Present:

Mr Justice Mohammad Ullah

Civil Revision No.2447 of 2016

Jobeda Khatun
Plaintiff-respondent no.1-petitioner
-Vs-
Shamsul Islam and others
Defendant nos. 10, 11, 13
appellant-opposite-parties

Mrs Tasmia Prodhan, Advocate
….For the petitioner
Mr Md. Rafiqul Islam with
Mr Md. Motiur Rahman, Advocates
….For the opposite-parties
Heard on 20.06.2023,16.07.2023,
17.07.2023,26.07.2023
and 31.07.2023
Judgment on 02.08.2023.

On an application under section 115(1) of the Code of Civil Procedure, 1908, at the instance of the plaintiff-respondent no.1-petitioner, a Rule was issued calling upon the defendant-appellant-opposite-party nos. 1-3 to show cause as to why the impugned judgment and decree dated 31.05.2016 passed by the learned Additional District Judge, Nilphamari in Other Appeal No. 20 of 2014 allowing the appeal reversing the judgment and decree dated 19.03.2014 passed by the learned Assistant Judge, Dimla, Nilphamari in Other Suit No.41 of 2010 decreeing the suit should not be set aside and/or why such other or further order or orders

as to this Court may seem fit and proper shall not be passed.

At the time of issuance of the Rule on 08.08.2016, the parties were directed to maintain status in respect of possession and position of the suit land initially for 6(six) months. Subsequently, on 29.01.2018, the period of status quo was extended till the disposal of the Rule.

Shortly stated, the facts relevant to the disposal of the Rule are as follows:

The petitioner Jobeda Khatun, as plaintiff, instituted Other Class Suit No. 41 of 2010 in the Court of Assistant Judge, Dimla, Nilphamari, seeking a decree for partition in respect of $22\frac{1}{2}$ decimal of land out of 75 decimal as described in the schedule to the plaint. It has been stated in the plaint that Azimuddin, the husband of the plaintiff and others, was the Korfa tenant under the landlords Ramgopal Mehesree and Gongagal Mehesree. The C.S Khatian No. 999 was prepared in the name of Azimuddin and others. S.A. Khatian No. 1209 was prepared and published in the name of said Azimuddin and others regarding 75 decimal land appertaining to S.A. Plot Nos.7903, 9704, 7911, and 7921. Azimuddin transferred the said 75

decimal of land to his first wife, Alima Khatun (defendant no. 9), and second wife, Jobeda Khatun (plaintiff), by a registered heba deed No. 9245 dated 23.09.1986. By dent of the registered heba deed, the plaintiff (second wife) became owner and possessor of 37.50 decimal of land. The remaining 37.50 decimal of land goes to his first wife (defendant no. 9). The plaintiff transferred 14 decimal of land to other defendants, and she possesses the remaining 23.50 decimal jointly with all defendants. The plaintiff, on 01.05.2010, claimed partition of the suit land with the defendants, but they refused to do the same, hence the suit.

Two sets of defendants contested the suit by filing different written statements denying the material averments made in the plaint.

The one set of defendants, namely defendant nos. 10, 11, and 13 filed a written statement contending, *inter alia,* that the suit is bad for the defect of parties and that the plaintiff did not bring all the properties into hotch-potch. The specific case of this set of defendants is that Azimuddin was the original owner of the deputed land. Azimuddin died, leaving behind 2(two) wives, one son, Hakim Uddin, and 4(four)

daughters, namely Nurun Nahar, Monwara, Kalpana, and Jamila. Jamila died, leaving behind her 4(four) sons to inherit her property. Azimuddin, during his lifetime, sold 23 decimal of land from S.A. Plot No. 7903 appertaining to S.A. Khatian No. 1209 in favour of defendant No.12, Md. Umar Ali, Asadul Haq and Ziaul Haq.

By registered deed No. 2106 dated 22.04.1997, Asadul Haq and Ziaul Haq sold six decimal of land from Plot No. 7903 to defendant no.11, and by registered deed no. 3435 dated 30.03.1998 sold two decimal of land to defendant no. 10. Md. Umar Ali sold eight decimal land to defendant no. 10 by registered deed no. 6508 dated 26.09.1996. Ziaul Haq and Asadul Haq sold 7 decimal of land to Sahabul. Sahabul sold 3 decimal land to defendant no. 11 by registered deed no. 5294 dated 10.08.1997. In this way, defendant no. 10 obtained 10 decimal of land. Defendant no. 11 obtained 9 decimal of land, and defendant no. 13 obtained 1 decimal by way of inheritance from his deceased father, Azimuddin. The plaintiff has no possession over the suit land, so the suit is liable to be dismissed.

