants no.4 to 8 entitled 1/10th share in the suit schedule properties?
5. Whether plaintiffs are entitled relief as prayed in the plaint?
6. What order or decree?
8. The plaintiff no.2 deposed before the court as PW.1 on 20.11.2012 and relied the documents marked as Ex.P1 to Ex.P13. After remand of this case, the plaintiffs not led any

further evidence and their side closed. In this case defendant no.1 deposed before the court by way of affidavit as DW.1 and relied the documents marked Ex.D1 to D.5 and closed his side. The defendants on their side examined two witness as DW.2 and 3. The DW.2 after chief examination not offered himself for cross examination, hence, his evidence is discarded. Counsel for defendant examined another witness as DW.3 by name Hajibabusab Attar and closed their side.

9. Heard arguments of both side counsel and perused the citations produced by the both side counsel.

10. My Findings on the above issues are as under :-

Issue No.1	:	Partly in the Affirmative
Issue No.2	:	In the Affirmative
Issue No.3	:	In the Negative
Issue No.4	:	Partly in the Affirmative
Issue No.5	:	Partly in the Affirmative
Issue No.6	:	As per final order, for the following :

REASONS

11. Issue No.1 to 3:-

All these Issues are taken for common discussions.

In order to avoid the repetition of the facts.

12. The plaintiffs and defendants admitted that one Miyan Sab was the propositus, he was grand father of plaintiffs and defendants no.1 to 3 and great grand father of defendant no.4 to 8. The said Miyan Sab had two sons by name Mukthum Sab and Chandasab. Plaintiffs and defendant no.1 to 3 are children of Mukthum Sab. The defendant no.4 to 8 are children of Late Smt. Fatamabi D/o. Mukthum Sab. It is admitted fact that the said Chandasab died issuelless.

13. It is the case of plaintiffs that, Chandasab died issuelless and suit properties are became ownership and possession of Mukthum Sab. After the death of Mukthum Sab, all the suit properties inherited by the plaintiffs and defendants as a tenant in common. Therefore, plaintiffs are entitle share in the all the suit properties.

14. The defendants apart from the relationship between plaintiffs and defendants all other allegations made by the plaintiffs is specifically denied by the defendants, but not taken any defense in their written statement filed on 21.02.2013. As per the direction of the Hon'ble High Court of Karnataka this court considered the above said written statement filed by the defendants and framed the issues.

15. It is the contention of plaintiffs that the defendant no.1 to 3 by making forged signatures of plaintiffs, given vardi to the revenue authorities stating that plaintiffs have relinquished their right over the suit properties, on the strength of vardi given to the revenue authorities by the defendants the name of plaintiffs deleted and entered the name of defendant no. 1 to 3 only in the revenue documents about the suit properties.

16. In order to prove the case, the plaintiff no.2 deposed before the court as PW.1 and relied the document marked as Ex.P1 to P.13. Ex.P1 to 4 are the records of right pertaining to

the Sy.no.277/2, 252/1. In the said records of right the name of Miyajaan S/o. Mukthum Sab Abbigeri, Mohammadgous S/o. Mukthum Sab Abbigeri and Noorahamad S/o. Mukthum Sab Abbigeri is showing as possessor of the properties. Ex.P5 is certified copy of mutation registered pertaining to CTS No.1773 in that on 17.05.1989 given vardi to the revenue documents stating that as per the consent deed given by the wife and children of Mukthum Sab, the name of wife and male children of Mukthum Sab only entered in the revenue records i.e., Ameena Bee W/o. Mukthum Sab Abbigeri, Mohammad Haneef, Miyan Sab, Mohammadsab and Noor Ahamad children of Mukthum Sab Abbigeri is entered in the revenue records. After that on 18.02.2000, the name of Ameenabi deleted stating that she expired on 03.04.1996. Ex.P6 is mutation register of CTS No.1783/1-A it shows that on 17.05.1989 as per the warsa the name of wife and male children of Mukthum Sab is mutated. Ex.P7 is paper publication which is published in daily news paper by the plaintiffs dated 18.08.2011 stating that the plaintiffs filed this suit for partition and they have share in the

