

Form No:HCJD/C-121

ORDER SHEET

IN THE LAHORE HIGH COURT, LAHORE

JUDICIAL DEPARTMENT

Civil Revision No. 49020 of 2024

Mst. Shamim Bibi alias Seema Bibi and 6 others

versus

Zakir Hussain and others

S.No. of order/ proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties or counsel, where necessary
	15.08.2024	Mr. Ihsan Ali Arif, learned Advocate for the revision-petitioners.

Through this civil petition, filed under section 115 of the Code of Civil Procedure-1908, the revision-petitioners have challenged judgment and decree dated 03.07.2024 passed by the learned Additional District Judge, Nankana Sahib as well as judgment and decree dated 06.03.2024 passed by the learned Civil Court, Nankana Sahib.

2. The facts, necessary for decision of the present civil revision, are that revision-petitioners No. 2 to 7 are sons and daughters of Umar Hayat-*deceased* from his second marriage with revision-petitioner No. 1 (Mst. Shamim Bibi alias Seema Bibi). The respondents are children of Umar Hayat-*deceased* from his first marriage with one Mst. Nawab Bibi-*deceased*. The respondent-side instituted suit dated 25.05.2021 titled “*Zakir Hussain and others versus Mst. Seema Bibi alias Naseem and others*” for declaration, permanent

injunction and cancellation regarding the property as detailed in the suit (the '*suit property*'), with the averments that on 21.08.2019 it was learnt by the respondents that a gift mutation No. 195 dated 30.01.2014 (the '*gift mutation*') is reflected as sanctioned in favour of revision-petitioners No. 2 and 3, which is against the law and it is outcome of fraud; that Umar Hayat-deceased was suffering from various diseases in 2014, when the *gift mutation* was sanctioned and then he passed in the same year. The suit was contested and this resulted into framing of the following issues:-

1. *Whether the plaintiffs are entitled to get the decree for declaration that they are owners in possession of the suit property and gift mutation No. 195 dated 30.01.2014 is false, frivolous, based on fraud and liable to be cancelled? OPP*
2. *If issue No. 1 is decided in affirmative, whether the plaintiffs are entitled to get a decree for permanent injunction that respondents be restrained from alienating the suit property till the final decision of the suit property? OPP*
3. *Whether the suit of the plaintiffs is within time? OPP*
4. *Relief?*

The parties led their respective evidence. The learned trial Court in its judgment dated 06.03.2024 gave issue-wise findings and decreed the suit while granting the following relief:-

“...As sequel to my findings on above said issues, instant suit of the plaintiffs is hereby decreed and mutation No. 195 dated 30.01.2014, is hereby cancelled...”

3. The revision-petitioners filed civil appeal No. 22 of 2024, which was dismissed vide judgment

and decree dated 03.07.2024. Being aggrieved from the same, the present civil petition has been filed.

4. Mr. Ihsan Ali Arif, learned counsel for the revision-petitioners has submitted that the learned two Courts below have misread the evidence; that *khasra gardawri* reflecting the possession of revision-petitioners No. 2 and 3 has been ignored. It is vigorously argued that the learned trial Court has even wrongly recorded the age of Umar Hayat-*deceased* at the time of his death; that the learned trial Court has noted the age of Umar Hayat-*deceased* as 80 years, whereas, the same was about 60 years at the time of death and this shows that the learned Courts below have failed to properly appreciate the record; that the issue of limitation is also wrongly decided.

5. Heard.

6. Record reflects that Zakir Hussain / respondent No. 1 appeared as PW-1 and his examination-in-chief is in harmony with his pleadings. He deposed that in the year (2014) when the *gift mutation* was incorporated Umar Hayat-*deceased* was suffering from severe ailments and then he died on 13.09.2014; soon thereafter the revision-petitioners got busy in their routine matters and normal business activities; that in the year 2019 they visited the revenue computer center and on probe it was unearthed that the *gift mutation* has been incorporated. Shaukat son of Akbar Ali (PW-2) also deposed similarly. Whereas, Shakir Ali,

Muhammad Arshad (the beneficiaries of the gift) and Noor Ahmad, one of the witness of the *gift mutation*, have not entered into the witness box. Revenue officer was not produced, either.

7. The learned trial Court has observed that Shakir Ali and Muhammad Arshad remained present in the Court during the proceedings but even then they have not opted to depose in their favour and by doing the same they have withheld best piece of evidence. Learned counsel for the revision-petitioners in order to justify the same has stated that Shakir Ali and Muhammad Arshad were minors at the time of gift. Even then at the time of institution of suit and when the proceeding was being conducted the said two revision-petitioners had the capacity to give evidence. Their witness / DW-1 admitted that on 17.10.2023 (i.e. when the case was in the process of adducing evidence) the said revision-petitioners were above eighteen years and both were married.