Defendant Nos. 9, 15,16, and 19 contested the suit by filing a written statement, giving full

support to the plaintiff's claim. Their case is that Azimuddin transferred 75 decimal land to his two wives, the plaintiff and defendant No. 9, by a registered deed of No. 9245 on 23.09.1986. The plaintiff got 37 decimal, and the defendant No. 9 got 37 decimal land. There was no partition between them. Alima Khatun transferred 9 decimal land to defendant No. 19 by a registered deed on 04.05.2008. Alima again transferred $16\frac{1}{2}$ decimal land to the defendant no. 15 by a registered deed No. 3247 dated 09.06.2010. On 09.03.1998, the plaintiff transferred 3 decimal land to defendant No. 16 by a registered deed No. 2800. Accordingly, the defendant Nos. 9,15,16 and 19 are entitled to 45 decimal land in the disputed khatian.

To resolve the dispute, the Trial Court framed as many as 5(five) following issues:

(a) Whether the suit is maintainable in its present form?

(b) Does the plaintiff have the title and joint possession in the suit land?

(c ) Whether the suit is bad for hotch-potch?

(d) Is the suit bad for the defect of parties?

(e) Will the plaintiff get the relief that was prayed for?

The plaintiff examined 3(three) witnesses in support of her case, while the defendant examined 4(four) witnesses. Besides, both parties produced documentary evidence, which was duly exhibited.

Having heard the parties and considering the materials on record, the Trial Court decreed the suit in preliminary form, allotting share (saham) to the plaintiff to the extent of 16 decimal and 45 decimal to defendant nos. 9, 15, 16, and 19.

The Trial Court ordered that the rest of the 14 decimals of land shall go to those unsaid defendants.

The Trial Court directed the concerned parties to partition the suit land amicably following the decree within 45 days from the date; in default, the decree-holder may get their share through the Court in accordance with law.

Against this, the defendants preferred Other Appeal No. 20 of 2014 before District Judge Nilphamari. The record of said appeal was transmitted to the Additional District Judge, Nilphamari, for hearing and disposal, who, having heard the parties and on consideration of the evidence on record, allowed the appeal on contest against the contesting respondents and ex-parte

against the other respondents and thereby the original suit was dismissed against the defendant nos. 10,11,13,9,15,16 and 19.

Being aggrieved by and dissatisfied with the impugned judgment and decree dated 31.05.2016, the plaintiff, as petitioner, moved this Court and obtained the Rule and the order of status quo as stated above.

Mrs. Tasmia Prodhan, learned Advocate for the petitioner, at the outset, submits that the Trial Court, having considered the oral and documentary evidence, rightly decreed the suit allocating share (saham) of 16 decimal of land to the plaintiff, but the Court of Appeal below most illegally and arbitrarily dismissed the suit which has occasioned a failure of justice.

The learned Advocate submits further that Azimuddin gifted 75 decimals of land to the plaintiff and defendant no.9 by a registered deed of gift dated 23.09.1986 with certain conditions, but such conditions would be treated as if no conditions were attached thereto, but the Court of appeal below without considering the provisions of gift with a condition laid down in section 164 of Mulla's Principles of Mahomedan

Law dismissed the suit which has occasioned a failure of justice and needs be interfered with by this Court.

The learned Advocate next submits that exhibit-3 is an out-and-out gift, not an arreyat/aariat/areeat, but the Court of Appeal below, without considering the provisions of Muslim Personal Law most illegally and arbitrarily dismissed the suit which has occasioned a failure of justice.

The learned Advocate again submits that arreyat comes from customs that cannot be superseded by the Muslim Personal Law (Shariat) Application Act 1937.

Having placed section 2 of the Muslim Personal Law (Shariat) Application Act, 1937, the learned Advocate submits that as per Shariya Law, any condition is void, but the heba is valid.

The learned Advocate lastly submits that Exhibit-3 is one kind of heba and the donor cannot revoke once the heba has been acted upon, but the Court of Appeal below, without considering the provisions of Muslim Personnel Law (Shariat) Application Act, 1937 most

illegally and arbitrarily dismissed the suit which needs be interfered with by this Court.

