



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3397]

WEDNESDAY, THE TWENTY FIFTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY SIX

PRESENT

**THE HONOURABLE SRI JUSTICE VENUTHURUMALLI GOPALA
KRISHNA RAO**

SECOND APPEAL NO: 199/2025

Between:

J. Ifthakar Hussain and Others

...APPELLANT(S)

AND

Gulla Basha and Others

...RESPONDENT(S)

Counsel for the Appellant(S):

1.M RAMALINGESWARA REDDY

Counsel for the Respondent(S):

1.A SYAM SUNDAR REDDY

The Court made the following:

HONOURABLE SRI JUSTICE V. GOPALA KRISHNA RAO

SECOND APPEAL No.199 of 2025

JUDGMENT:

This second appeal under Section 100 of the Code of Civil Procedure is filed aggrieved against the judgment and decree, dated 29.11.2024, in A.S.No.37 of 2013, on the file of the II Additional District Judge, at Adoni, Kurnool District, confirming the judgment and decree, dated 03.06.2013, in O.S.No.111 of 2009, on the file of the Senior Civil Judge, Adoni, Kurnool District.

2. The plaintiffs initiated action in O.S.No.111 of 2009, on the file of the Senior Civil Judge, Adoni, Kurnool District, with a prayer for declaration of their right and title over the plaint schedule property and for recovery of possession, and for arrears of rent and for costs.

3. The O.S.No.111 of 2009, on the file of the Senior Civil Judge, Adoni, Kurnool District, partly decreed the suit with proportionate costs. Felt aggrieved of the same, the unsuccessful defendants in the above said suit filed the aforesaid appeal before the first appellate Court. The learned II Additional District Judge, at Adoni, Kurnool District, dismissed the appeal with costs by confirming the judgment and decree passed by the learned trial Judge. Aggrieved thereby, the defendants approached this Court by way of second appeal.

4. The appellants herein are the defendants, the respondents herein are the plaintiffs in O.S.No.111 of 2009.

5. For the sake of convenience, both parties in the second appeal will be referred to as they are arrayed in the suit O.S.No.111 of 2009.

6. The case of the plaintiffs, in brief, as set out in the plaint averments in O.S.No.111 of 2009, is as follows:

One late Haseena was the wife of Plaintiff No.1, the mother of Plaintiffs No.2 and No.3, and the daughter of Md.Shareef and the said Md.Shareef died on 23-10-2005. During his lifetime, he executed a registered gift deed dated 23-10-2004 in favour of his daughter/late Haseena, in respect of the suit schedule property and delivered possession of the same to her. The plaintiff pleaded that pursuant to the execution of the registered gift deed, late Haseena was put in possession of the suit schedule property from the date of execution of the gift deed. The plaintiff further pleaded that late Haseena died on 17-01-2008, leaving behind the plaintiffs as her legal heirs and upon her death, the title to the suit schedule property devolved upon the plaintiffs by virtue of succession.

The plaintiffs further pleaded that the defendant Nos.3 to 5 attested the said registered gift deed which was executed by their father in favour of Late Haseena. The plaintiffs further pleaded that the defendant Nos.1 to 4 are the sons of Md.Shareef, defendant No.5 is his daughter, and defendant No.6 is

his wife and at the time of execution of the registered gift deed, the suit schedule property had been mortgaged to Sree Mahayogi Lakshamma Co-operative Town Bank, Adoni, when late Md.Shareef expressed his intention to execute the registered gift deed in favour of late Haseena, the plaintiff No.1 discharged the mortgage debt owed to the said Bank, wherein the payment was made by plaintiff No.1 by way of cheque to the said Bank. The plaintiffs further pleaded that after the demise of Haseena, plaintiff No.1 got his name mutated in the municipal revenue records in respect of the suit schedule property and has been regularly paying the municipal taxes and the plaintiff No.1 also cleared the arrears of municipal tax for the period from 01-10-2005 to 31-03-2009 and has continued to pay subsequent tax installments.

