

~~G18.92~~
IN THE PRIVY COUNCIL

(27), 1963
No. 17 of 1962

ON APPEAL
FROM HER MAJESTY'S COURT OF APPEAL
FOR EASTERN AFRICA

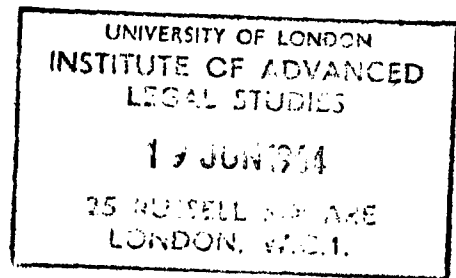
B E T W E E N

{1} ZAINAB BINT ABDULLA GULAB
{2} MOHAMED ISHACK GULAB
Plaintiffs/Appellants

- and -

{1} KULSUM BINT ABDUL KHALEQ
{2} HAJRA BINT ABDULLA
Defendants/Respondents

RECORD OF PROCEEDINGS



74100

HATCHETT JONES & CO.,
90, Fenchurch Street,
London, E.C.3.

Solicitors for the Appellants.

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RECORD OF PROCEEDINGSINDEX OF REFERENCE

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IN THE PRIVY COUNCIL

No. 17 of 1962

ON APPEAL
FROM HER MAJESTY'S COURT OF APPEAL
FOR EASTERN AFRICA

B E T W E E N

{1} ZAINAB BINT ABDULLA GULAB
{2} MOHAMED ISHACK GULAB
Plaintiffs/Appellants

- and -

10 {1} KULSUM BINT ABDUL KHALEQ
{2} HAJRA BINT ABDULLA
Defendants/Respondents

RECORD OF PROCEEDINGS

No. 1
P L A I N T

IN THE SUPREME COURT OF THE COLONY OF ADEN
CIVIL SUIT NO. 852 OF 1959

In the
Supreme Court

No.1
Plaint,
21st
November 1959.

20 1. Zainab bint Abdulla Gulab,
House No. 235C/14C,
Section E, Street No. 7,
Crater, Aden.
2. Mohamed Issack Gulab,
C/o. Maternity Clinic,
Crater, Aden. .. Plaintiffs

Versus

1. Kulsum bint Abdul Khaleq,
House No. 159/49,
Section E, Street No. 3,
Crater, Aden.

In the
Supreme Court

No.1

Plaint,
21st
November 1959
- continued.

2. Hajara bint Abdulla,
House No. 159/49,
Section E, Street No. 3,
Crater, Aden. .. Defendants.

The Plaintiffs state as under:-

1. The Plaintiffs and the Defendant No. 2 are the heirs of deceased Ismail Abdulla Gulab, who died at Aden on the 10th day of August, 1959. The 2nd Defendant is the widow of the deceased; the 1st Plaintiff is the sister of the deceased; the 2nd Plaintiff is the cousin of the deceased, and their respective shares in the estate of the deceased are (i) one-fourth to widow, (ii) one-half to sister, and (iii) one-fourth to cousin. 10
2. The deceased during his life time owned a house among other things bearing No. 159/49 situated at Sec. E, Street No. 3, comprised in Government Grant No. 2168 situated within the municipal limits of Crater, Aden. The said property is hereinafter referred to as the 'suit property'. 20
3. The 1st Defendant is a sister of the 2nd Defendant, and she is not an heir. She was brought up by the deceased since childhood and lived with her sister and the deceased for last about 25 years.
4. The Plaintiffs have come to know that the 1st Defendant had during life-time of the deceased about two years before his death obtained the conveyance of the suit-property to her own personal name by way of absolute sale, and she is now claiming to be the owner of the suit-property. The conveyance has been registered, and a copy of the deed of sale is annexed hereto as annexure 'A'. Therein she the 1st Defendant has purported to purchase the house for a sum of Shs.25,000/-. 30
5. The deceased at the time of his death was about 72 years old. He was very sick for nearly three years prior to his death and was infirm in mind and body for nearly three years. The Plaintiffs have, since the death of the deceased, come to know that the said transfer (Annexure 'A') was a sham and bogus transfer which the Defendants had obtained during the infirmity of the deceased, with intent to deprive the legal heirs of the deceased of their rightful shares in the estate of the deceased. 40

6. The Plaintiffs submit, that the said conveyance is void in law, as being without consideration, and/or further plead it was fraudulent with intent and object to deprive the heirs of deceased of their legal shares, and is therefore void at law.

In the
Supreme Court

No.1

Plaint,

21st
November 1959
- continued.

10

7. The Plaintiffs further submit that the deceased intended to transfer the suit-property by way of gift to said Kulsum, but on being advised that such a transfer might be challenged as being without consideration, and intended to defeat the rights of the lawful heirs, had made an ostensible sale, wherein no consideration passed from the Buyer to the Seller. The alleged sale was much below the normal value of the suit-property.

8. The alleged sale-deed was not prepared by a lawyer. It was prepared by the cousin, alleged to be free of charge. The attesting witnesses are the relatives of the 1st Defendant.

20

9. The 2nd Defendant is the sister of the 1st Defendant, and the Plaintiffs have reason to believe that she the 2nd Defendant conspired to obtain the fraudulent conveyance of the suit-property with intent to defeat the rights of the legal heirs, with whom she the 2nd Defendant is not on good terms. She had obtained the transfer of an Opel car (taxi) to her name only 4 months before the death of the deceased. However, in the present suit, she the 2nd Defendant is joined as a Formal Party, as she would not join to be a Plaintiff. No relief is claimed in this section against her.

30

10. The cause of action arose on 10th day of August, 1959 on the death of Ismail Abdulla Gulab, and finally in October 1959, when the 1st Defendant declined in answer to Plaintiff's notice dated 22.10.1959 to have the said conveyance of the suit-property set aside.

40

11. The premises are situated in the Colony of Aden; the Defendants reside in Aden, and this Court has got jurisdiction.

12. The suit is valued at Shs.25,000/- for purposes of jurisdiction and Courtfees and further Courtfees of Shs.50/- are paid for declaration sought.

In the
Supreme Court

No.1

Plaint,
21st
November 1959
- continued.

The Plaintiffs pray for decree against 1st Defendant that:

- i) The conveyance of the suit-property afore-said dated 19th August, 1957 from deceased Ismail Abdulla Gulab be declared null and void and the 1st Defendant be required to deliver it up for cancellation.
- ii) The suit-property be declared to be part of the estate of deceased Ismail Abdulla Gulab.
- iii) Costs of this action. 10
- iv) Such other relief as the Court considers just and proper.

sd/- (Arabic)
Plaintiff No. 1

sd/- P.K. Sanghani sd/- (Arabic)
Advocate for Plaintiffs Plaintiff No. 2

VERIFICATION

We, Zainab bint Abdulla Gulab and Mohamed Issack Gulab, do hereby declare that what is stated hereinbefore is true to the best of our knowledge and belief. 20

Dated this 21st day of November, 1959.

sd/- (Arabic)
Plaintiff No. 1

sd/- (Arabic)
Plaintiff No. 2

Documents annexed:

1. Copy of Deed of Sale dated 19.8.1957 (Annexure 'A').
-

No. 2
WRITTEN STATEMENT OF THE DEFENDANTS

In the
 Supreme Court

(Title as No.1)

No.2

WRITTEN STATEMENT OF THE DEFENDANTS

Written State-
 ment of the
 Defendants.

That the Defendants abovenamed beg to state as under:-

1. That it is admitted that the Plaintiffs and the Defendant No. 2 are the heirs of the deceased.

10 2. It is admitted that the deceased owned the premises bearing assessment No. 159/49 situated at Sec. E, Street No. 3, Crater, which is comprised under the Grant No. 2168. The deceased Ismail Abdulla Gulab sold the said house to the Defendant No. 1 as per Deed of Sale dated 19th August, 1957 which was duly executed and registered in accordance with law.

20 3. That the Defendant No. 1 is the maternal sister of the Defendant No. 2 and purchased the said house from the deceased consideration of Shs. 25,000/-. It is true that the Defendant No. 1 used to live with the deceased since her childhood.

30 4. It is denied that the Plaintiffs were not aware of the said sale during the life time of the deceased. The deceased was indebted and sold the said house to pay to the creditors and also spent money for his treatment. The Plaintiffs were all the time aware of the said sale and have asked the deceased during his lifetime about the sale. The position was explained to the Plaintiff No. 1. The Plaintiffs being satisfied with the genuineness of the sale and kept quiet during the life time of the deceased. The Defendant No. 1 is the absolute owner of the suit property and the original Deed of Conveyance is attached herewith and be treated as part of the written statement.

40 5. That the deceased died about 64 years. The deceased was sound in body and mind and executed the conveyance in accordance with the law which was registered with the Sub-Registrar on 19th August, 1957 in the presence of the witnesses. It is denied that the deceased was infirm in mind and body for 3 years prior to his death. The Plaintiffs

In the
Supreme Court

—
No.2

Written State-
ment of the
Defendants -
continued.

were since the sale was affected by the deceased fully aware of all the facts. It is denied that Plaintiffs came to know about the sale after the death of the deceased. It is denied that the transaction was bogus and sham. The allegation of the Plaintiffs that the Defendant No. 1 obtained the said transfer in infirmity of the deceased is totally false. The Defendant No. 1 rely upon the medical certificate of Dr. Mohamed Ahmed dated 19th August, 1957. The Defendants are ready to join issues with the Plaintiffs.

10

6. It is denied that the said Deed of Conveyance is void in law. The Defendant No. 1 paid a sum of Shs.25,000/- to the deceased being the actual cost of the property and it is denied that the said transfer was without consideration. The deceased has some debts on account of purchasing Taxi and medical treatment in India. The deceased has to go to India twice and sold the said property in need. It is also denied that the said transfer was fraudulent in any way. The Defendant No. 1 submits that the said transfer is in accordance with law and the Defendant No. 1 is the absolute owner of the suit property.

20

7. It is denied that the deceased wanted to transfer the suit property by way of gift to the Defendant No. 1. The Plaintiffs allegation is totally untrue and it is not admitted that in order to defeat the rights of the lawful heirs the sale was made. The Defendants state the said transfer is genuine.

30

8. That the fact that the sale deed was prepared by cousin and the relatives are the witnesses cannot effect the genuineness of the document. The said sale Deed was registered with the Sub-Registrar and the execution of the deed was admitted by the deceased before Sub-Registrar.

9. It is denied that the Defendant No. 2 conspired with the Defendant No. 1 and obtained the fraudulent transfer. The Defendant No. 2 has nothing to do with suit property. The said property was sold by the deceased by his free will in his life time to the Defendant No. 1. The allegation that in order to defeat the right of the heirs the Defendant No. 1 obtained the said transfer is totally false. The deceased went to traffic office and got the Taxi transferred in the name of

40

the widow Defendant No. 2 and the said transfer has nothing to do with the suit property.

In the
Supreme Court

No.2

Written State-
ment of the
Defendants -
continued.

10. That there is no cause of action for the suit arose against the Defendants. The Defendant No. 1 replied on 2nd November, 1959 through her Advocate Mr. S.N. Iyer, and denied all the allegation put forward by the Plaintiffs.

11. Jurisdiction admitted.

12. Valuation concerns court.

10 That the Defendants do hereby submit that the Plaintiffs are not entitled to the relief claimed and suit be dismissed with the costs.

L. T. I.
Defendant No. 1

L. T. I.
Defendant No. 2

sd/- W. H. ANSARI
Pleader for the Defendants

VERIFICATION

20

No. 3
PLAINTIFFS' REJOINDER TO DEFENDANTS'
WRITTEN STATEMENT

(Title as No.1)

PLAINTIFFS' REJOINDER TO DEFENDANTS'
WRITTEN STATEMENT

No.3

Plaintiffs'
Rejoinder to
Defendants'
Written State-
ment,

January 1960.

The Plaintiffs state in reply as under:-

30

1. The Plaintiffs denied all allegations of the Defendants in their written statement as are contrary to or inconsistent with what is stated in the Plaintiffs, and which are not otherwise specifically admitted herein.

In the
Supreme Court

No.3

Plaintiffs'
Rejoinder to
Defendants'
Written State-
ment,

January 1960

- continued.

2. Paras 3 & 4 of W/S: The Plaintiffs will join issue with the Defendant No. 1 if she really paid the consideration stated in the Deed. The Plaintiffs maintain that the sale was bogus, without consideration and fraudulent with the intent to defeat the rights of the lawful heirs of the deceased. The Defendant No. 1 is put to strict proof of having paid the consideration.

3. Para 4 of W/S: The Plaintiffs further deny that they were aware of the alleged conveyance during the life-time of the deceased, and the Derendants are put to strict proof thereof. The Plaintiffs further deny that the deceased was indebted so that it became necessary for him to sell the said property. The value of the house is approximately Shs.60,000/- and more and it was conveyed at almost one-third value to the Defendant No. 1. The Defendants are put to strict proof as to what the alleged debts were.

4. Further to para 3 hereof, as to the financial means of the deceased, the Plaintiffs further state that the deceased had an Opel Taxi car, which brought an average monthly income of Shs.1,200/- to Shs.1,500/-. The 2nd Defendant, the wife of the deceased had a share in a motor bus, and she derived an income of Shs.600/-, to Shs.800/- per month. The deceased moreover collected the rent of the house, which was Shs. 40/- per month. The deceased left no children and had no expenses. The deceased had later in pursuance of the object deprive the lawful heirs from the inheritance, had gifted and transferred his Taxi to the name of his wife, who is the 2nd Defendant.

5. Para 5 of W/S: It is denied that the deceased died at the age of 64 years. To the best of Plaintiffs' knowledge, his age was 74 years. He was ill for about 2½ years prior to his death. He was very old and infirm and was mostly confined in bed. He was also blind. The registration of the deed was effected at the deceased's house, as he complained of his inability to attend to the Registrar's office. The Plaintiffs seeing the Thumb Impression on the sale deed, further belief that the deceased was so infirm as unable to sign his name, though he was literate and knew Arabic and Urdu well to write and read.

6. Para 6 of W/S: It is denied that the deceased

10

20

30

40

was in debt, or that he sold the property under necessity. The Defendants are put to strict proof.

In the
Supreme Court

No. 3

Plaintiffs'
Rejoinder to
Defendants'
Written State-
ment,

7. Paras 7, 8 & 9 of W/S: The Plaintiffs will join issues with the Defendants on the rest of their written statement.

The Plaintiffs are entitled to the decree as prayed.

January 1960

- continued.

10

sd/- (Arabic)
Plaintiff No. 1

sd/- P.K. Sanghani sd/- (Arabic)
Advocate for Plaintiffs Plaintiff No. 2

VERIFICATION

We, Zainab bint Abdulla Gulab and Mohamed Ishaq Gulab, do hereby declare that what is stated hereinbefore is true to the best of our knowledge and belief.

Dated this _____ day of January, 1960, at Aden.

20

sd/- (Arabic)
Plaintiff No. 1

sd/- (Arabic)
Plaintiff No. 2

PLAINTIFFS' EVIDENCE

Plaintiffs'
Evidence

No. 4

ZAINAB BINT ABDULLA GULAB

No.4

IN THE SUPREME COURT OF THE COLONY OF ADEN

Zainab bint
Abdulla Gulab,
11th May 1960.

CIVIL SUIT NO. 852 OF 1959

(Title as No. 1)

30

Date Rozanaman
21.11.59 Plaintiff presented by Mr. P.K. Sangahni,
pleader for the Plaintiff.
Summons issued for w/s for 7.12.59.

In the
Supreme Court

Plaintiffs'
Evidence

No.4

Zainab bint
Abdulla Gulab,
11th May 1960
- continued.

7.12.59 Sanghani
Ansari - Valkale
w/s. 21.12.59

21.12.59 Sanghani
Ansari files w/s.
Rejoinder 4.1.60

4.1.60 Sanghani
Ansari & Iyer for Deft.'s valkale
Reply 25.1.60

25.1.60 Sanghani
Ansari & Iyer for reply on 8.2.60

8.2.60 Sanghani for Plaintiff
Ansari withdraws
Horrocks files valkale and w/s.
Hearing 11 May 1960

10

R.A. CAMPBELL.

11.5.60 Sanghani
Iyer and Horrocks for Defendants.

Sanghani:

Plaintiffs heirs of deed. Challenge convey-
ance of a house belonging to deed, and sold in
his life-time to Defendant 1 - Sister of Defendant
2. 20

Plaintiff 1 full sister of decd.

Plaintiff 2 cousin of decd.

Defendant 2 widow of decd.

These are only heirs of decd.

Transfer attached on 3 grounds:

- 1) Without consideration
- 2) Intent to deprive heirs of legal shares 30
- 3) 2 Defendants conspired to deprive others of
their shares and prevailed upon decd while of
infirm mind. Transfer obtained by undue in-
fluence by Defts.