8. One of the crucial dispute remained regarding the possession, being an important ingredient of gift. There was no impediment for the said two revision-petitioners to enter in the witness-box and depose as to this ingredient. In case titled “Muhammad Hussain Deceased through L.Rs and others versus Muhammad Ali through L.Rs. and others” (2022 CLC 1973), the following has already been observed by this Court:-

“...In the present case, the defendant No.1 was the beneficiary of the transaction but he did not appear as his

own witness to substantiate the stance stated by him in his written statement and also to prove the essential ingredients of gifts, and his two witnesses, that is, DW-2 and DW-3 though stated in their statements that Taj Din had told them that he wanted to give his land to defendant No.1, but both the witnesses did not say that Taj Din ever declared that he had given his land as a gift to defendant No.1. So, the conclusion would be that there was no evidence of declaration of gift by Taj Din or its acceptance by defendant No. 1...”

(Emphasis supplied)

9. PW-1 and PW-2 specifically deposed that the possession of the *suit property* was never given to revision-petitioners No. 2 and 3. In course of cross-examination hardly any relevant question, to contradict this part of the evidence, was asked. Learned counsel for the revision-petitioners has relied upon Ex.D-1, the *khasra gardawri*. He referred to page No. 31-A of this file, however, reading of the same reflects that Umar Hayat-*deceased* is reflected in possession of the *suit property*. When confronted, learned counsel stated that some part of the *khasra gardawri* could not be appended with this civil petition. It is observed that even the learned two Courts below, after thorough examination of Ex. D-1 (the *khasra gardawri*) and other documents, have reached to the conclusion that Umar Hayat-*deceased* is reflected in possession up-till the trial stage.

10. Learned counsel for the revision-petitioners has also pointed out some discrepancies including incorrectly mentioning of the age of

Umar Hayat-*deceased* at the time of his death, contrary to the death certificate, by the learned trial Court. This alleged mistake apparently is result of the statement of witness of revision-petitioners (DW-2), who deposed that Umar Hayat-*deceased* was eighty (80) years when he died. The two witnesses of the respondent-side have stated the correct age, thus, no benefit can be given to the revision-petitioners for this alleged discrepancy, which originally is introduced by their witness. It is an admitted fact that the *gift mutation* and the death of Umar Hayat-*deceased* pertains to same year. The witnesses of the revision-petitioners have themselves conceded as to the health condition of Umar Hayat-*deceased* in that year.

11. Learned counsel for the revision-petitioners also tried to explain that gift was given to Shakir Ali and Muhammad Arshad (revision-petitioners No. 2 and 3) in lieu of some cash compensation to the respondents and he stated that the legal heirs from the first wife are not deprived from their inheritance rights. There is no proof of giving any cash compensation. DW-1 though stated that cash compensation was given but in her cross-examination she admitted that she never witnessed such fact, thus, this part of evidence is based on hearsay, having no evidentiary value.

12. Learned counsel for the revision-petitioners has stated that the learned trial Court was under obligation to look into the question of limitation without this being raised. He relied

upon “Yousuf versus Muhammad Akbar and others”(2024CLC 1085). This argument can hardly help the revision-petitioners as the learned Courts below remained mindful about this settled law. As a matter of fact, the learned trial Court has framed issue No. 3 in this regard. The date and mode of knowledge about the *gift mutation* is pleaded in the plaint. To prove the same specific evidence has been led. PW-1 clearly deposed as to mode and manners in which he learnt about the *gift mutation* in the year 2019. The revision-petitioners have not even asked a single question to the witness *vis-à-vis* this part of examination-in-chief or any question regarding the issue relating to limitation. DW-1, DW-2 and other witnesses from the defendant-side have not even uttered a word with respect to this issue. The question of knowledge and limitation, in the circumstances, remained a mixed question of law and facts. The evidence of respondents went totally un-rebutted. This part of evidence is also supported by the circumstances of the case. The principle is well settled that where on a material and related part of evidence a witness is not cross-examined the same can lead to inference of truth of such part of the statement. Reference in this regard can be made to case titled “Mst. Nur Jehan Begum through Legal Representatives versus Syed Mujtaba Ali Naqvi”(1991 SCMR 2300). It will be beneficial to reproduce the following extract from the said judgment: -

“...The principle enunciated in the commentaries and rulings is that whereon

a material part of his evidence a witness is not cross-examined it may be inferred that the truth of such statement has been accepted. Statement of a witness which is material to the controversy of the case particularly when it states his case and the same is not challenged by the other side directly or indirectly, then such unchallenged statement should be given full credit and usually accepted as true unless displaced by reliable, cogent and clear evidence.”

(Underlining is added)

13. After reading the record and hearing the learned counsel, I have reached to the conclusion that no case of wrong exercise of jurisdiction or material irregularity is made out. The minor discrepancies relied by revision-petitioners are not enough to disturb the concurrent findings of the learned two Courts below. This revision-petition, therefore, is dismissed in limine. No order as to costs.

(Sultan Tanvir Ahmad)
Judge

Announced in open Court on 02.09.2024

Judge

*Iqbal**