

(2001) 11 KAR CK 0057

In the Karnataka High Court

Case No : Regular First Appeal No. 251 of 1994

Batoola Jan and Another

APPELLANT

Vs

G. Mohd. Basheer and Others

RESPONDENT

Date of Decision : 29-11-2001

Acts Referred:

Registration Act, 1908 — Section 17
Transfer of Property Act, 1882 — Section 129

Citation : (2002) 1 KCCR 233

Hon'ble Judges : V.G. Sabhahit, J;P. Vishwanatha Shetty, J

Bench : Division Bench

Advocate : Suresh S. Lokre, for the Appellant; Tajuddin, for Respondents 1 to 8 and K. Nandagopal, for Respondent 9, for the Respondent

Judgement

P. Vishwanatha Shetty, J.—The appellants, in this appeal, were Defendants 2 and 3 in O.S. No. 7 of 1990, on the file of the Court of Civil Judge and JMFC., Bhadravathi. In this appeal, they have called in question the correctness of the judgment and preliminary decree dated 29th August, 1992 for partition and for other reliefs made in the said suit.

2. The facts in brief, which may be relevant for the disposal of this appeal, may be stated as hereunder:

(a) One late Mohd. Ghouse Sab had two wives. They are Smt. Khyrum Bee, who is the first Defendant in the suit, and one Smt. Batoola Jan. Plaintiffs 1 to 3 and one late Mohd. Iqbal, who was the husband of the first appellant, are the sons; and Plaintiffs 4 and 5 are the daughters of late Mohd. Ghouse Sab through his first wife. Plaintiffs 6, 7 and 8 are the sons of the said Mohd. Ghouse Saheb through his second wife - late Batoola Jan. All the children of late Mohd. Ghouse Sab filed suit - O.S. No. 7 of 1990 seeking for partition and separate possession of the plaint schedule properties by metes and bounds and for mesne profits. They also prayed for a declaration of the sale of the plaint "A" Schedule property made by the first Defendant in favour of Defendants 2 and 3 as null and void and

not binding on the Plaintiffs. The second appellant is stated to be the adopted son of the first appellant.

(b) In the course of this judgment, the parties to the proceedings will be referred to with reference to their respective status in the trial Court.

(c) The suit filed by the Plaintiffs was resisted by the Defendants by filing a common written statement contending, inter alia, that plaint "A" and "D" properties are not available for partition. In so far as plaint "A" schedule property is concerned, it is their case that the said property was given to the first Defendant by her husband - late Mohd. Ghouse Sab towards "Dower" (Mahar) on 21st September, 1960 and as such, she having become the absolute owner of the said property, sold the same to Defendants 2 and 3 by means of registered sale deed dated 25th May, 1989. It was further claimed by them that plaint "D" schedule property is concerned, the said property absolutely belonged to the husband of the second Defendant - late Mohd. Iqbal.

(d) On the basis of the pleading of the parties, the trial Court framed as many as 14 issues, as follows:

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(e) In support of the case of the Plaintiffs, the first Plaintiff examined himself as PW-1 and examined one Pyarusab and Veerupaksha Jois as PWs. 2 and 3 respectively. The Plaintiffs have produced as many as 27 documents, which have been marked as Exhibits P-1 to P-26 and Exhibit C-1. The Defendants, in support of their case, examined Defendants 1 and 2 as D.Ws. 1 and 2 respectively and one Chidambara, R. Mohanvelu and M.M. Baig as D.Ws. 3, 4 and 5 respectively. They have produced as many as 43 documents, which have been marked as Exhibits D-1 to D-43, in support of their claim.