properties as stated in the paper publication and intimated to public at large not to deal with these properties as mentioned in the paper publication. Ex.P8 is certified copy of Kabuli patra. Ex.P9 is Jawab besmi. Ex.P10 is notice, Ex.P11 is application given to the land records Gadag. Ex.P12 is death certificate of Ameenabi. Ex.P.13 is death certificate of Mohammed Haneef. By producing these documents the plaintiffs submits that plaintiffs and defendants are tenant in common to the suit properties and they have share in the suit properties as stated in the plaint. It is the only defense of the defendant in their Written statement filed on 21.02.2013 that, the plaintiff not having possession of the suit properties. Therefore they have to seek the declaratory relief in the suit, without declaratory relief the suit of the plaintiff is not maintainable.

17. The counsel for defendant No. 1 to 3 also cross examine the PW1 that, since last 40 years, the name of defendants is appearing in the revenue records of the suit

properties. The plaintiffs not challenged the said revenue entry before any Court.

18. The counsel for plaintiff at the time of argument submitted the citation of Hon'ble Apex Court between **Mansoor saheb(died) Vs Saleema (D) by LRs which is disposed off on 09.12.2024**. In this case the Hon'ble Apex court “ *In para no.7 of the judgment it is discussed that mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only inable the person in whose favour mutation is ordered to pay the land revenue in question.. In Jitendra Singh Vs. State of MP and Ors. Right from 1997, the law is very clear. In the case of Balavant Singh Vs. Daulat Singh (D) by LRs, reported in (1997) 7 SCC 137, this court has on occasion to considered the effect of mutation and it is observed and held that mutation of property in revenue record neither creates nor extinguishes title to the property nor has it any presumptive value on title.*

Such evidence are relevant only for the purpose of collecting land revenue. Similar view has been expressed in the series of decisions thereafter.”

19. As per the pleadings of the plaintiffs, the plaintiffs tenant in common of the suit properties. Further counsel for defendants at the time of cross examination of PW.1 suggested that “ ದಾವಾ ಆಸ್ತಿ ಐಟಮ್ ನಂ.1 ಮತ್ತು 2 ಮತ್ತು ಮನೆಯಲ್ಲಿ ನಿಮಗೆ ಮತ್ತು ಪ್ರತಿವಾದಿಗಳಿಗೆ ಅರ್ಧ ಹಿಸ್ಸೆ ಇದೆ ಎಂದರೆ ಹೌದು ಎಂದು ಹೇಳುತ್ತಾರೆ.” The defendants in one breath submitted that plaintiffs are not having any possession of the properties and they did not seek any possession of the properties. Therefore, the suit of the plaintiffs not survive for consideration, in another breath the counsel for defendants suggested the PW.1, the plaintiffs and defendants having half share in the suit property item no.1 and 2. The counsel for defendants no.1 to 3 at the time of arguments submitted the citation of **Hon’ble Apex between Safinaz Abbas Bharmal and Ors vs Khalil Ahmed Gulam Nabi Bhure and Ors**. In this case Hon’ble Apex Court held that

the plaintiffs has to file a suit within 12 years and the suit of the plaintiffs is barred by limitation.

“ 21. By now, it is settled principle of law that the issue of limitation is a mixed question of fact and law. It is not in dispute that the parties are closely related to each other. It is also not in dispute that Defendant Nos. 1 to 4 and Defendant No. 5 are residents of the same village, whereas the Plaintiffs are residents of another village in adjoining tahsil of the same district. In this background, it will be appropriate to refer to Article 65 of the Limitation Act. Relevant part of the said Article is as under:

1 (2004) 13 Supreme Court Cases 385.

FA. 899-1999 Description of suit Period of Time from which limitation period begins to run 65 For possession of Twelve years When the immovable property of possession of the any interest therein based defendant on title. becomes adverse to the plaintiff.

Explanation.- For the purposes of this article -

(a) ...

