

**CS NO. 197 OF 2007**

**IN THE HIGH COURT AT CALCUTTA  
Ordinary Original Civil Jurisdiction  
Original Side**

**Md. Mehmood & Ors.**

**Vs.**

**Nargis Begum & Ors.**

**For the plaintiffs: -**

**Mr. P.K. Das, Sr. Advocate  
Mr. Anirban Kar  
Mr. I. Belal, Advocates**

**For the defendants: -**

**Mr. Malay Kr. Ghosh, Sr. Advocate  
Mr. Suman Dutta  
Mr. Sakya Sen  
Mr. A.Z. Mondal  
Mr. Shital Sunwar  
Mr. Tousif A. Khan, Advocates**

**For the KMC: -**

**Mr. Alope Kr. Ghosh, Advocate**

**Judgement On: -**

**27<sup>th</sup> July, 2015**

**I.P. MUKERJI, J.**

One Md. Bashir was a Mohammedan. He had two wives. Through the first wife, Noor Jahan, were born the plaintiffs, the ninth defendant and three others. Those three other offsprings predeceased their father. Nobody knows when his relationship with his first wife got severed. But it is quite clear that he stopped living with her by the end of the 60s and divorced her. She is long dead. She died on 3<sup>rd</sup> July, 2000. The first defendant is his second wife. Md.

Bashir married her on 19<sup>th</sup> September, 1969. (Evidence of the first defendant Xn.6). Through this wife he got four daughters who are the second to the fifth defendants. All these daughters are married, the first two in Kolkata, the third in Australia and the youngest in Mumbai (Evidence of the first defendant Xn 40-50)

It is reasonably clear that at least during the years preceding his death Md. Bashir lived on the second floor of premises no. 75, Elliot Road, Kolkata-16 with his second wife. It also appears that he had no real connection with the offsprings through his first wife, although it is not possible for this court to say that he had no connection. His eldest son Md. Mehmood, the first plaintiff lived in an area of 350 sq. ft. on the first floor of the said premises with his family, separately and with an independent kitchen. The day to day affairs of Md. Bashir were looked after by his second wife, the offsprings through her and partly by his nephew Md. Farooque.

At the time of his death on 15<sup>th</sup> January, 2007 Md. Bashir had two properties in Kolkata one at premises no. 75 Elliot Road and the other at 62 Taltala Lane. The former was his most valuable property spread over 1 bigha 2 cottahs of land. 80% of it was let out to tenants. He also had tenanted properties in Tinsukia, Doom Dooma Assam and a vacant piece of land in Maunathbhajan

Uttar Pradesh. Except for the two properties in Kolkata, especially the Elliot Road property, nothing much was said about his other properties.

The said offsprings of Md. Bashir through his first wife have instituted this suit against his widow and the offsprings through his second marriage.

Two principal reliefs are claimed in the plaint of which the first is more important. It is for a declaration that the transfer by Md. Bashir of premises No. 75, Elliot Road, Kolkata-16 to his widow by the alleged registered Deed of gift dated 3<sup>rd</sup> August, 2003 is voidable. Secondly, the properties left behind by Md. Bashir be partitioned amongst his heirs in accordance with the Hanafi School of Mohammedan law.

During the trial of the suit learned counsel for the plaintiffs handed up a sheet determining the shares that each of the parties to the suit would get upon partition of the estate of Md. Bashir. This was accepted by learned counsel for the defendants and is stated in the fourth issue.

On 3<sup>rd</sup> August, 2003 Md. Bashir executed this alleged Deed of gift in favour of his widow. It was presented for registration on 29<sup>th</sup> November, 2003.

The evidence led shows that even at the time of his terminal illness, Md. Bashir was attended to by his second wife and her daughters, assisted by Md. Farooque. From some time before his death he was suffering from respiratory trouble. He was taken to Islamia Hospital, in late December 2006. He did not

like to stay in this hospital. His said family members shifted him on 24<sup>th</sup> December, 2006 to the Mission of Mercy Hospital. There he was diagnosed with prostate cancer. His condition worsened. He fell into a coma on 10<sup>th</sup> January, 2007 and finally died on 15<sup>th</sup> January 2007.