Mr. Md. Rafiqul Islam, learned Advocate, on the other hand, submits that Exhibit-3 is a vogantor deed executed by Azimuddin for the limited purpose as to the plaintiff during her lifetime shall accept usufruct of the gift, and it is not a heba but an areeat denotes in section 170 of Mulla's Principles of Mahomedan Law, 20th Edition.

The learned Advocate submits further that since it is not a gift, the plaintiff has no syllable right over the suit land.

The learned Advocate next submits that the Court of Appeal below, being a final court of fact, rightly dismissed the suit, and as such, the finding and decision of the appellate Court need not be interfered with by the revisional Court since such finding is not perverse.

The learned Advocate next submits that arreyat distinguish from heba, and according to Sayed Amir Ali, the grant of usufructs for a limited time without consideration is called arreyat.

The learned Advocate also submits that a gift of usufruct like exhibit-3 for the lifetime is permissible in Muslim Law as it stands today in this sub-continent.

The learned Advocate again submits that exhibit-3 allows the plaintiff to enjoy the usufructs or the benefit for her lifetime which means will of the donor shall prevail over customary law of this sub-continent.

The learned Advocate next submits that by exhibit-3, the plaintiff has had no absolute right, title, or interest in respect of the land in question, and she cannot transfer the same at any point of time, but the donor can transfer his property, given to the donee for a limited purpose, at any point of time.

The learned Advocate lastly submits that the suit, as framed by the plaintiff for partition, is not maintainable without seeking consequential relief.

In support of his submission, the learned Advocate refers to the following decisions:

(1) PLD 1972 (Peshawar)37

(2) 47DLR(A.D.) (1995)41

(3) 55DLR(AD)(2003)115

(4) 4 ALR (2014) 354

I heard the learned Advocates from both parties and perused the plaint, written statement, evidence on record, and the impugned judgment and decree.

It appears that Jobeda Khatun wife of admitted owner Azimuddin, filed Other Suit for partition in respect of $22\frac{1}{2}$ decimal of land against the contesting defendants and others. Plaintiff claims $37\frac{1}{2}$ decimal of land and sought partition $22\frac{1}{2}$ decimal of land by metes and bounds with the defendants. However, the Trial Court decreed the suit in preliminary form, allocating share (saham) of 16 decimal of land in favour of the plaintiff and 45 decimal of land in favour of defendant nos. 9, 15, 16, and 19. The Trial Court also held that as per the plaintiff's admission, 14 decimal land should go to those unsaid defendants.

Against this, the contesting defendants preferred an appeal, which was allowed, and the suit was dismissed.

The plaintiff claimed that her husband, Azimuddin, by a heba deed dated 23.09.1986,

transferred 75 decimals of land to her and defendant no.9 in equal share. Defendant 9, Alima Khatun, is the first wife of Azimuddin.

In the facts and circumstances, the question that survives for determination is whether exhibit-3 is a heba attached with a certain condition or it is an arreyat allowing the plaintiff to enjoy the benefits and use of usufructs of the disputed land during her lifetime.

In Islamic Personal Law, Hiba refers to the concept of a gift. Let us break down each term:

1) **Hiba**: Hiba is the Arabic term for gift or donation. In Islamic law, it refers to the act of giving a gift voluntarily without any consideration in return. The person giving the gift is known as the "donor" or "grantor," and the person receiving the gift is known as the "donee" or "grantee." Hiba transfers ownership of property or assets from one person to another during the donor's lifetime.

The purpose of Hiba in Muslim personal law serves several functions, such as:

(1) **Expressing love and generosity:** One of the main purposes of making a gift in Islamic law is to express love, affection, and generosity towards others. It allows individuals to share their wealth with family members, friends, or those in need, thereby strengthening social bonds and fulfilling the spirit of charity.

(2) **Avoiding Injustice in inheritance:** Islamic inheritance laws are quite specific, with fixed shares allocated to various heirs. By making gifts during one's lifetime, a person can distribute their wealth in a manner that reflects their wishes and values, provided they do not violate the specific shares designated by Islamic inheritance law.

(3) **Avoiding Estate Disputes:** By making gifts during their lifetime, a person (s) can potentially avoid conflicts and disputes over their estate after their death. If done properly, the gifts are considered legally valid and irrevocable, providing clarity and certainty in asset distribution.

