

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT
JUDGMENT

C.R.No.16524/2023

Mehwish Mughal and another **VS.** Amira Bukhari etc.

Date of hearing	14.02.2024
Petitioners by	Mirza Waqas Baig and Mirza Kazam Ali Baig, Advocates
Respondents by	Mian Muhammad Hussain Chotiya, Advocate

Ch. Muhammad Iqbal, J:- Through this civil revision the petitioners have challenged the validity of the judgment & decree dated 08.10.2021 passed by the learned Civil Judge, Lahore who dismissed the suit for declaration and cancellation of documents, possession through partition with permanent injunction filed by the petitioners and also assailed the judgment & decree dated 02.12.2022 passed by the learned Additional District Judge, Lahore who dismissed the appeal of the petitioners.

2. Brief facts of the case are that Mehwish Mughal, petitioners and one Mirza Ijaz Baig filed a suit for declaration and cancellation of documents, possession through partition with permanent injunction against the respondents/defendants with the assertions that the plaintiffs are the successors of Mst. Jamila Begum wife of Mirza Muhammad Hussain who was owner of land measuring 13 Kanal 02 Marla situated in Moza Mota Singh Wala, District Lahore. Mst. Jamila Begum passed away leaving

behind one son Fazal Hussain Baig, the maternal grandfather of the plaintiffs No.1 & 2 and two daughters namely Bashir Begum and Rasheeda Begum. Fazal Hussain passed away leaving behind one son Mirza Pervaiz Ahmad Baig (father of respondents No.5 & 6) and one daughter namely, Shafaqat Parveen (mother of present petitioners/ plaintiffs). The plaintiffs are the legal heirs of Mst. Shafqat Parveen who married to Mirza Ijaz Ahmad Baig, deceased (who was plaintiff No.3 in the plaint). Mst. Shafqat Parveen died on 02.10.1977. After her death, Mirza Parvez Ahmad Baig did not incorporate the names of the petitioners as legal heirs of Mirza Fazal Hussain in inheritance mutation No.649 dated 19.01.2000. They also got attested further inheritance mutation No.786 dated 24.04.2003. On the basis of aforesaid illegal mutations, the defendants No.5 & 6 got attested registered sale deed dated 02.07.2003 in favour of defendant No.4, who further sold the said property to defendant No.3 through registered sale deed. The petitioners/plaintiffs also challenged the validity of two registered gift deed as well as the subsequent mutations. The petitioners/ plaintiffs stated that they are legal heirs of Mst. Shafqat Parveen who was daughter of Mirza Fazal Hussain Baig as such they are entitled to get their share in the estate left by Mirza Fazal Hussain Baig. The petitioners/plaintiffs prayed for cancellation of the aforesaid mutations.

The respondents No.2&3/defendants No.2 & 3 while filing the contested written statement contended that Mst. Jamila Baig died on 12.12.1982 whereas inheritance mutation No.649 was incorporated on 19.01.2000. Mst. Shafqat Parveen was not daughter of Mirza Fazal Hussain rather her father's name was Mirza Afzal Hussain Baig as per her Nikah Nama as such the petitioners/plaintiffs are not entitled for any share in the inheritance Mirza Fazal Hussain Baig. The other respondents/

defendants abandoned the trial proceeding so they were proceeded against ex-parte. Out of the divergent pleadings of the parties, the trial Court framed issues, recorded pro and contra evidence of the parties and finally dismissed the suit vide judgment & decree dated 08.10.2021. Being dejected, only the petitioner No.1/Mst. Mehwish Mughal filed an appeal whereas Mirza Imran Baig/plaintiff No.2 was living abroad as such he was arrayed as respondent. The appeal was dismissed by the appellate Court vide judgment & decree dated 02.12.2022. Hence, this civil revision.

3. I have heard learned counsels for the parties and have gone through the record.

4. The core controversy involved in this case is centered upon Issues No.1, 2 & 5 which are reproduced as under:

“1. Whether the plaintiffs are co-owners in the impugned property on the basis of their status as legal heirs of their deceased predecessor but the defendants have deprived them through forged and fictitious sale deeds in their favour which are ineffective qua the rights of the plaintiffs and liable to be canceled? OPP

2. Whether the plaintiffs are entitled for declaratory decree alongwith cancellation of impugned documents and consequential relief of possession of the property as prayed for? OPP

5. Whether the plaintiffs are not legal heirs of late Fazal Hussain because Mst. Shafqat Parveen was not the daughter of Late Mirza Afzal Hussain. Therefore, they are stopped by their act and conduct to file the instant suit and the suit is liable to be dismissed? OPD”