It does seem that his treatment at both Islamia and in Mission of Mercy Hospital was monitored by his family through the second wife. This is stated in evidence by Md. Farooque, his nephew and by his widow. This is likely because the second wife obtained the death certificate from the Mission of Mercy Hospital, is in possession of all his medical records and the death certificate issued by the municipal authorities after the funeral. These members of the family organised his funeral, as well.

Now, although it is claimed by the first plaintiff that he and the other members of Md. Bashir's family through his first wife had contributed towards his medical expenses, the evidence sounds doubtful because if they had admitted Md. Bashir to the hospital and paid for his medical expenses, the medical records and the death certificate would be in their possession.

There were two witnesses to this alleged Deed. One was Md. Farooque Khalil, the nephew, of 8B, Ripon Street, Kolkata-16 and the other was a lawyer S.S.G. Hasnain. The original Deed after registration bears the signature of Md. Bashir and his second wife at several places. It also bears their thumb impressions.

The document also contains their photographs under which are inscribed their respective signatures.

On 10<sup>th</sup> December, 2003 the first defendant executed a Power of Attorney in favour of her husband which was attested by a notary, Mr. Swapan Banerjee on the self-same date. This power of attorney also had Md. Farooque Khalil as one of the witnesses. The other witness was one Anup Kr. Patra of Abantipur Garia, 24 Pgs. (S).

By this Power of Attorney the first defendant gave all the power to her husband Md. Bashir to collect rent of the tenanted portion of the Elliot Road property

On 16<sup>th</sup> April, 2007, the first defendant obtained the original Deed of gift from the Registry. The property's market value of Rs. 2,39,00800 was assessed on 21<sup>st</sup> September, 2006 on 2<sup>nd</sup> May, 2007 the first defendant applied to the Kolkata Municipal Corporation for mutation. The plaintiffs on 16<sup>th</sup> May, 2007 are said to have obtained a certified copy of this document.

At the trial the following issues were framed by this court on 4<sup>th</sup> September, 2014:

### **Issues**

- 1. Whether the alleged Deed of Gift dated 3<sup>rd</sup> August, 2003 of premises No. 75, Elliot Road, Kolkata 700 016 to the defendant No. 1 is a lawful and legally valid document?**

- 1A. if not, is the alleged Deed of Gift liable to be cancelled and set aside?
2. Whether the alleged Deed of Gift dated 3<sup>rd</sup> August, 2003 of premises No. 75, Elliot Road, Kolkata-700 016 to the defendant No. 1 was executed by the late Md. Bashir under coercion and undue influence?
- 2A. Whether the alleged Deed of Gift dated 3<sup>rd</sup> August, 2003 of premises No. 75, Elliot Road, Kolkata-700 016 to the defendant No. 1 was obtained fraudulently?
- 2B. Was the alleged Deed of Gift ever acted upon?
- 2C. Was the late Md. Bashir physically and mentally competent to make a valid gift of premises No. 75, Elliot Road, Kolkata-700 016?
3. Was the property being premises No. 75, Elliot Road, Kolkata-700 016 lawfully mutated in the name of the donee Mrs. Nargis Begum in the records of Kolkata Municipal Corporation during the life-time of Md. Bashir?
4. Whether the parties are entitled to the estate of Md. Bashir (except premises No. 75, Elliot Road) in accordance with the shares mentioned below:
- |                    |         |
|--------------------|---------|
| 1. Md. Mehmood     | 14.583% |
| 2. Md. Masoom      | 14.583% |
| 3. Saira Begum     | 7.292%  |
| 4. Shah Jahan      | 7.292%  |
| 5. Afzal Jahan     | 7.292%  |
| 6. Nargis Begum    | 12.50%  |
| 7. Farzana Begum   | 7.292%  |
| 8. Ruksana Begum   | 7.292%  |
| 9. Sultana Begum   | 7.292%  |
| 10. Zeenat Parveen | 7.292%  |
| 11. Gulnar Jahan   | 7.292%  |
5. Is the defendant No. 1 the sole and absolute owner of the property being premises No. 75, Elliot Road, Kolkata-700016?
6. Whether the tenancies in premises No. 75, Elliot Road, Kolkata-700016 attained in favour of the defendant No. 1 as the owner during the life-time of Md. Bashir?
7. Whether the plaintiff's are entitled to reliefs as claimed for in the plaint?

