

A was held by
karnataka high court
that



**ASSIGN
BUSTER**

A transaction which is required to be registered under the law must be in writing, signed by transferor and attested by two competent witnesses. But, as pointed out earlier, Section 129 of the Transfer of Property Act specifically provides that the abovementioned provisions are not applicable to gifts made by Muslims. The result is that the only mode of affecting a gift by a Muslim is the delivery of possession, whether the property is movable or immovable. A Hiba of movable or immovable property is valid whether it is oral or in writing; whether it is attested and registered or not, provided the delivery of possession, has taken place according to the rules of Muslim law. Thus, writing and registration is not necessary to validate a gift of any kind of property whether movable or immovable.

Under Muslim law registration is also not sufficient to constitute a valid Hiba. A Hiba is valid only where the actual or constructive delivery of possession has taken place even if it has been made through a duly registered deed. In a gift made by a Muslim, the registration cannot cure the want of the delivery of possession. For example, if a makes a Hiba of his house to through a duly registered deed (Hibanama), but does not give possession to B, the gift is void.

In *Abdur Rahman v. Athifa Begum*, where possession of the gifted property was not given to the donee and the donee had no actual or symbolic possession of property till death of donor, it was held by Karnataka High Court that gift was not valid.

Note:

It is interesting to note that although under Muslim law registration is not necessary to complete a gift, yet the common practice among the Muslims in India is that apart from the delivery of possession, they make the Hiba also by registering the document. The reason is simple.

Registration has got an important evidentiary value and is regarded as the legal proof of a transfer of property. Where a Hiba is made without registration, it may be difficult to prove the transfer on any subsequent date if the witnesses have died or the document itself is lost or destroyed.