If any ground succeeds will rely upon Transfer of
Property Ordinance S6(2xi).

If this was a gift it probably could not have

been challenged but in so far as it is not a gift the legal consideration governing gifts do not apply. The matter becomes a bogus sale.

In the
Supreme Court

Plaintiffs'
Evidence

No.4

It is not pleaded that this was gift. Conveyance is alleged by Defendants.

Also will rely upon principles of S.53 T.P. Ord. Issues agreed as follows:

Zainab bint
Abdulla Gulab,

11th May 1960

- continued.

10

- 1) Was the conveyance made without consideration?
- 2) Was the conveyance made with intent to deprive the heirs of decd of their inheritance?
- 3) Did the two Defts. prevail upon decd and obtain execution of the conveyance by undue influence?
- 4) To what relief if any is Plaintiff entitled?

Plaintiff sworn:

Zainab bint Abdulla Gulab:

Examination.

20

Decd. Ismail Abdulla Gulab was my brother. Mohamed Issack Gulab was cousin of Decd. Hajra bint Abdulla is widow of decd. Ismail had no issue. According to our personal law we three are the heirs of Ismail. Shares $\frac{1}{4}$ to widow, $\frac{1}{2}$ to myself and $\frac{1}{4}$ to cousin.

Ismail died about 10 months ago. We found he had left a building and a motor taxi. After his death I learned that the building had been transferred. The building is in the Kati Hafa, Section E. It is the one mentioned in the plaint. I found the taxi was also transferred. This was in the name of the widow.

30

I made enquiries from Register of Documents and obtained a certified copy of transfer which I produce. The house was transferred to Kulsum, Defendant 1. She is the sister of decd's widow. She was brought up by deceased and lived with him since she was a child.

Deceased was about 70 years old at his death. I am 45 years old.

Kulsum had no employment and no means of her

In the
Supreme Court

Plaintiffs'
Evidence

own. She was married but returned to deceased after year. To my knowledge she did not have the money to buy this house. How could she pay for it when she had no money? The sale deed is merely prepared to defraud us. I don't know how.

No.4
Zainab bint
Abdulla Gulab,
11th May 1960
Examination -
continued.

I first learned of the transfer after deceased's death. My husband - Ahmed Abdul Rehman - made enquiries. I produce a notice sent by Sanghani on my behalf to Defendant 1 (Ex.2) and Mr. Iyer's reply on her behalf (Ex. 3) copy of notice was sent to Defendant 2.

10

By consent, exchange of correspondence between advocates admitted (Exs. 4 and 5).

I ask the Court to set aside the sale.

Cross-
examination.

XX:

I don't know the number of house where deceased lived. It is just near my house. I did not visit decd. for 4 or 5 months before his death. He was not talking much so I gave up visiting him. I did not attend his funeral because I was informed until after his body had been removed. I now say I did not visit him for 6 or 7 months before his death. Kulsum was a child when she went to live with decd. He kept her like his own child. I don't know how old she was exactly. I was also young at the time.

20

I never spoke to my brother about the transfer before his death. That is a lie. I first heard about the transaction by talk in the community. Decd. was a respected member of community. He used to be asked to settle disputes.

30

I have know Kulsum since childhood. That is how I know she had no money. I never discussed her financial affairs. Her brothers are not well to do. If they were they themselves would have purchased the house.

I was not present at conveyance. I have no personal knowledge of decd.'s intent in making it, nor what influence was brought upon him to sign it.

Re-examination. Plaintiff Re-X.

40

Decd. was bed ridden for about 3 years.

No. 5
MOHAMED ISHAAK GULAB

Plaintiff's W.1 sworn:

Mohamed Ishaak Gulab: (cousin of decd.)

One of his heirs. Decd. was about 60 - 70 at death. We were not on good terms. I used to see him about the town about 3 years before his death. He owned a house which is the subject of this suit. Two or three days before his death I heard he had sold it to the girl whom he had brought up. I don't know her name. The girl had no means with which to buy the house.

XX:

I don't know personally if the girl had any means to buy the house.

In the
Supreme Court

Plaintiffs'
Evidence

No.5

Mohamed Ishaak
Gulab,

11th May 1960.

Examination.

Cross-
examination.

No. 6
ALI ABDI MURSHED

Plaintiff 2 sworn:

Mr. Ali Abdi Murshed - sub-registrar of documents, Colony of Aden.

Registered a Deed of Conveyance dated 19th August, 1957 page 55 vol. 125, book 1. A sale deed between Ismail Abdulla Gulab and Kulsum bint Abdul Khaleq. I was called to their private premises between 1 and 2 p.m. and the execution of the document was admitted there. It had already been executed before witnesses. I do not remember whether any money was paid in my presence.

The witnesses to the deed present and also one Ali Abdurahman. I don't remember who else was there. I think there were two laides in the room. I don't recall either of them paying money to anybody.

Ismail Abdulla was in good health. I think he was sitting in a chair. I did not ask him to read. No medical certificate was produced to me.

No.6

Ali Abdi
Murshed,

11th May 1960.

Examination.

In the
Supreme Court

Plaintiffs'
Evidence

No.6

Ali Abdi
Murshed,
11th May 1960.
Cross-
examination.

XX:

A certified copy was applied for and issued to the applicant in payment. He was Ahmed Abdurahman, a sub-accountant in the Treasury. I see him now (Indicates man called into Court). It was some time after the registration. I know Ali Abdo Rehman Khan. I don't think I informed him about application. I think the application was made over a year after registration. Not sure. No money was paid in my presence. At least, that is the case to the best of my knowledge.

10

I did not ask Ismail before registering the document whether he admitted receiving consideration. I do sometimes do this and endorse the documents accordingly. The regulations do not require me to do this unless requested by the parties.

No.7

Usman Sheikh
Shammo,
11th May 1960.
Examination.

No. 7

USMAN SHEIKH SHAMMO

Plaintiff W.2 sworn:

Usman Sheikh Shammo - Traffic Licensing Officer.

20

One Ismail Abdulla Gulab had a car No. ADN 8575 and asked me to have this transferred to his wife. I have his application with me. I produce it (Ex. 6). This transfer was approved by the Commissioner, and the taxi permit was transferred.

Cross-
examination.

XX:

I have no personal knowledge of the file.

No.8

Ahmed Abdul
Rehman,
11th May 1960.
Examination.

No. 8

AHMED ABDUL REHMAN

Pl. W.3 sworn:

Ahmed Abdul Rehman - Accountant in Aden Trading Coy.

30

Husband of Plaintiff 1. Zainab. We have been married over 30 years. Knew decd. who was my brother in law. He died about 9 months ago. Name

Ismail Abdulla Gulab. He had previously been ill for about 3 years. I occasionally visited him. He had heart disease, I think. He was unable to carry on business. He was in bed for about 3 years. He was 65-70 at death. He was blind when he died. He was blind for a year or two before his death. He owned a house and a taxi. The house was in Section E. I think it is in Street 3. Not the same house as I live in, which is in Street 7. The houses are not very far apart. I did not attend decd.'s funeral. About a year before his death I saw him and he was rude to me. I did not go to see him again after that. We heard of his death too late to attend the ceremony.

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30

40

After his death my wife and I heard the house had been transferred to Kulsum. I first heard of this after his death - one or two days after it. I made enquiries as I was surprised. I spoke to Suleman Ahmed and Saeed Ahmed Jaffer and also the Sub Registrar of Documents. I applied for a copy of the Deed of Sale with my wife's consent. The application was in my wife's name. Ex. 1 is the copy I obtained. I did not ask widow nor Kulsum whether they had purchased the property.

I knew Kulsum and that she was dependant on decd. by whom she had been brought up and was therefore unable to buy a house. I knew she had no money.

She has brothers. They are Hassan, Ali, Yusuf, Hussain, Mohamed and one whose name escapes me at present. They are all full brothers. Hassan sells cigarettes and pans. He has a tiny business.

All are married and the average earnings of each would be about 300/- or 400/- per month. To my knowledge none of them owns a house.

I was therefore convinced that the alleged conveyance was bogus. Decd. used to be fond of my wife but was rude a year before his death.

Decd. was a tailoring contractor with the Aden Protectorate Levies.

He was well to do and not in debt to my knowledge. He never mentioned selling his house to me. He had a taxi permit. His latest taxi was purchased about 5 or 6 months before his death. It

In the
Supreme Court
—
Plaintiffs'
Evidence
—
No.8

Ahmed Abdul
Rehman,
11th May 1960.
Examination
- continued.

In the
Supreme Court

Plaintiffs'
Evidence

No.8

Ahmed Abdul
Rehman,
11th May 1960.
Examination
- continued.

Cross-
examination.

was an Opel Kapitän Car.

My wife did not claim her inheritance because we found that the house and taxi had been transferred from decd.'s name. Deceased went to India for treatment about 3½ years before his death. He did not visit India after that. Decd. went to India for an operation for removal of cataract. I took him to the doctor. It was Dr. Bannaji. The fees as far as I remember were Rs.150/-. I was present when fees were agreed. I saw decd. 2-3 hours after the operation in Dr. Bannaji's clinic. He stayed there a week. I believe the fees included the stay in the clinic. Decd.'s wife was not with him.

10

XX:

I don't know why decd. was rude to me. I gave up visiting him after this.

Plaintiff 2 is my friend. I heard about the transfer of the taxi after the death. I heard it from a taxi driver called Mohamed Bohri. I approached Suleman Mohd. after the death. I can't say who first told me about the house. It was a rumour and when I heard it I made enquiries.

20

I went to the Registrar's Office in 1957. I inquired from Mr. Murshed if the house was transferred. He would not tell me. I did not try to find out by other means. It was not necessary. I have never made an official application to the Registrar. I did not take legal advice. I did not go to decd. nor to Kulsum. I heard the rumour in 1957. My wife was an heir. There was no way in which I could check on the rumour. I kept quiet because I knew nothing officially. I took the application for the document (Ex. 1) I received the copy. I did not do this in 1957 because decd. was alive and I thought he would have told us. We were not then on good terms.

30

It was not my intention to strengthen my case by waiting for the death of decd. I had no particular intentions.

40

I was certain that Kulsum had no means to buy the house. When I said "to my knowledge" I meant to my certain knowledge. I did not ask her in 1959.

I did not challenge decd. as we were then on good terms. Decd. died in August 1959. Decd. went twice to India in the last 6 or 7 years.

I remember only two visits to India by decd. The last time he was accompanied by Kulsum's brother. Decd. did not consult heart specialists in India to my knowledge.

10 Defendant 2 to my personal knowledge prevailed upon decd. to sell the house. She had an interest in this because after Hajra's death Kulsum would get a share of Hajra's property.

I was not present at the transfer. I don't know what decd. or anybody else said about. I don't know the circumstances.

No. 9
SULEMAN AHMED

Pl. W.4 sworn:

Suleman Ahmed - Tailor

20 Knew decd. Ismail Abdulla Gulab. Member of Hindustani Jamd. (meeting of Elders). I am the Senior Member of Chief of the Jamad in Aden. Decd. was a member. He died 10-11 months ago. He was sick before his death for 3-4 years. He used to go out but would sometimes stop as he walked and clutch his chest. I don't know if he was bed ridden before his death.

30 About 3 years ago when he was sick he told me that he wanted to settle about the house. He wanted me to bring the Registrar so that the matter might be disposed. He said that he wished to transfer the house into the name of the girl who was with him, so that during his lifetime the building might be transferred. This was so that after his death there might be no dispute or quarrel. I asked why he was in a hurry about this and decd. replied that I have other relatives, and I do not wish there to be a quarrel after my death.

He said he had a cousin and a sister. The cousin was Plaintiff 2. I said that if there were

In the
Supreme Court

Plaintiffs'
Evidence

No.8

Ahmed Abdul
Rehman,

11th May 1960.

Cross-
examination

- continued.

No.9

Suleman Ahmed,
11th May 1960.

Examination.

In the
Supreme Court

Plaintiffs'
Evidence

No.9

Suleman Ahmed,
11th May 1960.
Examination
- continued.

relatives, they had their rights. I said I was busy and could not do the work and I avoided it.

Decd. said that the girl had looked after him and he wanted to transfer the house in her name. He did not say he wished to sell the house.

I did not have further conversations with him.

After decd.'s death husband of Plaintiff 1 came to me and I told him what I knew. I don't remember exactly when but this was some days after the death.

10

I have seen the house several times. It has two storeys and a flat roof. Two rooms below with usual offices. It is today worth about Shs.65,000/-. It is of stone below and lime on top.

Cross-
examination.

XX:

I did not see decd. after conversation I have mentioned. That was in his house. It took quarter to half an hour. Decd. was determined to give the house to Kulsum. He discussed it with me.

20

No.10
Abdul Kader
Kifatulla,
11th May 1960.
Examination.

No.10
ABDUL KADER KIFATULLA

Pl. W.5 sworn:

Abdul Kader Kifatulla - retired

I am a landlord with 6 or 7 houses. Member of Hindustani Jamad. Pl. W.4 is Sirdar or Chief of the Jamad. Knew decd. He was a member of the Jamad and I was on good terms with him. We both lived in Section E. I did not discuss his properties. I visited him two or three times while he was ill. We just discussed his health and treatment. I have seen the house he occupied. It was worth Shs.50-60,000/-.

30

Cross-
examination.

XX:

No questions.

No.11
ABDUL SATTAR LAKHOO

In the
Supreme Court

Pl. W.6 sworn:

Plaintiffs'
Evidence

Abdul Sattar Lakhoo: Broker, dealing in houses.

No.11

I have done this work for 10-12 years. I knew decd. and the house he occupied. It is now worth about Shs. 55,000/- to 60,000/-. I know Kulsum Abdul Khaleq. She is not related to me. I knew her after her divorce when she stayed with decd. She has 4 or 6 brothers.

Abdul Sattar
Lakhoo,
11th May 1960.
Examination.

10

XX:

Cross-
Examination.

No questions.

Some Defence witnesses leaving Colony and returning later.

ADJOURNED TO 13th JULY, 1960.

J.A.W. GILLET
11.5.1960.

DEFENDANTS' EVIDENCE

Defendants'
Evidence

20

No.12
ANWAR KHAN

No.12

13.7.60 Sanghani.
Horrocks.

Anwar Khan,
13th July 1960.
Examination.

Sanghani;

Plaintiffs' case complete except that there is one witness I may wish to call in rebuttal after Cross-examination of Defendant's witnesses. Plaintiffs' case already before Court in full. Evidence largely in nature of heresay.

Horrocks:

30

I am entitled to know Plaintiffs' case at this stage. Only circumstances in which Plaintiff might call any evidence in rebuttal is if Defendants adduce evidence which would not fairly be discovered from pleadings.

In the
Supreme Court

Defendants'
Evidence

No.12

Anwar Khan,
13th July 1960.
Examination

- continued.

Cross-
examination.

Defence W.1 sworn: Chief Inspector Anwar Khan,
Crater Police Station.

Knew Ismail Abdulla Gulab. He lived in Katiya, Sec. E, Crater. His taxi licence was transferred to his wife's name about March, 1959. Met Ismail in connection with the transfer. His mental faculties were not in any way out of the normal. I knew him previously. At no time during my knowledge of him was his mental faculties other than normal.

10

Cross-Examined:

I don't know how many months prior to his death I saw him. It was at Khormaksar Police Station. He came by taxi with Ali Abdul Khaliq. He was old. I saw him only sitting in the taxi. He didn't come into the office. He was told to attend at Khormaksar Police Station. I personally talked with him while he was in the taxi. He didn't leave the taxi. I came down to see him as he was old. I thought him unable to go up to the office which was upstairs. Ali Abdul Khaliq said to me that deceased was in the taxi. I didn't ask him to come up. I knew deceased since 1955. I saw him in 1955 and then again in 1959. In 1955 he was stronger. Ali Abdul Khaleq is the man now in Court. He said the deceased was old. In some cases I go down to see old people. Ali Abdul Khaleq did not ask me to go down. I conversed with deceased for about 10 minutes. The application was with me, I read it to deceased in Urdu. He said 'I want the taxi transferred to my wife's name.' I did not discuss anything. I read the application slowly. When I talked to deceased he was all right.

20

30

No.13

Kulsum bint
Abdul Khaleq,
13th July 1960.
Examination.

No.13

KULSUM BINT ABDUL KHALEQ

Defendant 1 sworn - Kulsum bint Abdul Khaleq:

I know Ismail Abdulla Gulab. Before his death I lived with him and his wife Hjara. When I went to live in that family I was young about 2 years old. I am now about 45 years old.