This alleged Deed of gift is challenged on principally two grounds. The first and the stronger ground is this. Under Mohammedan law a gift of immovable

property is complete and valid only by delivery of possession. The subject property was fully tenanted except the second floor where Md. Bashir lived with his second wife. His widow still lives there. A small part of the first floor measuring 350 sq.ft is where the first plaintiff lives. 80% of the property is tenanted.

It is said that to make the gift complete and valid there had to be delivery of possession of the tenanted portion. This, according to the authorities cited by Mr. P.K. Das learned senior Advocate for the plaintiff, which I will discuss later, had to be made by the tenants attorning the tenancy in favour of the donee. The gift was not completed without this formality he argued.

Learned counsel pointed out that Md. Bashir continued to issue rent receipts in his own name. He never described himself as the Constituted attorney of his donee wife. In fact this alleged gift was not even disclosed by Md. Bashir to the tenants or even to his son the first plaintiff who resided in the premises or to his offsprings from the first wife. He kept the gift a secret. No mutation of the property with Kolkata Municipal Corporation was made.

He even attacked the power of attorney saying that it was admittedly not executed before the Notary but executed in a lawyer's office, according to the evidence of the first defendant and thereafter taken to the Notary for attestation.

Hence, there was no presumption of authenticity of the power of attorney.

For those reasons the gift was invalid with regard to 80% of the property, learned counsel argued. The alternative argument was that the gift was not acted upon. No overt act evidenced this alleged gift. Hence it was invalid.

Secondly, it was stated by Mr. Das that according to the plaintiffs the Deed of gift was not the act of Md. Bashir. He was physically ill and mentally weak. He was in the clutches of his second wife and the offsprings through her. They had forced Md. Bashir against his wishes to execute the alleged Deed of gift in favour of his second wife. He was compelled by them to keep this alleged Deed of gift a closely guarded secret. He continued to collect rent from the tenants so that everybody knew that the property did not change hands. He was also compelled not to disclose this gift to the tenants or the offsprings through his first marriage which included the first plaintiff who resides in that property. Learned counsel cited **Sultan Miya Vs. Ajibakhatoon Bibi** reported in AIR 1932 Cal 497. **Gani Mia Vs. Wajid Ali** reported in 39 CWN 882, **K.S. Mahomed Aslam Khan vs. Khalilul Rehman Khan and others** reported in AIR 1947 PC 97, **Mahboob Sahab Vs. Syed Ismail and Others** reported in (1995) 3 SCC 693 (equivalent to AIR 1995 SC 1205), **Maqbool Alam Khan vs. Mst. Khodaija** reported in AIR 1966 SC1194, **Rasheeda Khatoon (Dead) Through Legal Representatives VS. Ashiq Ali. S/o Lieutenant Abu**

**Mohd. (Dead) Through Legal Representatives** reported in (2014) 10 SCC 459 and **Mst. Noor Jahan Begum Vs. Muft Khar Dad Khan and others** reported in AIR 1970 Allahabad 170 which I will discuss later on in this judgement.

He placed paragraphs 152 and 153 of the Treatise on Mohammedan law by Mulla.

This first point of Mr. Das was met by Mr. Malay Kr. Ghosh learned senior counsel for the first to fifth defendant with a lot of candour. He showed me passages from Mulla on Mohammedan Law namely paragraphs 152 and 153. He cited paragraph 152 (3) read with paragraph 153 and submitted that where the donor and donee resided in the same premises which was the subject matter of the gift, some overt act had to be done by the transferor indicating a clear intention on his part to divest himself of possession and control of the property but no physical departure from the property was required. Such was the case when the property was let out partially to tenants, as pronounced in paragraph 153 of the treatise.