The plaintiffs further pleaded that except for the property described in the plaint, late Shareef/the donor, did not possess any other property, particularly any house property at Adoni or elsewhere and the said late Md.Shareef requested his daughter, late Haseena, to permit him and the defendants to remain in possession of the suit schedule property as tenants and promised to pay rent at the rate of Rs.2,000/- per month. He further pleaded that during his lifetime, late Md.Shareef paid the rent and after his death, the defendants, being his legal heirs, failed to pay rent to late Haseena during her lifetime. Since the defendants were the brothers and sister of late Haseena, she took a lenient view in collecting rent from them.

The plaintiffs further pleaded that after the death of late Haseena, plaintiff No.1 requested the defendants to pay rent to him, as the plaintiffs had

succeeded to the estate of late Haseena, but the plaintiffs refused to pay rent and the defendants have deliberately denied the title of the plaintiffs to the suit schedule property with malafide intention and have evaded payment of rent. As such, the plaintiff is constrained to file the present suit.

7. The case of the defendant No.2 as per the written statement filed by the defendant No.2, which is adopted by the defendant Nos.1, 3 to 6 is as follows:

The eldest daughter of Md.Shareef by name Haseena was married to the plaintiff Nos.1 and after their marriage, they resided in the house of Md.Shareef and the plaintiff Nos.2 and 3 are the children of plaintiff No.1 and late Haseena. The defendants pleaded that they had taken lot of pain in getting treatment for Haseena at Putaparthi and the defendant Nos.1 and 2 were lorry drivers and they met with an accident at Raichur and as such the defendants are in need of money, for which Md.Shareef approached the plaintiff No.1 for arrangement of amount by obtaining loan from others.

The defendants further pleaded that the plaintiff No.1 obtained signatures of the defendant Nos.3 to 5 on a blank stamp paper of Rs.100/- and at that time they were minors and the witness Nos.1 and 2, who attested the registered mortgage deed were also kept in darkness and they were informed that it was a mortgage deed. The defendants further pleaded that the plaint schedule property is in possession and enjoyment of the defendants and when the possession of the property is not delivered to the plaintiff No.1, the alleged gift deed has no importance in the eye of law. The defendants

further pleaded that Md.Shareef died on 23.10.2005 and Haseena also died on 17.10.2008, and as the plaintiff No.1 wanted to marry the defendant No.5, and the said defendant No.5 was not given in marriage to the plaintiff No.1, the plaintiffs filed the present suit with false and vexatious grounds and as such, he prayed for dismissal of the suit with costs.

8. On the basis of above pleadings, the learned trial Judge framed the following issues for trial:

- 1) Whether the plaintiffs are entitled to declaration of their title over plaint schedule property and for delivery of possession of the same? and
- 2) To what relief?

9. During the course of trial in the trial Court, on behalf of the plaintiffs, P.Ws.1 to 4 were examined and Exs.A-1 to A-18 were marked. On behalf of the defendants, D.Ws.1 to 4 were examined and Exs.B-1 to B-12 were marked. Ex.X-1 is also marked.

10. The learned trial Judge after conclusion of trial, on hearing the arguments of both sides and on consideration of oral and documentary evidence on record, partly decreed the suit with proportionate costs. Felt aggrieved thereby, the unsuccessful defendants filed the appeal suit in A.S.No.37 of 2013, wherein the following points came up for consideration:

- 1) Whether the Judgment and Decree in O.S.No.111 of 2009, dated 03.06.2013, passed by learned Senior Civil Judge, Adoni is sustainable on facts and Law or it warrants inference in the appeal? and

2) To what relief?

11. The learned first appellate Judge after hearing the arguments, answered the points, as above, against the defendants and dismissed the appeal by confirming the judgment and decree passed by the learned trial Judge. Felt aggrieved of the same, the unsuccessful defendants in O.S.No.111 of 2009 filed the present second appeal before this Court.

12. On hearing learned counsel for the appellants at the time of admission of the second appeal on 02.09.2025, a learned Judge of this Court admitted the second appeal and framed the following substantial questions of law:

- 1) Whether the gift deed dated 23.10.2004 is valid in law, if supported by consideration? and
- 2) Whether the trial Court and 1st appellate Court erred in law declaring the title of the plaintiffs basing on such gift deed?

13. Heard Sri L.J.Veera Reddy, learned counsel representing Sri M.Ramalingeswara Reddy, learned counsel for the appellants/defendants and Sri A.Syam Sundar Reddy, learned counsel for the respondents/plaintiffs.

