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REPORTABLE

2025 INSC 1187

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2025
[@ SLP (C) NO. 16996 OF 2022]

DHARMRAO SHARANAPPA SHABADI AND OTHERS

... APPELLANT(S)

VERSUS

SYEDA ARIFA PARVEEN **... RESPONDENT(S)**

J U D G M E N T

S.V.N. BHATTI, J.

1. Leave granted.

2. The Civil Appeal arises from the judgment and decree dated 06.07.2022 in RFA No. 200204 of 2019 in the High Court of Karnataka, Kalaburagi Bench, Kalaburagi. The Civil Appeal is at the instance of the Defendants in OS No. 212 of 2013 in the Court of Principal Senior Civil Judge at Kalaburagi. The sole Respondent is the Plaintiff.

3. The following chronology is prefaced before adverting to the pleadings, evidence and findings in the impugned judgments.

3.1 Khadijabee w/o Syed Abdul Basit filed OS No. 68 of 1971 against her brother for partition and separate possession of agricultural land in Sy.No. 107 measuring 24 acres and 28 guntas at village Kusnoor, Taluka and District Gulbarga ('Suit Property'). On 27.10.1987, OS No. 68 of 1971 was decreed (Ex. P-1), declaring that the Suit Property belongs to Khadijabee. It is averred that on 05.12.1988, Khadijabee, under an oral gift/Hiba, conveyed to the Plaintiff 10 acres in Sy.No. 107. On 05.01.1989, the Memorandum of Gift (Ex. P-8) is stated to have been executed by Khadijabee in favour of Plaintiff. On 06.06.1989,

registration of a change of rights (Ex. P-2) in the Record of Rights ('ROR') in favour of Khadijabee was carried out covering the entire extent of 24 acres and 28 guntas. Khadijabee died on 29.11.1990 (Ex. P-3). On 23.05.1991, Abdul Basit, the husband of Late Khadijabee, again got the mutation (Ex. D-2) effected for 24 acres and 28 guntas. On 25.02.1995, Abdul Bas (as set out in the sale deeds) sold, through five sale deeds (Exs. D-3 to D-7), the extent of 24 acres and 28 guntas in favour of Defendant nos. 1 to 5, and through Exs. D-9 to D-43, the Suit Property has been mutated in their names. On 09.09.2001, Abdul Basit died. On 28.10.2013, Syeda Arifa Parveen, w/o Mushtaq Ahmed, filed OS No. 212 of 2013, praying for the reliefs of declaration that the Plaintiff is the owner of the Suit Property and perpetual injunction. The suit property is land Sy.No.107, admeasuring Ac. 24-28 Gts., situated at Village Kusnoor, Taluka and District Gulbarga. The Suit Property is bounded by a Government Road to the East, Sy.No.151 to the West, Sy.No.106 to the North, and Sy.No.119 to the South.

3.2 The Plaintiff, by way of amendment, prayed for a further declaration that the sale deeds alleged to be executed by Abdul Bas, dated 25.02.1995, in favour of Defendants are null and void and not binding on the Plaintiff (Exs. D-3 to D-7).

4. The averments in the plaint in support of the declaratory relief of title and cancellation of Exs. D-3 to D-7 state that Khadijabee died on 29.11.1990, and the Plaintiff is her only daughter and heir. Khadijabee's husband is also deceased, and she left no other legal heirs. Khadijabee, during her lifetime, made an oral gift/Hiba of 10 Acres of land out of the Suit Property in favour of the Plaintiff on 05.12.1988, and delivered possession, which the Plaintiff accepted. Subsequently, a Memorandum of Gift Deed was executed on

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05.01.1989. Based on the oral gift and succession, the Plaintiff claims to be the owner and in possession of the Suit Property. The Plaintiff asserted that the Defendant No. 1 was previously an agricultural servant of Khadijabee (original owner) on a yearly salary basis. The Plaintiff further asserts that the Defendants have no concern with either the ownership or possession of the suit land. Taking advantage of Dussehra Vacation, the plaintiff alleged that on 14.10.2013, the Defendants came to the suit land, tried to dispossess the Plaintiff by force, and asked her to vacate, claiming they had purchased the land. They also tried to stop agricultural operations. The Defendants claimed to have purchased portions of the Suit Property through registered sale deeds dated 25.02.1995, with the alleged vendor being Abdul Bas S/o Syed Hussain Saheb. The purchased portions are as follows: (i) Defendant No.1: 4 Acres 38 Guntas, (ii) Defendant No.2: 5 Acres, (iii) Defendant No.3: 5 Acres, (iv) Defendant No.4: 5 Acres and (v) Defendant No.5: 5 Acres. The Plaintiff contends that "Abdul Bas" S/o Syed Hussain Saheb (executor of the sale deed) does not exist, was never the owner, nor in possession of the suit land. The sale deeds were not executed by Khadijabee or her husband, "Abdul Basit Saheb". The Plaintiff alleges that the Defendants created these false sale deeds to make a false claim over the Suit Property. Therefore, these sale deeds have not conferred any right, title, and the Defendants have not become owners of the Suit Property. The Plaintiff argues that the entries in the revenue records were entered without following proper procedure. Further, the plaintiff stated that these entries are illegal because notices were not served upon the Plaintiff nor the original owners at the time of mutation of entries. These entries, therefore, do not confer any right, title, or interest on the Defendants.

5. The Defendants resisted the suit on all fours. The Defendants admit that Khadijabee was the original owner of the Suit Property, and she died on 29.11.1990 and her husband has also died. However, they deny that the

plaintiff is Khadijabee's only daughter, that Khadijabee left no other heirs, that Khadijabee made an oral gift of 10 Acres of land to the plaintiff on 05.12.1988, or that possession was delivered. According to Defendants, Khadijabee and her husband died issueless. They further deny that Khadijabee executed a Memorandum of Gift on 05.01.1989, or that the plaintiff became the owner and possessor of 10 Acres of land out of the total extent of the Suit Property. They allege that the plaintiff made up a story to grab their property by illegal means. They highlight that the alleged oral gift has not been heard of for 25 years, and the alleged Memorandum of Gift has not seen the light of day for all these years. The Defendants specifically contest that Defendant No. 1 was Khadijabee's agricultural servant, or that the Defendants have no concern with the ownership or possession of the Suit Property. The Defendants deny that on 14.10.2013, they tried to dispossess the plaintiff by force, or that they informed the plaintiff they purchased the lands through various sale deeds. The Defendants assert that during the Dussehra Vacation, they did not attempt to stop agricultural operations or ask the plaintiff to vacate and hand over possession. Further, the Defendants stated that the sale deeds were not executed by the plaintiff or her parents. Defendant Nos. 1 to 5 assert they are bona fide purchasers. They verified revenue and other records and were satisfied with the title of Abdul Bas @ Abdul Basit s/o Syed Hussain Sab as it was duly mutated in their vendor's name. The Defendants detail their individual purchases of land in Sy.No.107 on 25.02.1995 through registered sale deeds, specifying the document numbers and acreage for each Defendant. They assert that they are in possession of their portions as absolute owners since the date of purchase without any interference. They also mention that Abdul Bas @ Abdul Basit had previously sold house properties to Defendant No. 2's family in 1981. The Defendants' names were mutated in the revenue records based on these

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registered sale deeds after due process and have continued without objections from anyone, particularly the plaintiff. They deny that the said sale deeds did not confer any right, title, or interest on the Defendants, or that the Defendants did not become the owners. They further deny that notices were not served on the plaintiff, Khadijabee, or her husband when entries were made in the ROR, or that such entries are illegal and do not confer any right, title, or interest on the Defendants.

