

MHAU130000562024



ORDER BELOW EXH.38 IN RCS No.32/2024

Javed Bannu Qureshi Power of Attorney Sameer Javed Vs Honble Commissioner

This is an application filed by the plaintiff for impounding of Hiba dtd.19/09/1979. Hence, the plaintiff filed present application and prayed for allow of the application.

02. The defendant No.1 resisted the application by filling say vide Exh-39 and denied the application. The defendant No.1 contended that, the plaintiff pleaded in the plaint that, Hibanama was oral and in the present application he contended that, the reminder of Hibanama has been executed. However, the plaintiff has not produced original Hibanama. He has to prove the original Hibanama. Unless original document is produced, document can not be impounded and prayed for rejection of the application.

03. I have heard the Ld. Advocates for the plaintiff and defendant No.1. The Ld. Advocate for the plaintiff submitted that,

- a) The Hibanama was executed on stamp paper. However, it is not registered.
- b) There are 3 essential requirements of gift under Mohammedan Law and these are delivery of property, acceptance of property and delivery of possession to donee.
- c) He has relied on the authority of **Hon'ble Supreme Court** in the case of, **Hafeeza Bibi & Ors. Vs. Shaikh Farid, 2011 Legal Eagle 420**, wherein it is is laid down that, where the

requirement of valid gift i.e. declaration by the donor, acceptance by the donee and delivery of possession is fulfilled it is valid gift. An unregistered gift-deed does not necessarily invalidate the gift if the essential conditions under Mohammedan Law are satisfied.

- d) The plaintiff is already in possession over said property.
- e) However, unregistered gift-deed is not admissible in evidence.
- f) He further relied on the authority of **Hon'ble Bombay High Court** in the case of *Santosh Anant Raut Vs. Pukharaj Chogmal Rathod*, 2010 Legal Eagle 560, wherein it is laid down that, if the Civil Court finds that the document which is not duly stamped is sought to be tendered in evidence, the power under section 33 of the said Act will have to be exercised and the document will have to be impounded. After impounding the document, the Court is under an obligation to send a true copy of the said document to the adjudication of the Collector in accordance with Sub-section (3) of Section 32-A of the said Act. Only after adjudication is made by the Collector, the party relying upon the document will have to pay deficit stamp duty and penalty. After a certificate issued by the Collector regarding compliance with the requirement of payment of deficit stamp duty and penalty, Civil Court can exercise power under proviso (a) to section 34 of the said Act. Thereafter, the document can be admitted in evidence if the same is proved and if it is otherwise admissible in evidence.
- g) He further submitted that, the unregistered Hibanama is required to be impounded and prayed for allow of the application.

04. On the contrary, the Ld. Advocate for the defendant No.1 submitted that,

- a) The plaintiff has not produced original Hibanama. He has not produced its hard copy.
- b) The document can not be impounded on the basis of copy of the document without original is produced.
- c) The pleading in the plaint and application is contradictory in respect of said Hibanama and prayed for rejection of the application.

05. On perusal of the proceeding, it is seen that, the plaintiff has produced by way of E-filing scanned copy of Hibanama dtd.19/09/1979. On perusal of said Hibanama it recites that, Mr. Kamaruddin Abdul Rahim has executed said Hibanama in favour of Mr. Banesahab Pir Mohammad in respect of the plot admeasuring 25 x 15 ft. out of survey No.9. It further recites that, as per oral Hiba in 1971 said property is delivered to donee i.e. Mr. Banesahab Pir Mohammad. It is further seen that, he has accepted the property and in possession over said property and it bears signatures of donor, donee and witnesses.

06. It shows that, the requirements of valid gift as per Mohammedan Law i.e. delivery of property, acceptance of property and delivery of possession are fulfilled. In view of law laid down by **Hon'ble Supreme Court** in the case of **Hafeeza Bibi (Supra)** where the declaration of Hiba is reduced into writing it does not require registration.

07. Therefore, considering the Hibanama dtd.19/09/1979 does not require registration as it fulfills 3 essential conditions of valid gift under Mohammedan Law, it does not require impounding.

08. Since, said Hibanama does not require impounding, the authority in the case of **Santosh Raut (Supra)** is not helpful to the plaintiff.

09. Thus, for reasons aforesaid, Hibanama is not required to be impounded, the application is liable to be rejected. Accordingly, I proceed to pass the following order-

ORDER

Application is rejected

(Dictated and pronounced in open Court.)

Date :- 09.07.2026
Place :- Aurangabad.

(A. S. Tekale)
Civil Judge Senior Division
(Corporation Court), Aurangabad.