



Instituted on : 06.03.2017.

Registered on : 06.03.2017.

Decided on : 22.03.2021.

Duration : 04Yrs. 00Ms. 16Ds.

**IN THE COURT OF JOINT CIVIL JUDGE (JUNIOR
DIVISION) AHMEDPUR,**

TQ. AHMEDPUR, DIST. LATUR.

(Presided over by Shyam S. Tondchire)

Reg. Civil Suit NO. 106/2017**Exhibit. No.23.****MHLA060002982017**

1. **Imran S/o. Sahebmiya Sayed,**
Age -24 years, Occupation-Labour,
2. **Gulnaz D/o. Sahebmiya Sayed,**
Age -22 years, Occupation-Labour,
Both R/o. Peth Darwaja, Udgir,
Tq. Udgir, Dist. Latur.

...Plaintiffs.**:-Versus:-**

Sahebmiya S/o. Osmansab Sayed,
Age -65 years, Occupation-Business,
R/o Near Old Masjid Hadolti,
Tq. Ahmedpur, Dist. Latur

...Defendant.

**Claim:- Suit for Declaration of Ownership and Perpetual
Injunction.**

Advocates:- Mr. V.S. Shelke Advocate for the plaintiffs.

Mr. R.N. Siddiqui, Ld. Adv for defendant.

-: J U D G M E N T :-

(Delivered on this 22nd day of March 2021)

The plaintiffs have sought the relief of declaration of ownership vide Section 34 of the Specific Relief Act,1963 (Hereinafter shall be referred as 'the S.R.Act') and Perpetual Injunction vide Section 38 of the S.R. Act. against the defendant.

Subject matter:-

02] Subject matter of the suit land bearing Sy. **No.92** total Adm. 00 hector **65 Are**, (more particularly described in Para No.03 of the plaint) which is bounded as follows;

East:- The land of Osmansab Sayed,
West:- The land of Anand Jadhav,
South:- The land of Sujaoddin Sayed,
North:- The land of Datta Jadhav.

situated at village Hippalgaon Tq. Ahmedpur Dist. Latur. Henceforth, the land bearing Survey **No.92** shall be referred to as, '**The suit land**' for the sake of convenience.

Plaintiffs version:-

03] According to plaintiffs, the defendant is their father. They are belonging to Muslim community. They are follows Hanfi School of Law in all aspects of their life. Defendant was exclusive owner and possessor of suit land. Due to great love and affection towards the plaintiffs, defendant expressed his willingness and desire to give the suit land. Defendant has given suit land to plaintiffs by oral Hibba, as per his sweet will and wish on 01-08-2015 in presence of the witnesses. Same the plaintiffs have accepted

the ownership and possession of suit land by way of oral Hibba between them. Since then, the plaintiffs are become lawful possessor of suit land. They are cultivating and yield the income of suit land.

04] It is contention of the plaintiff that, they have approached to concerned Revenue Officer i.e. Talathi, Sajja Hippalgaon for the Mutation of suit land in their name on the basis of said Hibba. But, said Talathi has refused to do mutation in their name due to unregistered documents. Now defendant has no concern with suit land. But, the defendant on the instigation of some villagers miscreants, he is bend upon to obstruct and interfere in suit land. However, defendant is taking disadvantage of the fact that, the suit land is still standing in his name in Revenue Record and said Hibba is not registered. Therefore, defendant has denied the ownership and possession of the plaintiff over the suit land. Moreover, defendant has trying to create third party interest in the suit land.

05] Plaintiffs have further submitted that, on 04.02.2017 defendant denied the ownership and possession of plaintiffs by way of oral Hibba (Gift). However, defendant gave threatened to dispossessed from the suit land and also gave warning to vacate to suit land. The obstruction of the defendant is continuously. Ultimately plaintiffs have constrained to file the instant suit for relief of declaration and Perpetual Injunction.

Defendant version:-

06] The defendant appeared but he did not file his written

statement, inspite of sufficient opportunity to given to him. So, the suit proceeded without his written statement vide order passed below (Exh.01) dt. 10-07-2017.

07] In view of pleadings of plaintiff, following points arise for determination and I have mentioned my findings thereon for reasons to follow :

No.	POINTS	FINDINGS.
1)	Whether the plaintiffs prove that, the defendant had executed Hiba dated-01-08-2015 of suit land (described in Para No.01 of the plaint) in their favour ?	...In the affirmative.
2)	Whether the plaintiffs prove that, they are owner and possessor of the suit land (described in Para No.01 of the plaint) ?	...In the affirmative.
3)	Whether plaintiffs prove that, the defendant invaded and threaten to invade their right to enjoyment over the suit land (described in Para No.01 of the plaint) ?	...In the affirmative.
4)	Whether the plaintiffs are entitled for perpetual injunction as sought ?	...In the affirmative.
5)	To what relief, if any, are plaintiffs entitled ?	...As per final order.