(f) The trial Court, on consideration of the pleadings of the parties and appreciation of evidence - both oral and documentary, on Issue No. 1 held that plaint "A" and "D" schedule properties belonged to late Mohd. Ghouse Sab. On Issue No. 2, it negated the claim of the Defendants that plaint "A" schedule property was given as "Mahar" to the first Defendant by her husband - late Mohd. Ghouse Sab. The trial Court held Issue No. 3 against the Defendants and held that plaint "D" schedule property did not belong to the husband of the second Defendant - late Mohd. Iqbal. On Issue No. 4, the trial Court held that the third Defendant was not the son of late Mohd. Iqbal, but he was the adopted son of the second Defendant. On Issue No. 5, the trial Court took the view that it is unnecessary to give any finding. On Issue No. 6, it held that each of the sons of late Mohd. Ghouse Sab is entitled for 14/128th share in the plaint schedule properties and each one of his daughters is entitled for 7/128th share and his wife is entitled for 16/128th share. On Issue No. 7, it recorded a finding against the Defendants and held that the suit was maintainable. On Issue Nos. 8, 9 and 10, it held against the Defendants. On Issue No. 13, it has held against the Plaintiffs. On Issue No. 11, the trial Court held partly in favour of the Plaintiffs

and held that the sale of the plaint "A" schedule property made by the first Defendant in favour of Defendants 2 and 3 will be binding only in so far as her interest in the said property is concerned and it is not binding on the Plaintiffs.

(g) As noticed by us earlier, Defendants 2 and 3 have filed this appeal challenging the judgment and decree passed by the trial Court.

4. In this appeal, the grievance of the appellants is confined only in respect of plaint "A" schedule property. Sri Suresh Lokre, learned Counsel appearing for the appellants, firstly submitted that the trial Court having found that the document Exhibit D-1 having been produced from proper custody and there is presumption in favour of the execution of the said document as provided u/s 90 of the Evidence Act, has seriously erred in law in taking the view that Exhibit D-1 was not executed by late Mohd. Ghouse Sab in favour of the first Defendant, on the basis of the rebuttal evidence produced by the Plaintiffs. Elaborating this submission, he pointed out that the trial Court ought to have held that since the rejoinder was not filed to the Written Statement, the Plaintiffs were not entitled to lead rebuttal evidence. Secondly, he submitted that since the signature of late Mohd. Ghouse Sab was in Urdu, the trial Court has seriously erred in law in comparing the signature of late Mohd. Ghouse Sab in Exhibit D-1 with his other admitted signatures. Thirdly, the learned Counsel pointed out that the finding recorded by the trial Court that Exhibit D-1 was not executed by late Mohd. Ghouse Sab and it was a got up document, is vitiated on account of misreading of evidence on record. Finally, he submitted that the conclusion reached by the trial Court that Exhibit D-1 extinguishes the right, title and interest in plaint "A" schedule property, the value of which is more than Rs. 100/- and therefore, the said document not having been registered, the first Defendant did not acquire any right, title and interest in the said property, is erroneous in law. In support of his contentions, he relied upon the following decisions:

- (1) Jaitunbi Fatrubhai Vs. Fatrubhai Kasambhai and Others,
- (2) Mohammed Hashim v. Aminabi ILR 1952 7
- (3) AIR 1932 13 (Privy Council)
- (4) Imambi Vs. Khaja Hussain and Others, ;
- (5) Sadiq Sab v. Akhilandamma ILR 1985 Kar 170
- (6) Nagappa Chendappa Kolli v. Nannibu w/o. Dvalsab Devalatdar, AIR 1960 Mys 220.

5. However, Sri Tajuddin, learned Counsel appearing for the Plaintiffs-contesting Respondents, strongly supported the impugned judgment. He further pointed out that the trial Court has erred in law in drawing presumption u/s 90 of the Evidence Act regarding the execution of the document Exhibit D-1 on the ground that the same was produced from proper custody and it was of 30 years old. In support of his contention that Exhibit D-1 does not amount to gift, he relied upon

the following decisions:

- (1) Ram Prasad Singh and Others Vs. Mt. Bibi Khodaijatul Kubra and Others, ;
- (2) FAZAL DHALA Vs. COMMISSIONER OF Income Tax, BIHAR AND ORISSA.,
- (3) Abdul Wahab Khan Vs. Mushtaq Ahmad Khan and Others,
- (4) Imambi Vs. Khaja Hussain and Others,
- (5) Smt. Marembi and Others Vs. Umarsab and Another, .