14. The law is well settled that under Section 100 of CPC, High Court cannot interfere with findings of fact arrived at by first appellate Court, which is final Court of facts, except in such cases where such findings were erroneous being contrary to the mandatory provisions of law, or its settled position on the basis of the pronouncement made by the Apex Court or based upon inadmissible evidence or without evidence.

In the case of ***Bhagwan Sharma v. Bani Ghosh***¹, the Apex Court held as follows:

“The High Court was certainly entitled to go into the question as to whether the findings of fact recorded by the First Appellate Court which was the final Court of fact were vitiated in the eye of law on account of non-consideration of admissible evidence of vital nature.”

In the case of ***Kondira Dagadu Kadam v. Savitribai Sopan Gujar***², the Apex Court held as follows:

“The High Court cannot substitute its opinion for the opinion of the First Appellate Court unless it is found that the conclusions drawn by the lower appellate Court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at without evidence.”

15. The undisputed facts are that one late Haseena, who is the wife of the plaintiff No.1 and mother of the plaintiff Nos.2 and 3 and daughter of one Md.Shareef died on 17.10.2008, and Md.Shareef died on 23.10.2005. The case of the plaintiffs is that during the lifetime of Md.Shareef, he had executed a registered gift deed in favour of his daughter late Haseena in respect of the suit schedule property and delivered the possession of the property to late Haseena and she was put in possession of the suit schedule property. The plaintiff further pleaded that ever since the date of execution of registered gift deed dated 23.10.2004, late Haseena was in possession and enjoyment of the property and she died on 17.01.2008. The contention of the defendants is that they have not executed the gift deed and they pleaded that the plaintiff No.1 obtained signatures of the defendant Nos.3 to 5 on a blank stamp paper

¹ AIR 1993 SC 398

² AIR 1999 SC 471

of Rs.100/- and at that time, they were minors. The defendants further contended that the witness Nos.1 and 2, who attested the registered mortgage deed were also kept in darkness and they were informed that it was a mortgage deed. The execution of the registered document and the appearance of Md.Shareef before the Sub-Registrar for registration of the document is not yet disputed by the defendants. The contention of the defendants is that Md.Shareef executed the mortgage deed, but not a registered gift settlement deed. Therefore, the burden is on the defendants to prove that the said document is a registered mortgage deed, but not a registered gift settlement deed. Moreover, the defendant Nos.3 to 5 also attested the registered gift settlement deed while their father was gifting the suit schedule property to late Haseena and the defendant Nos.1 to 4 are the sons, defendant No.5 is the daughter and the defendant No.6 is the wife of Md.Shareef.

16. Learned counsel for the appellants would contend that the gift deed dated 23.10.2004, is not valid in law, since it is supported by consideration. It is not at pleaded by the appellants in the written statement that Ex.A-1 gift deed is an invalid document, since it is supported by consideration. It is not the case of the appellants that the Md.Shareef received consideration under Ex.A-1 from the donee. During the lifetime of Md.Shareef, he never disputed about the execution of registered gift settlement deed in favour of his daughter Haseena. The registered gift settlement deed is filed and marked as Ex.A-1 before the trial Court. The recitals in Ex.A-1 document clearly go to show that

the suit schedule property was delivered to the donee from the donor without any consideration and the possession was also delivered to the donee.

17. As stated *supra*, there is no pleading in the written statement that the gift deed is invalid document since it is supported by consideration. For the first time in the second appeal proceedings it was contended by the learned counsel for appellant that the gift deed is invalid document since it is supported by consideration. During the first appeal proceedings also the appellants have not taken the aforesaid plea that Ex.A-1 is invalid document since it is supported by consideration. There is no pleading in the written statement that after receiving consideration, Md.Shareef executed a gift settlement deed. The law is well settled that the *“the second Appellate Court could not go into questions which had not raised by the defendants in their pleadings or in the evidence or in the memorandum of the grounds of appeal”*. As seen from the grounds of appeal, the same is not raised by the appellants in the grounds of appeal.

