R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF APRIL, 2024

BEFORE

THE HON'BLE MR JUSTICE ANANT RAMANATH HEGDE

RFA NO.626 OF 2013 (PAR)

BETWEEN:

1. SULTAN MOHIYUDDIN,
   AGED ABOUT 56 YEARS,
   FIRST S/O LATE SRI T A ABDUL RASHEED,
   RESIDING AT NO.145/14,
   10TH 'A' MAIN ROAD, FIRST BLOCK,
   JAYANAGAR, BANGALORE-560011.

2. AHMED PASHA,
   AGED ABOUT 54 YEARS
   SECOND S/O LATE SRI T A ABDUL RASHEED,
   RESIDING AT NO.145/14, 10TH A MAIN ROAD,
   FIRST BLOCK, JAYANAGAR,
   BANGALORE-560011.

3 . AJAZ PASHA,
   AGED ABOUT 52 YEARS
   THIRD SON OF LATE SRI T A ABDUL RASHEED,
   R/A NO.145/14, 10TH A MAIN ROAD,
   FIRST BLOCK, JAYANAGAR,
   BANGALORE-560011.

...APPELLANTS

(BY MR MANU KULKARNI A/W MR KESTHUR SUDARSHAN AND MS. AMRITA ARYENDRA, ADVOCATES)

AND:

1. SMT HABEEBUNNISSA,
   AGED ABOUT 53 YEARS,
   W/O SRI RAFEEQ AHMED,

RESIDING AT NO.20,
E.NO.5TH STREET,
OLD MADRAS ROAD, ULSOOR,
BANGALORE-560008.

2. SMT KHAMARUNNISSA,
AGED ABOUT 50 YEARS,
W/O SRI KHALAD SHARIFF
RESIDING AT NO.29,
OLD POLICE LANE, MACKAN ROAD,
BANGALORE-560001.

3. SMT HALIMA BI,
AGED ABOUT 80 YEARS
W/O LATE SRI T A ABDUL JABBAR,
NO.41/A, RAMACHANDRA LAYOUT,
KARIYANNANAPALYA,
ST. THOMAS TOWN,
LINGARAJAPURAM
BANGALORE-560005.

…RESPONDENTS

(BY MR VIKRAM HULIGAL, SR. COUNSEL A/W
MR MOHAMMED TAHIR, ADVOCATE FOR R1 TO R3)

THIS RFA IS FILED UNDER SECTION 96 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 11.01.2013 PASSED IN OS NO. 10529/1996 ON THE FILE OF THE XXVIII ADDL. CITY CIVIL JUDGE, MAYOHALL UNIT, BANGALORE, DECREEING THE SUIT FOR PARTITION.

THIS APPEAL HAVING BEEN HEARD AND RESERVED ON 23.04.2024 COMING ON FOR PRONOUNCEMENT OF JUDGMENT, THIS DAY THE COURT PRONOUNCED THE FOLLOWING:

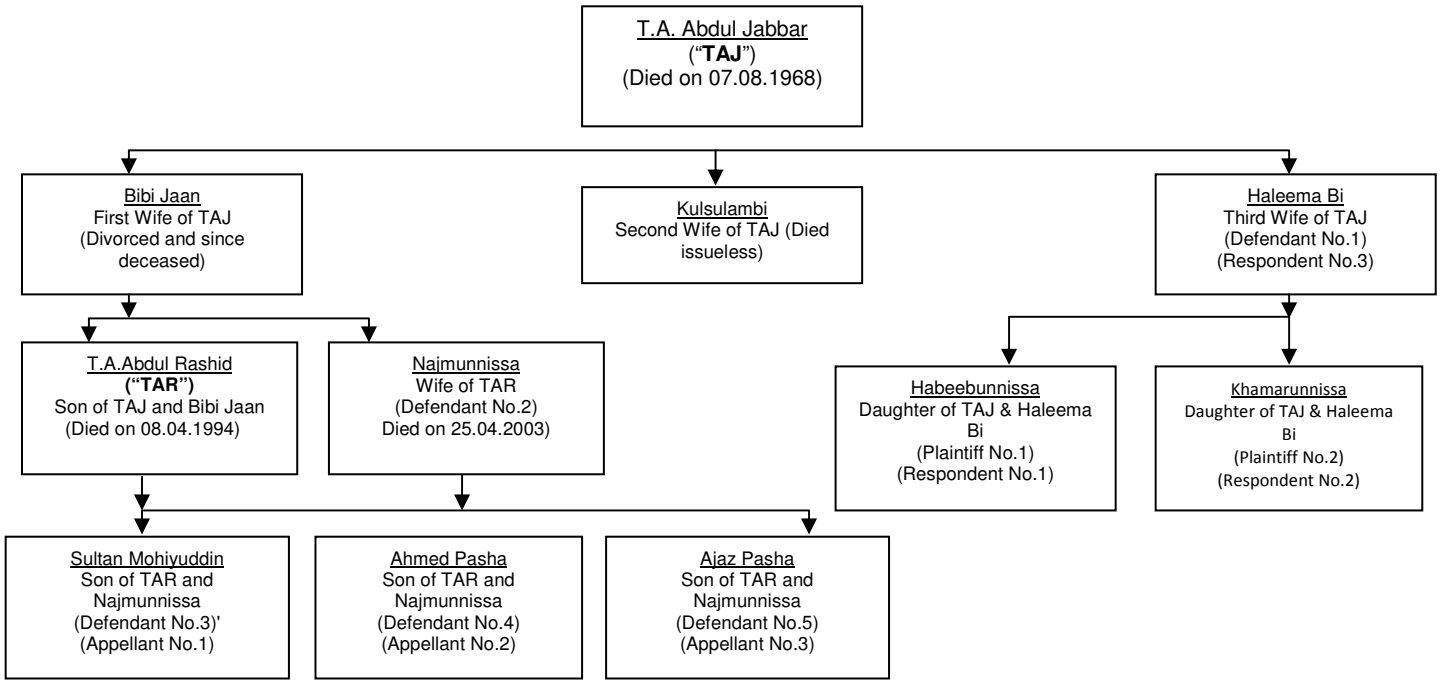
JUDGMENT

Whether the Muslim Personal Law (Shariat) Application Act, 1937, overrides Section 2(q) and Article 48 of the Karnataka Stamp Act 1957, which deal with the contract of "settlement" is the question that requires consideration in this appeal.

1. The trial Court in effect has held that the transfer of property through settlement deed is impermissible among the Mohammadans.

2. The suit is one for partition and separate possession. The plaintiff claimed 1/4th share, out of 7/8th share in the suit schedule property. The suit is decreed as prayed. Aggrieved by the judgment and decree, defendants No.3 to 5 are in appeal.

3. The admitted genealogy of the parties is as under:



4. One T.A. Abdul Jabbar was the propositus. He had three wives viz., Bibi Jaan, Kusalambi, and Haleema Bi. Abdul Jabbar died on 07.08.1968. When he died in 1968, his first wife Bibi Jaan was divorced, his second wife was not alive and his third wife was alive.

5. The suit is filed by Habeebunnisa and Khairunnisa, the daughters of T.A. Abdul Jabbar from his third wife Haleema Bi. The first defendant is Haleema Bi. The second defendant, Najimunnisa is the widow of T.A.Abdul Rasheed, the son of T.A.Abdul Jabbar from his first wife Bibijan. The defendants No.3 to 5 are the sons of T.A. Abdul Rasheed.

6. Admittedly, T.A. Abdul Jabbar executed a deed of settlement on 10.09.1965, in favour of his grandsons namely Sultan Moyuddin, Ahmed Pasha, and Azaz Pasha. All are the children of T.A. Abdul Rasheed.

7. On 11.09.1965, T.A. Abdul Jabbar executed another settlement deed in respect of sites No.68, 91, and 92 in Sy. No.104 of Guddadahalli i.e., A schedule property and also the entire 'B' schedule property in favour of his only son T.A.Abdul Rasheed. In the same settlement deed, Rs.5,000/- is given to the third wife Haleema Bi.

8. On 13.09.1965, one more settlement deed was executed by T.A. Abdul Jabbar in favour of his minor daughters namely the plaintiffs/respondents No.1 and 2.

9. All the settlement deeds are registered under the provisions of the Registration Act, 1908. The first and the third settlement deeds referred to above are not under challenge.

10. The suit was filed claiming a share in the properties covered by the second settlement deed dated 11.09.1965. Defendants No.2 to 5 resisted the suit and defended the settlement deed. Defendants also contended that the suit is barred by limitation.

11. The trial Court has held that there is no concept of transfer by way of "settlement" to settle the properties among the Mohammadans. Accordingly, the suit is decreed ordering partition of all the properties covered under the settlement deed of 11.09.1965.