Mr. Ghosh said that there was no dearth of overt acts on the part of Md. Bashir while making a gift of this immovable property. He had expressly or impliedly handed over its possession to his wife. He had duly executed a Deed of gift in the presence of two witnesses, handed over the same to the first defendant and

subsequently presented, the same for registration in the registration office in the presence of his wife, nephew Farooque and registration officials. The gift was made and accepted in the presence of the attesting witnesses, Md. Farooque and the lawyer Hasnain. A power of attorney was executed in his favour by the donee in acceptance of the gift and giving him power to collect the rent.

Mr. Ghosh also submitted that under Mohammedan law as elucidated by Mulla, the husband was the natural guardian of the wife and if a property was owned by her, he had the power to collect rent as the wife's manager. The power of attorney was also witnessed by two witnesses and attested by a Notary. Md. Bashir continued to collect rent from the property from the tenants as the manager of his wife and as her constituted attorney.

To establish the validity of the Deed of gift in the proven facts and circumstances of the case, Mr. Ghosh relied upon the following cases **Emnabai and Others Vs. Hajirabai** reported in **13 Bombay 352**, **Nawab Mirza Mohammad Sadiq Ali Khan and Others Vs. Nawab Fakr Jahan Begam and another** reported in **AIR 1932 ( PC) 13**, **Valia Peedikakkandi Katheessa Umma and Others Vs. Pathakkalan Narayanath Kunhamu** reported in **AIR 1964 SC 275**, **Hafeeza Bibi and Others vs. Shaikh Farid ( Dead) By Lrs. And Others** reported in **(2011) 5**

**SCC 654, Noohu Pathuammal and Others Vs. Ummathu Ameena and Others** reported in **AIR 1980 Madras 66, Chavittumparakkal Thamasikkum Dappayil Akkutty's daughter Pathumma vs. Pokku and Others** reported in **AIR 1998 Kerala 134.**

### **FINDINGS AND CONCLUSIONS**

I will deal with the point of coercion and undue influence first. When the allegation is that an instrument was made to be signed by the executant by force or undue influence, the person making the allegation has to prove that the executant was not in control of himself physically and mentally. He was overpowered by some other person and made to sign the instrument against his real wish. Either he was physically overpowered or he lived in an environment totally dominated by another person to such an extent that, that this person was able to force or persuade or emotionally influence the executant to sign the document, against his real wish.

The widow deposed that Md. Bashir was a dominating, strong willed and independent person and lived life according to his own terms. He made his own judgement and decision, without being influenced by anybody.

The evidence adduced by his widow and Md. Farooque is that at or about the time of execution of the Deed of gift Md. Bashir declared that he wanted to make a provision for his wife after his demise and expressed his desire to make

a gift of the Elliot Road property to her. The widow also deposed that Md. Bashir was a very good and devoted husband and always cared for her. She accepted this proposal. Md. Farooque deposed that Md. Bashir called him and said that he wanted to make this Deed in favour of his second wife. His lawyer should be requested to come to his house to take the necessary instructions. Accordingly Md. Farooque invited the lawyer Mr. Hasnain to Md. Bashir's house. Md. Bashir instructed Mr. Hasnain to draw a Deed of gift of the Elliot Road property in favour of his second wife. These instructions were given in the presence of Md. Farooque. The advocate got the draft Deed of gift ready. Md. Bashir examined and approved it. He read over its contents to his wife and explained them to her in Urdu. Thereafter, the Deed of gift was finalised, executed and handed over to the first defendant. Subsequently, it was registered.

At the time of execution Md. Farooque witnessed the same. On 29<sup>th</sup> November, 2003 Md. Bashir along with his second wife and Md. Farooque went to the registration office when the Deed of gift was presented for registration in the presence of Md. Farooque.

(See Xn 12-14, 24, 25. 27-39, 40-48 of Md. Farooque Khalil, XXn 278-298, questions Xn 58-107 XXn 241 to 282, 343 to 347 of the first defendant)

In my opinion, the plaintiffs have not been able to establish any case of undue influence, coercion etc. So, the first point raised by the plaintiffs fails.