18. In the absence of pleadings on a point of law or a factual format of the point of law arising between the parties, such question should not be permitted to be raised as a substantial question of law in the second appeal. The law is well settled that *“parties to the suit cannot travel beyond the pleading, so also the Court cannot record any findings on the issues which are not part of the pleadings”*. This Court being a Second Appellate Court cannot go into the questions which had not raised by the parties either in their

pleadings or in the evidence or in the memorandum of grounds of second appeal.

19. In the plaint it was pleaded that on the date of execution of registered gift deed, the schedule property was mortgaged to the Co-operative Town Bank, Adoni, when late Md.Shareef expressed his intention to execute a registered gift deed in favour of late Haseena, the plaintiff No.1, who is the husband of Haseena discharged the debt on the schedule property. It does not mean that a consideration was passed under the gift deed. The plaintiff No.1 is none other than the son-in-law and the donee is none other than the daughter of donor, it was admitted by the witness of the defendants, who was the Manager of the Co-operative Bank/D.W.4 that Md.Ghouse borrowed an amount prior to 23.10.2004, by mortgaging the plaint schedule property and he availed loan and the plaintiff No.1 had given a cheque of Rs.35,000/- for adjustment of the loan account of Md.Shareef. It does not mean that the gift is supported by consideration. Moreover, as per the Sub-Registry value of the suit schedule house property, its value is Rs.94,000/- on the date of Ex.A-1, but not Rs.35,000/-. To avoid further litigation, the plaintiff No.1 being the son-in-law of late Md.Shareef, might have discharged the balance loan amount to release the mortgage, in view of the relationship with Md.Shareef. It does not mean that Ex.A-1 gift deed is supported by consideration. Furthermore, the recitals in Ex.A-1 clearly prove that the schedule property was gifted to Haseena without any consideration and out of love and affection, under a registered gift settlement deed in favour of his daughter. The defendant Nos.3

to 5, who are none other than the children of Md.Shareef attested the said registered gift deed. In the light of the material on record and upon earnest consideration, it is manifest that the 1st substantial question of law raised in the course of hearing in the second appeal on behalf of the appellants did not arouse or remain for consideration.

20. Learned counsel for the appellant would contend that both the trial Court as well as the First Appellate Court erred in law to declare the title of the plaintiffs based on the Ex.A-1 gift deed. The respondents/plaintiffs herein approached the civil Court for seeking relief of declaration of title and recovery of possession of the plaint schedule property and for arrears of rent of Rs.72,000/-. The relief of arrears of rents was disallowed by the trial Court and the same was confirmed by the First Appellate Court. No cross-appeal or no cross-objections are filed by the plaintiffs. Therefore, the said finding reached its finality. The law is well settled that *“in a suit for declaration of title and possession, the entire burden is on the plaintiff to prove their right and title in the plaint schedule house property, but not in favour of the defendants”*. The title of the plaintiffs is based on Ex.A-1 registered gift settlement deed said to have been executed by Md.Shareef in favour of his daughter wherein the defendant Nos.3 to 5, who are the children of donor attested the gift deed and the ownership of Md.Shareef in respect of suit schedule house is undisputed by both the parties to the suit.

21. As noticed *supra*, the claim of the plaintiff is based on Ex.A-1 gift settlement deed and both the parties to the suit are interrelated, the same is

undisputed. The plaintiff relied Ex.A-1 registered gift settlement deed, P.W.1 is the plaintiff, P.W.2 is the scribe of the document and P.W.3 is one of the attester to Ex.A-1. The recitals in Ex.A-1 go to show that the plaint schedule property was gifted to Haseena by her father and the said Haseena died on 17.01.2008, by leaving the plaintiff No.1/Husband and plaintiff Nos.2 and 3/Children. As noticed *supra*, the title of Md.Shareef in respect of the plaint schedule house property is undisputed by the appellants. The recitals in Ex.A-1 go to show that plaint schedule house property was gifted by donor to donee without any consideration and out of love and affection and possession was also delivered on 23.10.2004 i.e. on the date of registered gift deed.

22. The plaintiff to prove Ex.A-1 document examined one of the attester as P.W.3, the execution of Ex.A-1 document itself is proved through P.W.3. Moreover, execution of Ex.A-1 gift deed is not disputed by the defendants. Md.Shareef never disputed the gift deed during his lifetime. As noticed *supra*, the appellants admitted the registered document executed by Md.Shareef in favour of Haseena, but they contended that Md.Shareef executed a registered mortgage deed, but not a gift deed. The same is not proved by the appellants for the reasons best known to them. The recitals in Ex.A-1 gift deed disclose that the possession was delivered to the donee on the date of gift settlement deed.