6. The following issues and additional issues were framed by the Trial Court:

> *"1. Whether the Plaintiff proves that, she is having right, title and ownership over the suit schedule property?*
> *2. Whether the Plaintiff further proves that, she is in lawful possession and enjoyment over the suit schedule property as on the date of filing of this suit?*
> *3. Whether the Plaintiff further proves that, defendants have interfered in the peaceful possession and enjoyment of suit schedule property as alleged in the plaint?*
> *4. What order or decree?*
> *Additional issues:*
> *1. Whether suit of Plaintiff is barred by limitation?*
> *2. Whether suit of the Plaintiff in present form is maintainable?"*

7. The Plaintiff examined herself as PW1 and PWs 2 to 4 on her behalf and got marked Exs. P-1 to P-8. The second Defendant was examined as DW1, and the third Defendant was examined as DW2. Exs. D-1 to D-44 have been marked on their behalf.

8. The respective pleadings of the parties are, to the extent needed, adverted to while taking up the contentions by the learned counsel appearing for the parties. The Trial Court, in effect, decreed the suit in part, granting a

decree of title and permanent injunction to an extent of 18 acres and 21 guntas of the Suit Property. The Trial Court disbelieved the case of the Plaintiff on Oral Gift, and the view taken by the Trial Court can be summed up as follows.

8.1 Plaintiff was the daughter of Khadijabee and Syed Abdul Basit. This finding was based on the testimony of PW2 and PW3, who had special means of knowledge of the familial relationship. The Court did this by invoking Section 50 of the Indian Evidence Act, 1872 ('Evidence Act').

8.2 The Trial Court, by referring to Section 73 of the Evidence Act, compared the disputed signatures and found that the signature of Syed Abdul Basit on Ex. P-8 (Memorandum of Gift) matched his signature on the sale deeds, concluding that they belonged to the same person.

8.3 The Trial Court held that the oral gift was not acted upon because the delivery of possession could not be established. Under Mohammedan Law, delivery of possession is an essential condition. The court also noted a discrepancy in the property's boundaries, as mentioned in the gift memorandum. This created doubt about the identification of the gifted portion, and it was concluded that a valid gift deed requires handing over of actual possession.

8.4 Trial Court held that as per the Mohammedan Law of succession, the shares of the legal heirs after Khadijabee's death were to be divided as 3/4th to the daughter and 1/4th to the father.

8.5 The sale deed was only valid to the extent of 1/4th share (6 acres and 7 guntas). The remaining 3/4th share of 18 acres and 21 guntas was declared void.

9. The Defendants filed RFA No. 200204 of 2019, in the High Court of Karnataka, Kalaburagi Bench and through the impugned judgment, while

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dismissing the appeal, modified the decree by holding that the Plaintiff is the absolute owner of 10 acres derived through Oral Gift and Ex. D-8, and of a 3/4th share in the balance of extent in the Suit Property, i.e., 14 acres 28 guntas. To conclude the introductory narrative, the High Court, through its findings:

9.1 Upheld the Trial Court findings on the Plaintiff being the daughter of Khadijabee and Abdul Basit.

9.2 It overturned the Trial Court's findings on the oral gift. The High Court found that the evidence proved the delivery of possession of 10 acres; thereby, completing the oral gift. It also noted that the testimony of witnesses PW2 and PW4 supported the Plaintiff's claim of possession.

9.3 The High Court modified the decree by noting that the Plaintiff is the absolute owner of the 10 acres gifted by her mother, and the 3/4th share in the remaining 14 acres and 28 guntas.

10. Hence, the civil appeal at the instance of the Defendants.

11. We have heard learned Senior Counsel, Mr. Rauf Rahim, for the Defendants and Mr. Amit Kr Deshpande for the Plaintiff.

11.1 It is argued for the Defendants assailing the findings of the High Court and the Trial Court that they bristle with perversity and suffer from unavailable presumptions and assumptions in law. To wit, it is explained that after the death of Khadijabee in 1990, her husband, Abdul Basit, became the sole heir and had his name recorded in the land records on 23.05.1991. On 25.02.1995, Abdul Basit sold the land to the petitioners through five registered sale deeds. The petitioners' names have been entered on the ROR and Crop Cultivation Column from 1995 to 2022-2023. They have paid agricultural taxes and obtained crop loans for the land. The respondent has not conclusively

proven her relationship as the daughter of Khadijabee and Abdul Basit, and no primary documentary evidence, such as a birth certificate, school records or a marriage certificate, was ever produced to prove her lineage. The Trial Court and High Court relied on Section 50 of the Evidence Act, *ipse dixit*, and accepted the testimony of three "interested witnesses". The alleged "Oral Gift" and the "Memorandum of Gift" (Hibanama) dated 05.01.1989, are doubtful and sham transactions. While Khadijabee signed her name in Urdu in the plaint, the gift deed only bears her thumb impression, which was not identified by anyone. Further, the document was never acted upon in the revenue records. The suit filed by the Plaintiff on 28.10.2013 was barred by limitation as it was filed 18 years after the 1995 sale deeds were registered. The High Court had exceeded its appellate jurisdiction by recognising the oral gift and granting 10 acres of the land to the respondent, especially since the trial court had rejected this claim and the respondent had not filed a cross-appeal. While the case was sub judice at the Supreme Court, the respondent forcefully dispossessed them on 02.01.2023 and had her name mutated in the land records without their knowledge.

11.2 Appearing for the Plaintiff, at the outset, it is argued that the reappreciation of oral and documentary evidence is not warranted in the facts and circumstances of this case. The findings recorded are concurrent and conform to section 50 of the Evidence Act, and do not warrant re-appreciation under Article 136 of the Constitution of India. Supporting the impugned judgments, it is argued by the Learned Senior Counsel that Khadijabee, was the owner of the suit land, who made an oral gift of 10 acres to the Plaintiff and later executed a memorandum of gift on 05.01.1989. Following her death, her husband, Abdul Basit

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and the Plaintiff inherited the Suit Property at the first instance. After Abdul Basit's death, the Plaintiff became the sole owner. This is supported by the testimony of PW-2, a cousin, and PW-3, a brother-in-law, who had intimate knowledge of the family and testified that the Plaintiff is Khadijabee's daughter. The memorandum of gift (Ex. P-8) was proven by presenting the original document and through the testimony of attesting witnesses. The suit was filed on 28.10.2013, after the Defendants attempted to dispossess the Plaintiff on 14.10.2013. The suit is within the statutory limitation period. The oral gift's essential conditions, including formal delivery of possession, were met, as confirmed by the deposition of PW-4, a neighbour. Furthermore, the alleged sale deeds were executed by an individual named Abdul Bas, not the deceased Abdul Basit. Even if Abdul Basit executed them, they would only be valid for his 1/4th share of the property.