This alleged Deed of gift was executed and registered with due solemnity under the Transfer of Property Act, 1882. It has two witnesses. It was signed, sealed and delivered. It was properly stamped and registered. Its due execution, attestation by two witnesses and registration have been proved. If it were a gift made by a Non-Mohammedan execution and registration of the instrument would have made the gift an ostensibly valid instrument. But chapter VII of the said Act relating to gifts specifically stipulates in Section 129 thereof that the provisions in the Chapter do not “affect any rule of Mohammedan law.” This simply means that the gift would have to be justified in terms of Mohammedan law. I may also add that the provisions in the said Act relating to general transfer also do not affect any rule of Mohammedan law according to Section 2 thereof.

I do not think that any ground that the alleged Deed of gift was not executed by Md. Bashir or the same was “sham” or fabricated could really stand. This is for the reason that this document was registered. Section 34 of the Registration Act, 1908 enjoins the Registrar of Assurances with a duty to verify, amongst other things the identity of the person claiming to have executed the document and asking for its registration. It also fixes a duty on him to enquire whether

the document is executed by the executant. Md. Bashir had attended the office of the Registrar of Assurance and presented the document for registration. His thumb impression along with that of his wife is affixed on the document. Their photographs are also affixed. I find the signature and seal of the registering authority authenticating registration of the document. There is no case whatsoever that the document was signed, sealed and registered in collusion with the officials of the registration office or that these officials failed to identify Md. Bashir and his signature. In the absence of these pleadings, the registering officer is deemed to have verified the identity of Md. Bashir and also deemed to have enquired from him that he had properly executed the document before registering the same. This presumption has to be made by the Court in the absence of any allegation against the registering officer. It follows that the Deed of gift was properly executed and registered.

Nevertheless, the Deed has to satisfy the tests prescribed by Mohammedan law.

For a Deed of gift of an immovable property to be valid, three conditions have to be fulfilled. The first is that there has to be a proper declaration of gift. The second is that it must be accepted by the donee. Thirdly, the donor must relinquish possession of the property and deliver the same to the donee. (see

**K.S. Mahomed Aslam Khan vs. Khalilul Rehman Khan and others**

reported in **AIR 1947 PC 97, Mahboob Sahab Vs. Syed Ismail and Others** reported in **(1995) 3 SCC 693 ) Hafeeza Bibi and Others vs. Shaikh Farid ( Dead) By Lrs. And Others** reported in **(2011) 5 SCC 654** and **Rasheeda Khatoon (Dead) Through Legal Representatives VS. Ashiq Ali. S/o Lieutenant Abu Mohd. (Dead) Through Legal Representatives** reported in **(2014) 10 SCC 459**.

The third condition was elucidated in **Sultan Miya vs. Ajibakhatoon Bibi** reported in **1932 Cal 497** Mr. Das relied upon a passage from the judgement of Mr. Justice R.C. Mitter which said that the subsequent conduct of the donor keeping the property to himself by not effecting mutation of the name of the donee in the records of rights, receiving the rent himself etc. showed that he retained dominion over the property and there was no valid gift and/or that the gift was not acted upon.

To quote Prophet Mohammad as reproduced in **Maqbool Alam Khan vs. Mst. Khodaija** reported in **AIR 1966 SC1194**:

**“Gifts are rendered valid by tender, acceptance and seisin. Tender and acceptance are necessary “because a gift is a contract, and tender and acceptance are requisite in the formation of all contracts; and seisin is necessary in order to establish a right of property in the gift, because a right of property, according to our doctors, is not established in the thing given merely by means of the contract, without seisin. [See Hamilton’s Hedaya (Grady’s Edn.)]”**

In a valid gift under Mohammedan law there must be delivery of possession or some overt act by the donor to declare the gift and put the donee in possession, as held in the above decisions.