40

Decd. was a tailor with A.P.L. My mother sewed and I prepared buttons. Hajra was my mother. I helped Gulab in his tailoring for 15 years. He gave me Rs. 50-60 per month. I was married and then divorced after about a year. After divorce I returned to live with Gulab and Hajra. I have 6 brothers. All my brothers helped me with small sums of money Shs. 5-10. Also all my relatives. I did not have to pay deceased for keep. He gave me food and lodging. Hajra gave me clothes and money. She kept my savings. The property was sold to me. I bought it with my money. There was a transfer deed. Before the deed was executed - 6 months before - decd. told me he wanted to sell the house as he was in debt.

In the
Supreme Court

Defendants'
Evidence

No.13

Kulsum bint
Abdul Khaleq
13th July 1960

Examination

- continued.

He didn't name his creditor nor the amount he owed. I said I wished to buy the house. Deceased said he would sell to me at Shs.25,000/- because he had brought me up. I was treated as his real daughter. I don't know how much of my savings Hajra held at this time. She kept the account. I took from her Shs.15,000/- I sold jewellery worth Shs.2,000/- to my brothers and relatives because I could get a good price amongst my own people. All my brothers jointly contributed Shs.3,000/-. I borrowed Shs.5,000/- from Hajra. I paid Shs.25,000/- to deceased. When the money was paid over Hasson Abdul Khaliq was present. He is my elder brother. Abdulla Salim was present, Ismail Abdul Rehman, my brother-in-law was present. Also Hajra, also a lady called Dolat who is Hajra's brother's wife. Dolat was present in connection with the purchase of a house from Hajra. I handed the money to Hasson Abdul Khaliq. He handed it to Abdulla Salim. It was counted and given to the deceased. The same day my younger brother Mohamed Abdul Khaliq was married.

Next day Murshed the Registrar came to our house. Decd.'s and my thumb impressions were taken because the sale was to be registered. We were asked if the money had been paid and we said yes. Our thumb impressions were taken on papers. Murshed also took thumb impressions of Dolat and Hajra in connection with sale of Hajra's house.

In the
Supreme Court

Defendants'
Evidence

No.13

Kulsum bint
Abdul Khaleq
13th July 1960
Examination
- continued.

Ismail's health was alright. He was al-
right mentally. He had trouble here (indicates
heart). He had occasional attacks. Dr.Moham-
ed Ahmed attended him. He attended him for 10-
11 years. Decd. was not bed ridden at time of
this transaction. He went out and came in.
He could walk.

Decd. made this transaction with his free
will and permission. Hajra and I did not cause
him to do it. I looked after decd. as his
daughter. No friction between Hajra and I on
the one side and deceased on other. We all
lived peacefully together.

10

Cross-
examination

Cross-examined:

Decd. had a small taxi. I don't know about
the taxi account. For 4-5 years before death
of deceased Hajra looked after taxi accounts
with the driver. I now say I don't know about
the taxi account. I wasn't concerned about the
account. The driver did not come daily to our
house. He did come sometimes. I don't know
who he talked to. Household expenses were
looked after by Hajra. I don't know if she
kept all the money. I didn't bother about the
money. Deceased paid me Rs.50-60 per month for
15 years. Sometimes he gave me less.

20

Decd. left the A.P.L. a year before he died.
Now I say I don't know about the time. Decd.
had a contract with A.P.L. His earnings de-
pended on work done. From Shs.4,000/- 8,000/-
- 10,000/- per month. He paid 6 or 7 tailors
out of his earnings, I did not see him pay his
wife.

30

From time to time I asked Hajra how much of
my money she had. She used to tell me. I might
ask her once a month or after two months.

I now say Hajra did not tell me how much of
my money she held. I trusted her and had faith
in her. If Hajra had died I would have asked
my brothers to count the money. I don't know
how or where she kept the money. I had no real
proof of my account with Hajra if she had died.
I never asked to withdraw money from Hajra.

40

I never spoke to my brothers about the money with Hajra. Never told decd. about the money with Hajra.

Nobody knew except myself and Hajra. I never told Hajra that she should not tell anybody.

Deceased had no income. High medical expenses. He went to Bombay three times. I don't know if he had money.

10 I did have the Shs. 15,000/-

I sold bracelets and a necklace and armlets.

20 I sold 12 bangles 5 tolas of armlets. I don't remember the weight of the necklace. There was also a chain and a ring. All were sold at the time time to different relatives. My sister bought the bangles. I don't know what she paid for them. I don't know about accounts. I got them when I was married. They were given to me by my relatives. It is a custom to give gold at time of weddings.

I don't know who bought each article. I have six or seven relatives. I did not try to sell jewellery in the market.

I received 3,000/- from brothers on the day I bought the house. I paid Shs. 25,000/- nothing more. I don't know if I paid stamp duty. Decd. paid Murshed's fee. The Shs. 25,000/- was paid before Murshed came.

30 If Murshed says he doesn't remember decd. telling him he had been paid that is a lie. When decd. told me about selling the house he told me he would think it over and reply to me in a month.

40 About 6 months before sale he told me he would sell to me the house. He said he wanted Shs. 25,000/- from me as I was brought up as his daughter. I do not know the market value of the house. I don't know if it is Shs. 60,000/-. I spoke to my brothers. Decd. did

In the
Supreme Court

Defendant's
Evidence

No.13

Kulsum bint
Abdul Khaleq
13th July 1960

Cross-
examination

- continued

In the
Supreme Court

Defendant's
Evidence

No.13

Kulsum bint
Abdul Khaleq

13th July 1960

Cross-
examination

- continued

not give me the house. He sold it to pay his debt. Decd. to my knowledge never considered giving me the house or bequeathing it to me. I don't know where the Shs.25,000/- went. I didn't ask decd. about his debts. I have no knowledge of his debts. Nor a single creditor. Decd. was literate. I don't know if he kept accounts. I didn't find receipts after his death. None of my brothers have property.

Ali earns Shs. 1,000/- per month. He is a clerk. I don't know where he works. He pays me Shs. 10/- per month. He gives me gifts at the Idd etc. The brothers jointly paid me Shs. 3,000/- as a gift. I have no children. I don't know who will inherit my property. Deceased was sick, ordinary sickness.

10

Untrue that he was bed ridden for 2½ years before he died.

Doctor came to house on day of sale. He came and examined decd. daily. Neither Hajra nor I asked for a certificate that he was then in good health.

20

Before the sale I told decd. I would like a certificate from a doctor in case I was dragged into court. I have heard a lot of things about the world. I thought people might make allegations. I did obtain a certificate so that it might be of use to me. The certificate was not given on the date of the transfer. I can't remember whether before or after. I had it before Murshed came and kept it. I asked for the certificate myself. The doctor gave into my hand. I see a document now - Ex. 7. I don't know if this is the certificate of the doctor. I didn't look at it. I folded it and put it away. Hajra and I are on very good terms. I don't know if Hajra could persuade decd. to do things or not against his will.

30

Exhibit 7

He was not indifferent to what went on in the house.

40

Hajra did not help me to buy the house. She lent me Shs. 5,000/- I have repaid Shs. 3,000/-.

Re-Examined:

I am illiterate. I did not ask for a medical certificate about Ismail's health. I don't remember whether I asked Dr. Mohamed Ahmed-for certificate. He attended the house daily. If other people sick he would attend to them. Decd.'s mother-in-law was living in her own house.

In the
Supreme Court

Defendant's
Evidence

No.13

Kulsum bint
Abdul Khaleq
13th July 1960
Re-examination
- continued

No.14

10 HASSON ABDUL KHALEQ

Hasson Abdul Khaleq sworn:

No.14

Hasson Abdul
Khaleq
13th July 1960
Examination

My younger brother Mohamed was married on 18.8.1957. I called at the house of Ismail Abdyl Gulab (decd.) in connection with the ceremony to pay money to my sister Kulsum. I paid her Shs. 3,000/-. This money was contributed jointly by all her brothers. The money was a gift to Kulsum so that she could buy deced.'s house.

20 When I paid Kulsum the Shs. 3,000/- the following were present - Decd., Kulsum, Hajra, Dolat, Mohamed and myself. Kulsum said 'Please bring two witnesses so I can pay it to deceased'. I brought two witnesses Abdulla Salim and Ismail Abdul Rahman. I was present when the money was paid to deceased. Kulsum gave me the money and I gave it to Abdulla Salim who counted it. He gave it to decd. saying 'There are the Shs. 25,000/-. They are all right.'

30 No document executed that day. Money paid in my presence. Dolat has since died. On the next day I saw the Registrar Murshed. I told Ismail Abdul Rahman to take Ali Abdul Rahman to Murshed and ask him to come to the house. I was present when Murshed came to the house on the day after the payment. Abdulla Salim was present. Ismail and Ali came

In the
Supreme Court
Defendant's
Evidence

No.14

Hasson Abdul
Khaleq
13th July 1960
Examination
- continued

with Murshed. Murshed, Kulsum and deceased had a conversation. Deceased and Kulsum gave their thumb impressions to a document. We all signed the documents who were present.

Cross-Examined :-

On 18th I went with money to my sister Kulsum. She knew about the wedding, there a few days before. After she received the money she came to the wedding. I paid the money at 9.30 - 9.45 a.m. Kulsum then came with me to my house. She was at my house all day. She returned late at night. At the time when I paid the money I was told to bring two witnesses and the Registrar. Kulsum only asked for Shs. 3,000/- She took Shs. 5,000/- from her mother, had Shs. 15,000/- of her own and sold jewellery for Shs. 2,000/-. I didn't buy jewellery. Brothers and sisters did. The ornaments had been sold previously. I have a shop selling cigarettes and betal leaf. I earn Shs. 250/- - 300/- per month. I have 5 in my family. One son earning Shs. 525/- per month for last 3 years. He was just starting to work in 1957. In those days I earned more than I earn now.

10

Of the Shs. 3,000/- I paid Shs. 200/-. 3 brothers paid each Shs. 200/-. 3 brothers paid Shs. 800/- each.

I also used to give Kulsum Rs. 5 and latterly Shs. 10/- per month. I have 6 sisters. To some I pay Shs. 3/- or Shs. 5/-. Kulsum has no husband. She was well looked after, but she was my eldest sister.

30

Ali Abdul Rahman is my relation. He is my cousin.

Abdulla Salim is not related to me.

Ismail Abdul Rehman is the husband of my sister. A leading man in the community. At the time of wedding all these people were present. We discussed the sale and registration.

If the house had been sold on open market

40

it would have fetched a higher price.

Decd. wanted to sell it outside. Kulsum said "Sell it to me. I will buy it if you wish to sell."

In the
Supreme Court

Defendant's
Evidence

No.14

Hasson Abdul
Khaleq

13th July 1960

Examination
- continued

10

Decd. spent a lot on medical treatment and trips to India for treatment. Twice my brother Yassin went with Decd. and once Ismail Abdul Rahman. Decd. paid all the expenses. He was blind. He left A.P.L. because of eyesight 8-10 years before death. Deceased did go out in last 2-3 years of his life. He walked with a stick. When tired he would rest.

I went to house of deceased at 11.45 a.m. 19th August.

Murshed with the two who called him arrived about 12.30 or 1 p.m.

20

Money was paid to Decd. on 18th. All the 25,000/- was paid. It was in Shs. 100/- in bundles of Shs. 1,000/-. The bundles were folded on a vertical axis and not secured.

The Shs. 3,000/- I brought similarly folded. All Shs. 25,000/- tied up in a handkerchief. I don't know where decd. put it. He was sitting in a Chair. He put the money near his cup beside him.

30

I stayed about half an hour after payment. Hajra didn't come to the wedding. She can't walk. Decd. didn't come to the wedding. In the evening he had a heart attack and sent for the Doctor. He sent word to me. I sent the doctor.

On 19th he was feeling better because he had an injection from Doctor on evening of 18th. Decd. put his thumb print on the sale deed because Murshed just took his hand and applied it to the stamp pad and put it on the document. He didn't ask if decd. could write.

Cross-examined:

Cross-
examination

40

Deceased made no objection. If asked to sign he would have done so.

In the
Supreme Court

Defendants'
Evidence

No.15

Ibrahim
Ramedhan
13th July 1960
Examination

No.15
IBRAHIM RAMEDHAN

Chief Inspector Ibrahim Ramedhan sworn:

Knew decd. Ismail Abdulla Gulab. He was an elder. I built a house on Plot 6, Khushaff Valley. Blessing of house on 10th March, 1957. Decd. was present. He took part in the ceremony. He did the prayers. His mental condition was normal. Also Physical conditions normal.

10

In May or June 1958 I had difficulty with my son. I approached decd. He intervened and managed to settle the problem. He gave us good advice on how to manage the house. In 1958 he could not walk. I brought him by car. I am related to Defendants distantly. All one tribe.

Cross-
examination.

Cross-examined:-

I am more closely related to Defendants than Plaintiffs. My niece is married to Kulsum's brother. The marriage was long ago. I visited deceased very occasionally, when something happened. I visited him 2-3 times 58-59. He was always in the house. Needed support to go out. He always wore glasses. I can't say if he was indifferent to worldly things.

20

No.16

Abdulla Salim
Sheer Ali
13th July 1960
Examination

No.16
ABDULLA SALIM SHEER ALI

Abdulla Salim Sheer Ali sworn:-

Remember going to house of deceased in connection with property transfer from decd. to Kulsum. I counted money which Hasson Abdul Khaliq gave me. It was Shs. 25,000/-. I gave it to decd. He was sitting in a chair. The money was folded into bundles of Shs. 1,000/- folded vertically unsecured. (Demonstrated as last witness but one.)

30

Deceased put the money near his cap. Not sure if it was on a bed or a table. It was near the chair where he was sitting.

Dolat present. She purchased a house from wife of Decd. Next day was present when Registrar arrived. Decd. and Kulsum put their thumb impressions on the documents. Murshed asked deceased if he had received the money. Decd. said he had.

In the
Supreme Court

Defendants'
Evidence

No.16

Abdulla Salim
Sheer Ali

13th July 1960

Examination

continued

Cross-
examination

10

Ismail's mental condition was all right, he was bathing. I asked if he was selling the house. He said yes. He was in the house. I knew him very well. In 1957 he used to go out but needed somebody to guide him. Not to support him.

Cross-examined:

P.W.D. overseer since 1956. I am free in afternoons from 12-2. I work from 2-4 p.m. Free after 4 p.m. I frequently visit shop of Hasson Abdul Khaleq. I buy cigarettes there daily and sit for half an hour or more. Not friend of Hasson's.

20

I also sit in the shop of Abdul-Ghafoor- Thabet for half an hour. Neither of these two are my friends. The only discussion I had about the house was what I have said with Decd. Ali Abdul Rehann is my friend. Deed of sale prepared by him.

30

Ali Abdul Rehann and I did not go to see Saeed Ahmed Jafer Ali. I knew him from my school days. I did not tell S.A.Jaffer Ali that decd. wished to bequeath the house to Kulsum nor did I tell him decd. wished to give the house to Kulsum. S.A.Jafer Ali is outside, I have not discussed this case with him.

He did not say that if deceased wished to give the house to Kulsum he should consult a lawyer.

I had no connection with Hasson Abdul Khaliq after he left the court.

Adjourned 22.7.1960.

In the
Supreme Court

22.7.60.

Defendants'
Evidence

Sanghani.

Horrocks.

No.16

Abdulla Salim - Cross-examined (Continued)

Abdulla Salim
Sheer Ali
13th July 1960
Cross-
examination
- continued

I know Saeed Ahmed Jaffer. He was in Court at last hearing. He is a good man. I can't say if he would always tell truth. I know him. He is not my friend. I can't say if he usually indulges in falsehood. I did speak to Yousuf Abdul Khaliq. I said to him "your brother gave evidence." Did he give good evidence?" I meant by this was he nervous or afraid. A man becomes nervous when he comes to Court and he should tell the truth. He said his evidence was all right. He did not tell me about the folding of the notes. I only spoke to him for one minute. Yusuf was not inside the Court room. Hassan and Yusuf had a talk when Hassan came out and then I caught Yusuf as he was going. Hassan was on the verndah outside the Court. I did not speak to Hassan as he was a witness. I didn't ask Yusuf what Hassan had said but how Hassan had fared. Yusuf had talked to Hassan. Yusuf asked Hassan how his evidence had gone, I overheard this. Then I called Yusuf. I didn't hear Hassan's reply. That is why I asked Yusuf.

10

20

On 18th I was present when money paid. No receipt was taken. I knew Hajra's family a long time. Decd. could see at that time - not blind. One eye had been removed. Don't know whether heavy cataract on remaining eye. Don't know if he went immediately after the operation. Dolat was there about the sale of a house. She purchased house of Deceased's wife and paid on the 18th. I counted her money. It was Shs. 6,000/-. Sale Deed executed next day. I paid Shs. 25,000/- to decd. and Shs. 6,000/- to Hajra.