(4) **Attaining Blessings and Rewards:** In Islamic teachings, acts of charity and giving are highly encouraged and considered worthy. Making gifts to others is seen as a virtuous act, and it is believed to attract blessings and rewards from Allah.

It is essential to note that while making gifts is allowed in Islam, certain conditions and guidelines must be followed to ensure the validity of the gift in the eyes of Islamic law. These conditions include:

- The donor must have full ownership and possession of the property being gifted.
- The gift must be given willingly and without any form of compulsion or coercion.
- The gift must be clearly defined, and the donor and the donee must know its details.
- The donee should formally accept the gift.

> There should be no deception or fraudulent intent in the gift-giving process.
>
> That means the gift is denoted voluntarily, without any condition or hesitation.

According to Mulla's Principles of Mahomedan Law, 20th Edition, page 193, section 170 denotes areeat as follows:

> **"170. Areeat** The grant of a license, resumable at the grantor's option, to take and enjoy the usufruct of a thing, is called areeat.
>
> **171. Sadaqah** A sadaqah is a gift made with the object of acquiring religious merit. Like hiba, it is not valid unless accompanied by delivery of possession, nor is it valid if it consists of an undivided share in property capable of division (s 160). But unlike hiba, a sadaqah, once completed by delivery, is not revocable; nor is it invalid

if made to two or more persons all of whom are poor (s 161).

What is the purpose of Araiat or Areeat or hiba or gift of usufructs in Muslim personal law given by a husband to his wife?

In Islamic personal law, when a husband gives the gift of usufructs (Aariat, Areeat) to his wife, allowing her to enjoy the benefits and use of particular property or assets during her lifetime, it serves several specific purposes:

This gift allows the wife to enjoy the benefits and use of a particular property or assets without transferring ownership.

The specific purpose of such a gift is as follows:

1. **Support and maintenance of the wife:**

   By granting the wife the usufruct of certain property, the husband ensures she is provided for during her lifetime. This gift can support her financially and enhance her quality of life while she remains alive.

2. **Enhancing the wife's financial independence:**

   The gift of usufruct empowers the wife by giving her the right to enjoy the benefits

of the property without relying on others. It provides her with financial independence and a sense of ownership.

3. **Expressing love and care:**

The act of giving a gift of usufruct to the wife is also a gesture of love, care, and affection from the husband. It is a way of showing appreciation and consideration for her well-being.

4. **Ensuring security:**

By granting the wife the right to use and enjoy the property during her lifetime, the husband ensures that she has a secure place to live and access to the resources needed to maintain her lifestyle.

5. **Islamic inheritance planning:**

In some cases, the gift of usufruct can be part of the husband's inheritance planning. It allows him to allocate certain assets to his wife while preserving the ownership of the principal property for his other heirs.

6. **Social and cultural significance:**

In many cultures and societies with a Muslim majority, the act of giving gifts, especially between spouses, is considered an important social and cultural norm. It

strengthens family bonds and fosters a sense of generosity and mutual care.

It is important to note that the gift of usufruct is distinct from an outright transfer of ownership. In this type of gift, the wife is granted the right to use and enjoy the property, but she does not become the legal owner. The ownership remains with the husband or the original owner of the property. Therefore, upon the wife's death, her heirs would not inherit the property or asset, as it would revert to the husband or the original owner.

If exhibit-3 (ভোগান্তর দানপত্র) stands as a deed of gift, then all the conditions of gift mentioned therein shall form, and its condition will not affect the true character of the deed as a deed of gift. Keeping this principle, let us look at exhibit-3, the alleged deed of gift, which is as follows:

"ভোগান্তর দানপত্র দলিল নং ৯২৪৫/৮৬"

ভোগবস্তুর দানপত্র মুল্য ২০০/০০ টাকা উপজেলা-ডিমলা, মৌজা- নাউতারা জমি -৭৫ পঁচাত্তর শতক জমা ২.৬২ পয়সা বরাবর মোছা: হালিমা খাতুন ও মোছাঃ জবেদা খাতুন জং মো: আজিমুদ্দিন, জাতী-মুসলমান, পেশা-গৃহস্থি, সাং-নাউতারা, উপজেলা-ডিমলা, জেলা-নিলফামারী লিখিতং