(b) where the suit is by a Hindu or Muslim entitled to the possession of immovable property on the death of a Hindu or Muslim female, the possession of the defendant

shall be deemed to become adverse only when the female dies;

22. It will also be relevant to refer the observations of the Privy Council in the case of Mahomedally (supra), which read as under:

"It was not contended before the Board that the plaintiff's suit is of the character mentioned in Art. 106 Limitation Act. It is a suit against certain Mahomedan co- heirs by a person entitled to part of the interest of an heir and the High Court on appeal rightly held that to such a suit neither Art. 106 nor Art. 123 is applicable. The heirs of a Mahomedan succeed to his estate in specific shares as FA. 899-1999 tenants in common and, the plaintiff's suit against the son and daughters of Ebrahimji for due administration of what came to their hands as property left by their father is governed as regards immovable property by Art. 144 and as regards movables by Art. 120: 20 I A 155 1; 59 I A 742. Upon the proper appreciation of Art. 120 as between tenants in common, it will be sufficient to refer to 57 I A 3253 and 45 Mad 6484. It does not appear that the widow, son or daughters of Ebrahimji received what was to come to them under the agreement of 24th September 1924 until the suit of 1924 had been decreed in 1926 which is well within six years of filing of the present suit on 23 rd July, 1930. But their Lordships think it right to

add that on the evidence they find no reason for holding that there had been an ouster or exclusion of the plaintiffs prior to 23rd July, 1924 : indeed there are concurrent findings of the Courts in India which are inconsistent with any such contention."

23. It can be seen that the Privy Council has held that the heirs of a Mahomedan succeed to his estate in specific shares as tenants in common, and the suit for recovery of immovable property is governed by Art. 144, presently Art. 65. It could thus, be seen that in view of Art. 65, the suit will have to be filed within a period of 12 years when the possession of the defendant becomes adverse to the plaintiff. It could thus, be seen that under Art. 65, suit will have to be filed within a period of twelve years from the ouster or exclusion of 1 20 I A 155 Mahomed Riast Ali v. Hasin Banu.

2 59 I A 74 Ghulam Muhammad v. Ghulam Husain 3 57 I A 325 Mt. Bolo v. Mt. Koklan.

4 45 Mad 648 Yerukola v. Yerukola FA. 899-1999 the plaintiff. However, in the present case since the Plaintiffs are claiming through deceased Zubaida, in view of Explanation (b) of Art. 65, possession of Defendant Nos. 1 to 4 shall be deemed to have become adverse only after the death of Zubaida.

24. In the present case, the dates are undisputed. The deceased Gulam Nabi has expired on 25 th December, 1963. Zubaida through whom Plaintiffs are claiming died on 23rd February, 1965. It could thus, be seen that the issue that will have to be decided is as to whether ouster or exclusion of the Plaintiffs is in the year 1994-95 as claimed by them, or it is from 1959 as claimed by Defendant Nos. 1 to

4. If the Plaintiffs prove that it is for the first time in the year 1994-95 there was ouster or exclusion from the suit property, the suit will be within limitation. Conversely, if the contesting Defendants prove that ouster is prior to period of 12 years from the date of institution of the suit, it will have to be held that suit is barred by limitation.

25. For considering the said issue, we will have to refer to the pleadings as well as oral and documentary evidence on record. The Plaintiffs have made a statement in paragraph 8 of the plaint that since the death of Gulam Nabi Bure, the demands of 25% share in the suit FA. 899-1999 property were made several times. It is further averred that Defendant No. 1 kept on promising, but did not give share till 1st of August, 1995. It is stated that for the first time in October 1994, the Plaintiff No. 7 came to know that Defendant No. 1 had illegally, in order to oust and exclude the Plaintiffs,

started showing inherited properties to the prospective purchasers for the purpose of selling the same. It is stated that thereafter after making enquiry and investigation by Plaintiff No. 7 and Plaintiff Nos. 13, they came to know about illegal design of the contesting Defendants. It is stated that at that time, the demand was made for 25% share by the Plaintiffs and Defendant No. 1 assured to give them their share. However, thereafter on several occasions the Defendant No. 1 except promising did nothing. On 1 st of August, 1995, the Plaintiffs asked for the final reply from Defendant No. 1 and on that day, Defendant No. 1 for the first time refused to give share. It is therefore contended that 1st August, 1995 would be relevant date to consider ouster or exclusion.”