30

Decd. kept the Shs. 25,000/- I gave him. Hajra took the Shs. 6,000/- and kept it below the pillow. Her own pillow. Two beds in the room. She was sitting on her bed. I didn't

40

ask for a receipt. I was just a witness. The documents were to be made and signed next day.

Payments made before execution because the decd. wanted the money. Hassan came to my house and said Kulsum had sent word that money was to be paid that day. Nobody else present at this time. I didn't ask why payment was to be made before execution.

In the
Supreme Court

Defendants'
Evidence

No.16

Abdulla Salim
Sheer Ali

13th July 1960

Cross-
examination

- continued

10 Dolat paid the same day without receipt so that her purchase could also be completed. Don't know if Dolat related to Kulsum (admitted they are sisters in law by Horrocks) Dolat is wife of Hajra's brother who is also Kulsum's brother. I know this. Dolat did pay the money. I counted it. It is not true that Dolat objected to the transfer of the house to Kulsum and that Hajra gave the Shs. 6,000/- house to Dolat so that Dolet would not object.

20 I was called to the house when the Registrar came. The time between 12.45 and 1 p.m. When Deed executed Dolat, Hajra and Kulsum were all present.

30 I don't know when deed was prepared. Ali Abdul Rahman prepared it. I saw his signature when I signed it. He was present. When money was paid I didn't ask Hassan who would prepare deed, nor did he tell me. It was said that the deed would be fixed next day and we would be told of the time. I was to be present at execution. I was working at this time. I asked for 10 or 15 minutes warning by telephone. There was a feast that day and I was called after 12 while lunching. I only came to know about Kulsum's purchase when the money was paid. I was told nothing about the brothers' intended gift to Kulsum before this.

No Re-examination.

In the
Supreme Court

No.17
MOHAMED NASSER HAITHAM

Defendants'
Evidence

Mohamed Nasser Haitham sworn:

No.17

Mohamed Nasser
Haitham

22nd July 1960.
Examination.

I know Ismail Abdulla Gulab decd. and his wife Hajra and Kulsum. These ladies are purdanashee but our houses were close and our women-folk exchanged visits. Not sure of date of his death.

I heard from him that he had transferred his house to Kulsum. At this time he was ill but in his proper senses. He was suffering from something in his chest and short sight. 10

Decd. made no complaint about the transfer. This conversation was about two years ago in Decd.'s house. At that time he was able to move about but was led by somebody because of his bad sight. I did not see him out of his house at this period. Hajra is paralysed.

I have known Ismail and Hajra about 20 years. They got on well together. Normal affection. Kulsum served decd. for a long time. She was like his adopted daughter. I did not notice friction between Kulsum and Ismail. 20

I visited decd. seldom - at Idd or if I heard he was very ill. He did not appear to me to be too ill. I used to see him attending religious ceremonies 4 or 5 years ago but not since.

I do not know if he had an eye removed. Last time I saw him it was dark. I visited him two or three times because of his illness in the last 3 years of his life. I am 67. He was I should say older than I - about 70. He was not too weak. Last time I saw him he complained of his illness and said he feared he might not live. This was 2 years before his death. He did not discuss the welfare of his wife and Kulsum in event of his death. Decd. had a taxi and a bus. I don't know if bus in Hajra's name. 30

Kulsum lived with deceased and looked after him. I don't know if she had support from her brother. 40

I know Abdulla Salim (last witness) he lived in our locality. I was on the Court verandah when he was called into Court last time. He came after Hassan had given evidence. I didn't see Hassan and Abdulla talk. They kept aloof from each other. Several of Hassan's brothers were there. I can't say if I saw them talking. I didn't pay attention to them.

In the
Supreme Court

Defendants'
Evidence

No.17

Mohamed Nasser
Haitham

22nd July 1960

Examination
- continued

Horrocks:

10 My last witness is a doctor who is still unwell. Request his evidence be taken on commission. Bailiff reports he refused to accept service.

Order:

Evidence of Dr.Mohamed Ahmed to be taken by a commissioner who is to be agreed by the parties, and such evidence is to be filed on 5.8.60.

Sanghani:

20 Now apply to call S.A.Jaffer Ali to give evidence to the effect that Abdulla Salim and Ali Abdul Rehman did go to consult him about whether decd. could give or bequeath S.P. to Kulsum.

Horrocks:

Object - If relevant should have been proved by Plaintiff. In any case proposed evidence as regards what was discussed would be hearsay.

30 Ruling:

Ruling

Application disallowed.

So far as the proposed evidence is not objectionable as hearsay it should have been had at the proper time. So far as it is hearsay it is inadmissible.

J.A.C.W. GILLETT.

In the
Supreme Court

NO.18
DR. MOHAMED AHMED

Defendants'
Evidence

Present -

No.18

Sanghani

Dr. Mohamed
Ahmed.
29th July 1960

Horrocks.

Dr. Mohamed Ahmed Sworn:

Examination

I identify Ex.7 - it was given by me. It bears my signature. It was on 19.8.59. I was attending the decd. for about 10 years, - Ismail Abdulla Gulab. He was about 60. I am not sure. I was attending him for various complaints - cold - pain chest - operation of one eye - for many things. One of his eyes was operated in 1955 and that became septic. He had cataract and was operated. He was wearing glasses. For the operation of his second eye he went to India. I was also attending other members of the family. His wife was suffering from Paralytic condition. He had heart troubles of long standing. He had malinger growth near his mouth which caused a twitch six months or so before his death. In August, 1957 when I gave this certificate Ex.7, he was mentally alright. When I gave the certificate he could get up - walk and can sit without any assistance. He was blind in one eye and could see with the other with glasses.

10

20

I was told by the deceased that the house was sold on that particular day of the certificate and that is why I mentioned it. The decd. himself ask for the certificate. There were several relatives and persons present.

30

Cross-
examination

Cross Examined Sanghani:

I don't remember where I prepared the certificate. I was told in the house on that day that the certificate was wanted that the deceased was alright.

I see four figures of dates - (month) column, as to the month - 9 and 8. Figure 9-8 - as to months - 9 appears to be in normal writing - it appears 8 squeezed or altered I don't who did it.

40

10 Ex.8: After Ex.7 was given a typed certificate was prepared. Ex.8 is a typed certificate - (produced by Def. wit. - indentified by the witness). This is an official certificate given by me. Ex.8 was given on the same evening or the next day. I don't remember who typed Ex.8. I did not type. No one in my dispensary typed it. No one in dispensary can type. I got it typed and signed. I was not surprised when the decd. asked for a certificate. There must have been some advice to the decd. to obtain a certificate. I infer from the deceased's talk. I do not recall the deceased discussing gifting the house to his daughter Kulsum. He was not bed ridden. He was understanding what I was saying to him and he could make me to understand. He was not insane. Whether he could be persuaded upon by someone I can't say.

20 The certificate was issued after he told me that he had sold the house. I went in the evening. In Exhibit 7 'Affixed his thumb impression in my presence' were struck off as that was not so. When he spoke to me I was under the impression that the deed was to be executed and I was to witness it. When I learnt that the deed had been already executed, I scored it out. Whether the certificate was to be used at the time of the execution of the deed I

30 can't say. I learnt in the beginning when I wrote the certificate Ex.7 that the deed was to be executed and I was to witness it.

40 When I knew that the deed was executed I scored off the 'Affixed thumb impression in my presence.' I can't say who told me that the deed was executed. Deceased was not very sick on the 18th or 19th August. I don't remember that he had a severe heart attack on the 18th or 19th August. I don't remember if he had a severe heart attack before I gave the certificate Ex.7. He did not tell me that he was to sell the house - it was on the day I visited him he told me about. Husband of the Plaintiff Abdul Rehman came and consulted me about the deceased after his death. I don't remember whether he enquired about the Medical Certificate. I remember having told him that he was mentally fit at the time of the sale. Until about four days of his death he enjoyed normal mental health.

50 No cross-examination.

Before me V.D.TRIPATHI (signed)
Registrar.

In the
Supreme Court

Defendants'
Evidence

No.18

Dr.Mohamed
Ahmed.

29th July 1960

Cross-
examination

- continued

In the
Supreme Court

No.19

Counsels
Addresses

(a) Sanghani
for
Plaintiffs

No.19

COUNSELS ADDRESSES

Sanghani for Plaintiffs

SANGHANI:-

Moslem laws of inheritance personal law of parties. Act contra unlawful under Section 25 Contract Ordinance. Contra Public policy.

Conspiracy. Plaintiffs entitled to damages or to set aside transfer. Registration irrelevant. If sale set aside Deceased died intestate with regard to house so Plaintiffs entitled to share. 10

During lifetime of Deceased Plaintiff had no existing right in property until death of Deceased.

No laches.

Evidence deceased prior to this wished to transfer Suit Premises to Defendant 1. Evidence not very clear but submit it meant a gratuitous transfer. P.8 typed record.

Undue influence.

Deceased was in a position where he could be influenced. 20

Section 17 Contract Ordinance.

Wife had real and apparent authority over Deceased she used to keep accounts etc.

Section 17(3) Burden of proof shifts.

Wife able to get benefit out of transfer to Kulsum.

What is the wife's evidence?

Money to lend to Sister but not to husband.

Transaction on its face appears unconscionable. 30

Successors-in-interest may avoid.

Any one of my submissions enough to avoid the transaction.

Defendant pleads deceased indebted and sold out of necessity. Deceased had kindly treated Defendant 1 for 40 years.

Medical Certificate.

If really hale and hearty why the Certificate. Manuscript and typed copy. Doctor couldn't remember date.

In the
Supreme Court

No.19

Counsels
Addresses

(a) Sanghani
for
Plaintiffs

- continued

10 Ex.7. 19.9.57 written first 8 written
over 9. Scoring out. Certificate obtained
after execution. Ex.7 the original and reli-
able Certificate. Obtained in anticipation
that Doctor might be asked to witness the deed.
See erasure on Ex.7. Grave suspicion about
bona fides of transaction. Evidence manufac-
tured to shift transfer. Doctor's explanation
about date. A busy man, writes date on scores
of prescriptions. Doctor says Ex.7 given in
20 evening. Defendant 1 says Ex.7 with her be-
fore deed executed. P.11. Murshed came at
noon 19th. She says she asked for certificate
herself.

No consideration proved.

Plaintiff has discharged his onus. Onus shifts. No payment before Registrar.

Horrocks

(b) Horrocks
for
Defendants

30 Formally tender evidence of Dr. Ahmed on
commission and ask for its inclusion in record.
Plaintiffs probably disappointed.

40 1. Until Deceased's death neither Plaintiff
nor Defendants were heirs. They had no legal
rights to deceased's estate. Deceased had
full legal right by gift or transfer for consid-
eration to dispose of all or any of his estate.
This is my understanding of Mohamed law. May-
be Prophet said it was a sin to defeat heirs.
Authorities leave no doubt Muslem is able to
dispose inter vivos of his property. Every-
thing he spends in life lessens heir's estate.
Relatives no rights during life.

In the
Supreme Court

No.19

Counsels
Addresses

(b) Horrocks
for
Defendants

- continued

Cohen's case no proper application here.
There was there a Creditor with rights. Agree-
ment to transfer was void as unlawful with
intent to defraud creditors.

Principle is unlawfulness of contract at
time when it is entered into.

2. No laches alleged. Defendants say why
didn't Plaintiff directly speak to Deceased in
his lifetime.

3. Mulla Principles of Muhammadan Law 14th Edition SS.51-54. P.P.44-45. 10

4. Deceased free to gift the property.
Equally free to sell. Deceased free to trans-
fer property with express intent that potential
heir may not succeed.

Element of conspiracy may afford a ground
of challenge even though act lawful if to harm
another.

Proof needed that at time of agreement it
was agreed to harm Plaintiff. 20

5. In form sale for consideration but essen-
tially a transfer. Evidence of deceased hav-
ing consulted an elder about such transfer.
Some months before died. Tends to negativè
suggestion of undue influence. He discussed
it with a friend.

After transfer Deceased referred to it to
Haithan without expressing any regret. Free
voluntary intention to transfer to virtually
adopted daughter. Natural deceased should have
her much in mind. Relatives not on speaking
terms etc. 30

Doubt if evidence supports suggestion that
deceased was susceptible to undue influence.

Doctor "can't say".

Plaintiffs evidence about bed ridden exag-
gerated. Doctor denies it.

Certificate Evidence of Kulsum not reconciled

with that of Doctor. Doctors explanation reasonable. In view of Doctors evidence as to physical and mental evidence Plaintiff has tried to mislead Court.

In the
Supreme Court

No.19

Deceased likely to wish to benefit the girl.

Counsels
Addresses

No evidence to show undue influence in fact exerted. Deceased clearly wished to benefit Kulsum.

(b) Horrocks
for
Defendants

10 Money

- continued

I didn't call all witnesses present at payment. Multiplying witnesses not beneficial. Hazra paralysed. Story Unusual. Deceased may have been given bad advice. 3000/- from brothers not unlikely. 2000/- not essentially unlikely for jewellery. Hazra holds household purse. Kulsum illiterate. Received presents from family. Living free for years. Evidence of notes being handed over.

20 Monies S.92 Indian Evidence Act.
S.100 Aden Evidence Ordinance.

Even if held that 25,000/- did not pass Court can hold transfer made out of natural love and affection.

Sanghani

Consideration pleaded 25,000/-. Not love and affection.

Horrocks

30 49 Cal 161. Two types of gift at 164. Plaintiffs have no better right than deceased would have had. Deceased could not evade transfer (save undue influence) nor can Plaintiffs.

59 Cal. 1932 P.1111 et P.1115.

Room for inferring transfer out of natural love and affection. No failure for lack of consideration. May be treated as a gift.

In the
Supreme Court

No.19

Counsels
Addresses

(b) Horrocks
for
Defendants

- continued

Tr. Pr. Ord. expressly preserves Moh'd law of gifts in Part 6 S.126.

Delivery such as case permits. Donor not obliged to get out.

If agreement due undue influence. Deceased could set aside. Heirs likewise. Evidence negatives this. Ahmed Abdul Rehman at P.7 typescript).

Ingredients of undue influence. No evidence that Kulsum could dominate will of deceased. Evidence that she was dutiful daughter. Further evidence is required that domination was used. Mere benefit not enough to cause inference.

10

What is unconscionable here?

Plaintiff says if given no challenge. Why then is inadequacy of consideration ground for challenge. Nothing in circumstances here shifts burden. Deceased an elder of community.

S.62(a) T.P. Ordinance Analagous to Sheriah.

S.53 T.P. Ordinance Policy of law to uphold contracts including debts. At date of transaction Plaintiffs had no right. No law to protect presumptive inchoate rights.

20

Plaintiff puts it that wife managed deceased's affairs and therefore secured benefit by securing benefit for Defendant 1.

Deed "Before the Registrar"

Not uncommon for whole to be done before Registrar. Not professionally drafted. Not important.

30

Certificate wise precaution in circumstances. It was sought deliberately to deal with any attempt to challenge transfer on grounds of ill feeling.

Typed certificate made out following day. No doubt as to date.

Sanghani

Mulla's illustration says heirs have right to set aside on undue influence. Suggest any other right likewise. e.g. want of consideration, unlawful object etc. First contract and then transfer.

In the
Supreme Court

No.19

Counsels
Addresses

(b) Horrocks
for
Defendants

10

Gift not pleaded Court can't be asked to hold transfer was a gift. I said Deceased had right to gift away in his lifetime. Moslem has considerable restriction on his property in life. Not more than one-third in apprehension of death. Even this one-third cannot be to an heir without consent of other heirs.

- continued

Possession must be given to donee, i.e. such possession as property is capable of. Was possession given here? No evidence.

Was deceased under apprehension of death? Previous night he had a serious attack.

20

Two set of gifts - one for love not heba al awaz - it is simple gift.

Distinction important in view of power to revoke.

Evidence does not show valid gift under Muslim law made.

No.20
JUDGMENT

No.20
Judgment
30th November
1960.

IN THE SUPREME COURT OF THE COLONY OF ADEN
CIVIL SUIT NO. 852 OF 1959

30

ZAINAB BINT ABDULLA GULAB &
ANOTHER ... PLAINTIFFS
VERSUS
KULSUM BINT ABDUL KHALEQ &
ANOTHER ... DEFENDANTS

J U D G M E N T

This action concerns the transfer of a

In the
Supreme Court

No.20

Judgment

30th November
1960

- continued

house No.159/49 situated at Section E Street 3, Crater. This house was the property of Ismail Abdulla Gulab (deceased) and it was transferred by him to Kulsum bint Abdul Khaleq (Defendant 1) by a deed of sale dated 19th August, 1957.

Ismail Abdulla Gulab (whom I shall call Ismail) died on 10th August, 1959. The two Plaintiffs and Defendant 2 Hajra bint Abdulla are heirs of Ismail. Defendant 1, Kulsum bint Abdul Khaleq is not an heir of Ismail. She is the sister of Hajra (Defendant 2).