23. The plaintiffs pleaded in the plaint itself that the property shown in the plaint is the only property of late Md.Shareef and except the said property, he was not having any other property, particularly the house property at Adoni, at

that juncture, late Md.Shareef requested Haseena/donee to permit him and defendants to remain in the possession of the property as tenants and promised to pay rent of Rs.2,000/- per month. The plaintiffs further pleaded that as long as Md.Shareef was alive, somehow or the other he used to pay the rent and after the death of Md.Shareef, the defendants, who are the legal heirs of Md.Shareef failed to pay the rent to Haseena during the lifetime. The plaintiffs further pleaded that the defendants are the brothers, sisters and mother of late Haseena and she also taken a lenient view in collecting rents from her brothers and sisters and the said Haseena died on 17.01.2008. The plaintiffs further pleaded that after the demise of late Haseena the plaintiff No.1 requested the defendants to pay the rents to him as they have the succeeded the estate of Haseena after her death, by taking advantage of the death of Haseena, the defendants postponed the delivery of possession and payment of rent to the plaintiffs.

24. The house tax receipts, property tax receipts and demand notices supports that the plaintiffs are in the plaint schedule property and Ex.A-3 to Ex.A-5, Ex.A-9 to Ex.A-14 supports the same. On the other hand, the defendants have not filed any house tax receipts or water tax receipts to prove their defence. The oral and documentary evidence proves that on the date of settlement deed itself, the possession of delivered to the donee. The trial Court by giving reasons rightly held that *“the delivery may be constructive delivery and in cases a symbolic delivery has been held to be a good and sufficient compliance with the requirements of law”*. The oral and documentary

evidence and Ex.A-1 clinchingly establishes that the possession was delivered to donee and Md.Shareef being the father of the donee is continuing in the possession of the plaint schedule property at his request as a tenant. As per the evidence of D.W.1/wife of Md.Shareef, two (02) years prior to the death of her husband, he informed that he executed a mortgage deed in favour of Haseena. Md.Shareef died on 23.10.2005, the gift settlement deed is said to have been executed on 23.10.2004, just one (01) year prior to his death. Therefore, her statement in the evidence of D.W.1 cannot be taken into consideration. From the evidences of P.Ws.1 to 3, it is evident that late Md.Shareef executed a gift settlement deed in favour of his daughter Haseena and later he died on 23.10.2005, Haseena also died on 17.10.2008 and after the death of Haseena, the defendants failed to pay the rents to the plaintiffs, though the plaintiffs demanded and they failed to vacate the premises. The plaintiffs who are none other than the husband and children of Haseena filed a suit for seeking the relief of declaration of title and recovery of possession. As stated *supra*, the execution of registered document on 23.10.2004, by Md.Shareef is undisputed by the defendants. But they contended that the plaintiff No.1 obtained the signatures of defendant Nos.3 to 5 on a blank stamp papers of Rs.100/- and at that time they were minors and the witness Nos.1 and 2, who attested the registered mortgage deed were kept in darkness and they were informed that it was a mortgage deed. Therefore, the entire burden is casted upon the defendants to prove the same, but they failed to prove the same.

25. Learned counsel for the appellant placed reliance in **Mansoor Saheb (Dead) & Ors. Vs. Salima (D) by Lrs. & Ors.**, vide **Civil Appeal No.4211 of 2009**, wherein the Apex Court held as follows:

“Mohammedan Law, being the personal law, possesses its own legal principles and regulations which govern family relationships in matters such as marriage, divorce, inheritance, custody and guardianship. Its distinctive feature sets it apart from other personal laws on fundamental issues. It is pertinent to examine the legal principles, if any, governing partition under Mohammedan law.”