12. A few citations are relied on by both the counsel, and we may refer to them if, in the analysis, the same is warranted.

13. The above narrative presents the following points for consideration.

i. Whether the impugned judgments suffer from perversity and misreading of evidence, warranting re-appreciation of evidence under Article 136 of the Constitution of India?

ii. Whether the High Court is correct in reversing the finding of the Trial Court on the Oral Gift without an appeal/cross-appeal by the Plaintiff?

iii. Whether the Plaintiff established her claim as the daughter of Khadijabee and Abdul Basit?

iv. Whether the claim of the Plaintiff under oral gift/Hiba is validly proved, and the title is derived to an extent of 10 acres?

v. Whether the suit for declaratory relief is barred by limitation?

Point I

14. Re-appreciation of evidence is normally not undertaken by this Court under Article 136 of the Constitution of India. The learned senior counsel appearing for the parties, in support of their respective arguments, have invited our attention to both the oral and documentary evidence. We have taken note of the incorrect appreciation of evidence and a few inconsistent findings in the impugned judgments. The re-appreciation is undertaken primarily to examine whether the Trial Court and the High Court have accurately recorded the available findings. In a given case, the reappreciation of evidence is not barred under Article 136 of the Constitution of India. This principle is elucidated in *Mahesh Dattaray Thirthakar v. State of Maharashtra*[1], which has helpfully summarised the position of law on appreciation of evidence under Article 136 of the Constitution of India, and the relevant extracts are as follows:

> *"34. xxxx this Court does not normally reappreciate evidence under Article 136, but when the High Court has redetermined a fact in issue in a civil appeal, and erred in drawing inferences based on presumptions, the Supreme Court can reappreciate the evidence to prevent further delay instead of remanding the matter. (See N.G. Dastane v. S. Dastane [(1975) 2 SCC 326] at SCC p. 329.]*
>
> *35. From a close examination of the principles laid down by this Court in the aforesaid series of decisions as referred to hereinabove on the question of exercising power to interfere with findings of fact by this Court under Article 136 of the Constitution, the following principles, therefore, emerge:*
>
> *• The powers of this Court under Article 136 of the Constitution of India are very wide.*

[1] (2009) 11 SCC 141.

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• It is open to this Court to interfere with the findings of fact given by the High Court if the High Court has acted perversely or otherwise improperly.

• When the evidence adduced by the parties in support of their respective cases fell short of reliability and acceptability and as such it is highly unsafe and improper to act upon it.

• The appreciation of evidence and finding is vitiated by any error of law of procedure or found contrary to the principles of natural justice, errors of record and misreading of the evidence, or where the conclusions of the High Court are manifestly perverse and unsupportable from the evidence on record.

• The appreciation of evidence and finding results in serious miscarriage of justice or manifest illegality.

• Where findings of subordinate courts are shown to be perverse or based on no evidence or irrelevant evidence or there are material irregularities affecting the said findings or where the court feels that justice has failed and the findings are likely to result in unduly excessive hardship.

• When the High Court has redetermined a fact in issue in a civil appeal, and erred in drawing inferences based on presumptions.

• The judgment was not a proper judgment of reversal."

15. The argument of learned senior counsel for the Plaintiff is noted, and having regard to the ratio in *Mahesh Dattaray Thirthakar (supra)*, we are of the view that, to appreciate the real issue between the parties, the objection is rejected.

Point II

16. The Plaintiff categorically claimed that she is the only daughter and heir to Khadijabee. On 29.11.1990, Khadijabee died, and on 09.09.2001, Abdul Basit died. According to Plaintiff, as noted supra, Khadijabee, during her lifetime, made an oral gift/hiba for 10 acres of agricultural land in the Suit

Property and delivered possession, which was said to have been accepted by the Plaintiff. Ex. P-8 memorandum of gift deed dated 05.01.1989 is produced to evidence the factum of oral gift. The Plaintiff claims, through the oral gift, an extent of 10 acres. With the demise of Khadijabee on 29.11.1990, it is stated that the Plaintiff and Abdul Basit are the heirs entitled to the property. Since Abdul Basit died on 09.09.2001, the Plaintiff claims a declaration of title to the entire Suit Property.

17. The Defendants admit the demise of Khadijabee on 29.11.1990. They categorically deny that (a) Plaintiff is the daughter of Khadijabee, (b) Khadijabee executed an oral gift for 10 acres of land in the Suit Property and (c) possession according to Defendants was with their predecessors-in-interest and is presently with the Defendants pursuant to Exs. D-3 to D-7. The claim is based on the oral gift being a concocted version to grab the Suit Property.

18. The party to a lis is not under a legal obligation to file an appeal against mere findings recorded by the Court. Let us examine if the finding on oral gift by the Trial Court is a mere finding, and whether the High Court has substantially altered the relief without there being an appeal or cross-appeal. The Trial Court, while rejecting the oral gift, accepted the case of the Plaintiff over 18 acres and 21 guntas (3/4th share). The high court, while reversing the finding, has substantially altered the relief by increasing the extent to which the Plaintiff is entitled to a declaration. To wit, the trial court granted the relief of permanent injunction and held that her ownership of 3/4th share in Khadijabee's property of 18 acres and 21 guntas was established. The Appellate Court enhanced her share by including the 10 acres allegedly gifted by her mother through hiba and 3/4th share in the remaining 14 acres and 28 guntas; thus, totalling 24 acres and 28 guntas. Now, let us refer to the power of the appellate court in modifying the decree.

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19. In *Banarsi and others v. Ram Phal,*[2] this Court held that:

> *"8. Sections 96 and 100 of the CPC make provision for an appeal being preferred from every original decree or from every decree passed in appeal respectively; none of the provisions enumerates the person who can file an appeal. However, it is settled by a long catena of decisions that to be entitled to file an appeal the person must be one aggrieved by the decree. Unless a person is prejudicially or adversely affected by the decree he is not entitled to file an appeal (See Phoolchand and Anr. v. Gopal Lal, [1967] 3 SCR 153; Smt. Jatan Kanwar Golcha v. M/s Golcha Properties (P) Ltd., [1970] 3 SCC 573; Smt. Ganga Bai v. Vijay Kumar and Ors., [1974] 2 SCC 393.* ***No appeal lies against a mere finding. It is significant to note that both Sections 96 and 100 of the CPC provide for an appeal against decree and not against judgment.***
>
> *13.* ***We are, therefore, of the opinion that in the absence of cross appeal preferred or cross objection taken by the plaintiff-respondent the First Appellate Court did not have jurisdiction to modify the decree in the manner in which it has done.*** *Within the scope of appeals preferred by the appellants the First Appellate Court could have either allowed the appeals and dismissed the suit filed by the respondent in its entirety or could have deleted the latter part of the decree which granted the decree for specific performance conditional upon failure of the defendant to deposit the money in terms of the decree or could have maintained the decree as it was passed by dismissing the appeals. What the First Appellate Court has done is not only to set aside the decree to the extent to which it was in favour of the appellants but also granted an absolute and out and out decree for specific performance of agreement to sell which is to the prejudice of*

[2] (2003) 9 SCC 606.

the appellants and to the advantage of the respondent who has neither filed an appeal nor taken any cross objection."