6. In the light of the rival contentions advanced by the learned Counsel appearing for the parties, the following two questions would arise for consideration in this appeal:

(i) Whether the trial Court was justified in taking the view that the Defendants have failed to prove that document Exhibit D-1 was executed by late Mohd. Ghouse Sab?

(ii) Whether the finding recorded by the trial Court that since Exhibit D-1 was not registered, the first Defendant did not acquire any right, title or interest in plaint "A" schedule property and consequently, Defendants 2 and 3 also did not acquire any right, title and interest in the said property, calls for interference by this Court?

Re: Question (i):

10. The trial Court, as pointed out by Sri Suresh Lokre, learned Counsel appearing for the appellant, has proceeded on the basis that Exhibit D-1 was produced before the Court from proper custody and the said document being of 30 years old, a presumption is required to be drawn with regard to the execution and attestation of the said document as provided u/s 90 of the Evidence Act. However, on the basis of the rebuttal evidence adduced by the Plaintiffs and other inherited deficiencies and improbabilities of the case pleaded by the Defendants, the trial Court has recorded a finding that the Defendants have failed to prove that Exhibit D-1 was executed by late Mohd. Ghouse Sab. The trial Court, in support of its conclusion, has assigned the following reasons:

(1) On appreciation of the evidence of PW-2, who is a relative of the parties and who has claimed that he was familiar with the signature of late Mohd. Ghouse Sab and who has also spoken to the admitted signatures of late Mohd. Ghouse Sab at Exhibits C-1(a) and C-1(b), it is clear that the signature found on Exhibit D-1 was not the signature of late Mohd. Ghouse Sab.

(2) On comparison of the disputed signature of late Mohd. Ghouse Sab in Exhibit D-1 with the admitted signature of late Mohd. Ghouse Sab found in Exhibit C-1, it has found that the signature found in Exhibit D-1 purporting to be that of late Mohd. Ghouse Sab is not his signature.

(3) In reply notice Exhibit P-12 dated 7th February, 1990 issued on behalf of the

Defendants in response to the legal notice Exhibit P-9 dated 8th January, 1990, the first Defendant has not referred to the execution of Exhibit D-1 in her favour.

(4) Though Exhibit D-1 is stated to have been executed in 1960 and late Mohd. Ghouse Sab died in the year 1967, the khata in respect of plaint "A" schedule property continued in the name of late Mohd. Ghouse Sab till the year 1985.

(5) Till the filing of Exhibit D-1 before the Court, the Defendants have not asserted about the execution of Exhibit D-1; and no reference was made in the application filed for change of khata about the execution of Exhibit D-1, by the first Defendant; and the change of khata in respect of plaint "A" schedule property in the name of the first Defendant was also not sought on the basis of Exhibit D-1.

(6) The absence of any evidence to show that late Mohd. Ghouse Sab had agreed to give plaint "A" schedule property by way of "Mahar" to the first Defendant.

As noticed by us earlier, the trial Court has taken the view that Exhibit D-1 has come from proper custody and the said document being of more than 30 years old, a presumption with regard to the execution and attestation of the document is required to be drawn u/s 90 of the Evidence Act. However, after drawing the presumption, on appreciation of the evidence on record, the trial Court, as noticed by us earlier, has taken the view that the Plaintiffs have rebutted the presumption available and shown that document Exhibit D-1 was not executed by late Mohd. Ghouse Sab. Having gone through the evidence on record and in the facts and circumstances of the case, we are of the view that the trial Court was not justified in drawing the presumption with regard to the execution and attestation of the document Exhibit D-1. Section 90 of the Evidence Act confers discretion on the Court to draw presumption that the signature and every other part of a document, if it has come from proper custody and purporting or proved to be 30 years old, is in the signature or in the hand writing of such person and it was executed and attested by the person by whom it purports to have been executed and attested. From the reading of Section 90 of the Evidence Act, it is clear that there is no obligation on the Court to draw a presumption. It only enables the Court to draw the presumption as spelt out in Section 90 of the Evidence Act if the Court, having regard to the facts and circumstances of the case, considers it proper and appropriate to draw the presumption to do so. The object of Section 90 of the Evidence Act is that on account of lapse of time, it may be difficult for a person who relies upon a document, to examine the scribe, executant or attestors of the document and prove it. However, whether a presumption has to be drawn or not, it is for a Court in a given case having regard to the totality of the evidence adduced, either to draw the presumption or not to draw the presumption available u/s 90 of the Act. It is left to the judicial conscience of the Court. The discretion conferred on the Court has to be exercised fairly, reasonably and keeping in mind the totality of the circumstances of the case and the injustice that may be caused to the parties by either drawing or not drawing the presumption. Every relevant circumstances of the case will