10

The Plaintiffs claim that the alleged sale was bogus and attack the validity of the transfer to Kulsum (Defendant 1) on these grounds. Firstly Plaintiffs allege that no consideration passed; secondly that the transfer was made with intent to defraud the heirs of their inheritance and thirdly they allege that the two Defendants conspired to deprive the Plaintiffs of their lawful inheritance and prevailed upon Ismail to execute the transfer while he was bodily and mentally infirm.

20

The Plaintiffs concede that Ismail could have validly transferred the suit property as a gift inter vivos but the Defendants have not pleaded that the transfer was by way of gift and the Defendants must therefore abide by their elected defence which is that there was a bona fide sale for Shs. 25,000/-

The Defence is that the suit property was validly purchased by Kulsum for Shs. 25,000/-, that no influence was brought to bear upon Ismail and that the sale was good and lawful.

30

The following issues are agreed between the parties -

1. Was the conveyance made without consideration?
2. Was the conveyance made with intent to deprive the heirs of the Deceased of their inheritance?
3. Did the two Defendants prevail upon the Decd. and obtain execution of the conveyance by undue influence?

40

4. To what relief if any, are the Plaintiffs entitled?

In the
Supreme Court

No.20

Judgment

30th November
1960

- continued

10 It is clear that Kulsum lived with Ismail from a very early age and that Ismail treated her as a daughter. The evidence of Doctor Mohamed Ahmed who attended Ismail for 10 years prior to his death is that Ismail suffered from heart trouble of long standing and from eye trouble. I am satisfied from the evidence of the Doctor and other witnesses that Ismail was mentally sound in August 1957. I do not find evidence to support the view that he was mentally infirm at any time until 4 days before his death. In August, 1957 Ismail was blind in one eye and was able to see with the other eye with the aid of spectacles. He was able to walk. I am satisfied that when he transferred the suit property to Kulsum, Ismail was not in immediate fear of expectation of death. 20 I am fortified in this view by the fact that in March 1959 when Ismail had a malignant growth upon his mouth and was in fact within 5 months of death he arranged to transfer his taxi licence into the name of his wife Hajra in order to make provision for her after his death. Ismail took no such steps in August 1957 and the evidence does not show that there was any alteration in Ismail's feelings towards his wife between August 1957 and his death. 30

With regard to the first issue which concerns the consideration for the sale the Plaintiffs say firstly that no money was found after Ismail's death. They say that it is incumbent upon the Defendants to account for the Shs. 25,000/-.

40 The market value of the house is about Shs.50,000/-. This is not challenged by Defendants. The Registrar of Documents does not recall any payment being made before him nor does he recall asking Ismail whether he had in fact received the purchase price.

Plaintiff 1 Zainab bint Abdulla Gulab states that she has known Kulsum since childhood and that Kulsum had no money.

In the
Supreme Court

No.20

Judgment

30th November
1960

- continued

Zainab's husband Ahmed Abdul Rahman states that he also knows that Kulsum had no means and that her brothers are all persons of small means.

The Plaintiffs also called Suleman Ahmed who is the Sirdar of the Jamad or meeting of Hindustani elders to which Ismail belonged. This witness impressed me as telling the truth. He states that about 3 years ago Ismail asked him to assist in transferring the house to the name of Kulsum during his lifetime. Ismail wished to give the house. There was no mention of sale.

10

The evidence for the Defendants on this point is firstly that of Kulsum, who states that she raised the Shs.25,000/- by taking her life-savings of Shs. 15,000/- which were held for her by Hajra, and by selling her own jewellery which realised Shs. 2,000/-, a gift of Shs.3,000/- from her 6 brothers jointly and a loan of Shs. 5,000/- from Hajra.

20

She states that Ismail required this money to pay off debts. She did not know the name of any of his creditors nor did she offer any explanation as to why Ismail did not ask Hajra for the money. Kulsum said that Hajra kept her savings and that she did not know how much of her money Hajra held. She says that Hajra gave her clothes and money and that her brothers used to contribute a few shillings per month to her. She does not know which relatives bought her jewellery.

30

She called two persons who claim to have been present when payment was made to Ismail. The first was her brother Hassan Abdul Khaleq and the second was Abdulla Salim Sheer Ali.

Having considered the evidence with regard to the first issue I have come to the conclusion that the balance of probabilities is strongly against a woman of Kulsum's status being able to raise Shs. 25,000/- in the manner she has described. Furthermore having seen Kulsum, Hassan Abdul Khaliq and Abdulla Salim in the witness box I did not form the impression that their evidence with regard to payment was truthful.

40

My finding on the first issue is that no

financial consideration was given by Kulsum for the transfer of the property.

In the
Supreme Court

No.20

Judgment

30th November
1960

- continued

10 The second issue is whether or not the transfer was made with intent to deprive the heirs of Ismail of their inheritance. I find that Ismail transferred the property to Kulsum intending her to have it and keep it. To this extent it can be said that the intent was to deprive the heirs of their inheritance. It appears however that there is nothing unlawful in that intent.

Syed Ameer Ali in his book MAHOMMEDAN LAW makes the following observation about the powers of a Muslim in disposing of his property -

20 "The owner for the time being has absolute dominion over all property in his possession, whether he has acquired it himself, or whether it has devolved upon him by inheritance. He can sell or dispose of it in any way he likes, provided operation is given to it during his lifetime. It is only with regard to dispositions intended to take effect after the donor's death or made in extremis that his power of disposition is limited by the rights of his heirs."

Vol. ii 3rd Edition at page 38)

30 With regard to the third issue I find having carefully considered all the evidence that the Defendants did not cause Ismail to make the transfer by undue influence. Ismail discussed the matter with Suleman Ahmed the Sirdar of the Jamad who is a respected member of his community. I consider that Ismail had good reason to make the transfer out of affection and gratitude for the care given to him by Kulsum.

The last issue is concerned with the remedies, if any available to the Plaintiff.

40 On the facts as I have found them the position is briefly that Ismail during his lifetime sought to transfer the suit property to Kulsum out of natural affection and gratitude. For reasons which are not clear he purported to do

In the
Supreme Court

No.20

Judgment

30th November
1960 -

continued

this by means of a sham sale for Shs.25,000/- . No consideration in fact passed from Kulsum for this sale. Ismail and Kulsum continued to reside in the suit property with Hajra (Defendant 2) until Ismail's death. Kulsum has not pleaded that the transfer was a gift and under Cross-examination she has expressly denied on oath that it was a gift.

I find that property in the house has passed to Kulsum even though she has not paid money for it. The transfer was effected by a registered document signed by the donor and attested by two witnesses.

10

For these reasons this suit is dismissed with costs to Defendant.

J.A.C.W. GILLETE
Additional Judge to the Supreme
Court.

30.11.1960.

In the Court
of Appeal for
Eastern Africa

No.21

Notice and
Grounds of
Appeal.

22nd March 1961

No.21

NOTICE AND GROUNDS OF APPEAL

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN
AFRICA AT NAIROBI

CIVIL APPEAL NO.34 OF 1961

BETWEEN:

Zainab bint Abdulla Gulab & Anr. Appellants

AND

Kulsum bint Abdul Khaleq & Anr. Respondents

MEMORANDUM OF APPEAL

(i) Zainab bint Abdulla Gulab and (ii) Mohamed Ishack Gulab the Appellants abovenamed appeal against the aforesaid decision on the following grounds namely :-

30

1. The Learned Judge erred in Law, in not

decreeing the Plaintiff's claim, on his finding that the sale transaction in issue was without consideration and therefore it was sham and void in point of law.

In the Court
of Appeal for
Eastern Africa

No.21

Notice and
Grounds of
Appeal

22nd March 1961-

continued

2. The Learned Judge erred in law in holding that the property had passed to the Respondents, because under a sham and/or void contract no transfer of interest or property takes place.

10 3. The Learned Judge erred in law in deciding the issue relating the fraudulent intention of the deceased Ismail Abdulla Gulab, and ought to have held in law and fact that the intention of the deceased to deprive the lawful heirs of their rightful inheritance.

4. The Learned Judge erred in law in not considering the evidence relating to the serious heart attack on the night previous to the preparation of the suit Deed of Sale.

20 5. The subject matter of the appeal is valued at Shs. 25,000/- for purposes of jurisdiction and court fees, and is brought within the prescribed period of limitation.

The Appellants therefore pray:

- (i) That this appeal be allowed with costs.
 (ii) That the Judgment and Decree of the Supreme Court be set aside AND the Appellants' claim be decreed as prayed.
 30 (iii) That the Appellants be given such other and further relief as the Appellants be entitled in law and equity.

To,

The Hon'ble the Judges of Her Majesty's Court of Appeal, Nairobi.

And to,

S.N.Iyer Esqre.,
Advocate for Respondents.

The Address of the Appellants for service is:-

40 C/o. P. K. Sanghani,
Advocate,
Aden.

FILED this 22nd day of March, 1961, at Aden.

In the Court
of Appeal for
Eastern Africa

No.22
NOTES TAKEN BY THE HON.PRESIDENT
SIR KENNETH O'CONNOR

No.22
Notes taken by
the Hon.
President
(Sir Kenneth
O'Connor)
20th June 1961

IN HER MAJESTY'S COURT OF APPEAL FOR
EASTERN AFRICA
AT NAIROBI

CIVIL APPEAL NO.34 OF 1961

BETWEEN

(1) ZAINAB BINT ABDULLA GULAB)
(2) MOHAMED ISHACK GULAB) APPELLANTS 10

and

(1) KULSUM BINT ABDUL KHALEK)
(2) HAJRA BINT ABDULLA) RESPONDENTS

NOTES TAKEN BY THE HON. THE PRESIDENT - SIR
KENNETH O'CONNOR.

20.6.61. Coram: O'Connor, P.
Crawshaw, J.A.
Newbold, J.A.

Sanghani for Appellants.
Iyer for Respondents. 20

Sanghani opens:

Facts set out in judgment.

p.41. Issues.

Issue 1. Judge found that no consideration passed for the suit transaction which was a sale by deceased to Respondent, Kulsum.

It is possible to set aside the sale on success of any of these 3 issues 1 to 3.

Issue 1 decided in favour of the Plaintiff: Cross-appeal. The finding of the learned judge on the first issue is not challenged in the cross-appeal. 30

P.43 line 29. "No financial consideration given by Kulsum."

p.44.

Conclusions on law erroneous. In Aden the mere fact that the transfer was effected by a registered deed did not convey the title to the transferee.

(1869) 2 B.L.R.120 (P.C.)
Kali Prasad v. Raja Saheb Prahlad, 12
Moore's I.A. 282.

Mulla Contract 8th. p.211(g)
p.205.

p.211. "solemnity of a deed" not applicable in India.

s.55. Aden Transfer of Property Ordinance, Vol.III (Cap.154). There cannot be a "sale" for natural love and affection.

If this was a sale - there was no price paid and therefore no sale. It was a sham sale and a sham sale does not pass title.

Gift not pleaded.

Evidence of a gift could not be given as it would contradict the document.

The question of gift cannot be considered. Incidents of gift under Mohammedan law.

A gift of above one-third of Testator's property and made as a donatio mortis causa.

If a gift had been pleaded evidence might have been called to show that this was a mortis causa.

Another restriction on the gift is that possession must have been given to the donee.

To Court:

The onus was not on the Plaintiff to show that the property had not gone from the estate of Ismail either by sale or gift.

Submit:

(1) Where a consideration is expressed in

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Eastern Africa

No.22

Notes taken by
the Hon.
President
(Sir Kenneth
O'Connor)

20th June 1961

continued

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Notes taken by
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continued

writing neither the parties nor the Court can go outside this.

Transferee not a blood relative. Kulsum was a sister of the deceased's wife and had been brought up by him.

(2) Where a matter is not pleaded, the parties should not be allowed to go beyond the pleadings.

The judge has not found that it was a gift to hold so would be against the testimony of the transferee.

10

This property was worth 60,000 and out of natural love and affection he might have transferred it as an undervalue.

Suppl.Rec. p.3, line 13.

Last paragraph of judgment does not give any reasons for the court's conclusion that the property passed to the defendants.

Consideration:

Tatia v. Babaji. 22 Bom. 176, N.S.p.699. p.179 end.

20

"No consideration paid or promised, no sale".

Mulla's Contract. p.210.

Manna Lal v. Bank of Bengal (1876) 1 All.309. Title does not pass.

Crawshaw: S.56(d)(ii) Transfer of Property Ordinance p.2937.

If I have agreed to sell my property, the property passes when a transfer is signed, but the property remains subject to a charge for the purchase price.

30

Kali Prasad's case. 12 Moore I.A.282. 20 E.R. p.356.

To Court: I have no greater rights than the deceased had to set aside the deed.

Transfer of Property Ordinance, s.6(1)
(2)(i).

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Ground 3 of the Memo.

No.22

The judge found that the intention was to deprive the heirs.

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Section 25 Contract Ordinance (Cap.30)
p.368 "law" includes personal law.

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continued

10 The personal law of the parties is the Mohammedan Law. The prophet forbids depriving heirs of their inheritance.

I do not dispute the deceased had an absolute right to dispose of his property inter vivos provided he did in proper form.

p.43. If the object of the transaction was to deprive the heirs of their lawful inheritance, the transaction is void (Transfer of Property Ordinance, s.6(2)(i) read with s.25 of the Contract Ordinance).

20 The deceased was in extremis when he made the disposition and he had therefore no right of free disposition.

Finding of the judge on that point was incorrect.

Ground 4.

Evidence p.26 line 20.

That evidence has not been considered by the judge. He might have thought himself to be in extremis.

30 Cross-Appeal. I await what Iyer may say. I say he was not legally competent being in extremis. I do not mean that he was insane, but his mentality was weak.

Court p.35. Doubt as to genuineness.

Iyer:

(1) Sanghani was asked if consideration

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failed would document be valid. I think that he answered "Yes". If so, Sanghani has no leg to stand on.

(2) Sanghani agreed he only had the same right as the deceased. How could the Plaintiff come to Court.

The deceased was a Muslim who conveyed document which purported to be a sale, but which says that the property is conveyed and possession given.

Mulla. Mohamedan Law 14th edn. pp.134, 5.

Deceased conveyed the property to the first Defendant. He gave it so inter vivos. This is not a testamentary disposition. On that date the Plaintiffs had no right. Though rights would start after his death.

Sanghani's references were to contracts not to conveyances.

p.33. 34. Sale Deed.

The property has been conveyed and possession has been given. That continued till the death of the deceased two years later - on the 10/8/59 - without question.

The title passed and the document was not void.

Registrar of Documents -

Even if the consideration failed the property passed. The deceased has died after two years. He had accepted that the property had passed after two years.

The deceased could not sue to set aside the conveyance after total failure of consideration.

p.13. Issues.

p.44 line 23.

Court has made a finding of fact that natural love and affection was the consideration.

Adjourned to 2.15.

10

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On resumption: Bench and Bar as before.

Iyer continues:

The conveyance is not void even if there is no consideration.

Judge has held as a fact that the deceased was compos mentis and that no undue influence was exercised.

Plaintiffs are only entitled to any property remaining at deceased's death.

10

p.18. p.24.

Equity looks to intent rather than form. Respondents concede that the deceased could do this but they object to form only.

Mulla. Muslim Law. Art.50.

A declaration in a deed of gift that possession has been given binds the heirs of the donor.

Subsequent conduct of Plaintiffs.

p.13, line 31.

20

p.14.
c.f. husband p.16, line 32.

p.17.
p.18. He knew of the transfer in 1957.

p.4, para.7.

S.55. Transfer of Property Act.
Does not say that if consideration has not passed the document is void.

30

S.56(d)2. Ownership of property can pass to a buyer before payment of the whole of the purchase money.

S.53. Fraudulent transfer. Confined to creditors.

S.126. Saving on Mohammedan Law in regard to gifts.

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Intention of deceased must be given effect
to - utres magis valeat.

Odgers. Construction of Deeds. 3rd edn.
p.26.

A.I.R. (1915) 102.
Balaprasad v. Asmabi (1954) Nag.328.
Sirajuddin Haldar 49 Cal.161.

A gift which has not proved to be a gift
for consideration may be treated as a simple
gift.

10

Not necessary to plead the effect of the
document which is itself before the court.

s.25. Contract Ordinance. This refers to
an agreement in a transfer.

Mulla Contract Act, p.211

At his writing and registration with motive
of natural love and affection - adopted daughter
is "nearly related".

p.210. Tatia's case was decided before the
Transfer of Property Act was enacted.

20

But this is not a contract.

Transfer of Property Ordinance, s.6(1).
No application.

Submit: This is a case where the title has
passed to the Defendant even if there was no
consideration except natural love and affection.
Appeal should be dismissed.

Cross-Appeal.