(***emphasis supplied***)

20. Juxtaposition of the view taken by the Trial Court and the High Court on the oral gift/Hiba would explain the infirmity pointed out by the Defendants against the impugned judgment.

ISSUE	TRIAL COURT REASONING	HIGH COURT REASONING
Validity of Hiba under Mohammedan Law	Disbelieved the theory of the oral gift dated 05.12.1988, because of doubt regarding the identification of 10 acres due to boundary discrepancies in Ex. P-8. The Trial Court concluded that no actual possession was handed over.	Reversed the Trial Court finding and stated that the finding that the gift deed has not been acted upon cannot be accepted. The evidence discloses delivery of possession and thereby the gift became complete and the Plaintiff held its possession. To rebut the finding of boundary discrepancies, the High Court attributed it to poor drafting and that the cross-examination was lacking.
Possession of the suit property	The Trial Court accepted the Plaintiff's case of possession to the extent of the share inherited.	Possession of the Plaintiff can be said to have continued on the remaining extent of her share in the suit property after the death of her mother. It also inferred delivery of possession for the gifted land due to the mother-daughter relationship.

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21. By applying the ratio in *Banarsi (supra)*, we notice that the impugned judgment has not considered whether a ground is made out for modifying a decree or not. The High Court has disturbed a finding of fact, leading to modifying the decree of the Trial Court in OS No. 212 of 2013 without there being an appeal/cross-appeal. To this extent, the findings of the High Court are not tenable in the facts and circumstances of this case. The other reasons assigned by the High Court are independently examined while considering the plea of Hiba and the Plaintiff as the daughter of Khadijabee. The finding on this point, noted as an illegality, may not conclude the consideration of other issues.

Point III

22. The Plaintiff claims the status of the only daughter of Khadijabee and Abdul Basit. On 29.11.1990, Khadijabee died, and on 09.09.2001, Abdul Basit died. The suit was filed on 28.10.2013, i.e., nearly 23 years from the demise of Khadijabee and 12 years after the demise of Abdul Basit. The Defendants denied the status claimed by the Plaintiff as the only daughter and legal heir to Khadijabee and Abdul Basit. The Defendants contend that the lineage claimed by the plaintiff is particularly with respect to the Suit Property. The Trial Court, on the status of Plaintiff by referring to Section 50 of the Evidence Act and relying on the oral evidence of PWs 2 and 3, concludes that the Plaintiff is the daughter of Khadijabee and Abdul Basit. The High Court has broadly agreed with the view taken by the Trial Court.

23. Mr. Rauf Rahim argues that Section 50 of the Evidence Act enables receiving opinion evidence of a person having special means of knowledge on a fact in issue on the relationship. The requirements of Section 50 are strictly complied with, and the mere statement of a witness is not conclusive of a claim for a relationship with the deceased Khadijabee. Section 50 has three

steps for allowing opinion evidence, and the next threshold is that the witnesses so tendered in evidence must conform to the credibility, reliability and inspire confidence in a court to treat the oral evidence as deciding the issue in favour of a party. The impugned judgments, it is argued, have reproduced oral evidence in an abstract way, without either weighing or testing the reliability or credibility of the witnesses examined on behalf of the Plaintiff. Generally, the best evidence is documentary evidence, and the circumstances as shown in the plaint disclose that the proof of status could have been through documentary evidence such as a birth certificate, school admission and leaving record, voters list, ration card or any contemporaneous document where the deceased parents have accepted the Plaintiff as their daughter. He contends that the foremost suspicious circumstance, not verified by the courts, is that the claim for status as daughter is coming fairly late after two-and-a-half decades since the demise of Khadijabee and twelve years from the date of the demise of Abdul Basit. The Trial Court, by referring to Section 73 of the Evidence Act, assumed the role of a handwriting expert and compared the signatures between Ex. P-8, a disputed document, and Exs. D-3 to D-7. The court, in exceptional cases, sits in the armchair of a handwriting expert and can compare a signature in dispute with an admitted signature. In the case at hand, the Plaintiff does not admit Exs. D-3 to D-7, and Defendants are not admitting Ex. P-8. There is no proof or presumption with a semblance of evidence as to the conduct in the relationship of the Plaintiff with Khadijabee. The status is an important declaratory relief, the findings per se are perverse, and the Plaintiff failed to prove her status as the daughter of Khadijabee.

24. Mr. Ameet Kr Deshpande contends that Section 50 of the Evidence Act provides an opportunity to adduce oral evidence in proof of the status or relationship of a party, which is a fact in issue. There is no requirement in

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law that the documentary evidence alone can enable a court to decide on the status claimed by a party. The evidence of PWs 2 and 3 is consistent, coherent and has means of special knowledge; thus, there is no reason to discredit the evidence of PWs 2 and 3.

25. The argument has two facets: (i) the scope, appreciation and applicability of evidence under section 50 of the Evidence Act, and (ii) whether, on the established principles, the oral evidence is sufficient to accept the claimed status of Plaintiff as daughter of Khadijabee.

26. *Dolgobinda Paricha v. Nimai Charan Misra*[3] is an apt authority for appreciating the contours of Section 50 of the Evidence Act on the opinion evidence on the relationship in issue of fact. The following principles can be culled out from *Dolgobinda Paricha (supra)*:

a. Section 50 specifically makes the opinion expressed by the conduct of a person with special knowledge relevant.
b. For the applicability of the section, there are three essentials.
    i. Firstly, the court has to form an **opinion** as to the relationship of one person to another.
    ii. Secondly, the opinion on this relationship must be **expressed through conduct**.
    iii. Thirdly, the person whose conduct expresses the opinion must have **special means of knowledge** on the subject, such as being a member of the family or otherwise.
c. The term "opinion" is defined not as a casual statement or gossip but as a "judgment or belief" or a "conviction." This belief is demonstrated and proved through the person's **conduct or behavior**. The conduct must be of a tenor that can only be explained by the existence of that inner belief about the relationship.

26.1 *Chandu Lal Agarwala v. Khalilar Rahman*,[4] further clarifies by stating that conduct is not the ultimate proof of relationship but an

[3] AIR 1959 SC 914.
[4] ILR (1942) 2 Cal 299, 309.

intermediate step. It allows the court to infer the "opinion" of the person whose conduct is in evidence. The court then weighs this opinion to arrive at its own conclusion regarding the relationship in issue. Hence, Section 50 does not make evidence of mere general reputation (without accompanying conduct) admissible as proof of a relationship. Further, if the conduct is of such a tenor, the Court only gets to a relevant piece of evidence, namely, the opinion of a person. It still remains for the Court to weigh such evidence and come to its own opinion as to the *factum probandum*, as to the relationship in question. In conforming to the above, the conduct, being a perceptible external fact, must be proved by "direct evidence" as defined in Section 60 of the Evidence Act. This means that the witnesses must testify to what they personally saw or heard.

26.2 The opinion expressed by conduct of any person as a member of the family or of any person otherwise has special means of knowledge on the subject is a relevant fact. This testimony remains as direct evidence under Section 60 of the Evidence Act.