:- REASONS :-

08] In order to substantiate their claim, the plaintiffs have examined total four witnesses. Plaintiff No.1 Imran Sahebmiya Sayyad (P.W.01) *vide* (Exh.16), Yunus Mohammadsab Sayyad (P.W.02) *vide* (Exh.17), Faiyaz Habib Reheman (P.W.03) *vide* (Exh.18) and Mahrunissa Maheboob Sayyad (P.W.04) *vide* (Exh.19).

Beside the oral evidence plaintiffs have adduced documents i.e. Copy of Mutatio Entry No.803 dt-20-06-2007 vide (Exh.08), copy of 7/12 extract of suit land for the year of 2013-14 at (Exh.09), copy of holding of account defendant at (Exh.10). Thereafter, plaintiffs closed their evidence by filing pursis at (Exh.22).

09] Learned Advocate V.S. Shelke of the plaintiffs has argued that, the defendant had executed oral Hiba on 01-08-2015 in favour of plaintiffs in presence of two witnesses. Since then plaintiffs are possessor of the suit land. The defendant has no concerned with the suit land. Further, submitted that, defendant has obstructed the peaceful possession of the plaintiff over the suit land. Plaintiffs have proved their case by giving sufficient evidence. Hence, they are entitled for the relief claimed.

Point Nos. 01 & 02 :- (As to Hiba, ownership and Possession):-

10] As mentioned earlier, the defendant has not contested the suit by filing written statement or by conducting cross-examination of the plaintiffs and their wetnesses. The defendant has not bothered to adduce any documentary or oral evidence either. In the circumstances, the Ld. Advocate for plaintiffs submitted that since the plaintiffs have proved their entire case on oral evidence, the suit deserves to be decreed.

11] Here, the observations of the Hon'ble Apex Court in **Rameshchand Ardhavakiya Vs. Anil Panchagani (2003(4) Mh.L.J. 579)** deserves to be referred-

“...Though the Court is not bound to frame issues under O.XIV and deliver the judgment on every issue as required by

O.XX R.5, yet, the trial Court would scrutinize the available pleadings and documents and consider the evidence adduced, and would do well to frame the points for determination and proceed to construct the ex-parte judgment dealing with the points at issue one-by-one. Merely because the defendant is absent the Court shall not admit evidence the admissibility whereof is excluded by law not permit its decision being influenced by irrelevant and inadmissible evidence.”

The Hon'ble Apex Court further observed that-

“...Even in the suit proceed ex-parte and in the absence of written statement, unless the applicability of O.IX R. 10 of CPC is attracted, the Court acts thereunder. The necessity of proof by the plaintiff of his case to the satisfaction of the Court can not be dispensed with. In the absence of denial of plaint averments, the burden of proof on the plaintiff is not very heavy. A prima-facie proof of the relevant facts constituting the cause of action would suffice and the Court should grant the plaintiff such relief as to which he may, in law, to be found entitled...”

12] From the above observations, of the Hon'ble Apex Court, it is clear that merely because defendant failed to contest the suit in any manner, it does not mean that the Court will have to pass a decree in favour of plaintiff. The burden on the plaintiffs will not be reduced due to non-contest of suit on part of defendant. Plaintiffs will have to prove their case by adducing sufficient evidence on record. In our case, the plaintiffs have claimed defendant had executed oral Hiba on dt-01-08-2015 in respect of suit land in their favour. Since then, they are cultivating the suit land.

13] First of all I would like to see the relevant statutory

requirement of a valid gift under Mohammadan Law and the legal principles laid down by the Hon'ble Supreme Court in case of **Mahaboob Saheb's Case reported in AIR 1995 SC 1205**, as herein below :-

1. The triple requirement of a valid gift under Mohammadan Law can be stated thus :-
 - (i) Manifestation of the wish to give on the part of the donor ;
 - (ii) The acceptance of the donee, either expressly or impliedly; and
 - (iii) The taking of possession of the subject matter of the gift by the donee either actually or constructively.

14] Moreover, Hon'ble Apex Court has further summarized the rules of Mohammadan law relating to gifts as stated by Mulla as follows :-

Section. 147 : That writing is not essential to the validity of gift either of movable or immovable property

Section. 148 : Essential to the validity of a gift that the donor should divest himself completely of all ownership and dominion over the subject matter of gift

Section. 149 : The triple requirement as stated earlier.

Section. 150 : For a valid gift there should be delivery of possession of the subject matter of the gift and taking of possession of the gift by the donee either actually or constructively; and

Section. 152 : Whether the donor is in possession, a gift of immovable property of which the donor is in actual possession is not complete, unless the donor physically departs from the premises with all his goods and chattels, and the donee formally enters into possession.

15] It is thus clear that the gift need not be in writing and consequently no registration is required. But, its requires that the

donor should completely divest himself physically of the subject matter of gift.

16] The plaintiff in order to prove Hiba dt-01-08-2015 examined total three witnesses i.e. Yunus (P.W.02) at (Exh.17), Faiyaz (P.W.03) at (Exh.18) and Mahrunissa (P.W.04) at (Exh.19). in their examination-in-chief have deposed that the defendant had executed Hiba in favour of the plaintiffs on 01/08/2015 and handed over possession of the suit land to the plaintiffs on that day. Since then, plaintiffs are possessor of suit land.