**Gani Mia Vs. Wajid Ali** reported in **39 CWN 882**, ruled that if the gift comprised of tenanted property the delivery of possession would be completed if the tenants were asked to “attorn to the donee”. I quote a passage from that judgement:

**“I have pointed out above that property in the possession of a tenant, mortgages or wrong-doer can be the subject-matter of a valid gift under the Mohamedan Law. In such cases delivery of khas possession is not necessary. In the case of property in the possession of tenants, asking the tenants to attron to the done or allowing the donee’s name to be registered in the Revenue Registers or the landlord’s papers, as the case may be, would be regarded as delivery of possession by the donor.**

**Mahboob Sahab Vs. Syed Ismail and Others** reported in **(1995) 3 SCC 693** held that constructive possession had to be delivered to the donee if actual possession could not be delivered. This decision was followed in **Rasheeda Khatoon (Dead) Through Legal Representatives VS. Ashiq Ali. S/o Lieutenant Abu Mohd. (Dead) Through Legal Representatives** reported in **(2014) 10 SCC 459**. According to learned counsel for the plaintiffs even if the Deed of gift stipulated that possession had been delivered to the defendant it was a rebuttable presumption as held in **Mst. Noor Jahan Begum vs. Muftkhar Dad Khan** reported in **AIR 1970 Allahabad 170**.

In my opinion, the issues have to be pinpointed and answered accordingly. In this case, the gift is by the husband to his wife. The gift is of a property which is partially vacant. The vacant part was occupied by Md. Bashir and his second wife. 80% of the property was tenanted. The entire property was sought to be gifted by the husband to his wife.

Under Mohammedan law if the donor and donee are residing in the same property it is not essential that the donor should depart from the premises to deliver possession to the donee. The gift is completed by any overt act on the part of the donor to divest himself of control over the property. (paragraph 152 (2) of Mohammedan law by Mulla).

In paragraph 153 Mulla says that the same rule applies in the case of husband and wife whether the property is used for joint residence or is let out to tenants or partly used for residence and partly let out to tenants.

I think the judgement which substantially covers this proposition is **Emnabai and Others Vs. Hajirabai** reported in **13 Bombay 352** read with an earlier judgement it relied upon. The facts are substantially similar to this case. They need to be told.

In 1871 a Mohammedan gentleman executed a Hiba or a Deed of gift, transferring a house let out to tenants in favour of his wife. He registered the deed. He got the name of the donee recorded in the Municipal books to collect

the rents. A division bench of the Bombay High Court presided over by Sir Charles Sargeant held that this transfer constituted a valid gift of the tenanted part also. This judgement relied on an earlier judgement in the case of **Amina Bibi vs. Khatija Bibi** reported in **3C 307** where Sir M. Saussee Chief Justice held that if the gift comprised of a residential house to which was annexed another structure which was tenanted, a gift of the entire property by the husband to the wife resulted in a valid gift of the adjoining tenanted structure, also.

The husband is the natural manager of the wife. Even if after gift of the property the husband collects rents from the tenants, he is deemed to be doing so as the manager of his wife.(see paragraph 153 of Mulla)

There is enough evidence on record to show that Md. Bashir made a declaration of his gift by overt acts. He had signed the Deed of gift in the presence of his nephew and his lawyer. According to the evidence of the widow he is said to have declared to her in the presence of these persons that he was making a gift of 75, Elliot Road, Kolkata-16 property to her. He said he was making this gift out of natural love and affection. He explained the terms of the gift to her in Urdu. She accepted it. He and his wife accompanied by the nephew presented the deed for registration in the registration office.

These in my opinion were sufficient overt acts to make the gift valid. The Deed of gift is valid, subject to my observation below.

I do not read the decision **Emnabai and Others Vs. Hajirabai** as covering a case where a part of the property is occupied by a person other than a tenant. The first plaintiff being the son of Md. Bashir through his first marriage was and still is in occupation of 350 sq. ft of the first floor of this property at the time of execution and registration of the gift and is still in possession of it. He was not occupying that part of the property as a member of his father's family. He was living separately for a long time. The evidence shows that he had a bare minimum of connection with his father. His father never disclosed to him the said gift. According to his evidence he asked his step mother about this gift after the death of his father. She said she would not discuss anything during the "Iddat" period of 90 days. He came to know of it thereafter (evidence of Md. Mehmood Xn 230). I have no doubt in my mind that Md. Bashir had kept this gift a secret from his son.