have to be kept in mind by the Court while deciding as to whether the presumption u/s 90 of the Evidence Act has to be drawn or not. It cannot be done in a mechanical manner. The Court will have to consider the question, though prima-facie the document sought to be relied upon in the course of the evidence, indicates that it was executed 30 years back, whether, as a matter of fact, the date mentioned in the document represents the correct date of the execution of the document; or whether it is a date given for the purpose of getting the benefit of Section 90 of the Evidence Act and as a defence for the inability to lead positive evidence in proof of the document; or whether the document has been produced before the Court from proper custody or not? The facts and circumstances of the present case and the inherent improbabilities persuade us not to draw the presumption u/s 90 in respect of the document Exhibit D-1. According to the case of the Defendants, the first Defendant gave the document to her Counsel for the production of the same before Court. In the course of the evidence, DW-1 has expressed her inability to identify the document. In her evidence, she has stated as follows:

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The Lawyer who has filed the document in the Court, has not been examined. Since DW-1 has failed to identify Exhibit D-1, we are inclined to take the view that there is no evidence placed before the Court to show that Exhibit D-1 was produced from proper custody. The evidence of the second Defendant-DW-2, is of no assistance to show that Exhibit D-1 was produced before the Court as the one which has come from proper custody. She has stated in her evidence that she was not aware as to who has written Exhibit D-1 and she came to know that the same was written by one Shanbhogue and one Sabjan had signed the document as an attesting witness only after the filing of the suit. She has further admitted that the document was not executed in her presence. She has also not stated that the document was in the custody of DW-1 or in her custody and it was given either by DW-1 or by her to their Lawyer for the purpose of production of the same before the Court. There is no foundation laid or any material placed before the Court to draw presumption available u/s 90 of the Evidence Act. Except that the document itself purports to have been executed on 21st September, 1960, there is no other circumstances which would in any manner suggest that the document had come into existence on 21st September, 1960. It is only in the course of the trial of the suit, Exhibit D-1 came to be produced before the Court. There is no reference even in the Written Statement filed by the Defendants on 17th December, 1990 about the execution of Exhibit D-1 by late Mohd. Ghouse Sab. Admittedly, late Mohd. Ghouse Sab has expired in the year 1967. Mohd. Iqbal - the husband of the second Defendant, who was managing the affairs of the family, after the death of his father, died in the year 1988. If, as a matter of fact, plaint "A" schedule property was given as a gift to the first Defendant by virtue of Exhibit D-1, during the life time of Mohd. Ghouse Sab himself, a report would have been given to the Revenue Authorities for change of Khata in respect of the said property; even if it was not done during

his life time, at least it would have been done immediately after his death. That was also not done. The evidence on record shows that even after the death of late Mohd. Ghouse Sab, his name continued till the year 1987-88. It is only in the year 1987-88, an application was filed before the Municipal Authorities for change of Khata in the name of the first Defendant. Even in that application, there is no reference to Exhibit D-1. Further, even in the reply notice Exhibit P-12 issued on behalf of the first Defendant as a reply to the legal notice Exhibit P-9, there is no reference made to Exhibit D-1. Even in the Written Statement, there is no reference to Exhibit D-1. Exhibit D-1 was filed into Court only on 31st January, 1992 along with an application seeking condonation of delay in production of the document. If, as a matter of fact, Exhibit D-1 was available with the first Defendant, we do not find any justification for not producing the said document at an earlier stage of the proceedings before the Court. All these factors would prima-facie throw serious doubt with regard to the date of execution of the document on 21st September, 1960. While drawing the presumption available u/s 90 of the Evidence Act, in our view, the Court cannot totally ignore these aspects of the matter which, in our considered view, are relevant factors to decide the question as to whether the document Exhibit D-1, as a matter of fact, came to be executed 30 years ago. No doubt, Section 90, as noticed by us earlier, confers power on the Court to draw a presumption with regard to the execution of the document and other matters referred to therein; but the presumption has to be drawn by the Court after careful scrutiny of several circumstances, which may weigh either in favour of drawing the presumption or against doing so. Therefore, we are of the view that in the facts and circumstances of the case, the trial Court was not justified in drawing the presumption u/s 90 of the Evidence Act.