মোঃ আজিমুদ্দিন পিতা মৃত রহিমুদ্দিন মাসুদ জাতী– মুসলমান, পেশা-গৃহস্থি সাং-নাউতারা, উপজেলা-ডিমলা, জেলা-নিলফামারী কষ্য নিজ হস্তে হাল চাষ ও দখলিয়া স্বত্ব বিশিষ্ট জোত জমা ভোগান্তর দানপত্র মিদং লিখিতং কার্যাঞ্জে তোমরা আমার ১ম ২য় বিবাহিত স্ত্রী হও। তোমাদের সেবা শুশ্রুষায় অত্যন্ত সন্তুষ্ট হইয়া তোমাদের জীবিকা প্রতিপালন করায় অদ্য আমার নিজ স্বত্ব দখলিয় নিম্নবর্নিত জ্যোতজমা যাহার অনুমান বাজারমুল্য মবলগ ২০০/- (দুইশত) টাকা হইবে তাহা তোমাদেরকে ভোগান্তর দানপত্র করিলাম এবং অত্র ভোগান্তর দানপত্র লিখিত প্রদানের প্রতিজ্ঞা করিতেছি যে, যত দিন তোমাদের জীব মানে আমি কিংবা আমার ওয়ারিশ গন বেদখল করিতে পারিবে না । যদি কেহ করি বা করে তাহা হইলে সর্বোতভাবে সর্বাদালতে অগ্রাহ্য হইবে ভবিষ্যতে আমার ওয়ারিশগন কাহার চক্রান্তে তোমাদেক বেদখল করিলে দেওয়ানী ফৌজদারী দ:বি: আইনত: দন্ডনীয় হইবে । অত্র ভোগান্তর দানপত্রের জোত জমা তোমাদের অভাবে আমার ওয়ারিশগন পাইবে । এতদ্বার্থে স্বেচ্ছায় অন্যের বিনা অনুরোধে অত্র ভোগান্তর দানপত্র লিখিয়া দিলাম ইতি সন ১৩৯৩ সাল ৬ ই আশ্বিন ইং ২৩/৯/৮৬ (অস্পষ্ট ) টিপসহি মো: আজিমুদ্দিন নিং স্ত্রী-বিপিন চন্দ্র সরকার ।

তফশিল জোত জমার বর্ণনা-জেলা-নীলফামারী, উপজেলা ও সাব-রেজিষ্ট্রি অফিস-ডিমলা, মৌজা-নাউতারা, জে.এল নং ৪১ নং মহাল মালিক বাংলাদেশ সরকার পক্ষে সি, ও রেভিনিউ ডিমলা উক্ত মালিকের সেরেস্তা ৯৯০ নং

খতিয়ানে ৭৫ শতক জমিনের কাত ২.৬২ পয়সা জমার জোত মধ্যে মধ্যে ৭৫ শতক জমিনের কাত নং ২.৫২ পয়সা জমার জোত ভোগান্তর দানপত্র করিলাম জে,এল ৪১ নং খতিয়ান ৯৯০ নং দাগ নং ৭৯০৩ উনআশি শত তিন দাগে ৩২ শতক, ৭৯০৪ উনআশি শত চার দাগে ১ শতক, ৭৯১১ উনআশি শত এগার দাগে ৬ শতক, ৭৯২১ উনআশি শত একুশ দাগে ৩৬ শতক মোট চারি দাগে ৭৫ পঁচাত্তর শতক জমিন ভোগান্তর দানপত্র বটে ইসাদী দলিল পড়িয়া দাতাকে শুনাইলাম স্ত্রী বিপিন চন্দ্র সরকার মো: জামালুদ্দিন পিতা মো: আব্দুল আজিজ, সাং-নাউতারা দ:নিং স্ত্রী – বিপিন চন্দ্র সরকার, সাং আকাশ কুড়ি এল নং ১৯ শ্রী বৃন্দাবন রায় সাং নাউতারা (৩য় পাতা) এফিডেভিট নামীয় ডিমলা সাহেব stamp duty of Tk. (10) (অস্পষ্ট) of cost Dimla 23/9/86 .আমার আমাদের নাম মো: আজিমুদ্দিন সরকার ৮৫ বৎসর, পিতা মৃত রহিম উদ্দিন মহাম্মদ সাকিন-নাউতারা, উপজেলা-ডিমলা, জেলা-নীলফামারী। ১) আমি আমরা প্রতিজ্ঞা পূর্বক বলিতেছি যে আমি আমরা বাংলাদেশের চিরস্থায়ী নাগরিক যে, স্থাবর সম্পত্তি হস্তান্তর করা হইতেছে তাহা বাংলাদেশের দলিল আইন ১৯৭২ সালের রাষ্ট্রপতির ০৮ নং আদেশ বলে আপীল করা হয় নাই । ২) বাংলাদেশ পরিত্যক্ত সম্পত্তি আইন ১৯৭২ সালের রাষ্ট্রপতির ১৬ নং আদেশের বিধি অনুযায়ী পরিত্যক্ত নহে ৩) প্রচলিত কোন আইন অনুযায়ী তাহা সরকারের বর্তায় নাই বা বাজেয়াপ্ত হয় নাই । ৪) প্রচলিত হস্তান্তর সম্পত্তি