20. As discussed above the defendants not taken any defense about the limitation point, the plaintiffs are ouster or exclusion from the property and also not proved before the court that they are not in possession of suit properties. There is no pleading about these aspect. Even if considered about limitation point, the plaintiffs not proved before the court about ouster from that property, therefore the said citation is not

applicable to the case in hand. Therefore, this court come to the conclusion that the plaintiffs need not pray for declaratory relief.

21. The defendants counsel at the time of cross examination of PW.1 suggested that the said Miyan Sab had two sons they are Chandasab and Mukthum Sab. The said Chandasab and Mukthum Sab inherited the properties. The said Chandasab had half share in the properties. The said Chandasab made a oral gift of his half share in the properties in favour of defendant no.1 to 3. Therefore, they are the absolute owner and in possession their half shared property and plaintiffs are not having any share in the suit properties. Further in the cross examination counsel for defendants suggested that some of the properties are granted land from the government to the Mukthum Sab. The plaintiffs are not having share in the said property also. Since plaintiffs are married daughters of Mukthum Sab. These set of defense not taken in the written statement of defendant no.1 to 3. The

Counsel for defendants suggested the said questions to the PW.1 but counsel for plaintiffs objected for stating as per the direction of the Hon'ble High Court, this court has to consider the written statement of defendant no.1 to 3 on 21.03.2013 therefore, the answer to the said suggestion not taken by this court. Further the defendant no.1 deposed before the court as DW.1 by way of evidence on affidavit. The DW.1 in his evidence on affidavit took a contention about oral gift and Inam land. There is variance between pleading and proof. The defendants not pleaded in their written statement about the oral gift and Inamland / tenanted land whereas in the evidence the defendants pleaded about oral gift and Inamland / tenanted land.

22. The counsel for plaintiffs at the time of arguments submitted above said citation which is described above, in that citation the Hon'ble Apex Court between ***Mansoorsaheb(dead) Vs Salima (D) by LRs*** which is disposed off on 09.12.2024. Delt with oral gift in Mohammadan law. The Hon'ble Apex

Court quoted the citation “1922 SCC Online PC 1813 Civil Appeal No.4211 of 2009, this court in Jamila Begum Vs. Shami Mohammad, 20 reiterate the essentials of valid and complete gift as letdown in Abdulrahim.

“Under the Mohammadan law, no doubt, making oral gift is permissible.

The conditions to make a valid and complete gift under the Mohammadan law are as under:

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

(b). The thing gifted should be in exitance at the time of hiba.

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

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

(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). (f) The thing gifted should come in the possession of the donee himself, or of his representative, guardian or executor.” Mulla on Mohammedan Law²² provides for the manner in which a gift is to be made which are:

“by a clear and unequivocal declaration of intention of making a gift made orally or in writing by the donor or his agent, and i. accepted expressly or impliedly by the donee or his agent except in the case of a gift, a. by a guardian to his ward; or b. of a debt to the debtor; and ii. Such declaration and acceptance must be followed by the delivery of possession (actually or, constructively) of the subject-matter of the gift by the donor or his agent to;

- a. the donee or his agent; or***
- b. To the guardian, if the donee is a minor or lunatic;***
- c. To the husband if the donee is a minor wife provided that the marriage has been consummated; or***
- d. To the trustees, if the gift is made through a trust.***

iii. On the delivery of possession, a gift becomes complete, immediately.” (Emphasis supplied) (2019) 2 SCC 727 (2009) 6 SCC 160 5th Edition 14-CIVIL APPEAL NO.4211 OF 2009

25. The upshot of the above discussion is that there are three essential elements which are necessary for a valid gift deed. They are:

- a) The gift has to be necessarily declared by the person giving the gift, i.e., the donor;**
- b) Such a gift has to be accepted either impliedly or explicitly by or on behalf of the donee; and**
- c) Apart from declaration and acceptance, there is also a requirement of delivery of possession for a gift to be valid.**

26. It is a fact that the requirements for the validity of a gift deed are sequential. One must follow the other. The latter can only hold water if the first one is complied with. In other words, if (a) is not complied with, (b) and (c) would not be of consequence; similarly, if (a) and (c) are met without (b), it would still be of no consequence. In the end, all three conditions must be met.