12. Learned counsel for the appellants Sri Manu Kulkarni would contend that the transfer through a "settlement deed" is not expressly barred under the Mohammadan Law. Even if it is assumed to be barred, the principle of 'estoppel' would apply and the plaintiffs who claimed benefit under the other settlement deed executed by their father cannot be

allowed to question another settlement deed executed by the father in which they are not given the benefit.

13. It is urged that the judgment of a co-ordinate bench of this in ***Abdul Rehman vs. Atifa Begum,*** *1997 SCC online Karnataka 218* relied upon by the trial Court is *per incuriam* as the binding precedent of the Supreme Court in the case of **GULAM ABBAS vs HAJI KAYYUM ALI AND OTHERS (1973) 1 SCC, 1** and judgment in **SHEHAMMAL vs HASSAN KHANI RAWTHER AND OTHERS (2011) 9 SCC, 223** are not noticed.

14. The evidence on record namely the settlement deed and revenue records would clearly demonstrate that the possession of the property is transferred to the beneficiaries of the settlement deed.

15. It is also urged that the suit is barred by limitation as the suit is not filed within three years from the date of execution of the settlement deed. Learned counsel for the appellants also points out that three sites described in Schedule A were sold even before the suit was filed and the plaint is not amended seeking cancellation of the sale deeds in the names of the purchasers who are subsequently added as parties to the suit.

16. Learned Senior counsel Sri. Vikram A.Huligol, appearing on behalf of the plaintiffs/respondents No.1 and 2 urged that the concept of "transfer of the property through a settlement deed" is not expressly recognised in the Shariat Law. He would submit that any transaction which is likely to deprive the right of an heir apparent violates the principles of Shariat Law. This being the position, the settlement pleaded by the defendants is rightly rejected by the trial Court.

17. Since the transfer or settlement of the property by way of settlement deed is unknown in Shariat Law, the alleged transfer in favour of defendants is void. Thus, the defendants did not acquire any right over the property covered under the settlement deed. And the suit for partition by the plaintiffs after the demise of their father is maintainable.

18. Sri Mohammad Tahir, the learned counsel appearing for one of the respondents urged before this Court that the settlement deed in question is contrary to the Quranic injunction. He would urge that any transaction that deprives a right of an heir apparent and confers an advantage on another, and/or consequently discriminates among the heirs of a settler, is forbidden in the Quran. The settlement deed in question seeks to confer an unfair advantage over the descendants of

T.A.Abdul Jabbar from his first wife to the detriment of the third wife and the children from the third wife of T.A.Abdul Jabbar. It is his submission that such inequitable distribution of the property by a Mohammadan violates the Quaranic injunction.

19. Learned counsel would place reliance on the following two judgments:-

i. Jameela Begum vs. The Controller of Estate Duty, Madrasa, AIR 1991 SC 414.

ii. Saiyyid Altaf Ali vs. Wazir Jan (1887) ILR 9 ALL 357.

20. This Court considered the contentions raised at the bar and also perused the records.

21. The following points arise for consideration:

(a) Whether the *transfer of property through a 'settlement deed' to some of his family members to the exclusion of other family members, is barred under Shariat law?*

(b) Whether the Trial Court is justified in granting a decree for partition without there being a prayer for cancellation of the settlement deed and the sale deeds in favour of the defendants?

(c) Whether the suit is barred by limitation?

22. Transfer of property through a settlement deed is one of the modes of transfer recognised under law, though the transfer/settlement through a settlement deed is not specifically provided in the Transfer of Property Act, 1882. The term "settlement" is defined under Section 2(q) of The Karnataka Stamp Act, 1957 (for short 'Act of 1957'). Article 48 of the Act of 1957 deals with the stamp duty payable on the settlement deed.

23. Section 2(q) of the Act of 1957 reads as under:

> *(q) "Settlement" means any non-testamentary disposition in writing, of moveable or immoveable property made-*
>
> *(i) in consideration of marriage,*
>
> *(ii) to distribute the property of the settler among his family or those for whom he desires to provide, or to provide for some person dependent on him, or*
>
> *(iii) for any religious or charitable purpose;*
>
> *and includes an agreement in writing to make such a disposition, and where any such disposition has not been made in writing, any instrument recording whether by way of declaration, of trust, or otherwise, the terms of any such disposition."*

24. As can be noticed from the definition, the 'settlement deed' has to be in writing and it can be executed;

(a) in consideration of marriage, or

(b) to distribute the property of the settler either among his family members, or in favour of some other persons to whom he desires to provide, or on some other person dependent on him.