বর্তমানের কোন আইনের কোন বিধানের পরিপন্থি নহে। ৫) প্রস্তাবিত হস্তান্তর সম্পত্তি বাংলাদেশ ভুমির সর্বোচ্চ সীমা নির্ধারন আইন ১৯৭২ সালের রাষ্টপতির ৯৮ নং আদেশ ৫ এর (ক) ধারা অনুসারে বাতিলযোগ্য নহে । ৬) প্রস্তাবিত সম্পত্তি হস্তান্তরকারীর হস্তান্তর করিবার পূর্ণাধিকার আছে হস্তান্তরকারীর সম্পত্তি নির্ভুলভাবে দলিলে বর্ণিত হইয়াছে । আমার জ্ঞান ও বিশ্বাস মতে তাহার মুল্য সঠিকভাবে নিরুপণ করা হইয়াছে । আমি / আমরা শপথ পূর্বক উপ-নিবন্ধক সাহেব সমীপে অদ্য পক্ষ্যে সহি করিলাম ইতি ইং ২৩/৯/৮৬ তাং এফিডেভিটকারীর স্বাক্ষর টিপ সহি এফিডেভিট কারীকে অদ্য চিনি তিনি আমার সম্মুখে টিপ সহি দিলেন মো: আজিমুদ্দিন নিং স্ত্রী বিপিন চন্দ্র সরকার সনাক্তকারীর স্বাক্ষর স্ত্রী বিপিন চন্দ্র সরকার এল নং ১৯ পিতার নাম গ্রাম উপজেলা-ডিমলা,জেলা-নীলফামারী ইসাদী (অস্পষ্ট) solemnly affirmed before me the execution who has been identified by solemnly আজিমুদ্দিন বিপিন চন্দ্র সররার নং১৯ স্বা: দঃ আলম S.R Dimla ২৩/৯/৮৬ নং ১১৩০ মূল্য ২/৫০ তাং ২৩/৯/৮৬ নাম আজিমুদ্দিন সাকিন-নাউতারা, উপজেলা-ডিমলা। স্বাক্ষর- *স্ত্রী সুধীর চন্দ্র সিংহ রায়।*

নং ------১২৩১ মূল্য -২/৫০ – তাং ২৩/৯/৮৬ নাম আজিমুদ্দিন সাকিন –নাউতারা ।"

On a plain reading of the deed dated 23.09.1986, it appears that it confers the

plaintiff the right of enjoyment of usufructs during her lifetime only.

It will be profitable to look at the decision in the case of Nawazish Ali Khan vs. Ali Raza Khan, reported in AIR 1948 Privy Council 134.

The relevant portion of this judgment is quoted below:-

> "In dealing with a gift under Muslim Law, the first duty of the Court is to construe the gift. If it is a gift of the corpus, then any condition which derogates from absolute dominion over the subject of the gift will be rejected as repugnant; but if upon construction, the gift is held to be one of limited interest the gift can take effect out of the usufruct, leaving the ownership of the corpus unaffected except to the extent to which its enjoyment is postponed for duration of the limited interest."

On scrutiny of Exhibit 3, it appears that the plaintiff shall have only a right of enjoyment in the scheduled property during her lifetime, which would devolve upon the donor's heirs after his

death. So, having considered the exhibit-3, I have no hesitation in holding that Exhibit-3 is not a deed of gift, but a gift of usufructs known in Muslim Law as areeat or Ariyat, which is permissible till today in this subcontinent for the Muslim community.