27. Thus, registration of gift is not required under Mohammedan Law and, the unwritten and unregistered gift executed by the donor in favour of donees is valid. This position has been reiterated by this Court on various occasions. We may refer to a few of them.

In Rasheeda Khatoon v. Ashiq Ali²³, it was observed:

“17. ...a gift under the Muhammadan law can be an oral gift and need not be registered; that a written instrument does not, under all circumstances require registration; that to be a valid gift under the Muhammadan law three essential features, namely, (i) declaration of the gift by the donor, (ii) acceptance of the gift by the donee expressly or impliedly, and (iii) delivery of possession either (2014) 10 SCC 459 15-CIVIL APPEAL NO.4211 OF 2009 actually or constructively to the donee, are to be satisfied; that solely because the writing is contemporaneous of the making of the gift deed, it does not warrant registration under Section 17 of the Registration Act.” (Emphasis supplied) This position was reiterated by this Court in Hafeeza Bibi v. Sk. Farid²⁴ -

“10. In Mahboob Sahab v. Syed Ismail [(1995) 3 SCC 693] this Court referred to Principles of Mahomedan Law by

Mulla, 19th Edn. and in para 5 noticed the legal position, in relation to a gift by a Muslim incorporated therein, thus:

(SCC pp. 696-97) “5....It would, thus, be clear that though gift by a Mohammadan is not required to be in writing and consequently need not be registered under the Registration Act; for a gift to be complete, there should be a declaration of the gift by the donor; acceptance of the gift, expressed or implied, by or on behalf of the donee, and delivery of possession of the property, the subject-matter of the gift by the donor to the donee. The donee should take delivery of the possession of that property either actually or constructively. On proof of these essential conditions, the gift becomes complete and valid. In case of immovable property in the possession of the donor, he should completely divest himself physically of the subject of the gift.” (Emphasis supplied) This Court in D.N. Joshi v. D.C. Harris²⁵ placed reliance on the following observation of Hafeeza Bibi (supra):

23. As discussed above by this court that the defendant not taken any defense of oral gift in their written statement. But however counsel for plaintiffs at the time of cross

examination of DW.1 suggested the questions about oral gift. The citation produced by the counsel for plaintiffs, the Hon'ble Apex court detailed discussed how to prove the oral gift and what are the ingredients of oral gift. After perusal of the citation by this court, the Hon'ble Apex Court make it clear that how to considered the oral gift.

24. The condition of the oral is that the donor must be declared about his gift. Further at the time of gifting the property which is the ownership of the donor should not be accompanied by things not gifted i.e., should be free from things which have not been gifted.

25. The case in hand, as per the condition of defendants, the Chandasab and Mukthum Sab had possession and ownership of the suit property. As suggested by the counsel for defendants to the PW.1 at the time of cross examination that Chandasab and Mukthum Sab had possession of suit properties. The said Chandasab made a oral gift of his half share property to the defendant no.1 to 3. But

defendants noway stated that there was a partition between Mukthum Sab and Chandasab. It is only stated that the said Chandasab had half share in the suit properties and that half share gifted to the defendant no.1 to 3. As per main condition of the oral gift is that the gift property should not be accompanied by things not gifted it means that the gifted property should not be attached to the other properties, the case in hand, the defendants not stated or produced any documents that such and such property are partitioned between Chandasab and Mukthum Sab and Chandasab received such and such properties in partitioned and said properties are gifted to the defendant no.1 to 3. Looking to the oral evidence of the defendants side, the Chandasab gifted his half share to the defendant no.1, but there is no beifureation (division) of the properties between Chandasab and Mukthum Sab. Under such circumstance also in a Mohammadan law oral gift is not valid.