(d) for any religious or charitable purpose.

25. In short, the "settlement", under the Act of 1957 is a contract involving the property. It involves the owner and the beneficiary. Since it is a contract any person competent to contract irrespective of his or her religious faith or belief can enter into a contract of settlement either as a settler or beneficiary. To be a settler, in addition, he must own a property.

26. The definition of "settlement" referred to above does not mandate equal or equitable distribution of the property through a settlement deed. The settler is competent to settle the property in a manner he chooses as long as his discretion does not violate any law.

27. The preamble to the Act of 1957 also provides that the object of the Act is to consolidate and amend the law relating to stamps. The application of the Act is not dependent on religious faith or belief. It applies to all, irrespective of their religious faith or belief. In other words, the Act is ***religion-neutral***. In other words, any person competent to contract can execute a deed of settlement in respect of the property owned by him whether movable or immovable irrespective of his or her religious faith or belief.

28. It may be true that a contract resembling a "settlement" or a transaction which squarely falls within the definition of a "settlement" under Section 2(q) of the Act of 1957 may not find reference in the Quran, or any other religious prescription for that matter. The Shariat law which is believed to be the divine instructions of the Almighty may not envisage all types of contracts which are recognised under contemporary law. That does not mean that the contract entered through a 'deed of settlement' is impermissible among the Mohammadans. More importantly, what is not expressly recognised in Shariat law is not necessarily something which is forbidden. It may still be in tune with the philosophy of the Quran.

29. Any contract that is neither recognised nor forbidden in Sharia law; and which is expressly recognised in a Law that is religion-neutral, then such contract should be held permissible under the religion-neutral law, irrespective of their religious faith including Mohammadans.

30. It is also relevant to refer to Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937 (for short 'the Act of 1937'). Section 2 of the Act of 1937 reads as under:-

> ***"2. Application of personal law to Muslims.-***
>
> *Notwithstanding* ***any custom or usage to the contrary,*** *in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females including personal property inherited or obtained under contract or gift or any other provision of Personal Laws, marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and mubaraat, maintenance, dower, guardianship, gifts, trusts and trust properties and wakfs (other than charities and charitable institutions and charitable and religious endowments), the rules of decision in cases where the parties are Muslims, shall be the Muslim Personal Law (Shariat)."*
>
> (Emphasis supplied)

31. Section 2 of the Act of 1937 provides that on the matters specified in the said Section, the Muslim Personal Law (Shariat) will prevail over any *usage or customs to the contrary*. In other words, the overriding effect is only in respect of *any usage or customs contrary to the* Shariat Law and not on any Statute passed by competent legislature.

32. When the Act of 1937 was brought into force, the Indian Stamp Act, 1899 (for short Act of 1899) was in force. The said Act of 1899 also recognised the "settlement". The term "settlement" defined in Section 2(24) of the Act of 1899 is in substance similar to the definition of the term "settlement" in Section 2(q) of the Act of 1957. This being the position, the Court has to hold that the Act of 1937 does not override the provisions of the Act of 1957. Thus, the transfer of property by way of "settlement" as defined under the provisions of the Act of 1957 is very much permissible even among the Mohammadans.

33. In addition, the transaction namely the "contract of settlement" is not covered in Section 2 of Act of 1937, though reference is made to gifts, trusts, and trust properties and wakfs other than charities and charitable institutions and charitable and religious endowments. In other words

"settlement of property through a settlement deed" other than gift and trust is kept out of the ambit of Section 2 of the Act of 1937. Assuming that there is anything in Shariat law forbidding the contract of settlement, then also same is not saved under the Act of 1937.

34. There is yet another angle to the point involved. The Act of 1957 has conferred the right to enter into transactions referred to in the said Act including the 'Contract of settlement' on all persons (subject to fulfillment of other criteria) irrespective of their religious faith or belief. The interpretation that the Mohammadans cannot enter into 'Contract of Settlement' recognised under the Act of 1957 violates the right guaranteed under Article 14 of the Constitution of India.

35. Thus, T.A.Abdul Jabbar, who settled his properties vide settlement deeds dated 10.09.1965, 11.09.1965 and 13.09.1965 was competent to execute the settlement deed. The trial Court erred in holding that the settlement deeds were not recognised among the Mohammadans.