Applying the above principles of Mohammedan law, in my opinion, it logically follows that if an heir on intestacy of the donor of an immovable property is in possession of a part of the property, not as a member of the donor's family but separately, a donor is obliged to notify him also of the gift. Otherwise the gift will fail in respect of that part for lack of proper declaration

and non-delivery of possession. To my mind considering the status of the first plaintiff, Md. Bashir was required to declare this gift to him. No overt act was done in the presence of the son to suggest the gift of the said property. In my opinion the gift could not cover 350 sq. ft occupied by the first plaintiff.

I declare that the Deed of gift relating to the entire premises 75, Elliot Road, Kolkata-16 is valid save and except the said portion of 350 sq. ft on its first floor occupied by the first plaintiff. He is entitled, in my opinion to defend his possession.

Furthermore, in the Deed of gift it has been mentioned in several places that the tenants of the property were being notified. Not even once in this Deed is there any hint as to what would happen to the first plaintiff who was in occupation of this area of the property, living separately from his father. I have every reason to believe that Md. Bashir being the father and against whom the first plaintiff has no complaint intended expressly or impliedly to leave out this 350 sq. ft. occupied by him from the purview of the gift.

In those circumstances, I declare the Deed of gift to be valid with regard to the entire premises No. 75, Elliot Road, Kolkata-16 except the 350 sq. ft on the first floor occupied by the first plaintiff. The said gifted area does not form part of the estate of Md. Bashir. I also declare that the said 350 Sq. ft. of the said premises belongs to the estate of Md. Bashir.

The shares of the parties in the estate of Md. Bashir are as follows:-

<b>1. Md. Mehmood</b>	<b>14.583%</b>
<b>2. Md. Masoom</b>	<b>14.583%</b>
<b>3. Saira Begum</b>	<b>7.292%</b>
<b>4. Shah Jahan</b>	<b>7.292%</b>
<b>5. Afzal Jahan</b>	<b>7.292%</b>
<b>6. Nargis Begum</b>	<b>12.50%</b>
<b>7. Farzana Begum</b>	<b>7.292%</b>
<b>8. Ruksana Begum</b>	<b>7.292%</b>
<b>9. Sultana Begum</b>	<b>7.292%</b>
<b>10. Zeenat Parveen</b>	<b>7.292%</b>
<b>11. Gulnar Jahan</b>	<b>7.292%</b>

Decree in terms of claim (f) of the plaint in accordance with the above declaration. Preliminary decree in terms of claims (f) and (g) of the plaint. The existing Joint Receivers are appointed Joint Commissioners of Partition and Joint Receivers over the entire estate of Md. Bashir. They will immediately take actual physical possession of all vacant areas and symbolic possession of other portions at a remuneration of 400 Gms per month for each Commissioner. They will appoint a Valuer /Chartered Engineer in consultation with the parties. The Joint Commissioners and Joint Receivers will fix his fees. The remuneration of the Joint Commissioners and Joint Receivers and of the Valuer/ Chartered Engineer will be paid by the parties according to their shares.

A report should be filed in this court by the Joint Commissioners and Joint Receivers by 31<sup>st</sup> January, 2016.

The first defendant will immediately be entitled to the rental income of 75, Elliot Road, in its entirety. She will collect and appropriate the same from August 2015 (rent for July 2015) onwards. The Joint Commissioners and Joint Receivers will also prepare accounts of the surplus in their hands of the rental collections made of 75, Elliot Road, Kolkata- 700 016 after payment of liabilities and hand over the same to the first defendant immediately. The Joint Commissioners and Joint Receivers will collect and keep invested in a nationalised bank other rental income. They will pay municipal tax from the rent and if it is not sufficient collect the same from the parties and pay. From now, the taxes of 75, Elliot Road, Kolkata-700 016 will be paid by the first defendant. She will also keep the property in repair.

All the issues are answered by this Judgement and decree.

The above suit is part decreed to the above extent. All existing interim orders are superseded by this preliminary decree.

Urgent certified photocopy of this Judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

**(I.P. MUKERJI, J.)**

**Later:**

Stay of operation of the judgement and decree is prayed for by Mr. Kar, learned Advocate. Considering the prayer made, the Joint Receivers will maintain the existing status quo for a period of three weeks from date.

**(I.P. MUKERJI, J.)**