27. The Evidence Act teaches us principles on perception and discrimination of relevant facts. The perception permitted as a relevant fact does not automatically amount to a fact proved till the same passes the test of discrimination, namely, the triple test of relevancy, admissibility and competence of the witness. It has been pithily held in *Pottem Subbarayudu And Another v. Kothapalli Gangulu Naidu And Others*,[5] by referring to *Govinda v. Champa Bat*,[6] a Learned Single Judge of the High Court of Andhra Pradesh held that:

[5] 2000 SCC OnLine AP 296.
[6] AIR 1965 SC 354.

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> *"17. There can be no straightjacket formula for the appreciation of oral evidence of the witnesses. The credibility of the witness is the paramount consideration for the Court. After passing the three legal tests viz., relevancy, admissibility, and competence of the witness, while considering the credibility of the witness, the Court has to consider various parameters so as to appreciate the oral evidence on the point by testing the same on the touch stone of two important yardsticks viz., the probabilities and surrounding circumstances among various other parameters. Even when no rebuttal is adduced by the adversary the ocular testimony of the witnesses examined on the side of the party on whom the burden lies, cannot implicitly be relied upon without testing the same with reference to the probabilities and surrounding circumstances."*

28. Keeping in perspective the above principles, we appreciate the oral evidence relied on by the Plaintiff.

28.1 In chief examination, PW2, Mohammad Khayamulla, stated that he knew both Khadijabee and the Plaintiff, Syeda Arifa Parveen. That his mother and Khadijabee's mother were first cousins, which is how he was related to both the Plaintiff and Khadijabee. He lived as a tenant in the same house as Khadijabee and the Plaintiff in Maqdumpura, and used to take the Plaintiff to school, confirming his knowledge that Khadijabee was her mother. Khadijabee, as the owner of Sy.No. 107, had only one daughter, the Plaintiff, and gifted her 10 acres out of love and affection on 05.12.1988. This oral gift was made in Khadijabee's house in the presence of Khadijabee, the Plaintiff, Abdul Basit Sab, Abdul Raheman Sab, Mustaq Ahmed, and Ayub Ali. The credibility of this witness comes under serious scrutiny when the witness includes Mustaq Ahmed as one of the witnesses to the oral gift dated 05.12.1988. He noted that Khadijabee handed over possession of the

land and all agricultural implements to the Plaintiff and that he was also present when she executed the Memorandum of Gift on 05.01.1989. He stated that Khadijabee put her thumb impression on the document, which was also signed by the Plaintiff and two witnesses, Syed Abdul Basit and Md. Abdul Rahman, although he himself did not sign it, as he was told the two witnesses were sufficient.

28.2 In cross-examination, the witness states that his mother is the first cousin of Khadijabee's mother. He notes that Khadijabee made an oral gift of 10 acres of land to the Plaintiff out of love and affection and handed over possession. He also states that he was present at the time of the oral gift and that Khadijabee gave a plough and two cows to her daughter for cultivation, which symbolised the delivery of possession. He states that the gifted 10 acres of land was located on the southern side of the total land. He claimed to have seen Khadijabee's Ration Card, which listed the Plaintiff as her daughter, and had also seen school documents regarding the same. He denied that the Plaintiff's father and mother had no children. He denied that the names Abdul Basit and Abdul Bas were the same.

28.3 The oral evidence proceeds to speak on the relationship, etc., without primarily establishing the competence and credibility of the witness to depose to these circumstances. To infer special means of knowledge, the witness does not refer to any document except his oral evidence. The oral evidence dealing with aspects not stated by the Plaintiff are in the pleadings.

28.4 In chief examination, PW3 stated that he knows the Plaintiff and that she is the daughter of Syed Abdul Basit, also known as Munshi. He noted that the Plaintiff's husband, Mustaq Ahmed, is his brother. He stated that prior to the marriage proposal, they had made inquiries and

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were aware that the Plaintiff was Syed Abdul Basit's daughter. He testified from personal knowledge that the Plaintiff is the daughter of Abdul Basit. The witness further asserted that Abdul Basit, the Plaintiff's father, died on 09.09.2001 and was never referred to as Abdul Bas.

28.5 In his cross-examination, he holds that he is the brother of the Plaintiff's husband. He had **inquired** about the Plaintiff's parentage with the Plaintiff and her relatives. He claimed that Abdul Basit gave the land to his daughter in 1989. He denied that Abdul Basit and his wife had no children and volunteered that they had a daughter. When asked if he had seen the Plaintiff's documents to prove she was the daughter of Abdul Basit and Khadijabee, he replied that he knew it because he was a relative, and he denied not being their relative. He also denied the suggestion that the names Md. Abdul Rehman and M.A. Rehmansab were different, volunteering that they were the same person. He volunteered that he had not told his full name and age to the Plaintiff. He denied the suggestion that Abdul Basit was also known as Abdul Bas.

29. The trial court failed to properly evaluate the oral evidence of witnesses PW2 and PW3 in accordance with the principles set forth in *Dolgobinda Paricha (Supra)* and *Chandu Lal Agarwala (Supra)*. It failed to independently assess the credibility of the witnesses' opinion and to form its own conclusion about the Plaintiff's relationship with Khadijabee and Abdul Basit. The trial court, while examining the testimonies of PW2 and PW3, correctly identified that their opinions on the Plaintiff's relationship were admissible under Section 50 of the Evidence Act because they were people with special means of knowledge about the relationship of the Plaintiff with deceased Khadijabee.

However, the evidence does not prima facie satisfy the triple test of section 50, and has not appreciated that even if the evidence conforms to the three requirements, the evidence thus far is at an intermediate stage. The Trial Court referred to the suggestion of the Defendants and that the witnesses asserted special means of knowledge. The further finding that it will suffice if he(witness) has special means of knowledge, so a person watching the conduct of members has to be treated as having special means of knowledge. The issue is answered by looking into the signatures in Ex. P-8 and Exs. D-3 to D-8.

30. To appreciate, yet another illegality in the approach of the Trial Court, we notice the discretionary power of courts under Section 73 of the Evidence Act. Section 73 of the Evidence Act empowers a court to compare disputed signatures, writings, or seals with others that have been admitted or proven to be authentic. It also grants the court the power to direct any person present in the court to write any words or figures for the purpose of comparison.

30.1 Comparison with Admitted or Proven Documents: The primary function of Section 73 is to allow the court to compare a disputed signature or handwriting with a standard document that is either admitted by the parties or has been proven to the satisfaction of the court to be genuine. The comparison can be made by the court itself. In *Fakhruddin v. State of Madhya Pradesh*,[7] this Court emphasised that a court should not assume the role of a handwriting expert. The Court held that while the court can compare a disputed signature with an admitted one under Section 73, it would be hazardous to rely solely on this comparison without the assistance of an expert. The Court underscored the importance of corroboration, stating that the court's own comparison

[7] 1966 SCC OnLine SC 55.

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can be used as corroborative evidence to support the testimony of an expert witness, or vice versa.