In effect the judge did hold this.

p.44, line 36.

30

It is binding on the Plaintiffs. He could
exclude the heirs.

Sanghani in reply:

p.13, line 10.

It was not pleaded nor is it one of the
Issues that this was a gift.

Chitaley 5th, Civil Procedure. O.6, r.2, note 9. p.1698, 9. Lord Westbury on pleadings "involved in the pleadings".

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Passing of the property. The Contract Act is supplemental to the Transfer of Property Act. Every transfer is preceded by a contract.

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continued

Transfer of Property Ordinance, s.4.

10 Accordingly it was not necessary for the legislation to repeat that any transfer without consideration (except a gift) is void.

Tatia v. Babaji (1896) 22 Bom.176. Farrant C.J.

This was a sham sale and no title passed.

Sirajuddin Haldar, 49 Cal.161. That was a case in which a deed of gift was sought to be set aside. This is a deed of sale.

Also in that case the Plaintiff referred to a simple hiba in the pleadings.

20 "Hiba" involves a number of questions of fact on which evidence should be called.

In this case the Plaintiff must stand or fall by a deed of sale.

Subsequent conduct. There was no cause of action.

Laches by itself is not a ground. Plaintiffs are seeking a legal remedy.

Defendant No.2 joined as a formal party and she has supported the 2nd Defendant. Joint defence.

30 Iyer:

Plaint paragraph 9. The Defendant 2 is charged with a conspiracy. Not a formal party.

C.A.V.

K.K. O'CONNOR.

20.6.61.

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NOTES TAKEN BY THE HON. JUSTICE OF APPEAL
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No.23

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Crawshaw).

20th June 1961

IN HER MAJESTY'S COURT OF APPEAL FOR

EASTERN AFRICA

AT NAIROBI

CIVIL APPEAL NO.34 OF 1961

BETWEEN

1. ZAINAB BINT ABDULLA GULAB		
2. MOHAMED ISHACK GULAB	APPELLANTS	10
AND		
1. KULSUM BINT ABDUL KHALEK		
2. HAJRA BINT ABDULLA	RESPONDENTS	

NOTES TAKEN BY THE HON. JUSTICE OF APPEAL
(E.D.W. CRAWSHAW)

20.6.61. CORAM: O'CONNOR P.
CRAWSHAW J.A.
NEWBOLD J.A.

Sanghani for Appellants
Iyer for Respondents 20

SANGHANI opens

Facts are set out in judgment.

41 - Issues

Issue 1 - 43/29. Judge found in favour
of appellants, - no consider-
ation. Submits if appellants
successful on any of the first
three issues, they should be
entitled to conveyance being
set aside. 30

Finding of judge on 1st issue
was challenged in cross-appeal.

44/25 seq. Submits judge erred in law. A registered deed did not convey the property to transferee.

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No.23

Khali Prasad v. Raja Saheb Prah-
lad (1869) 2 B.L.R.(P.C.) 120
(Bombay L.R.) 12 M.I.A. 282
(Moore's Indian Appeals)

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continued

10

Above case not available in Aden or in this court, although reported in both above reports. MULLA ON CONTRACT 8th Edn. 211 refers to case, note (J). See also p.205, note (f).

Submits a mere formal deed does not transfer in absence of consideration.

20

S.55(1) - cap.154 Aden Laws. Love and affection in this definition is not consideration.

Submits instant case was alleged sale, and there being no consideration, or promise, no title passed.

"Gift" not pleaded and not in cross-appeal, and not in deed itself.

30

Does not on the other hand say that there was a contract - submits no contract, and transferee not under obligation to pay anything.

(See para.7 of Plaint. Is not this very much what the judge found on p.44/25.)

40

44/10

This is the only property left by deceased, and he could not dispose of more than one third. If "gift" had been pleaded, evidence would have been called by appellants. It shows that it was intended to take effect after death.

In the Court
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Notes taken
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continued

Not necessary for appellants to show how in any circumstances the conveyance was invoked.

When consideration is expressed to be in writing, neither parties nor court are allowed to go beyond express writing.

So far as love and affection are concerned, the transferee was not a blood relation, but only wife's sister. 10

If matter not pleaded, court cannot come to finding on it; submits that in fact the judge did not find it was a gift.

Refers p.3 supplementary record, where Iyer asked it be held gift, if held no consideration - submits he could not properly ask this, and argues judge did not uphold it as a gift. 20

44/36 Judge gives no reasons for his conclusion.

Tatia v. Babaji I.L.R. 22 Bombay 176.

MULLA 210 - Manilal v. 1 Allahbad 309 (1876).

As to section 56(d)(ii), submits no promise in instant case.

Refers again Khali Prasad case, Vol.20 E.R. New series 356. 30

Intention of deceased immaterial if no consideration.

Do not say that appellants have any greater rights than deceased had. If he could not set deed aside, appellants could not, but submits deceased could.

Section 6(1) Transfer of Property Act. Cap.154 and Section 6(2)(i).

If contract void, then transfer under contract is void.

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continued

Ground 3

I have already dealt with 1 and 2. Section 25 Contract Act, cap.30 "forbidden by law" includes personal law.

10

Court must apply personal law; not a question of evidence.

Submits "unlawful" only in sense that transfer must be done properly. Refers 43/35 as to depriving heirs. If intention was to deprive heirs of lawful inheritance, Section 6(2)(i) cap.154 applies and transaction void.

Ground 4

20

Submits transfer made in extremis following a heart attack and therefore he had no right to deprive heirs. Challenge finding of judge - incorrect.

30

26/20. Deed executed on 19th and this evidence not considered by judge. Concedes this evidence in itself not evidence of in extremis, but he had been ill for a long time. (See Medical Certificate p.35 and evidence on page 20).

As to cross-appeal, submits not compos mentis or legally competent.

IYER

Under impression that Sanghani agreed in answer to Bench that if conveyance executed but consideration failed, the document was valid - he later contradicted this.

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continued

34. Essential part of deed is that it actually conveys title and "possession".

If deceased compos mentis and no fraud, submits deceased could not have got back the property.

Sanghani concedes that appellants had no greater rights than deceased.

14th Edn. MULLA ON MOHAMMEDAN LAW 134, 5 - power of disposal.

Any rights would be through deceased after his death on ground of fraud or undue influence. 10

Submits Sanghani's references are all to void contracts, and not to position where legal estate is property actionably conveyed. Title having passed; no question of document being void.

Registration of deeds and not of title in Aden.

For two years before his death, the deceased recognised the transaction and passing of title. 20

Deceased could not sue to set aside transfer on grounds of failure of consideration, because title passed. Submits this, if correct, is sufficient answer to whole appeal.

13. Issues - Disagrees with Sanghani that if 1st issue in affirmative, that disposes of the matter. 30

Adjournment to 2.15.

E.D.W.CRAWSHAW J.A.

ON RESUMPTION: BENCH & BAR AS BEFORE.

IYER continues:

Document speaks for itself. No evidence of undue influence. Court held it compos mentis.

Appellants only entitled to property left at time of deceased's death, and they are entitled to no rights deceased had not.

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continued

18/32. Appellants themselves produced evidence that deceased wanted to convey property during lifetime to avoid trouble.

10

Equity looks to intent rather than form

Appellants concede deceased had right to dispose of property but are looking to form to upset it.

14th Edn. MULLA ON MOHAMMEDAN LAW
p.139 - "Delivery of possession"
Art.150(4).

20

Agree it is not a deed of gift, but property in fact has passed and deed is binding on heirs. Appellants cannot question what he did in his lifetime. Evidence that he transferred it for natural love and affection.

13/31 Lived with deceased since a child
14/10 "I don't know how..."

16/32 Witness had heard of transfer, but
17/35 took no steps until after deceased's death two years later.

30

4. para. 7 of plaint. Appellants themselves submitted "gift".

para. 5 of plaint. No evidence of mental infirmity, and not so found.

Section 55/(i). Transfer of Property Act. cap.154. Does not say deed void if no consideration.

Section 56(1)(d)(ii) - passing of property recognised.

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No.23

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continued

Section 126 - excludes applicability
of this part to mortis causa and
Mohammedan Law.

3rd Edn. Odgers Construction of
Deeds, p.26.

Bala Prasad Asaram Charkha & Ors.
v. Asmabi w/o Fakruddin Bohri,
A.I.R. (1954) Nagpur 328 - citing
Privy Council case.

Odgers 834 - near bottom

10

I.L.R.49. Calcutta 161 Sirajuddin Haldar v.
Isab Haldar. "Hiba" has no con-
sideration, but just simple gift.
No consideration and deed treated
as plain gift.

Not necessary to plead effect of
document which is itself before
the court. Court can give effect
to intentions.

Section 25, cap.30, Contract Act.
Nothing unlawful, and anyway
question terms in actual convey-
ance and not "agreement" only.

20

MULLA ON CONTRACT, 211 - adopted
daughter is "nearly related" even
although not of same blood.

p.210. Conveyance different from
agreement. Anyway law of contract
not really relevant; it is the
Transfer of Property Act which
does.

30

The finding of love and affection
is not a finding of consideration,
but as showing deed of gift.

Section 6(2)(i) - submits no bear-
ing on this case.

Judge right in holding property had passed, and for apparent reason that it was gift for love and affection.

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CROSS-APPEAL

In effect, judge found as set out in cross-appeal, but did not specifically say deed was binding on appellants.

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continued

SANGHANI 13/10.

not a gift; a bogus sale.
Not pleaded gift.

5th Edn. Vol.2 Chitterley
C.P.C. O.6. rule 2q note 9.

Not open to defence to succeed on ground of gift as not pleaded.

30/37.

Contract Act is supplemental to Transfer of Property Act. Not necessary for the Ordinance to say that transfer without consideration void.

If no price, no sale.

Refers Tatia case again. Fictitious sale.

Ref.49, Col.161 - submits not relevant, as it related to deed of gift. "Hiba" was open in pleadings.

2nd Defendant was added, as she supported 1st Defendant's case - witness defence refers.

IYER

Refers to para.9 of plaint - 2nd Defendant alleged to have conspired.

SANGHANI

No action for damages for conspiracy.

Judgment reserved.

E.D.W.CRAWSHAW J.A.

20.6.61.

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No.24
NOTES TAKEN BY THE HON. JUSTICE OF APPEAL
(C.D.NEWBOLD)

No.24
Notes taken
by the Hon.
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Appeal (C.D.
Newbold)

IN HER MAJESTY'S COURT OF APPEAL
FOR EASTERN AFRICA
AT NAIROBI

CIVIL APPEAL No.34 of 1961.

20th June 1961

(1) Zainab Bint Abdulla Gulab)
(2) Mohamed Ishack Gulab) Appellants

And

10

(1) Kulsum Bint Abdul Khalek)
(2) Hajra Bint Abdulla) Respondents

NOTES TAKEN BY THE HON. JUSTICE OF
APPEAL III - MR.JUSTICE NEWBOLD

20.6.61 Coram: O'Connor P.
Crawshaw J.A.
Newbold J.A.

Sanghani for Appellants
Iyer for Respondents.

Sanghani opens:-

20

Facts in judgment. Points for decision
set out in issues at p.41.

On 1st issue finding in favour of Appell-
ants that no consideration passed.

Submit that if Appellants received finding
on any issue the sale should be set aside and
property considered as intestate property.

Finding in first issue not challenged on
cross appeal.

P.43 L.29 - finding that no consideration
given.

30

P.44 L.38 - finds that property passed and
this wrong in law. Fact that transfer regis-
tered did not convey property to Kulsum.

Mulla 1869 2 Bombay L.R. 120.

12 Moore's I.A. 282 - Kali Prasad v. Raja S. Prahlad.

Mulla's Contract 8th Ed. p.211(g) p.205.

Transfer of Property (Cap.154) Section 55 - Sale - no sale for natural love.

As this was only a sale, if no price paid no sale. Learned judge said it was a sham sale and this does not pass title.

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continued

10 Will not deal with question of gift as not pleaded and not in cross appeal.

Judge has not found gift.

Deceased had right to gift property but he did not do so - made a sham sale which is void.

Question of gift cannot be considered as it has certain factors under Mohamedan law e.g. - gift exceeding one-third of testator's property and in anticipation of death.

20 Finding that deceased not in anticipation of death challenged. If gift pleaded evidence would have been called on this point.

Also in gift the possession of property must have been delivered - even where there is registration.

Once a consideration expressed in writing no one may go beyond express writing.

Kulsum not a blood relation.

30 Once a matter not pleaded parties should not be allowed to go beyond pleading. Lord Westbury in Chitterly and Mulla.

Supplementary Record p.3.

Tatia v. Babaji 22 Bombay 176 (NS) 699 - no consideration - deed set aside.

Mulla's Contract p.210 - Manalal v. Bengal 1 All. 309.

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Kali Prasad's case p.356 20 ER. - no
consideration and transfer set aside.

I have no more right to set aside deed than
deceased had - if he could not set it aside I
cannot as Appellants claim through deceased.

Cap.154 Section 6(1) and (2)(i).

Ground 3 of Memorandum of Appeal - judge
held that intention to deprive heirs but not
unlawful or fraudulent.

I.C. Ordinance Section 25 Cap.30 - law 10
includes personal law.

Personal law of Mohamedans - court takes
notice of this - it is law of land.

Under that personal law he could gift pro-
perty if he did so in proper way and in proper
form.

P.43 line 33 - end.

If object was to deprive heirs, this tran-
saction read with Section 6(2)(i) of Transfer of
Property Ordinance and Section 25 of Contract 20
Ordinance is void.

Unlawful as deceased in fear of death and
this circumstance precludes a gift.

Ground 4 of Memorandum of Appeal - P.26
line 20 - this may show he was in fear of
death - he wants to make arrangements for them.

Cross-appeal - if in fear of death he was
not competent to gift more than one-third.
Doubt of genuineness of medical certificate at
p.35. 30

Ask appeal be allowed and cross appeal be
dismissed.

Iyer:

Sanghani said if consideration failed the
document nevertheless valid.

He also said he only had same rights as deceased.

Deceased Muslim - he conveys by document purporting to be sale but essential point is provision that property transferred and possession given.

If deceased of sound mind and no fraud or under influence then deceased has no right to set aside deed.

10 As muslim he could gift property inter vivos.

Mulla Mohamedan Law 14th Ed. - p.134 - 135 - a complete gift can be given inter vivos.

In this case the deceased conveyed property inter vivos. At time of execution Appellant had no rights - any rights arise only on death.

Document shows that property passed.

20 Cases referred to all refer to contracts - here we are concerned with documents which convey property.

Here property conveyed, possession given and position remains like that for 2 years.

Title having passed no question of document being void.

Registration of documents not of title.

If consideration not paid only has a claim for amount - in this case deceased died.

Could not sue to set aside transfer for failure of consideration.

30 Do not agree that if any issue found for Appellants be entitled to succeed.

P.44 line 23 - end.

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Adjourned to 2.15.

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On resumption: Bench and Bar as before.

Iyer continues:-

No.24
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continued

Assuming no consideration this transfer is not void.

Learned judge held deceased compos mentis.

Appellants only entitled to property vested in deceased at time of death. Appellants cannot get anything more than what deceased held.

P.18 line 32 - deceased wished Kulsum to have house.

10

Intention rather than form is the important thing. Appellants object to form only as they concede a gift could have been made.

Mulla on Muslim Law p.139 - delivery of possession binding. Cases referred to.

P.13 line 31, P.14 lines 1-12, 29-31.

P.16 lines 32-40 P.17 lines 31-45. p.18 lines 1-3.

Plaint paragraph 7 - gift pleaded.

Several allegations, e.g. under influence, fraud, conspiracy, etc. pleaded but no evidence to support allegations.

20

Cap.154 Section 53 - does not say if consideration not passed document void.

Section 56(d)(ii) - charge.

Section 53 - fraudulent transfers

Section 126 - Mohamedan law for gifts only preserved.

Intention of deceased must secure effect.

Odgers Construction of Statutes 3rd Ed.
p.26 - law anxious to save deed.

30

A.I.R. 1954 Nagpur 328 - Belaprasad's case.

Odgers p.134 about 4 lines from bottom.

49 Calcutta p.161 - Sirajuddin's case -
gift for consideration - transaction could be
regarded as simple gift.

Not necessary to plead it is a gift -
court can give effect to intention of parties
in a document which is before the court.

Kulsum was adopted into family.

Mulla Contract p.211.

10 Section 6 of Cap.154 has no bearing on this
case.

Submit title passed to Respondents even if
no consideration - judge correct. Nothing to
show that transaction void.

Cross-appeal.

P.44 line 36 - This is in effect what
cross appeal asks for.

Ask dismiss appeal.

Sanghani:

20 P.2 line 10 - gift not pleaded.

2 Chitterley 5th Ed. V. 6 R.29 note 9.

I never pleaded gift - I pleaded sham
sale - paragraph 7 does not plead gift.