26. In a case of **Rasheeda Khatoon Vs. Ashiq Ali**³, the Apex Court held as follows:

“11. In Mahboob Sahab v. Syed Ismail and Others [MANU/SC/0698/1995: (1995) 3 SCC 693] a two-Judge Bench referred to Section 147 of the Principles of Mahomedan Law by Mulla wherein the essentials of valid gift under the Muhammadan Law have been elucidated and proceeded to explicate the principle. We think the reproduction of the relevant passage would be seemly:-

“Under Section 147 of the Principles of Mahomedan Law, by Mulla, 19th Edn., edited by Chief Justice M. Hidayatullah, envisages that writing is not essential to the [pic]validity of a gift either of moveable or of immovable property. Section 148 requires that it is essential to the validity of a gift that the donor should divest himself completely of all ownership and dominion over the subject of the gift. Under Section 149, three essentials to the validity of the gift should be, (i) a declaration of gift by the donor, (ii) acceptance of the gift, express or implied, by or on behalf of the donee, and (iii) delivery of possession of the subject of the gift by the donor to the donee as mentioned in Section 150. If these conditions are complied with, the gift is complete. Section 150 specifically mentions that for a valid gift there should be delivery of possession of the subject of the gift and taking of possession of the gift by the donee, actually or constructively. Then only the gift is complete. Section 152 envisages that where 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

³ MANU/SC/0901/2014

premises with all his goods and chattels, and the donee formally enters into possession. It would, thus, be clear that though gift by a Mohammedan 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.”

27. In a case of **Sonia Bhatia Vs. State of U.P. and Ors.**⁴, the Apex Court held as follows:

“From a conspectus, therefore, of the definitions contained in the dictionaries and the books regarding a gift or an adequate consideration, the inescapable conclusion that follows is that 'consideration' means a reasonable equivalent or other valuable benefit passed on by the promisor to the promisee or by the transferor to the transferee. Similarly, when the word 'consideration' is qualified by the word 'adequate', it makes consideration stronger so as to make it sufficient and valuable having regard to the facts, circumstances and necessities of the case. It has also been seen from the discussions of the various authorities mentioned above that a gift is undoubtedly a transfer which does not contain any element of consideration in any shape or form. In fact, where there is any equivalent or benefit measured in terms of money in respect of a gift the transaction ceases to be a gift and assumes a different colour. It has been rightly pointed out in one of the books referred to above that we should not try to confuse the motive or the purpose of making a gift with the consideration which is the subject matter of the gift. Love, affection, spiritual benefit and many other factors may enter in the intention of the donor to make a gift but these filial considerations cannot be called or held to be legal considerations as understood by law. It is manifest, therefore, that the passing of monetary consideration is completely foreign to the concept of a gift having regard to the nature, character and the circumstances under which such a transfer takes place. Furthermore, when the legislature has used the

⁴ MANU/SC/0363/1981

word 'transfer' it at once invokes the provisions of the Transfer of Property Act. Under section 122 of the Transfer of Property Act, gift is defined thus:

"Gift" is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

Such acceptance must be made during the lifetime of the donor and while he is still capable of giving.

If the donee dies before acceptance, the gift is void."

28. In the case at hand, it is not at all pleaded by the appellants in the written statement that Ex.A-1 gift deed is invalid document since it is supported by consideration. The recitals in Ex.A-1 gift settlement deed clearly go to show the suit schedule house property was delivered to the donee from the donor without any consideration and out of love and affection and possession was delivered to the donee on the date of gift deed itself. The defendant Nos.3 to 5, who are none other than the children of Md.Shareef attested the said registered gift deed. There is no pleading in the written statement that the gift deed is invalid document, since it is supported by consideration. During the pendency of the first appeal proceedings also the appellants have not taken any plea that Ex.A-1 gift deed is invalid document, since it is supported by consideration. Furthermore, the house tax receipts, the property tax receipts and demand notices also supports that the plaintiffs are in the possession of the plaint schedule house property, Ex.A-3 to Ex.A-5 and Ex.A-9 to Ex.A-14 supports the same. There was a evidence on record to show that after execution of Ex.A-1 registered gift settlement deed, the donor being the father requested the donee to permit them to retain in the schedule property as tenant on

payment of rent of Rs.2,000/- and subsequently, after one (01) year from the date of execution of Ex.A-1 gift deed, Md.Shareef died and later his daughter Haseena also died and later disputes arouse between both the parties. The execution of registered gift settlement deed is undisputed by Md.Shareef during his lifetime and it is not at all the case of Md.Shareef that after receiving consideration, he had executed Ex.A-1 document in favour of his daughter. During the lifetime of Md.Shareef, he never challenged the gift deed before any Court of law. After the death of Md.Shareef, till so far the defendants also did not challenge the said gift deed before the Court of law.