30.2 Comparison by the Court in a Prudent Measure: Section 73 gives the court the power to compare documents. The power to compare documents, and the available power, should be exercised as a measure of last resort, and the court's conclusion should not be the sole basis for a decision in serious matters. It is apposite to excerpt the following finding from the judgment of the Trial Court:

> *"21. It is worth to note here that, in case signature of Syed Abdul Basith S/o Syed Hussain Saheb in Ex.P.8 which is memorandum of gift is compared with signatures of Abdul Bas S/o Syed Hussainsab in Ex.D3 to Ex.D7 and Ex.D8 with bare eyes, one can say these signatures are one and the same belong to only one person. As per Sec. 73 of Indian Evidence Act court can compare signatures of the person in documents. Though plaintiff has contended Syed Abdul Basith and Abdul Bas are altogether different, but in order to show there are two persons by name Syed Abdul Basith and Abdul Bas, who are altogether different, nothing is placed on record.*
>
> *22. It is material to note here that, in Ex.P8 and Ex.D3 to Ex.D8 name of father of either Abdul Basith or Abdul Bas is shown as Syed Hussainsab. In case there is material to demonstrate in Kusnoor village there were two persons by name Syed Hussain Saheb and each of them got sons of by name Syed Abdul Basith and Abdul Bas, then version of plaintiff that, both Syed Abdul Basith and Abdul Bas are altogether different can be acceptable. In view of absence of such material on record, comparing signature of Syed Abdul Basith S/o Syed Hussainsab in Ex.P8 with signatures Abdul Bas S/o Syed Hussain Saheb in Ex.D3 to Ex.D8 one can easily say Syed Abdul Basit was also used to called as Abdul Bas.*

23. As it is clearly stated by plaintiff and same is mentioned in Ex.P8 Syed Abdul Basit had put his signature as one of attesting witness to Memorandum of Gift, said signature of Syed Abdul Basit is tally with signature of Abdul Bas in Ex.D3 to Ex.D8 it can be held these Syed Abdul Basiit and Abdul Bas are one and the same person.

24. Looking into signature of Syed Abdul Basith on Ex.P8, it can be held the plaintiff is daughter of Khadijabee and Syed Abdul Basit. (…)"

31. The above consideration establishes that the Trial Court accepts the relationship based upon a document which is contested by the Plaintiff, and compares the signature to a document disputed by the Defendants. More specifically, the Plaintiff categorically denied the execution of Exs. D-3 to D-5 as having been made by Abdul Basit.

31.1 It did not proceed to the crucial second step of evaluating the intermediate opinion in light of all evidence before drawing a final conclusion on the relationship. The trial court treated the witnesses' opinion as a fact to be adopted, rather than a piece of evidence to be weighed. It took their assertion as proof of the relationship itself, bypassing its own duty to form a conclusive opinion. It did not take into consideration the possibility of bias of PW2 and PW3, both of whom are close relatives of the Plaintiff. Conduct is an intermediate step, allowing the court to infer an opinion, but it does not serve as the final proof of the relationship. The omissions made by the trial court undermine the evidentiary rigour required under Sections 50 and 60 of the Evidence Act.

31.2 Both the courts have overlooked the oral evidence that the Plaintiff admits to having studied up to the 10th standard in Urdu medium. No documentary evidence is filed, and non-filing of relevant documents is

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appreciated in the total context of the Plaintiff's claim. PW2 states that he has seen the ration card of Khadijabee showing Plaintiff as her daughter. He has also seen the school documents in this regard. PW4 claims to be a next-neighbour to the land owner of the Suit Property. His evidence is mostly for proving the possession of the Plaintiff of the Suit Property. The appreciation of oral evidence cannot be illustrated in a straight-jacket formula. The experience and the expertise of the court would enable appreciation of oral evidence. In the process, the credibility of the witness is the paramount consideration for the court. In the sequence of narrative, atleast if one fact is proved or admitted by the opposite party, from such proof or admission, the existence of sequential facts can be inferred. The impugned judgments have resorted to circular reasoning, which is impermissible and illegal.

32. We have taken note of the oral evidence and also the approach of the Trial Court and the High Court. To sum up, it may be noted that the Trial Court has exercised its jurisdiction under Section 73 of the Evidence Act, referred to Section 50 of the Evidence Act, and, without testing the credibility, relevancy, admissibility and competence of the witnesses, in an abstract way, has held that the Plaintiff is the daughter of Khadijabee. The Trial Court further found that the mere suggestion to these witnesses does not discredit the evidence of PWs 2 and 3. The Trial Court failed to note that the Plaintiff and the witnesses, going by their evidence, are withholding the documents in their possession, namely, school-leaving records, ration card, etc. The perversity in appreciation is evident from the improvements in the evidence of PWs 1 to 3 on all material aspects.

33. Adverting to the consideration by the High Court, we notice that the evidence of PWs 2 and 3 has been accepted as the witnesses having special means of knowledge of the Plaintiff with Khadijabee. The appreciation, we are

of the view, failing to adhere to the standard tests in appreciating oral evidence, and abstract findings have been recorded on the status of the Plaintiff vis-à-vis Khadijabee. The emphasis is on relevant facts admissible in evidence. Assuming the evidence is admissible, the same must conform to the triple test. We hasten to add that the proof of status or relationship need not always necessarily be through documentary evidence, but, when oral evidence is the basis on which the opinion is required to be formed by a Court, the Courts are allowed to treat an opinion on conduct about a relationship as only a relevant fact. This should not be confused with 'as *factum probandum'*. We observe that the impugned judgments are liberal in their approach to accepting the status claimed by the Plaintiff as the daughter of Khadijabee. The point is answered accordingly.

Point IV

34. The Plaintiff, for the relief of declaration, sets up two narratives; namely, (a) that on 05.12.1988, Khadijabee, through an oral gift/Hiba, gifted to Plaintiff 10 acres in the Suit Property. On 05.01.1989, Ex.-P8, a memorandum of gift deed, recording a past oral gift, was executed, and (b) on 09.09.2001, Abdul Basit died, and she remained the only heir and successor to the estate of Khadijabee. As PW1, the Plaintiff deposes that the three elements of a valid Hiba/oral gift were complied with, and the property with an extent of 10 acres stood transferred. The Plaintiff, being the donee, her evidence is appreciated after appreciating other oral and documentary evidence available on record. The Defendants have denied the oral gift and also Ex. P-8, a memorandum of gift deed. As discussed supra, the Trial Court disbelieved the oral gift and also Ex. P-8. The High Court, by introducing a case not stated by the Plaintiff, accepted Hiba.

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35. In *Abdul Rahim v. Sk. Abdul Zabar*,[8] *Rasheeda Khatoon v. Ashiq Ali*,[9] *Hafeeza Bibi v. Sk. Farid*,[10] and *Mansoor Saheb v. Salima*,[11] this Court had considered the various aspects underlying the transfer of property through Hiba. Hiba is a disposition between living persons and is fundamentally an act of benevolence. The theological underpinnings trace back to the Prophet Mohammed (PBUH), who is reported to have said, "Exchange gifts among yourselves so that love may increase."[12]

36. The oral gift and the effect of a valid oral gift are reiterated as follows:

36.1 There are three essential conditions for an oral gift under Mohammedan Law.

First, a clear manifestation of the wish to give on the part of the donor.

Second, an acceptance of the gift by the donee, which can be either implied or explicit.

Third, taking of possession of the subject-matter of the gift by the donee, either actually or constructively.