26. The other condition of oral gift is that the donor must be declare about his gift. The defendants not produced any documents or oral evidence of witness that at the time of declaration of gift, the witnesses are present and said Chandasab infront of the witnesses declared about gifting the properties to the defendant no.1 to 3 and donee is accepted the said gift in the presence of witnesses. The defendants on their behalf examined one witness by name Ibrahimsab Mulgund as a DW.2. The said witness deposed before the court by evidence of examination of chief, but not offered himself for cross examination. Therefore, his oral evidence not considered. Thereafter, defendant no.1 to 3 examined another witness by name Hajjibabusab Attar as a DW.3. In examination in chief he submits that he know the family members of plaintiffs and defendants and he awarred about oral gift made by the Chandasab. In the examination of chief of the DW.3 submits that ***“During the lifetime of Chandasab Abbigeri has gifted his undivided share in two agricultural land and house***

property in favour of defendant no.1 to 3 as per Mohammadan law”.

27. When this court asked the questions to the DW.3, the witness submits that he was not present at the time of gift and further he denied that he was not present at the time of oral gift made by the Chandasab.

28. Looking to the all these oral evidence of defendants, the defendants not proved the oral gift made by the Chandasab. As discussed above the defendants not taken any defense about the oral gift in the written statement. On the account of this also the defendants cannot take defense of oral gift in their oral evidence.

29. The counsel for defendants in the examination chief of DW.1 taken a defense about Inamland / tenanted land . The DW.1 at the time of evidence produced documents marked as Ex.D.1 to D.5. Ex.D1 to 3 are records of rights pertaining to the suit properties. Ex.D.4 & 5 are mutation register.

30. The counsel for defendants at the time of arguments submits that the plaintiffs not produced any iota of documents to show that suit properties are inherited from Miyan Sab. The plaintiffs came to the court for partition, but plaintiffs not produced any documents to show that, the suit properties are belonging to Miyan Sab. It is the defense of defendants that the suit properties are Inam land granted to the Mukthum Sab. Therefore, the married daughters are not entitle any share in the granted land. Counsel for defendants at the time of arguments submitted the citations of Hon'ble Apex Court.

i). **Nimbavva S/o.Basalingayya Hiremath Vs.Channaveerayya S/o. Gurushantayya** which is disposed off on 26.08.2013 in the said citation about granted land. In this case the defendants not taken any contention about the Inam land and not pleaded about the land is granted to the Mukthum Sab. Even defendants not produced any iota of documents to show that suit properties granted to the Mukthum Sab. As discussed above there is variance between

pleading and proof of defendants side. Therefore, the said citation is not applicable to case in hand. The defendants cannot prove their defense on the weakness of plaintiffs. The defendants has to prove their case indipendantly. The defendants not taken any defense as stated in the oral evidence. The defendants failed to disprove the case of plaintiffs by cogent pleading and evidence.

31. In this case plaintiffs proved that plaintiffs and defendants are tenant in common of immovable properties. The plaintiffs in their plaint claimed the share in the movable properties like i) Gold ornaments about 100 tola, worth Rs.20,00,000/- ii) Silver ornaments worth Rs.8,00,000/-iii) Furniture's worth Rs.50,000/-. iv) Household utensils worth Rs.50,000/- v) Agricultural implements worth Rs.50,000/-. vi) Four bullocks worth Rs.50,000/-. The plaintiffs not produced any iota of documents to show that they have inherited the movable properties from Miyan Sab and they are tenant in common of these movable properties. Even counsel

for plaintiffs not suggested anything about these movable properties in the cross examination of DW.1. The plaintiffs are not entitled any share in the movable properties as stated above.