Mst. Mehwish Mughal (P.W.1) has deposed that her great maternal grandmother's name is Mst. Jamila Begum who had one son Mirza Fazal Hussain Baig and two daughters namely Bashir Begum & Rasheeda Begum; that her maternal grandfather's name was Fazal Hussain Baig who had two children, one daughter Shafqat Parveen (who is mother of plaintiff) and one son Pervaiz Ahmad; that she and Mirza Imran Baig are issues of

Mst. Shafqat Parveen; that her father's name is Mirza Ejaz Baig who died on 22.07.2015; that Mst. Jamila Begum was owner of land measuring 13 Kanal 02 Marla in Moza Mota Singh Wala Tehsil Cantt. District Lahore; that after death of Mst. Jamila Begum, the property was to be partitioned among the legal heirs; that legal heirs of Rasheeda Begum and her maternal uncle, Mirza Pervez Ahmad Baig with inter-se collusiveness got incorporated mutation No.649 dated 19.01.2000 and deprived other legal heirs; that Mirza Parvez Ahmed died in 2003 and he had four children, two sons Kashif Mughal & Ali Mughal and two daughters Saima Mughal and Sana Mughal who were living in village and inheritance of Mirza Parvez was incorporated in their name without knowledge of the plaintiffs. She produced in evidence copy of mutation (Exh.P.2), Nikah Nama dated 27.06.1975 (Exh.P.3); that the legal heirs of Bashir Begum filed an appeal on 29.04.2003 against mutation No.649 dated 19.01.2000 and mutation was cancelled on 14.01.2004; that against said order, Sharifan Bibi filed an appeal before Executive District Officer (Revenue) Lahore which was dismissed on 17.03.2012; that from legal heirs of Pervez Ahmad only Saima Mughal and Sana Mughal are alive whereas his sons have passed away. Abid Akram Khan (P.W.2) deposed that:

"مہوش کی والدہ کا نام شفقت پروین جبکہ والد کا نام مرزا اعجاز بیگ (مرحوم) ہے۔ میں مدعیہ مہوش کے والدین کے نکاح کے موقع پر موجود تھا اور میرے علاوہ میرے والد محمد خان (مرحوم) میرے تایا گل محمد خان اور میرے والد کے کزن وحید اکرم خان اور میرے سرسرمزاق احمد بیگ مدعیان کے والدین کے نکاح کے موقع پر موجود تھے۔ یہ تمام لوگ مدعیان کے والدین کے نکاح میں گواہ تھے۔ میں ان کے دستخط پہچان سکتا ہوں۔۔۔ مدعیان کل دو بہن بھائی ہیں۔ بھائی کا نام مرزا عمران بیگ اور بہن کا نام مہوش مغل ہے۔ مہوش کے ماموں کا نام مرزا پرویز احمد بیگ اور ان کے والد کا نام مرزا فضل حسین بیگ ہے۔ فضل حسین بیگ کے 2 بچے تھے، بیٹے کا نام مرزا پرویز احمد بیگ جبکہ بیٹی کا نام شفقت پروین ہے فضل حسین بیگ کی والدہ کا نام جمیلہ بیگم ہے۔ جمیلہ بیگم کے کل 3 بچے تھے جن میں بیٹے کا نام فضل حسین بیگ جبکہ بیٹیوں کا نام بشیر بیگم اور رشیدہ بیگم ہیں۔ مدعیان کے ماموں مرزا پرویز احمد بیگ نے خود کو فضل حسین بیگ کا اکلوتا وارث بتاتے ہوئے اپنے نام پر جائیداد متددعو یہ کا وراثتی انتقال کروالیا تھا جبکہ مدعیان کی والدہ مسماۃ شفقت

پروین کو ان کے والد کی وراثت سے محروم کر دیا تھا۔۔۔ بشیر بیگم میرے سرسرم حرم مرزار فیق احمد بیگ کی والدہ تھیں۔ بشیر بیگم جو کہ جیلہ بیگم کی بیٹی تھی ان کے وارثان کو بھی جائیداد متدعو یہ میں سے حصہ نہ دیا گیا تھا جس بناء پر مرزار فیق احمد بیگ کے وارثان جن میں میری زوجہ بھی شامل ہے ایک دعویٰ دیوانی سول کورٹ لاہور میں دائر کیا تھا جو کہ بصیغہ راضی نامہ واپس لے لیا گیا۔ مصدقہ کاپی دعویٰ بعنوان مرزا اعظم بیگ وغیرہ بنام کرنل ریٹائرڈ محمد طارق احمد بر مشتمل 12 پرت بطور Exh.P.15 پیش کرتا ہوں۔۔۔ مدعیان مرزا فضل حسین بیگ کے وارثان ہیں۔ جن کو جائیداد متدعو یہ میں سے انکا وراثتی حصہ ملنا قرین انصاف ہے۔"

Despite lengthy cross examination the stance taken by the P.Ws could not specifically be shattered by the other side.