36.2 A gift under Mohammedan Law does not require a written document to be valid. An oral gift that fulfils the three essential requisites is complete and irrevocable. The mere fact that a gift is reduced to writing does not change its nature or character. A written document recording the gift does not become a formal instrument of gift.

36.3 The distinction that a written deed of gift is not required to be registered if it "recites the factum of a prior gift" but must be registered if the "writing is contemporaneous with the making of the gift" is considered "inappropriate and is not in conformity with the rule of gifts in

[8] (2009) 6 SCC 160.
[9] (2014) 10 SCC 459.
[10] 2011 5 SCC 654.
[11] (2023) SCC OnLine SC 3809.
[12] Al-Marghinani, Burhan al-Din, Al-Hiadaya, Quran Mahal, Karachi Vol. III, p. 283; Mulla, Principles of Mahomedan Law, 20th Edition, Chapter XI (Gifts).

Mohammadan Law".[13] Section 129 of the Transfer of Property Act, 1882 ('Transfer of Property Act') excludes the rule of Mohammedan Law from the purview of Section 123, which requires registration for the gift of immovable property.

36.4 Delivery of possession is a critical and necessary element for a valid gift. It can be actual or constructive. Constructive possession can be demonstrated by overt acts by the donor that show a clear intention to transfer control. For example, the donor applies for the mutation of the donee's name in the revenue records.

36.5 Continuous evidence of acting under the oral gift is crucial to prove the delivery of possession. The donee must be able to demonstrate "exclusive control" over the property to derive benefit under it, such as by collecting rent, or by the donor performing acts like mutation on behalf of the donee. Conversely, the donor's continued collection of rent and the donee's lack of control over title documents or mutation records can be evidence that possession was not transferred.

37. In *Mussamut Kamarunnissa Bibi v. Mussamut Husaini Bibi*,[14] the Privy Council held that proof of a transfer of possession, especially in the absence of consideration, is required to enable an oral gift. It also held that "the Court is bound to watch with the greatest care, perhaps even with suspicion, the case of a verbal gift set up after the alleged donor's death; and if the case had rested upon oral testimony alone, their Lordships probably might not have had this Appeal before them." The case of oral gift was strengthened by subsequent actions such as publicising the gift and the signing of a *mukhtarnama* (power of attorney) to enact the mutation of names in government records. The Privy Council considered several actions taken by

[13] See, *Hafeeza Bibi (Supra)*.
[14] 1880 UKPC 36.

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the recipient after the oral gift was made, including filing receipts for government payments, paying income tax, and suing a tenant for ejectment to accept the existence of an oral gift.

38. The oral gift confines to 10 acres of the total extent of 24 acres 28 guntas. The oral gift is stated to be on 05.12.1988, and Ex. P-8 was said to have been executed on 05.01.1989. The first circumstance, which remains unexplained by the Plaintiff, is that Khadijabee herself requested the mutation of her name for the entire Suit Property, i.e., 24 acres and 28 guntas. Ex. P-2, marked on behalf of Plaintiff, refers to the court decree and mutation of the ROR from Haji Mohammed Yusuf to Khadijabee. The oral gift, as said to have been stated by the Plaintiff, was anterior in point of time, and if the same is valid, the donor ceased to be an owner to the extent of 10 acres. The probability or conduct of the donor and donee would be in consonance with the alleged oral gift that the name of the Plaintiff had to be mutated for an extent of 10 acres. The mutation of right, title and possession to the entire extent of the Suit Property in favour of Khadijabee would cast a serious doubt on the Oral Gift. The second circumstance is that Khadijabee died on 29.11.1990, and Late Khadijabee's husband, Abdul Basit, got his name entered for the total extent of the suit schedule. If the twin narratives stated by her for claiming the Suit Property are established, then the Plaintiff, both as donee and successor-in-interest, must have got mutation in her favour but not in favour of Abdul Basit. The Defendants, through Exs. D-3 to D-7, assert that they have purchased the Suit Property from Abdul Bas (Abdul Basit). As evidenced by Exs. D-9 to D-43, the names of Defendants are entered in the ROR. Abdul Basit died on 09.09.2001. The Plaintiff, either in her capacity as donee, or as at least now the sole heir to the Suit Property, has not taken steps to get her name entered in the ROR. It is axiomatic that hiba is operative with immediate effect and deprives the transferor of his control and ownership

over the property.[15] The Privy Council, giving due recognition to transfer through Hiba, laid down that evidence of possession is an important consideration. *Rasheeda Khatoon (supra)* is a case closer to the circumstances of the issue at hand.

38.1 In *Rasheeda Khatoon*, the Plaintiff's plea of collecting rent was not accepted because no rent receipts were filed. The fact that the donor continued to issue rent receipts after the alleged gift was used as evidence against the donee's claim of possession. The absence of proof that the land was mutated in the donee's favour by revenue authorities was considered a point against the donee's claim of possession. The donee not being in possession of the title deeds was another factor considered by the court. Hence, the court concluded that the Plaintiff could not prove either actual or constructive possession, thereby making the oral gift incomplete.

38.2 Therefore, the evidence of acting under the gift (e.g., collecting rent, holding title, mutation) is essential to substantiate the claim of possession. While Mohammedan Law allows for a gift to be made orally without a written document, the validity of such a gift is contingent on the demonstration of all three essential elements, particularly the delivery of possession. The courts will scrutinise "contemporaneous" and "continuous" evidence of the donee's actions and control over the property to determine if possession was indeed transferred. The lack of evidence (e.g., failure to collect rent, donor's continued control, lack of mutation) will lead to proving that a gift was never completed, regardless of any written declaration.

[15] Rasheeda Khatoon (supra).

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39. The precedents are that to constitute a valid conveyance through an oral gift, the three contemporaneous conditions of declaration by donor, acceptance by donee, possession by donee and to continue to establish possession through contemporaneous evidence to show that Hiba is acted upon. The Hiba is not used as a surprise instrument and cannot sprout into a transfer of property as per the convenience of a party. Moreover, to keep in line with the sanctity of Hiba, it is in the interest of the donor, donee and a third person interested in the subject matter that Hiba is acted upon by completing all three essential requirements in public knowledge rather than in secrecy. The Courts appreciate fulfilment of contemporaneous requirements and possession through evidence while recognising conveyance through an oral gift. Possession is one of the important conditions to constitute a valid oral gift. The courts presume possession of a party from the circumstances pleaded and proved. In the case at hand, there is a consistent revenue record, Ex. P-2, Ex. P-3, Ex. P-4, Ex. P-5 and Exs. D-9 to D-43 showing in the revenue records that the names of Defendants are entered in ROR and their predecessors in interest, both in the title and possession columns. The Plaintiff places oral evidence, and the circumstances summed up above do not inspire confidence for accepting that there has been a valid oral gift in any capacity, i.e., as a daughter or otherwise, in favour of Plaintiff. The impugned judgments presume possession in favour of Plaintiff on *ipse dixit* statements, and the courts below fell in grave error in not appreciating the long lapse of years and continued silence of Plaintiff vis-à-vis the Suit Property. The next limb is whether Ex. P-8 satisfies as a Memorandum recording the past transaction and would come to the aid of the Plaintiff, at least to the extent of 10 acres said to have been given. Ex. P-8 bears L T I of Khadijabee. The plaint in OS No. 68 of 1971 is marked as D-44. Khadijabee has signed the plaint in Urdu, and during cross-examination, PW2 specifically