32. It is the contentions of defendants that the plaintiffs relinquished their right over the suit properties. The defendants not proved by cogent evidence that the plaintiffs are given up their share over the suit properties, at the time of framing of issues it is wrongly framed that whether plaintiff proves that daughter of Mukthum Sab given up their share over suit schedule properties, instead of whether defendants proves that daughter of Mukthum Sab give up their share over the properties. Further as discussed above there is no pleadings of the defendants that daughters of Mukthum Sab give up their share over the suit properties. The defendants failed to prove that defendants are giveup their share over the suit properties. The counsel for defendants at the time of arguments submitted that the daughters of Miyan Sab

relinquished their right over the properties by giving vardi to the revenue authorities. As discussed above there was no pleading of defendants about this aspect. Even then the revenue records not created any title as discussed above. For these reasons and discussion this court holds **Issue no.1 Partly in the Affirmative, Issue no.2 in the Affirmative and Issue No.3 in the Negative.**

33. **Issue no.4 and 5:**

These issues are taken for common discussion, since these issues are interlinked with each other.

34. As discussed above in issue no.1 to 3, the plaintiffs proved that they are tenants in common of the suit schedule properties except the movable properties. The plaintiffs are entitle share in the immovable suit schedule properties. But plaintiffs not proved by cogent evidence about the movable properties. The plaintiffs are entitled 1/10the share in the suit schedule properties and defendant no.1 to 3 entitle 2/10the share and defendant no.4 to 8 entitled 1/10 the share in suit

schedule properties except movable properties. For these reasons issue no.4 and 5 holds in partly in the Affirmative.

35. **Issue No 6:-**

As discussed in Issue No.1 to 5, this Court proceed to pass the following:

ORDER

The suit of the plaintiffs is hereby partly decreed with cost.

The plaintiffs are entitled 1/10th share in the immovable suit schedule properties.

The plaintiffs are not entitled any share in movable properties as stated in the schedule iii of the suit i.e., **iii) Movable properties as detailed herein below:**

- i) Gold ornaments about 100 tola,
- ii) Silver ornaments
- iii) Furniture's
- iv) Household utensils

v) Agricultural implements

vi) Four bullocks

The defendant no.1 to 3 entitled 2/10th share in the suit schedule properties except movable properties.

The defendant no.4 to 8 jointly entitled 1/10th share in the suit schedule properties except movable properties.

Draw decree accordingly.

Office is directed to register suo-moto FDP after completion of appeal period.

(Dictated to the Stenographer, directly on Computer and typed by him. The same is corrected and then pronounced by me in the open court on this the **17th day of July 2026**)

(Smt. P.R. Patil)
Addl. Senior Civil Judge &
J.M.F.C., Gadag.

ANNEXURE

1. List of witnesses examined for the plaintiff :-

P.W.1 : Smt. Jamelabi W/o. Khasimsab Tahasildar.

2. List of documents marked for the Plaintiff :-

- Ex.P.1 : Records of right of RS No.277/2
- Ex.P.2 : Records of right of RS No.252/1
- Ex.P.3 : Records of right of RS No.590/1A
- Ex.P.4 : Records of right of RS No.643/1A
- Ex.P.5: C.C of property extract of CTS No.1773
- Ex.P.6: C.C of property extrat of CTS No.1783/1-A
- Ex.P.7: Paper publication
- Ex.P.8: Kabuli patra
- Ex.P.9: Javab besmi
- Ex.P.10: Notice
- Ex.P.11: Application to Tahasildar, Gadag
- Ex.P.12 & 13: Death certificates

3. List of witnesses examined for the defendants :-

- D.W.1 : Miyajan S/o. Maktumsab Abbigeri
- D.W.2 : Ibmrahimsab S/o. Davalsab Mulgund
- D.W.3 : Hajjibabusab S/o. Hajjirajesab Attar

4. List of documents marked for the defendants :-

- Ex.D1 to 3: RTC extracts
- Ex.D4 : CTS card
- Ex.D5 : M.E.No.13771

(Smt.P.R.Patil)
Addl. Senior Civil Judge &
J.M.F.C.,Gadag.