Contract Ordinance supplemental to Trans-
fer Ordinance.

Cap.154 Section 4 - other than gift a
transfer without consideration is void.

Sham sale can always be challenged.

Tatia's case.

30 If sham sale no property passes - finding
of court that a sham sale.

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continued

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Do not agree with Mulla Transfer 4th Ed.
at p.284.

No.24

Notes taken
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Newbold)

20th June 1961
continued

Sirajuddin's case - this was a deed of gift
but present case is sale. In that case there
was the question of a gift or a gift for consid-
eration, but in either case a gift. Here it is
a gift or a sale.

I joined 2nd Defendant only formally -
she supported 1st Defendant.

Iyer:

Paragraph 9 of Plaintiff - 2nd Defendant con-
spired to obtain fraudulent conveyance.

C.A.V.

C.D.Newbold.

20.6.61.

10

No.25

Judgment of
the Hon.
President.

19th July 1961

No.25

JUDGMENT OF THE HON.PRESIDENT

IN HER MAJESTY'S COURT OF APPEAL
FOR EASTERN AFRICA AT NAIROBI

CIVIL APPEAL NO.34 OF 1961

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BETWEEN

1. Zainab Bint Abdulla Gulab
2. Mohamed Ishack Gulab Appellants

AND

1. Kulsum Bint Abdul Khaleq
2. Hajra Bint Abdulla Respondents

(Appeal from the judgment and decree of the
Supreme Court of Aden (Mr.Justice Gillete) dated
30th November, 1960, given at Aden in

Civil Suit No.852 of 1959

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BETWEEN

1. Zainab bint Abdulla Gulab
2. Mohamed Ishack Gulab Plaintiffs

and

1. Kulsum bint Abdul Khaleq
2. Hajra bint Abdulla Defendants

JUDGMENT OF O'CONNOR P.

This is an appeal from the Supreme Court of

Aden. The Appellants (Plaintiffs in the suit) and the second Respondent are the heirs according to the Mohamedan law of Ismail Abdulla Gulab (hereinafter referred to as "the deceased") who died at Aden on the 10th August, 1959. The deceased during his life-time owned a house in Aden. The second Respondent is the widow of the deceased and the First Respondent Kulsum is her sister. Kulsum is not an heir of the deceased; but was brought up from childhood by the deceased and lived with him and his wife (her sister) for about 25 years.

In the Court
of Appeal for
Eastern Africa

No.25

Judgment of
the Hon.
President.

19th July 1961

continued

On the 19th August, 1957, the deceased executed a document which purported to be a deed of sale of the house in Aden to Kulsum. The deed recited the deceased's ownership of the house and Kulsum's agreement to buy it for Shs. 25,000/- and witnessed that in pursuance of the said agreement and in consideration of the sum of Shs. 25,000/- paid by the buyer before the Sub-Registrar (the receipt of which was acknowledged) the deceased granted the house to Kulsum; and it was stated in the deed that the deceased thereby gave possession of the house to Kulsum and that she agreed to pay the quit rent and taxes of the premises. After the sale, which was registered on the 19th August, 1957, the deceased and his wife and Kulsum continued to live in the house theretofore.

The Appellants claimed that the alleged sale to Kulsum was a sham, that she never paid any money as consideration for the sale deed, that the deceased when he executed it was infirm in mind and body and that it was executed as a result of a fraudulent conspiracy between Kulsum and her sister to deprive the heirs of the deceased of their legal shares in his estate, and they claimed a declaration that the sale-deed was void, delivery of it up for cancellation, a declaration that the house was part of the estate of the deceased and costs. Paragraphs 7 of the plaint reads:-

"7. The Plaintiffs further submit that the deceased intended to transfer the suit property by way of gift to said Kulsum, but on being advised that such a transfer might be challenged as being without consideration, and intended to defeat the

In the Court
of Appeal for
Eastern Africa

No.25

Judgment of
the Hon.
President.

19th July 1961
continued

rights of the lawful heirs, he made an ostensible sale, wherein no consideration passed from the buyer to the seller. The alleged sale was much below the normal value of the suit-property."

The value of the house was said to be about Shs. 50,000/-.

The Respondents denied that the transaction was bogus or that the deceased was infirm and they denied the alleged conspiracy. They availed that Kulsum in fact paid Shs. 25,000/- for the house and denied that the deceased wanted to transfer by way of gift to her. 10

The Appellants filed a rejoinder in which they joined issue with the Respondents on their defence and maintained that the alleged sale was bogus.

The learned judge framed four issues as follows:-

1. Was the Conveyance made without consideration? 20
2. Was the Conveyance made with intent to deprive the heirs of the deceased of their inheritance?
3. Did the two Defendants prevail upon the deceased and obtained execution of the conveyance by undue influence?
4. To what relief if any, are the Plaintiffs entitled?"

He found that Kulsum had lived with the deceased from a very early age and that he treated her as a daughter. He found that the deceased had suffered from heart trouble of long standing and eye trouble; but that he was mentally sound in August 1957 and that when he transferred the house to Kulsum, he was in no immediate fear or expectation of death. A witness, one Suleman Ahmed who was the Sirdar of the Jamad, to which the deceased belonged impressed the learned judge as a truthful witness. He stated that about three years ago 30 40

when the deceased was sick, he wanted to settle about the house; the deceased had said that he wished to transfer the house into the name of the girl who was with him, he wanted the building transferred during his lifetime, so that after his death there might be no quarrel with his relatives: the deceased had said that the girl had looked after him and he wanted to transfer the house to her name: he had not said that he wished to sell the house.

In the Court
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Eastern Africa

No.25

Judgment of
the Hon.
President

19th July 1961

continued

The learned judge found on the first issue, that no financial consideration was given by Kulsum for the transfer of the property. On the second issue he found that the deceased had transferred the property to Kulsum intending her to have and keep it; but that there was nothing unlawful about that. He quoted authority for the proposition that a Mohamedan Owner has absolute dominion over property in his possession and can sell or dispose of it in any way he likes, provided operation is given to the disposition during his lifetime: It is only with regard to dispositions intended to take effect after the donor's death or made in extremis that his power of disposition is limited by the rights of the heirs. On the third issue the learned judge found that the Respondents did not cause the deceased to make the transfer by undue influence and that the deceased had good reason to make the transfer out of affection and gratitude for care given to him by Kulsum. The learned Chief Justice concluded his judgment as follows:-

"On the facts as I have found them the position is briefly that Ismail during his lifetime sought to transfer the suit-property to Kulsum out of natural affection and gratitude. For reason which are not clear he purported to do this by means of a sham sale for Shs.25,000/-. No consideration in fact passed from Kulsum for this sale. Ismail and Kulsum continued to reside in the suit-property with Hajra (Defendant 2) until Ismail's death. Kulsum has not pleaded that the transfer was a gift and under cross-examination she has expressly denied on oath that it was a gift.

In the Court
of Appeal for
Eastern Africa

No.25

Judgment of
the Hon.
President

19th July 1961
continued

I find that the property in the house has passed to Kulsum even though she has not paid money for it. The transfer was affected by a registered document signed by the donor and attested by two witnesses.

For these reasons this suit is dismissed with costs to Defendant."

Mr. Sanghani, for the Appellants, argued that the purported sale was without consideration and that in Aden a sale without consideration was void and would not pass the ownership of the property. He relied on Section 27 of the Contract Ordinance (Cap.30 of the Law of Aden) which is similar to Section 25 of the Indian Contract Act, although there is no one (sic) important difference, namely that whereas in India an agreement without consideration is (with certain exceptions) expressed to be void, in Aden it is expressed to be no (sic) enforceable at law. He conceded that the deceased could have made a valid gift of the property during his life-time; but contended that the Respondents could not be heard to allege that the transaction was a gift, as a gift had not been pleaded and the learned judge had not found that the transaction was a gift. And he said that even if the transaction was a gift, it was made while the deceased was in extremis following a severe heart attack and was, therefore, invalid.

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As already stated, the effect of Section 27 of the Contract Ordinance, upon which Mr. Sanghani relied, is that an agreement made without consideration is not enforceable at law except in specified circumstances, one of which is where the agreement is expressed in writing and registered under the law for the time being in force for the registration of documents and is made on account of natural love and affection between the parties standing in a near relation to each other. It has been held in Contract Act that a Muslim's wife's parents stand in near relation to her husband; Nisar Ahmed Khan v Rahmat Begum A.L.R. 1927 Oudh.146 cited in POLLOCK AND MULLA on the INDIAN CONTRACT ACT (8th Edn.) at P.204. It is clear, therefore, that the parties need not be blood

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relations in order to make this exception applicable. There seems to be considerable doubt whether Section 25 of the Indian Contract Act, which applies to agreements, would be applied in the Mufassal in India so as to avoid a completed transfer made without consideration (See Tatia v Babaji cited at P.210 of POLLOCK AND MULLA) In my opinion, Section 27 of the Aden Contract Ordinance would have no application to a completed transfer of property without consideration where no question of enforcing an agreement arose. But even if I am wrong on this, I think that the transaction in the present case might well be held to fall within the exception which I have mentioned. I find it unnecessary, however, to decide this point as I think that the transaction was valid as a gift by a Mohamedan made during his lifetime.

In the Court
of Appeal for
Eastern Africa

No.25

Judgment of
the Hon.
President

19th July 1961

continued

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Mr. Sanghani, as already stated, argued that the Appellants could not be heard to say that the transaction was a gift as they had not pleaded this and Kulsum had denied it, and he cited the well-known words of Lord Westbury in Eshenchunder Singh v Shamachurn Bhutto ii Moo. Ind. App.71/20 E.R.3 upon the necessity of a determination being founded upon a case either to be found in the pleadings or involved in or consistent with the case thereby, made. But the Plaintiffs themselves, in para. 7 of the plaint quoted, pleaded an ostensible sale without consideration which was in fact intended to transfer the suit property by way of gift. That was what the learned judge found to have occurred and it was entirely open to him to do so upon the Plaintiff's own pleading. The legal effect of that finding is a matter which it is open to us to determine. It is not correct, as Mr. Sanghani suggested, that a deed of sale cannot be treated as a deed of gift because the document recites a consideration which was not in fact given, and Section 100 of the Evidence Ordinance (Cap.58 of the Laws of Aden) corresponding to Section 92 of the Indian Evidence Act does not prevent evidence being adduced to show that no money was in fact paid: Serajuddin Halidar v Isab Halidar (1921) 49 Cal. 161, 165; and proviso (a) to Section 100(I) of the Evidence Ordinance.

In the Court
of Appeal for
Eastern Africa

No.25

Judgment of
the Hon.
President
19th July 1961
continued

In my opinion, the transaction which was pleaded in para.7 of the Plaint and which the learned judge found to have taken place constituted in law a gift of the suit property by the deceased, who was admittedly a Mohamedan, made during his lifetime, which would be valid under Mahomedan Law: MULLA'S PRICIPAES OF MAHOMEDA LAW (13th Edn.) P.134 Art.142. Where donor and donee both reside in the property, no physical departure or formal entry is necessary: Shaik Ibrahim v Shaik Suleman (1884) 9 Bom. 146. And a declaration in a deed of gift that possession has been made given binds the heirs of the donor MULLA P.139: Sheikh Muhammed Mumtaz Ahmed v Zudaida Jan (1889) 16 I.A.205. As already stated, the document in this case may be treated as a deed of gift. By Section 126 of the Transfer of Property Ordinance (Cap.154 of the Laws of Aden) nothing in Part VI of that Ordinance affects the rules of Mahomedan Law relating to gifts. The deceased when he made the gift to Kulsum was not in extremis, since he lived for a further two years, and I agree with the learned judge's finding that he was not then in immediate fear or expectation of death.

Mr. Sanghani relied also on Section 25 of the Contract Ordinance and said that the transaction was void as being unlawful, in that the intention was to deprive the heirs of their rights in the estate of the deceased. I see nothing unlawful in the Mahomedan Owner of Property disposing of that property by a gift made two years before his death and when he was not in extremis or in fear or expectation of imminent death, provided that there is a bona-fide intention to make a gift, an acceptance express or implied and a sufficient delivery of possession. I think that all these circumstances obtained here and that the transaction was not unlawful merely by reason of the fact that it purported to be effected by a sham deed of sale stated to be for a consideration which the donor well knew would not be

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paid and which was not paid. It would certainly not be unlawful merely because the disposition deprived the apparent heirs of their expectations. I agree also with the learned judge's finding that the Respondents did not cause Ismail to make the transfer by undue influence. I would dismiss the appeal with costs.

In the Court
of Appeal for
Eastern Africa

No.25

Judgment of
the H.C.
President

19th July 1961
continued

10 There was a cross appeal in the following terms;

"The lower Court, having held that the deceased Ismail Abdulla Gulab was (a) compos mentis (b) legally competent to dispose of his property inter vivos in any way he liked, ought further to have held that the transfer made in favour of the 1st Defendant was legally valid and effectual against the Plaintiffs even if the said transfer was accompanied by the intention to deprive the Plaintiffs of their rights of inheritance."

20

In my opinion, the finding which the cross-appeal averred that the learned judge ought to have made was the finding which he had made. This was an entirely unnecessary cross-appeal and I would strike it out. The cost of perusing it should be the Appellants. (It did not add anything appreciable to the hearing time); and no other costs of it (as opposed to the costs of the appeal) should be charged by the Respondents' advocate to his clients.

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Dated at Aden this 19th day of July 1961.

K. K. O'CONNOR
PRESIDENT.

In the Court
of Appeal for
Eastern Africa

No.26

JUDGMENT OF CRAWSHAW, J.A.

No.26

Judgment of
Crawshaw, J.A.
19th July 1961

IN HER MAJESTY'S COURT OF APPEAL

FOR EASTERN AFRICA

AT NAIROBI

(TITLE AS IN NO.25)

JUDGMENT OF CRAWSHAW J.A.

I agree and have nothing to add.

Dated at Aden this 19th day of July 1961.

E.D.W. CRAWSHAW

JUSTICE OF APPEAL.

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No.27

Judgment of
Newbold, J.A.
19th July 1961

No.27

JUDGMENT OF NEWBOLD, J.A.

IN HER MAJESTY'S COURT OF APPEAL

FOR EASTERN AFRICA

AT NAIROBI

(TITLE AS IN NO.25)

JUDGMENT OF NEWBOLD, J.A.

I also agree.

Dated at Aden this 19th day of July 1961.

C.D. NEWBOLD

JUSTICE OF APPEAL

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No.28
ORDER DISMISSING APPEAL

In the Court
of Appeal for
Eastern Africa

IN HER MAJESTY'S COURT OF APPEAL
FOR EASTERN AFRICA
AT NAIROBI

No.28

Order dismiss-
ing Appeal

CIVIL APPEAL NO.34 OF 1961

19th July 1961.

BETWEEN

ZAINAB BINT ABDULLA GULAB & ANR. Appellants

Versus

10 KULSUM BINT ABDUL KHALEQ & ANR. Respondents

IN COURT THIS 19TH DAY OF JULY, 1961.

Before the Honourable Sir Kenneth O'Connor,
President, the Honourable Mr. Justice Crawshaw,
and the Honourable Mr. Justice Newbold, Justices
of Appeal.

O R D E R

20 THIS APPEAL coming on for hearing in the
presence of and UPON HEARING P.K. Sanghani Esq.
Counsel for the Appellants and S.N. Iyer Esq.,
Counsel for the Respondents IT IS ORDERED that
(i) this appeal be dismissed with costs (ii)
the cross appeal be struck out (iii) the Re-
spondents do pay to the Appellants the cost of
perusing the cross appeal and (iv) no other
costs of the cross appeal (as opposed to the
costs of the appeal) be charged by the Respon-
dent's Advocate to his clients.

GIVEN UNDER MY HAND AND THE SEAL of the
Court at Aden, the 19th day of July, 1961.

30 sd/- V. D. TRIPATHI
DEPUTY REGISTRAR.

In the Court
of Appeal for
Eastern Africa

No.29
ORDER GRANTING FINAL LEAVE TO APPEAL
TO HER MAJESTY IN COUNCIL.