36. The trial Court has relied upon the judgment of the co-ordinate Bench of this Court in ***Abdul Rehman vs. Atifa Begum, 1997 SCC online Karnataka 218*** to justify its

finding. In the said judgment the Court was examining the question whether the settlement deed under scrutiny was in fact a gift deed recognised under Mohammadan Law. The Court held that the settlement deed in question did not satisfy the requirement of a gift under Mohammadan Law. More than anything else Section 2(q) and Article 48 of the Act of 1957 are not brought to the notice of the Court in the said case. Thus, the said judgment cannot be considered a binding precedent and it is *per incurium*.

37. The Hon'ble Apex Court in the case of ***Shehmmal and Gulam Abbas*** *supra* in a slightly different context of surrender of a right of succession has held that the equitable doctrine of estoppel applies to the Mohammadans and same is not contrary to Shariat Law.

38. Out of the three settlement deed executed by their father, having received the benefits under one of the settlement deeds, the plaintiffs have selectively chosen to assail the other settlement deed executed by their father which does not confer benefit to them. Thus, the plaintiffs cannot be permitted to assail another settlement deed by their father which does not confer benefit to the plaintiffs.

39. It is relevant to note that T.A.Abdul Jabbar who executed the settlement deeds on 10.09.1965, 11.09.1965 and 13.09.1965 did not question the said deeds. He died on 07.08.1968. The persons on whom the properties are settled have taken benefit of the said settlement. The plaintiffs are also beneficiaries under the two settlement deeds.

40. The suit for partition is filed on 12.06.1996. The plaintiffs are claiming through T.A.Abdul Jabbar. The plaintiffs do not inherit what is not possessed by T.A.Abdul Jabbar. The plaintiffs being the heirs of T.A.Abdul Jabbar will inherit only what he possessed. T.A. Abdul Jabbar was a party to all the settlement deeds referred to above. When T.A. Abdul Jabbar died on 07.08.1968, he had few days over a month to question the aforementioned deeds dated 10.09.1965, 11.09.1965 and 13.09.1965. Thus, the plaintiffs who inherited the right of T.A.Abdul Jabbar could have filed a suit within three years from the aforementioned settlement deeds dated 10.09.1965, 11.09.1965, and 13.09.1965. However, the suit is filed in the year 1996. Moreover, no relief is sought seeking a declaration or cancellation of the said deeds which was the requirement given the fact that the plaintiffs are claiming through their father who executed all the settlement deed in question. This

being the position, this Court is of the view that the suit is defective as well as barred by limitation. The trial Court has not considered these aspects.

41. The respondents have relied on the judgment of the Apex Court in ***Jameela Begum*** *supra* and also the judgment of the Allahabad High Court in ***Saiyyid Altaf Ali*** *supra*. In ***Jameela Begum*** *supra,* the Apex Court was dealing with the question as to whether there can be any stipulation on the beneficiary of a settlement deed. The Apex Court held in the affirmative. This judgment does not come to the aid of the respondents. On the other hand, the said judgment holds that stipulation in the settlement deed is valid which also means that the "settlement" recognsied under the Stamp Act is permissible among Mohammadans.

42. In the case of ***Saiyyid Altaf Ali*** *supra,* the Allahabad High Court was considering the validity of a gift deed executed in the apprehension of death on account of illness which eventually is the cause for the death of the donor. In such circumstances, the gift deed construed as a Will and subjected to the restrictions relating to a Will by a Mohammadan. In the present case, the deed of settlement in question cannot be construed the one executed in apprehension

of illness which is the cause of death of the settler. The settler died 2 years 10 months after the execution of the settlement deed. There is nothing on record to hold that it was an instrument executed on a death bed.

43. The finding of the Trial Court that the defendants are not in a possession of the property pursuant to the settlement deed is also in correct as the recital in the deed itself would demonstrate that the possession of the property is transferred.

44. Nothing is urged before this Court on behalf of the respondents to hold that the execution of settlement deed is vitiated on any other grounds other than the grounds discussed above.

45. For the reasons stated above, the judgment and decree under appeal are unsustainable and accordingly set aside.

46. Hence the following:

ORDER

(i) The appeal is ***allowed***.

(ii) The Judgment and decree dated 11.01.2013 in O.S.No.10529/1996 on the file of XXVIII Additional City Civil Court, Bengaluru are set aside.

(iii) Consequently the suit in O.S.No.10529/1996 on the file of XXVIII Additional City Civil Court, Bengaluru is dismissed.

Sd/-
JUDGE

GVP/CHS