5. Conversely, Shabbir Ahmad (respondent/defendant) himself appeared as his sole witness as D.W.1 and controverted the assertions made by the P.Ws.

6. During pendency of the appeal of the appellant, respondents No.4 & 5, Mst. Saima Mughal and Mst. Sana Mughal, real daughters of Mirza Pervez Ahmad and granddaughters of Mirza Fazal Hussain Baig appeared in person alongwith their counsel before the appellate Court [on 10.02.2022 and 29.01.2022 respectively] and got recorded their statements on oath in favour of the petitioners/plaintiffs. For ready reference, statements of the respondents No.4 & 5 are reproduced as under:

“Statement of respondent No.6 Sana Mughal d/o Mirza Pervaiz Ahmad Baig r/o House No.477, Block-B-II, Township, Lahore.

On oath stated that predecessor in interest namely Jameela Begum is my great paternal grandmother and great maternal grandmother of appellant Mehwish Mughal and perform respondent No.10 Mirza Imran Baig, that appellant filed suit/ instant appeal for getting her legal share in the property of Jameela Begum. Jameela Begum has one son namely Mirza Fazal Hussain Baig and two daughters Rasheeda Begum and Bashir Begum. Mirza Fazal Hussain Baig is my paternal grandfather and maternal grandfather of appellant and perform respondent No.10. Mirza Fazal Hussain Baig has one son namely Mirza Pervaiz Ahmad Baig my father and one daughter namely Shafqat Perveen my Aunt (Phupho) who is mother of appellant and perform respondent No.10 are my real cousins therefore Jameela Begum. I have no objection on

acceptance of instant appeal and to set aside the judgment and decree dated 08.10.2021.

R.O. & A.C.
29.01.2022

Muzzammil Musa,
Addl. Sessions Judge, Lahore

Statement of respondent No.5 Saima Sohail d/o Mirza Pervaiz Ahmad Baig w/o Sohail Siddique r/o House No.1, Street No.11, Mohalla Panj Peer Mehboob Park Mughalpura, Kahna Nau Tehsil Lahore Cantt. CNIC No.35202-4116770-4.

On oath stated that predecessor in interest namely Jameela Begum is my great paternal grandmother and great maternal grandmother of appellant Mehwish Mughal and perform respondent No.10 Mirza Imran Baig, that appellant filed suit/ instant appeal for getting her legal share in the property of Jameela Begum. Jameela Begum had one son namely Mirza Fazal Hussain Baig and two daughters Rasheeda Begum and Bashir Begum. Mirza Fazal Hussain Baig is my paternal grandfather and maternal grandfather of appellant and perform respondent No.10 Mirza Fazal Hussain Baig has one son namely Mirza Pervaiz Ahmad Baig my father and one daughter namely Shafqat Perveen my Aunt (Phupho) who is mother of appellant and perform respondent No.10. My aunt Shafqat Perveen has died, appellant and perform respondent No.10 are my real cousins therefore they are entitled to get their sharia/ legal share in the property of Mst. Jameela Begu. I have no objection on acceptance of instant appeal and to set aside the judgment and decree dated 08.10.2021.

R.O. & A.C.
10.02.2022

Muzzammil Musa,
Addl. District Judge, Lahore”

(emphasis supplied)

The respondents/defendants never filed any application before the appellate Court to re-examine as well as cross examine the respondents No.4 & 5.

The legal heirs of Bashir Begum including the petitioners/plaintiffs filed an appeal before the Collector, Lahore Cantt. for the cancellation of Mutation No.649 which was accepted vide order dated 14.01.2004 (Exh.D.16), the said mutation was set aside and direction was passed to the concerned Revenue Officer to decide the matter of inheritance of Mst. Jamila Begum afresh after providing opportunity of hearing to all

the parties concerned. The said order was assailed by respondents/Mst. Sharifan Bibi etc. through an appeal before the Additional Commissioner (Revenue), Lahore Division, Lahore which was dismissed vide order dated 17.03.2012.