It will be profitable to look at the decision taken by the Appellate Division in the case of Rabjel Mondal vs. Didar Mondal and others reported in 47 DLR (A.D.)(1995)41 wherein the late lamented Mr. Justice Mustafa Kamal defined distinction between gift (Hiba) and ariyat in Muslim Law, stemming from some fundamental distinctions between the concept of property in English law and Muslim law, which has been admirably and elaborately dealt with in the case of Mst. Khan Bibi Vs. Mst. Safia Begum, PLD 1969 Lahore 338. This decision followed the reasonings in the two Privy Council cases of Amjad Khan Vs. Ashraf Khan and others AIR 1929 (P.C.) 149 and Nawazish Ali Khan Vs. Ali Raza Khan AIR 1948 (P.C.) 134 and it was held as follows:

> "The consensus of opinion of different authors of Muhammadan Law supports the proposition that where corpus of the property is transferred

> for life time and the conditions are attached thereto, the gift is valid but the conditions are void. However, where the intention of the maker of the gift is to transfer the usufruct of the property then in that case a limited interest is created for a particular time and, therefore, conditions can be attached to it such as the reversion of the property to the donor after the expiry of the limited period."

According to Syed Ameer Ali, the grant of the usufructs for a limited time, without consideration and resumable at will, is called Aariat. The author defines Aariat as a "constituting person, the owner of the usufructs of a property without consideration."

The rules relating to the liability of a person who has taken a thing on Aariat and other matters connected therewith are minutely laid down in the Fatawa-i-Alamgiri, but it is unnecessary to go into them here, as the Contract Act is applicable to all those questions.

For some distinguishing features of Aariat, references with advantages may also be made to Articles 806, 807, and 825, Chapter III, Book VI of the Majella.

Article 806 reads as follows:

"The lender can go back from the loan whenever he wishes."

I have already construed exhibit-3 as a gift of usufructs created by Azimuddin for limited purposes to certain comfort and livelihood for his two wives, including the plaintiff.

Exhibit 3 confers the plaintiff the right to enjoy usufructs during her lifetime. The donor had the right to seize the contract and transferred 23 decimals of land in 1996 to the contesting defendants and others. Since Exhibit 3 was created for a limited purpose, it has not been given the right to transfer the property at any point. The donee transferred certain property to the defendants without absolute right, title, interest, ownership, and possession over the land. No one can seek partition by metes and bounds like this one.

From the evidence on record, it appears that after the transfer made by Azimuddin in 1996, the

contesting defendants and others have been possessing and enjoying the property, and then they produced a rent receipt, which is collateral evidence of the possession and title.

Being a final Court of fact, the appellate Court rightly found that without seeking consequential relief, a simple suit for partition is not maintainable. If the finding and decision of the appellate Court are not perverse or otherwise shaken, the revisional Court should not interfere with such a finding sitting on a revisional jurisdiction.

During the hearing, the learned Advocate for the petitioner tries to convince this Court that it is a gift with attached certain conditions that cannot be maintained.

There can be no doubt whatsoever that the intention of Azimuddin, the executor of the deed, was to see that his wives did not suffer any privacy or hardship during their lifetime, and the deed was an arrangement for the enjoyment of the usufruct of the schedule land during their lifetime only.

According to section 164, Mulla's Principle of Mahomedan Law, it is true that a gift should

be without conditions. I have already recorded that there must be specific terms and conditions for executing, performing, and transferring a deed of gift. But in the present case in hand, I have already found that it is an areeat defined in section 170 of Mulla's Principles of Mahomedan Law, 20th Edition, created for a limited purpose, i.e., for usufructs of the land in question for the lifetime of the plaintiff. What would be the fate of exhibit 3 has been categorically mentioned in the deed itself, saying that after the death of the donee, the right, title, and interest of the land would be devolved upon the donor. It means it is a gift created for a limited purpose.

In such a situation, I think the choice lies upon the donor regarding what he wants to do about his property transferred for a certain period to use the usufructs of the same to his wives.

In such facts and circumstances, considering the Islamic Personal Law and the law relating to this subject matter, I do not find any merit in this Rule.

Accordingly, the Rule is discharged.

However, there will be no order regarding cost.

Accordingly, the impugned judgment and decree dated 31.05.2016 passed by the learned Additional District Judge, Nilphamari, in Other Appeal No. 20 of 2014 is hereby affirmed.

The period of status quo granted earlier by this Court is hereby recalled and vacated.

Let the lower court records (LCR) and a copy of this judgment be transmitted to the Court concerned forthwith.

Ohid/BO/1