17] However, plaintiff No.2 (P.W.01) has filed his evidence by affidavit at (**Exh.16**). I have gone through the evidence by affidavit, it appears that, he has reproduced the content of their pleading. Therefore, it is not necessary to reproduce the contents of affidavit as it. Upon sufficient opportunities the defendant has failed to cross-examination (P.W.01) to (P.W.04). Hence, their testimonies are remains unchallenged and unshattered.

18] Therefore, the evidence of (P.W.02) to (P.W.04) are trustworthy and helpful to prove Hiba dated 01/08/2015. On the other hand the defendant did not adduce oral as well as documentary evidence on record. Thus, in other words is sufficient to hold that the triple requirements of a valid Hiba/gift under Mohammadan Law are satisfied. Therefore, I hold that Hiba had executed by the defendant in favour of plaintiffs on 01/08/2015.

19] Letus, to discuss second contention of plaintiffs regarding the possession of suit land. As pr Section. 150 : For a

valid gift there should be delivery of possession of the subject matter of the gift and taking of possession of the gift by the donee either actually or constructively. In the evidence of (P.W.02) to (P.W.04) it reveals that, the defendant handed over the possession of suit land on the day of execution of Hiba. Their evidence remain unchallenged and unshattered.

20] In addition to oral evidence the plaintiffs have produced copy of 7/12 extract of suit land, therein name of defendant shown in title clause. In this regard plaintiffs contended that, they approached to concerned authority i.e. Talathi Sajja Hippalgaon for Mutation Entry of suit land in their name on the basis of oral Hiba. But, concerned authority flatly refused to take Mutation Entry in their name for want of non registration of document.

21] As mentioned earlier as per the Mohammadan Law the concept of Hiba is admitted and plaintiffs are satisfied triple requirements of a valid Hiba/gift. It is clear on preponderance of probabilities that, plaintiffs are owner and possessor of suit land as on the date of institution of the suit. Hence, I have no hesitation to hold that, the plaintiffs are owner and possessor of the suit land. Therefore, **I record the finding of Issue Nos. 01 & 02 in the affirmative.**

Point No. 03 :- [As to Obstruction]

22] As regards question of obstruction, plaintiff No.01 and (P.W.02) to (P.W.04) have affirmed on oath the fact of obstruction to peaceful possession of plaintiffs at the hand of defendant. The same

is not denied by the defendant. In view of my finding on issue Nos. 1 and 2, it is clear that the plaintiffs are in the possession of the suit land. Since, as the plaintiffs are in possession of the suit land, which is in the name of defendant and he did not deny the averments in the plaint. It would be justifies apprehension raised by the plaintiffs regarding creating third party interest at the hand of defendant. I have no hesitation to hold that, the defendant causing obstruction over the suit land to the plaintiffs. Therefore, I record the finding of **Issue No. 03 in the affirmative.**

Issue No.04:-[Perpetual injunction]:-

23] Plaintiffs have sought relief of simplicity injunction vide Section 38 of S.R.A. against the defendant. The relief of perpetual injunction is dependent on basis of possession. That is to say, in such cases, relief of perpetual injunction can be granted only if the claimants have proved their possession over the suit land and obstruction at the hand of defendant.

24] In present case, above discussion and my affirmative finding on issue Nos. 1 to 3, it is shows that the plaintiffs have established that, the defendant invade and threatening to invade by taking this advantage of the fact that, the suit land still standing in his name. Accordingly, plaintiffs are entitled to the relief of perpetual injunction as sought. Hence, I have record my finding of **Issue No. 04 in the affirmative.**

Issue No. 05 :-[As to what order & decree]:-

25] In the backdrop of above discussions and in view of my

findings on Issue Nos. 01 to 04, it is crystal clear that, plaintiffs have proved their ownership and possession over the suit land as well as obstruction to their peaceful possession over the suit land on part of defendant, the plaintiffs have become entitled to the relief of declaration of ownership as well as of perpetual injunction as prayed for. There is no other technical bar to grant such relief to plaintiff. In the given facts and circumstances, plaintiffs are required to be directed to bear their own costs. In the result and my finding to **Issue No. 05, I proceed to pass following order;**

:- ORDER :-

1. Suit is decreed.
2. The plaintiffs are hereby declared as owner of the suit land bearing Gat No.92 Adm. 00 H. 65 Are., situated at Hippalgaon, Tq. Ahmedpur, more particularly described in prayer clause-1 of the plaint.
3. The defendant or any other person claiming through him are hereby permanently restrained from doing any act which has an effect of causing obstruction to the peaceful possession of plaintiffs over the suit land bearing Gat No.92 Adm. 00 H. 65 Are., situated at Hippalgaon, Tq. Ahmedpur, more particularly described in prayer clause-1 of the plaint.
4. Decree be drawn accordingly.
(Dictated and pronounced in open Court.)

Place :- Ahmedpur,
Date :- 22.03.2021.

(Shyam S. Tondchire)
Joint Civil Judge (Jr.Dn.)
Ahmedpur.