11. Now, the question that remains to be considered, is whether, in the absence of presumption available u/s 90 of the Evidence Act in respect of the execution and attestation of Exhibit D-1, the Defendants have established the execution of Exhibit D-1? As noticed by us earlier, since DW-1 has stated that she is not able to identify Exhibit D-1, her evidence is of no use to prove Exhibit D-1. The only other evidence available is of DW-2. She has admitted in her evidence that she was not present when Exhibit D-1 was executed. We find it difficult to accept the assertion made by her that she is able to identify the signature of late Mohd. Ghouse Sab in Exhibit D-1. We cannot ignore the fact situation that she is a highly interested witness as she claims interest to plaint "A" schedule property by virtue of sale deed Exhibit D-2 executed by the first Defendant in her favour and in favour of her adopted son. It is the case of the Plaintiffs that D Ws. 1 and 2 had joined together and were responsible for fabricating Exhibit D-1. We are also unable to accept the evidence of DW-5 wherein he has asserted that he is able to identify the signature of late Mohd. Ghouse Sab in Exhibit D-1. We are also unable to accept his version that he is able to identify the hand writing and signature of late Govinda Rao, who is stated to be the scribe of Exhibit D-1. It is not the case of DW-5 that he has been regularly dealing with either late Mohd.

Ghouse Sab or the said Govinda Rao; and in that connection, he had acquainted himself with their signatures and hand writing. There is no acceptable foundation laid in the evidence of DW-5 to show that he had any special reason to be acquainted with the hand writing and signature of either late Mohd. Ghouse Sab or Govinda Rao. Further, he has admitted in his evidence that Govinda Rao has left behind him his daughter, who is married to an Advocate at Shimoga. In our view, the daughter of the said Govinda Rao could have been the best witness to speak to the signature and hand writing of the said Govinda Rao. She has not been examined. Further, except the assertion made by D Ws. 1, 2 and 5 that one of the attesting witnesses to Exhibit D-1 viz., Sabjan, has expired, no material is placed in support of this assertion. None of his relatives had been examined either to speak about his death or to identify his signature. Under these circumstances, we find it highly unsafe to rely upon the evidence of DW-5 to identify the signatures of late Mohd. Ghouse Sab and Govinda Rao. Further, PW-2, who has been examined on behalf of the Plaintiffs in support of their case that the signature in Exhibit D-1 is not the signature of late Mohd. Ghouse Sab, is the nephew of late Mohd. Ghouse Sab. There is no dispute on this. He has produced the mortgage deed dated 8th January, 1946 executed by his father in favour of one Ananda Bhat as Exhibit P-23. The said Mohd. Ghouse Sab has signed the said mortgage deed as a witness. PW-2 has identified the said signature. Further, the Plaintiffs got summoned the original of the plaint in O.S. No. 47 of 1960 signed by late Mohd. Ghouse Sab and the said plaint was got marked through PW-2 as Exhibit P-23. PW-2 has identified the signatures of late Mohd. Ghouse Sab found in the plaint Exhibit P-23, which are marked as Exhibits C-1(a) and C-1(b). He has also asserted that the signature purporting to be of late Mohd. Ghouse Sab found in Exhibit D-1, is not the signature of late Mohd. Ghouse Sab. The trial Court, on comparison of the signatures of late Mohd. Ghouse Sab found in Exhibits P-23 and C-1(a) and C-1(b) with the signature purporting to be of late Mohd. Ghouse found in Exhibit D-1, has also found that the signature found in Exhibit D-1 is not the signature of late Mohd. Ghouse Sab. No doubt, learned Counsel for the appellants has made a serious grievance of it. We have also compared the signature purporting to be of late Mohd. Ghouse Sab in Exhibit D-1, with the signature of late Mohd. Ghouse Sab found in plaint Exhibit P-23. On such comparison, we have no reason to disagree with the conclusion reached by the trial Court. The trial Court has not held that Exhibit D-1 was not proved only on the basis of comparison of the signature found in Exhibits C-1(a) and C-1(b) with the signature found in Exhibit D-1; it has also taken several other relevant circumstances, which are referred to by us earlier. Therefore, we find that there is no merit in the grievance made by the learned Counsel for the appellants that the trial Court has erred in comparing the disputed signature of late Mohd. Ghouse Sab with the signatures found in Exhibit C-1. Consequently, we have no hesitation to hold that the Defendants have failed to prove Exhibit D-1.