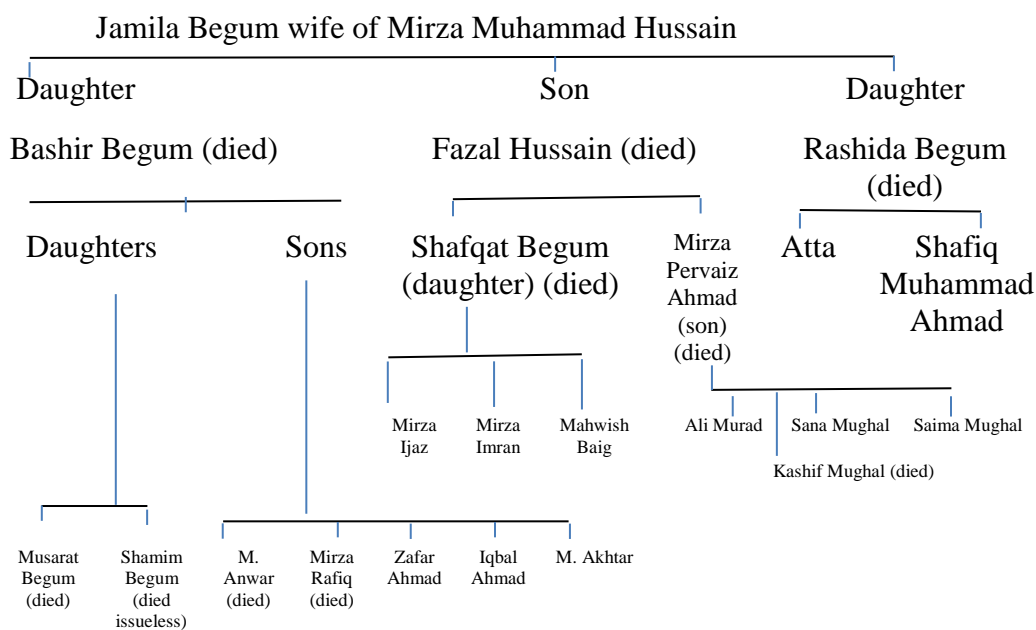
Further legal heirs of Bashir Begum etc. also filed a suit for declaration and challenged the validity of impugned inheritance mutation No.649 as well as the subsequent transactions. The copy of said suit as well as its proceedings was placed on record by the P.W.2 as Exh.P.15. It is interesting to note that at the time of exhibiting the said documents, the trial Court observed that this document is consisted of 12 pages but alongwith the record only five pages are available. Thus, while taking judicial notice and for resolving the real controversy between the parties, the record of said suit was requisitioned which has become available. In the said suit (Exh.P.15), present petitioners were arrayed as defendants No.11 to 13. The plaintiffs in the said suit stated with regard to the relationship of the parties in paragraph No.2 & 3 of plaint which are reproduced as under:

“2. That the said Super predecessor (Grand Mother and Super Grand Mother of the plaintiffs) namely Jamila Begum died a long ago leaving behind one son Namely Fazal Hussain and two daughters namely Bashir Begum & Rashida Begum (All have died).

3. That the said Fazal Hussain died leaving behind one son namely Mirza Pervaiz Ahmed Baig and a daughter Shafqat Begum (both died). The said Mirza Pervaiz Ahmed Baig died leaving behind defendants No.8 to 10 as his surviving spouses. Whereas the said Shafqat Begum D/o Fazal Hussain was died leaving behind defendants No.11 to 13 as her living spouses/ legal heirs.”

The present petitioners [who were defendants No.11 to 13] while filing written statement contended that they are legal heirs of Mst. Shafqat Parveen. Further, the defendants No.8 to 10 [children of Mirza Parvez Ahmad Baig who are respondents No.4 & 5 in this civil revision] while filing the written statement in the said suit

also admitted the aforementioned facts as correct. The respondent No.2/Mst. Sharifan Bibi [who was defendant No.4 in the said suit] while filing her written statement also admitted the contents of para No.3 of the plaint as correct. Mst. Sharifan Bibi filed an application under Order VII Rule 11 C.P.C. in the said suit wherein the pedigree table of Mst. Jamila Begum was prepared which also shows Mst. Shafqat Begum as daughter of Fazal Hussain. For reference, relevant portion of said pedigree table is reproduced as under:



Moreover, the defendants No.14, 15 & 17 to 23 in the said suit filed an application for transposing them as plaintiffs as they were also aggrieved of the inheritance mutation No.649. The said suit was withdrawn on 23.06.2009 on the basis of a compromise between the parties. Bashir Ahmad (D.W.1) while recording his statement in instant suit also admitted that a compromise was made in the aforesaid suit. He also admitted that the appeal titled Sharifan Bibi Vs. Iqbal Ahmad Khan etc. was dismissed by the Additional Commissioner Lahore on 17.03.2012. It is settled law

that presumption of correctness/sanctity/truth is attached to the judicial proceedings/judicial record.¹

6. As the petitioners/plaintiffs challenged the inheritance mutation while in the plaint asserting the existence of fraud and subsequently proved the same through cogent evidence, thus onus was shifted upon the respondents/defendants to prove the validity of the said mutation through affirmative and corroborative evidence but they failed to dislodge the onus.²

7. The petitioners/plaintiffs through cogent, trustworthy & concrete oral as well as documentary evidence proved that Mst. Shafqat Parveen is daughter of Mirza Fazal Hussain Baig as such she was/is also entitled to inherit from the estate left by Mirza Fazal Hussain but Mirza Parvez Ahmad Baig, real brother of Mst. Shafqat Parveen in order to deprive her from the legacy, did not mention her name while incorporating the impugned inheritance mutation.

8. So far as the Nikah Nama (Exh.P.3) of Mst. Shafqat Parveen on which basis the Courts below have non-suited the petitioners is concerned, it appears that tempering was made with the name of Fazal Hussain Baig and it has been shown as Afzal Hussain Baig. Further, D.W.1 in his cross examination admitted that address of Shafqat Parveen in Nikah Nama is written as 111-Samanabad Lahore and that property was owned by Mst. Jamila Begum, predecessor-in-interest of the parties of the lis. This fact also shows that Mst. Shafqat Parveen was daughter of Mirza Fazal Hussain.

9. Admittedly, the moment Mirza Fazal Hussain Baig closed his eyes, all his legal heirs according to the principles of Quran &

¹ *Muhammad Ramzan Vs. Lahore Development Authority, Lahore* (2002 SCMR 1336) and *Waqar Jalal Ansari Vs. National Bank of Pakistan & Another* (2008 SCMR 1611)

² *Muhammad Akram & Another Vs. Altaf Ahmad* (PLD 2003 SC 688) and *Amjad Ikram Vs. Mst.Asiya Kausar and 2 others* (2015 SCMR 1)

Sharia became absolute owner to the extent of their respective shares in estate of the deceased and without resorting to the legal course of independent transaction, the said ownership cannot be taken away by means of any unauthorized entry in the revenue record and if any entry is made in clandestine manner with collusiveness of the revenue staff, such entry is devoid of any legality and creating any valid right. The main object of registration and sanctioning of mutation of inheritance is mere formality to update the official record whereas all legal heirs of a deceased become absolute owners of the property to the extent of their respective share until and unless they themselves voluntarily and legally further alienate their said share/right and the said legal heirs by operation of law become joint owners in the estate having constructive possession over their share and no limitation runs against the inheritance matters as well as against any patently void order/entry.³

10. From the above, it can conveniently be observed that the petitioners/plaintiffs successfully proved their case through solid, concrete & trustworthy oral as well as documentary evidence but the two courts below who by committing mis-reading and non-reading of the evidence decided issues No.1, 2 & 5 against the petitioners/plaintiffs and the said findings of the Courts below on these issues are not sustainable in the eyes of law which are hereby reversed and these issues are decided in favour of the petitioners/plaintiffs and against the respondents/defendants.

11. As the decisions of the lower fora suffer from blatant mis-reading and non-reading of the evidence as well as mis-application of law, as such the same are not sustainable in the eyes of law and are liable to be set-aside and this Court is well

³ Ghulam Ali and 2 others Vs. Mst. Ghulam Sarwar Naqvi (PLD 1990 SC 1) and Ghulam Qasim and others Vs. Mst. Razia Begum and others (PLD 2021 SC 812)

within jurisdiction under section 115 CPC to interfere with illegal and perverse concurrent findings of the lower fora.⁴

12. In view of above, this civil revision is **allowed**, the judgment & decree dated 08.10.2021 passed by the trial Court as well as judgment & decree dated 02.12.2022 passed by the appellate Court are hereby set aside and the suit for declaration filed by the petitioners/plaintiffs is hereby decreed as prayed for with costs throughout.

(Ch. Muhammad Iqbal)
Judge

Approved for reporting.

Judge

Abdul Hafeez

⁴ Nazim-ud-Din & Others Vs. Sheikh Zia-Ul-Qamar & Others (2016 SCMR 24)