No.29

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN
AFRICA AT NAIROBI

Order granting
Final Leave to
Appeal to Her
Majesty in
Council

CIVIL APPLICATION NO.18 of 1961

(In the matter of an intended appeal to Her
Majesty in Council)

B E T W E E N

26th March 1962

1. Zainab bint Abdulla Gulab Appellants 10
2. Mohamed Issack Gulab ... Applicants

AND

1. Kulsum bint Abdul Khalek
2. Hajra bint Abdulla ... Respondents

(An Appeal from the Judgment and Order of the
Court of Appeal for Eastern Africa at Nairobi
dated 19th day of July, 1961 in Civil Appeal
No.34 of 1961, BETWEEN

1. Zainab bint Abdulla Gulab
2. Mohamed Issack Gulab ... Appellants 20

AND

1. Kulsum bint Abdul Khalek
2. Hajra bint Abdulla ... Respondents)

O R D E R

UPON MOTION made unto this Court by Mr.P.K.
Sanghani, Advocate for the Appellants for Final
Leave to Appeal to Her Majesty-In-Council AND
UPON READING the Affidavit of Mr.P.K.Sanghani,
sworn on the 6th day of March, 1962, AND UPON
HEARING Mr.P.K.Sanghani, Advocate for the Ap-
pellants and Mr.S.N.Iyer, Advocate for the Re-
spondents, THIS COURT DOETH HEREBY give leave
to the Appellants to appeal to Her Majesty-In-
Council against the Judgment and Order dated the
19th day of July, 1961.

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GIVEN under my hand and the Seal of the
Court, at Aden this 26th day of March, 1962.

(Sgd) R.L. Le-Gallais

CHIEF JUSTICE
SUPREME COURT, ADEN As Judge of
Her Majesty's Court of Appeal for
Eastern Africa.

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E X H I B I T SPlaintiffs
ExhibitsEXHIBIT 1. - DEED OF SALE

No.1

Certified copy granted under Section 44
of the Registration Ordinance No.12 of
1938.

Deed of Sale
(Ismail Abdulla
Galab to Kulsum
Bint Abdul
Khaleq)

Serial No.465

GOVERNMENT OF ADEN19th August
1957

Presented at the
Office of the Sub-Regis-
trar of Aden between the
10 hours of 1 & 2 p.m. on
the 19th August, 1957.

Stamp Duty Ordinance
No.13. Duty paid Shs.
383-50. Receipt No.
7166. Date 17.8.1957.

L.T.I. of Kulsoom.
sd. A. A. Murshed.
Sub-Registrar of Aden.

sd. U. S. Shanoo
for Chief Accountant.
Aden Treasury.

X X X
X X X
X X X

20 Ismail Abdulla Gulab,
executing party-Indian-
Muslim, Camp Aden, ad-
mits execution and makes
his thumb print.

THIS INDENTURE made
this 19th day of August,
1957 between Ismail Ab-
dulla Gulab, Muslim,
Landlord, aged about 72
years, Indian, herein-
after called the Seller
of the one part, and
KULSAM BINT ABDUL
KHALEQ, ADULT INDIAN
LADY MUSLIM, AGED ABOUT
42 YEARS HEREINAFTER
CALLED THE BUYER OF THE
OTHER PART.

Thumb Impression
of Ismail Abdulla Gulab.

30 Ismail Abdul Rehman -
Indian Muslim - Trader.
Camp Aden & known to
the Sub-Registrar states
that he personally knows
the above executant &
identifies him.

WHEREAS the said
Seller is possessed of
PUCCA HOUSE or building
situate within the
Colony of Aden at SEC-
TION "E" STREET NO.3
REGISTERED UNDER GRANT
NO.2168, AND BEARING
ASSESSMENT NO.159/49,
159/49A, AND 159/49B,
and measuring 29'3" IN
FRONTAGE AND 36'8" IN
DEPTH AND BOUNDING ON
THE NORTH BY SEC. "E",
STREET NO.3 ON THE
SOUTH BY SWEEPER PASSAGE,
ON THE WEST BY STREET
NO.10, AND ON THE EAST
BY HOUSE NO.160/50.

sd/- Ismail Abdul
Rehman
Dated 19th August, 1957.
sd/- A.A.Murshed
Sub-Registrar, Aden.

40 REGISTERED NO.422 AT
PAGE 55 to - Volume No.
124 of BOOK NO.1.

sd/- A.A.Murshed,
Sub-Registrar, Aden.
dated 19.8.1957.

Plaintiffs
Exhibits

No.1

Deed of Sale
(Ismail Abdulla
Galab to Kulsum
Bint Abdul
Khaleq)

19th August
1957

continued

AND WHEREAS the said Seller HAS agreed with the said BUYER for the absolute sale to HER of the premises and hereditaments intended to be hereby assured at the price of Shs. (25,000/-) E.A. Shillings TWENTY FIVE THOUSAND ONLY.

NOW THIS INDENTURE witnesseth that in persuance of the said agreement and in consideration of the sum of Shs. 25,000/- (E.A.Shillings TWENTY FIVE THOUSAND ONLY) paid by the said Buyer before the Sub-Registrar (the receipt whereof the said Seller do hereby acknowledge and from the same DO hereby release the said Buyer HER heirs, executors, administrators, and assigns the said Seller DO hereby grant and confirm free of all incumbrances unto the said Buyer and HER heirs and assigns, all that plot of ground situate, as aforesaid together with buildings, yards, courts, drains, water-courses, lights, liberties, privileges, easements and appurtenances whatever to the said plot of ground belonging or in otherwise appertaining or usually occupied therewith or reputed to belong or to be appurtenant thereto. To have and to hold the said hereditaments and premises hereby assured or expressed so to do, subject as aforesaid, unto and to the use of the said Buyer HER heirs and assigns.

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The Seller hereby gives possession of the aforesaid property to the Buyer.

30

And the said Buyer Her heirs and assigns do hereby agree to pay all quit-rent and other taxes chargeable on the said premises.

IN WITNESS whereof the said seller hereunto set HIS hands the day, month and year first above written.

signed in the presence of:)

sd:- A. Salim

i.e. Abdulla Salim.

sd:- Hasson Abdul Khaleq

} Thumb Impression of
} ISMAIL ABDULLA GULAB

sd:- Ismail Abdul
Rehman.

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PREPARED BY:- Free of charge.

sd/- A. Abdul Rehman

COUSIN OF THE BUYER.

Copies by: X X X

TRUE-COPY

Compared by: X X X

sd. A.A.Murshed
Sub-Registrar of Documents,
Aden.

EXHIBIT 2
LETTER SANGHANI TO KULSUM BINT ABDUL
KHALEQ

Plaintiffs
Exhibits

No.2

From: P.K.Sanghani,
Advocate.

N/531/59

Kulsum bint Abdul Khaliq,
House No. 159/49, Sec.E,
Aden.

Letter
Sanghani to
Kulsum Bint
Abdul Khaleq

22nd October
1959

10 Dear Madam,

Re: ZAINAB BINT ABDULLA GULAB

Under instructions of my abovenamed client,
I give this notice as under:-

2. My client is one of the heirs of deceased
Ismail Abdulla Gulab who died at Aden on the
10th day of August, 1959. My client is the
sister of the deceased, and as such she is en-
titled to an inheritance in the estate of the
deceased.

20 3. My client all the time believed, and was
under the impression that the House No.159/49
wherein the deceased was his personal property.
Only after the death of the deceased, my client
was informed by you and others that you had
purchased the house.

30 4. My client was surprised at such informa-
tion, and on making further enquiries, she has
come to know that the alleged sale was in fact
a bogus and sham transaction, in which you and
your sister Hajra managed to get the convey-
ance from the deceased with a view to defeat
the rights of legal heirs. My client further
believes that no price was at all paid and
that it was a transaction without any consid-
eration and you obtained it while the deceased
was old and infirm in mind and body. On the
death of the deceased, no cash amount was found
in the estate of the deceased.

40 5. In the circumstances, in order to avoid
Court litigation, my client requests you that
you agree to have the sale declared void, and

Plaintiffs
Exhibits

No.2

Letter
Sanghani to
Kulsum Bint
Abdul Khaleq
22nd October
1959

continued

to transfer to the lawful heirs of the deceased.
Failing your compliance within 8 days from the
receipt hereof by you, my client would be
obliged to proceed legally holding you liable
for all costs and consequences.

Yours faithfully,

(sgd) P.K.SANGHANI
ADVOCATE.

Copy to:

Hajra bint Abdulla,
House No.159/49, Sec.E/3,
Crater, Aden.

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No.3

EXHIBIT 3.

Letter Iyer
to Sanghani
2nd November
1959

LETTER IYER TO SANGHANI

S.N.IYER
BARRISTER-AT-LAW

OPPOSITE GIRLS' SCHOOL,
NO.20 MAIDAN,
CRATER, ADEN.

ADVOCATE, HIGH COURT,
BOMBAY.

2nd November, 1959.

ADVOCATE, SUPREME
COURT, ADEN.

20

P.K.Sanghani Esqr.,
Advocate for Zainab bint Abdulla Gulab.

Dear Sir,

I am instructed by my clients Kulsum Bint
Abdul Khaleq and Hajra Bint Abdulla to reply to
your letter No. N/531/59 dated 22nd October
1959 addressed to the former with copy to the
latter as follows :-

My clients are considerably surprised at
the allegations and imputations contained in
your letter. Your client may be an heir of
the deceased but she has no right in law to
question the actions of the deceased regarding
his own property which he dealt with during his
lifetime. The transaction was a perfectly

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straight forward one and was concluded by the deceased Ismail Abdulla Gulab about 2 years before he died. It is absolutely untrue that the deceased was infirm either in body or mind when he sold the property to my client Kulsum bint Abdul Khaliq. He was sound in body and mind. My client Hajra denies and takes strong exception to the allegation of your client that she 'managed to get the conveyance from the deceased with a view to defeat the rights of the legal heirs.' Your client will appreciate that Hajra did not get the conveyance. The property was sold by the deceased to Kulsum bint Abdul Khaliq.

Plaintiffs
Exhibits

No.3

Letter Iyer
to Sanghani
2nd November
1959

continued

The instrument of sale and conveyance was duly registered by the deceased in accordance with law with the Sub-Registrar of Documents, Aden. The terms incorporated therein speak for themselves. My clients say that your client has been fully aware of all the facts regarding the sale ever since the sale was effected by the deceased. It is absolutely untrue that your client only learnt of the fact after the death of the deceased as alleged by your client. To come forward with the suggestion after more than two years that the transaction was 'bogus and sham' leave much to be desired. My clients again deny all the allegations and imputations contained in your letter.

In the circumstances, if any legal proceedings are instituted against my clients your client may note that the same will be defended by my clients at your client's entire risk as to all costs etc.

Yours faithfully,

(sgd) S. N. Iyer.

Plaintiffs
Exhibits

EXHIBIT 4.

No.4

LETTER SANGHANI TO ANSARI

Letter Sanghani
to Ansari.
30th December
1959

Ex.4 Letter from P.K.Sanghani.

30th December, 1959.

To,
W.H.Ansari Esq.,
Aden.

Dear Sir,

Re: C.SUIT NO.852 of 1959
Zainab bint Abdulla & Another vs.
Kulsum bint Abdul Khatek & Another

10

In the above matter, the Defendants have pleaded in their written statement (vide paras.4 and 6) that the deceased Ismail Abdulla 'was indebted and sold said house to pay to the creditors, etc. etc.'. It is necessary in order to understand the true nature of the defence to know as to what the alleged debts of the deceased were, and who were the creditors paid by the deceased. Will you be so good enough to state, what were the debts of the deceased and who were the creditors paid by the Defendants.

20

The Rejoinder is due to be filed on the 4th proximo, and I shall be obliged if you will furnish the particulars as soon as possible.

Yours faithfully,

EXHIBIT 5.
LETTER IYER TO SANGHANI

Plaintiffs
Exhibits

No.5

S. N. IYER,
BARRISTER-AT-LAW.
ADVOCATE, HIGH COURT,
BOMBAY.
ADVOCATE, SUPREME COURT,
ADEN.

OPPOSITE GIRLS' SCHOOL,
NO.20 MAIDAN,
CRATER,
ADEN.

6th February, 1960.

Letter Iyer
to Sanghani
6th February
1960

10 P.K.Sanghani Esq.,
Advocate.

Dear Sir,

Re: Civil Suit No.852 of 1959
Zainab bint Abdulla & Anr.
- Versus -
Kulsum bint A. Khaleq & Anr.

Reference your letter No.L/455/59 dated
30th December, 1959, addressed to Mr. W.H.
Ansari.

20 The allegations in paragraphs 4 and 6 of
the Written Statement, to the effect that the
deceased sold the house to pay creditors and
also spent money for his treatment, I consid-
er, and shall so submit to the Court in due
course, were averments of matters of evidence
and moreover, that the facts so pleaded were
unnecessary for the defence of the action.

30 The Defendants, however, do not propose
to resist your application for particulars
upon the foregoing ground, but they are un-
able to give precise information as to the
nature and extent of the debts which the de-
ceased owed. From 1946 to 1955, the de-
ceased was unemployed. He retired from his

Plaintiffs
Exhibits

No.5

Letter Iyer
to Sanghani
6th February
1960

continued

employment as tailoring contractor to A.P.L. in 1946 and, presumably in recognition of his services, he was granted a taxi licence. He acquired a taxi in September 1955 and his obligation in that respect was one of debts which, the Defendants believe, the deceased was able to discharge from the sale proceeds under reference. Moreover, the deceased was suffering from heart ailment. He made three visits to India in 1951, 1955, and 1956, for the purpose of obtaining treatment and, the Defendants believe, made the requisite financial provision by taking loans. My clients do not know the names of the persons from whom the deceased took loans and their information upon this matter is based wholly upon statements made by the deceased to the 1st Defendant.

10

I find it difficult to understand how any lack of particularity in paragraphs 4 and 6 of the written Statement has made it difficult to understand the true nature of the Defence but, in order that no room for doubt may remain, I would summarise the Defence in this way. The deceased sold the property inter vivos for consideration. He was compos mentis. The sale was effected by a duly registered instrument. Accordingly, immediately before his death, the deceased had no interest right or title in the property such as could devolve upon the Plaintiffs at his death. Moreover, as the deceased was compos mentis, he had complete right to dispose of the property inter vivos, even by gift, and the question of consideration is accordingly irrelevant between the parties to this suit.

20

30

Yours faithfully,

(sgd) S. N. IYER

EXHIBIT 6

LETTER ISMAIL ABDULLA GULAB TO O.C.
TRAFFIC BRANCH, KHORMAKSAR

Plaintiffs
Exhibits

No.6

Ismail Abdulla Gulab,
Section E. St. No.3,
Al-Anadi Road,
Crater, Aden.

Letter Ismail
Abdulla Gulab
to O.C.
Traffic Branch,
Khormaksar
27th March
1959

Aden, March 27th, 1959.

10 The Officer Commanding,
i/c. Traffic Branch,
KHORMAKSAR.

Respected Sir,

I, the undersigned, Ismail Abdulla Gulab,
beg to lay the following few lines for your
kind and sympathetic consideration and action.

I am holding Taxi licence for my car
ADN 8575. Since September, 5th 1955 for
plying Taxi in the Colony of Aden.

20 I am now 65 years old and I have a Wife
wholly dependent upon me. God forbid, but
should anything happen to me, which of course
is not in human hands, a great misfortune will
befall on my poor wife who has no one else who
would look after her in my absence, and who is
down with paralize.

30 I have therefore decided to secure her
livelihood even after my death, and that only
by a request to you to kindly transfer the
existing Taxi Licence to her name, i.e. Mrs.
Hajra Abdulla Abdul Karim.

This would enable her to look after

Plaintiffs
Exhibits

herself and live on whatever income she gets from the Taxi.

No.6

Letter Ismail
Abdulla Gulab
to O.C.
Traffic Branch,
Khormaksar

I have, Sir, all hopes that in the circumstance described as above, you will be good enough to agree with my request and take necessary action, for which act of kindness not only myself but my wife will also remain grateful to you for ever.

27th March
1959

Yours faithfully,

continued

L.T.I. ISMAIL ABDULLA GULAB.

10

Defendants
Exhibit

EXHIBIT 7

CERTIFICATE BY DR. AHMED.

No.7

Certificate by
Dr. Ahmed.

TELEGRAM 'DOCTOR' ADEN.

19th August
1957.

DR. MR.

DR. M. AHMED.

IT IS TO CERTIFY THAT ISMAIL ABDULLA GULAB
AGED 62 YEARS HAS BEEN EXAMINED BY ME TODAY.
HE IS BOTH PHYSICALLY AND MENTALLY QUITE FIT.
HE HAS SOLD HIS HOUSE GRANT NO. 2168 TO
KULSUM BINT ABDUL KHALIQ AND I AM AWARE OF
TRANSACTION.

20

SD/-

ON APPEAL
FROM HER MAJESTY'S COURT OF APPEAL
FOR EASTERN AFRICA

B E T W E E N

(1) ZAINAB BINT ABDULLA GULAB
(2) MOHAMED ISHACK GULAB
Plaintiffs/Appellants

- and -

(1) KULSUM BINT ABDUL KHALEQ
(2) HAJRA BINT ABDULLA
Defendants/Respondents

RECORD OF PROCEEDINGS

HATCHETT JONES & CO.,
90, Fenchurch Street,
London, E.C.3.
Solicitors for the Appellants.