12. Further, it is also necessary to point out that even assuming that a

presumption is required to be drawn u/s 90 of the Evidence Act in respect of Exhibit D-1 regarding the execution and attestation of the said document as has been done by the trial Court, we are of the view that the evidence adduced by the Plaintiffs in the facts and circumstances of the case, is sufficient to rebut the said presumption. We do not find any justification to disagree with the several reasons given by the trial Court which are culled out by us above, to come to the conclusion that the Defendants have failed to prove Exhibit D-1 and the presumption available stood rebutted. We are also of the view that the very reasons given by us stated above not to draw the presumption u/s 90, itself are sufficient to take the view that the Defendants have failed to prove Exhibit D-1. If, as a matter of fact, Exhibit D-1 was executed as claimed by the Defendants in the year 1960, we are unable to understand as to why the said document did not see the light of the day till the date of the production of the same before the Court on 31st January, 1992. Therefore, looked at from any point of view, we are fully satisfied that Exhibit D-1 cannot be relied upon to support the claim of the Defendants.

13. Though the above conclusion would be sufficient to dismiss the appeal, however, since the trial Court has recorded a finding that Exhibit D-1 cannot be admitted in evidence and relied upon, as the said document is not registered, we find it appropriate to consider the validity of Exhibit D-1 i.e., the second question, referred to above.

Re-question (ii):

14. It is the case of the Defendants that plaint "A" schedule property was given by way of gift towards Mehar or Dower to the first Defendant. However, the trial Court, on consideration of the recitals in Exhibit D-1, has taken the view that Exhibit D-1 is not a simple gift, but it amounts to the sale of plaint "A" schedule property or at least amounts to "hiba-bil-iwaz". Now, the question is, whether the said finding is required to be affirmed by us? "Mehar" or Dower has been defined by learned author Mulla in his Book "Principles of Mohammedan Law" as a sum of money or other property which the wife is entitled to receive from the husband in consideration of the marriage. The learned author further proceeds to state that husband may settle any amount he likes by way of dower upon his wife and the dower may be prompt or deferred. It is well settled that the amount of dower may be fixed either before or at the time of marriage or after the marriage; and it can be even increased after marriage and the dower is considered as a debt by the husband to his wife. Therefore, there is an obligation on the part of the husband to discharge the dower amount due by him to his wife. Keeping these things in mind, we will have to consider the case of the Defendants whether plaint "A" schedule property was given as gift towards mehar or dower by late Mohd. Ghouse Sab to the first Defendant. Under Mohammedan Law, it is open to a Muslim to gift an immovable property. Section 129 of the Transfer of Property Act provides that the provisions contained in Chapter-VII shall not affect any rule of Mohammedan Law relating to gifts of