29. Learned counsel for the respondents placed reliance in **Abdul Rahim and Others Vs. Sk.Abdul Zabar and Others**⁵, wherein the Apex Court held as follows:

“Indisputably, in the present case the deed of gift is a registered one. It contains a clear and unambiguous declaration of total divestment of property. A registered document carries with it a presumption that it was validly executed. It is for the party questioning the genuineness of the transaction to show that in law the transaction was not valid.”

30. In the case at hand, the gift deed is registered one. As stated *supra*, the possession of the property was delivered to the donee by the donor, the same is a constructive possession which is supported by the documentary evidence, in view of the relationship with the father, since the donor/father does not have any alternative accommodation as such, at request of father, the daughter let out the house on payment of rent of Rs.2,000/- per month. As stated *supra*,

⁵ (2009) 6 Supreme Court Cases 160

immediately after obtaining registered settlement deed, at the request of the father of the donee, the donee permitted her father/donor to stay in the same premises as a tenant. Moreover, the gift deed is registered gift settlement deed dated 23.10.2004, the said registered gift settlement deed is not yet cancelled by the competent Court till so far. A suit for cancellation of registered gift settlement deed is not filed by the donor during his lifetime or by the appellants subsequent to the death of donor till so far. Therefore, unless and until, the said gift settlement deed in Ex.A-1 is validly cancelled, the plaintiff s are having valid right and title in the plaint schedule house property.

31. In a case of **Bepari Shaik Peeran Vs. Kamalapuram mahaboob Bi and Others**⁶, the Composite High Court of Andhra Pradesh at Hyderabad held as follows:

“12.when absolute rights had been transferred under a gift by a Mohammadan, whether such document will be invalid for the mere reason that the right to enjoy the property is postponed inasmuch as such rights are retained by the donor herself for life ? From the recitals of Ex.A-1, the intention of the donor is clear and categorical to convey absolute rights in favour of the appellant/plaintiff. In fact, while retaining the right to enjoy the income for maintenance, a restriction not to have the right of alienation, also is imposed and this is also suggestive of the fact that what had been conveyed by the donor to the donee under Ex.A-1 are absolute rights in the plaint schedule property and hence the mere fact that there was no delivery of possession in presenti on the date of the document cannot by itself invalidate Ex.A-1. In fact this is the view expressed even by the Privy Council in the decision referred (2) supra. On a careful reading of the decisions referred to supra, it can be seen that no contrary opinion had been expressed in this regard. In the case of passing of absolute rights under a gift by a Muhammadan, the postponement of enjoyment will definitely fall under an exception and on that ground it cannot be said that Ex.A-1 is invalid and this view expressed by me also is in accordance with the view expressed by our High Court in the decision referred to (3) supra and also a Division Bench of the Madras High Court referred (7) supra. It is needless to point out that in the light of the view expressed by me relating to the validity of Ex.A-1, the

⁶ 2002 SCC OnLine AP 640

appellant/plaintiff is entitled to the relief prayed for since the validity of Ex.A-2 and Ex.A-3 will depend upon Ex.A-1 only."

32. In the case at hand, the plaintiffs proved their right and title in the plaint schedule property and there is an ample evidence to show that the plaintiffs are having absolute right and title in the plaint schedule property, as such the plaintiffs are entitled for relief of declaration of title and recovery of possession of the suit schedule property. In the light of the material on record and upon earnest consideration now, it is manifest that the substantial questions of law raised in the course of hearing in the second appeal on behalf of the appellants did not arise or remain for consideration. This Court is satisfied that this second appeal did not involve any substantial question of law for determination.

33. In the result, the second appeal is **dismissed**, confirming the judgment and decree passed by the trial Court and the First Appellate Court. Two (02) months time period is granted to the appellants to deliver the vacant possession of the plaint schedule property to the respondents.

Pending applications, if any, shall stand closed. Each party do bear their own costs in the second appeal.

V. GOPALA KRISHNA RAO, J.

Date: 25.02.2026

SRT