stated that Khadijabee was signing, not affixing her L T I. This inconsistency remained unexplained. Further, under Ex. P-8, in clause 5, which reads that the donee shall hereafter peacefully hold and possess and enjoy the land property with all its inclusions without any interference, claim or demand whatsoever from the donor. Ex. P-8 belies the possession and transfer said to have been made on 05.12.1988. From the above, except the self-serving and oral evidence from interested witnesses of Plaintiff, there is no evidence on possession, whether actual or constructive, having been delivered to Plaintiff. On the other hand, the Exhibits relied on by the Plaintiff, coupled with D-8 to D-43, do not enable, presuming that the Plaintiff continued to be in possession of 10 acres of the suit schedule. The High Court was liberal in explaining away the minor variations, if any, in Ex. P-8 do not adversely affect the Plaintiff's claim. With respect, we are unable to subscribe to the said view. Consequently, the claim of the Plaintiff under Hiba and Ex. P-8, for want of evidence on possession, fails, and the point is answered in favour of the Defendants.

Point V

40. The additional issue no. 1 is whether the suit of the plaintiff is barred by limitation. The Trial Court answered the issue in negative and in favour of the Plaintiff. The Trial Court reasons that the cause of action arose on 14.10.2013, when the Defendants allegedly tried to dispossess the Plaintiff from the suit property; and thus, notes that there is interference with the rights of the Plaintiff in the suit property on the said date.

41. On 28.10.2013, the present suit OS No. 212 of 2013 was filed for declaration that the Plaintiff is the owner and possessor of the Suit Property, and declare that the sale deeds dated 25.02.1995, Exs. D-3 to D-7, in favour of the Defendants, is null and void. The plaint in paragraphs 9 and 10 refers

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to the circumstances constituting the cause of action. For brevity, we note whether there is a cause of action or whether the suit is within the period of limitation, which are determined by the averments in the plaint. Therefore, the averments in the written statement are not determinative in this aspect.

42. Article 58 of the Limitation Act, 1963 ('Limitation Act') provides for the period of limitation in a declaratory suit. The use of the words "when the right to sue first accrues", as mentioned in Article 58, is very relevant and important. It categorically provides that the limitation of three years has to be counted from the date when the right to sue first accrues.[16] The declaratory relief for title is based on the oral gift and successorship of the Plaintiff. The plaintiff also prays for setting aside Exs. D-3 to D-7, for which Article 59 of the Limitation Act is applicable. The crux of consideration is whether the averments in the plaint continue to keep the cause of action alive, or by constructive notice and negligence on the part of the Plaintiff, even if, at one given point of time, there was a cause of action, whether the same is barred by time or not is the crux of the matter.

43. It becomes relevant to refer to the timelines in this case to determine if the cause of action is continuing, or, by constructive notice and negligence on the part of the Plaintiff, the cause of action is barred by time. There are two claims made by the Plaintiff: first, on the oral gift of 10 acres, and second, on the claim that she is the legal heir to the suit property.

43.1 The domino with respect to the oral gift is set into motion on 05.12.1988, when Khadijabee said to have orally gifted 10 acres in Sy.No.107. On 05.01.1989, this oral gift was written down as a Memorandum of Gift. Khadijabee died on 29.11.1990, and Abdul Basit died on 09.09.2001. Despite this, the Respondent did not apply for

[16] *Nikhila Divyang Mehta and another v. Hitesh P. Sanghvi and others*, 2025 INSC 485.

mutation either in 1989, 1990, 2001 or in the interregnum till 2013, asserting her right as the transferee of the Suit Property from late Khadijabee.

43.2 With respect to the claim that the Respondent is the legal heir of 24 acres and 28 guntas in the Suit property, it is pertinent to note that Khadijabee died on 29.11.1990, and Abdul Basit got his name mutated for 24 acres and 36 guntas in his name on 23.05.1991 through Ex.. D-2. Subsequently, on 25.02.1995, five sale deeds were executed by Abdul Basit in favour of the Defendants, and D-9 to D-23 entries in ROR indicate a presumption of possession.

44. The mutation entry in Exs. P-1 and P-2, coupled with the execution of Exs. D-3 to D-7 are sources of potential mischief to the claim of the Plaintiff to the suit property. Plaintiff has not acted in time in challenging the maintenance of ROR, or registered sale deeds, within the time stipulated by law. The conduct for over a period of 23 years cannot be appreciated as the conduct of a passive observer but amounts to failure to use the care that a reasonably prudent and careful person would use under these circumstances. Negligence in law signifies a failure in the performance of duty.

45. The interpretation clause in Section 3 of the Transfer of Property Act deals with constructive notice. Depending on the facts and circumstances of each case, if the inquiry that a reasonable person would conduct in the specific circumstances is not made, then Courts, through constructive notice, may impute knowledge on such persons. Thus, constructive notice in equity treats a man who ought to have known a fact as if he actually knows it.[17]

46. In the present case, the Plaintiff had opportunities to mutate the Suit Property in her name on 05.01.1989, 29.11.1990, 25.02.1995, and

[17] *Noorul Hoda v. Bibi Raifunnisa*, (1996) 7 SCC 767.

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09.09.2001. Furthermore, the Respondent did not file the suit until 2013, which, in any case, exceeds the three-year limitation period. Therefore, we impute knowledge through constructive notice in the present case, and consequently, it cannot be stated that there was a continuing cause of action.

47. Moreover, to set aside instruments of sale (Exs. D-3 to D-7), the muster under Article 59 of the Limitation Act must be met. It is axiomatic that there is a presumption that a registered document is validly executed. A registered document, therefore, *prima facie* would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, the Respondent has not been able to rebut the said presumption.[18] Interestingly, in the impugned judgment, constructive notice is put against the Defendants despite there being no public record of the Oral Gift or the claim to the Suit Property.

48. The circumstances have been chronologically explained, and the earliest cause of action to the Plaintiff in the case on hand was when Ex. P-2, dated 06.06.1989, was brought into existence at the instance of Khadijabee, and the cause of action has again arisen when Ex. P-3 was brought into existence, denying the claim of the Plaintiff by Late Abdul Basit. Abdul Basit is said to have executed Exs. D-3 to D-7 on 02.05.1995. The names of vendees have been mutated, and the continued negligence would result in constructive notice of transactions covered by Exs. D-3 to D-7. The impugned judgments failed to appreciate the effect of constructive notice in answering whether the suit is within the period of limitation or not. On consideration of the circumstances and by applying the precedents on the point, we hold that the suit filed on 28.10.2013 is barred by limitation, particularly for the reliefs sought for. The point is answered accordingly.

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[18] *Prem Singh and others v. Birbal and others*, 2006 AIR SC 3608.

49. For the above reasons and discussion, the Impugned Judgments are set aside; The Plaintiff's suit, OS No. 212 of 2013, is dismissed; and the Civil Appeal is allowed. All pending applications are disposed of accordingly. No order as to costs.

.....J.
[AHSANUDDIN AMANULLAH]

.....J.
[S.V.N. BHATTI]

New Delhi;
October 07, 2025.