immovable property. Under Mohammedan Law, gift is also described as "Hiba". "Hiba" or gift is "a transfer of property made immediately and without any exchange" by one person to another and accepted by or on behalf of the latter. According to the learned author Mulla, under Mohammedan Law, no writing is necessary for gift of either movable or immovable property; and a gift to be valid, the donor should divest himself completely of all ownership and dominion over the subject of the gift. In other words, a gift to be valid, it should satisfy three conditions viz., (1) the declaration of gift by the donor; (2) acceptance of the gift - express or implied by or on behalf of the donee; and (3) delivery of possession of the subject of the gift by the donor to the donee. However, if the gift is reduced into writing and the same is contemporaneous with the gift, it must be registered. Further, if such a deed is only a memorandum of things already transacted and did not embody the gift, no registered document is necessary. The Division Bench of this Court in the case of Imambi (supra) relied upon by Sri Suresh Lokre, while considering the question that when the lands were given by a Mohammedan husband to his wife as "Dower", whether such a transfer requires registration as provided u/s 17 of the Indian Registration Act, has observed that "payment of prompt or deferred of dower, may be, in cash or in kind, to be made by the husband to his wife, at the time of the marriage is a pious obligation cast on the husband by Mohammedan Law; and further it approved the law laid down by the High Court of Bombay in the case of Jaitunbi Fatrubhai Vs. Fatrubhai Kasambhai and Others, and also by the High Court of Hyderabad in the case of Mohammed Hashim v. Amijnabi AIR 1952 Hyd. In the case of Jaitumbi (supra), the High Court of Bombay has laid down that the assignment of land by the bridegroom to the bride in lieu of Mehar at the time of marriage, is in the nature of gift and no writing is necessary for the validity of the gift since Section 129 of the Transfer of Property Act exempts gift from a Mohammedan from the provisions of that Act and that a gift would be complete and valid if three ingredients i.e., offer, acceptance and delivery of possession are satisfied. While considering the decision of the High Court of Hyderabad in the case of Mohammed Hashim (supra), the Division Bench of this Court has, at paragraph-14, observed as follows:

When at the time of the marriage, a land is assigned by the bridegroom to the bride in lieu of "mehar" the assignment is a simple gift and neither a sale nor "Hiba"

Therefore, the question is whether Exhibit D-1 is in the nature of a mere memorandum of things already transacted and did not embody the gift? If the recital in Exhibit D-1 is only a mere memorandum of things already transacted and did not embody the gift, the said document does not require registration. It is, therefore, useful to refer to the recitals in Exhibit D-1, which read as follows:

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From the recitals in the document, referred to above, it is clear that late Mohd. Ghouse Sab intended to give plaint "A" schedule property to the first Defendant

towards Mehar and for her future maintenance. The document further recites that the first Defendant is entitled to enjoy the said property as she likes either during the life time of her husband or after his death. It further states that no one else except the first Defendant, has any right in the said property. Therefore, from the reading of Exhibit D-1, it appears to us that the document Exhibit D-1 is intended to convey the right, title and interest of late Mohd. Ghouse Sab in plaint "A" schedule property to the first Defendant, who is his wife, both by way of Mehar and for her future maintenance. The said document cannot be considered as a memorandum of things already transacted. It is relevant to point out that there is no evidence on record to show that either at the time of the marriage or at any other time prior to the execution of Exhibit D-1, late Mohd. Ghouse Sab had agreed to pay any amount in cash by way of Mehar to the first Defendant or had given the plaint "A" schedule property by way of Mehar in lieu of cash amount fixed. The recital in Exhibit D-1, to our mind, appears that by virtue of the said document, late Mohd. Ghouse Sab intended to give the plaint "A" schedule property for two purposes viz., (1) by way of Mehar and (2) for future maintenance of the first Defendant. Therefore, in view of Section 17 of the Registration Act, it is clear that the said document requires compulsory registration; and since the said document is admittedly not registered, the first Defendant did not acquire any right, title or interest in plaint "A" schedule property. We are of the view that the trial Court, on appreciation of the evidence on record and also the recitals in Exhibit D-1, has rightly taken the view that the first Defendant, by virtue of Exhibit D-1, has not acquired any title to the plaint "A" schedule property and consequently Defendants 2 and 3 have not acquired any title to the said property by virtue of sale deed Exhibit D-2 executed by the first Defendant in favour of Defendants 2 and 3. We do not find any infirmity in the said finding recorded by the trial Court.

15. In the light of the above discussion, we find it unnecessary to refer in detail the decisions cited at the Bar, referred to above.

16. In the light of what is stated above, this appeal is liable to be dismissed and accordingly, it is dismissed. However, no order is made as to costs.