

Stereo. H C J D A 38

JUDGMENT SHEET

**LAHORE HIGH COURT,  
MULTAN BENCH, MULTAN**

JUDICIAL DEPARTMENT

**C. R. No. 174-D of 2009**

**Mian Manzoor Ahmad through L. Rs.**

**VERSUS**

**Mian Muhammad Akbar and 5 others**

**JUDGMENT**

<b>Date of Hearing</b>	23.01.2023
<b>Petitioner(s) by:</b>	Sahibzada Mehboob Ali Khan, Advocate
<b>Respondents No. 1 &amp; 2 by:</b>	Mr. Muhammad Masood Bilal, Advocate
<b>Respondents No. 3 to 6 by:</b>	Syed Naveed-ul-Hassan Bukhari, Assistant Advocate General

**ABID HUSSAIN CHATTHA, J.** This Civil Revision is directed against the impugned Judgments & Decrees dated 21.03.2007 and 26.02.2009 passed by Senior Civil Judge, Dera Ghazi Khan and Additional District Judge, Dera Ghazi Khan, respectively, whereby, the suit for declaration filed by Respondents No. 1 and 2 was concurrently decreed against Mian Manzoor Ahmad, predecessor-in-interest of the Petitioners (the “**Petitioner**”).

**2.** Succinctly, the facts divulged in the plaint are that the Deputy Commissioner, Dera Ghazi Khan demanded donation of free land for construction of Dispensary in Mauza Ghaus Abad, Dera Ghazi Khan. The Petitioner and Respondent No. 1 were real brothers and they collectively donated 07 Kanals & 05 Marlas land (the “**suit property**”) for the said purpose which was mutated by way of gift to the Provincial Government through the District Collector vide mutation No. 109 dated 31.03.1966. The Petitioner donated 03 Kanals & 16 Marlas of land, whereas, Respondent No. 1 donated 03 Kanals & 09 Marlas of land and Dispensary was

constructed by the Health Department of the Government of the Punjab on the suit property. Later, the Government approved Basic Health Unit (the “**BHU**”) in another Mouza for which separate land was required and request for donation was accordingly made. Respondent No. 1 was a political person and a member of the District Council. He proposed to the Petitioner that they may collectively donate 12 Kanals land for the BHU provided the suit property previously donated by them for the Dispensary is returned. However, the Petitioner did not agree to the proposal, whereafter, Respondent No. 1 separately and singly donated 12 Kanals land for construction of the BHU. In this behalf, the District Council, Dera Ghazi Khan passed the Resolution to the effect that the suit property previously donated for construction of Dispensary be returned to the person who donated the required land for the BHU. Accordingly, the suit property was transferred in the name of Respondent No. 1 vide mutation No. 564 dated 02.01.1986. The abandoned building material of Dispensary was separately auctioned which was purchased by Respondent No. 1, whereafter, Respondent No. 1 is in possession of the suit property. It was further alleged in the plaint that the Petitioner did not object when the suit property was transferred back in the name of Respondent No. 1 and he also transferred 03 Kanals & 16 Marlas land to his son, Respondent No. 2. As such, Respondents No. 1 & 2 are owners in possession of the suit property and the Petitioner has no concern with the same. It was further stated that after a period of 12 years due to certain differences between the brothers, the Petitioner submitted an application on 12.01.1998 to the revenue officials for correction of mutation which was allowed and further challenge thereto in the revenue hierarchy by Respondents No. 1 and 2 failed. As such, the orders dated 01.09.1998, 12.01.1999, 13.11.2000 and 26.04.2001 passed by the revenue officials, whereby, mutation No. 564 dated 02.01.1986 was rectified and the suit property was mutated in proportion to the respective shares of donation of the Petitioner and Respondent No. 1 are unlawful and against the law and facts for the reason that the suit property was returned to Respondent No. 1 alone in exchange for land gifted by him for the BHU. Hence, the order for correction of the said mutation was unlawful and the referred orders passed by the revenue officials are liable to be set aside.

3. The suit was contested by the Petitioner. It was submitted in the written statement that Respondent No. 1 unconditionally gifted the land measuring 12 Kanals for construction of the BHU. It was not given in exchange for the suit property which after extinguishment of the purpose for which it was donated had become surplus and was liable to be returned to the original donors in proportion to their previous ownership. No modern construction was raised on the suit property which existed in the abandoned condition. Respondent No. 1 succeeded to mutate it in his name to the exclusion of the Petitioner without his knowledge and consent. Upon gaining knowledge of mutation No. 564 dated 02.01.1986, the Petitioner moved an application to the revenue hierarchy for correction of mutation which was concurrently allowed.

4. The Official Respondents No. 3 to 6 also filed written statement. It was admitted that the suit property was given to Respondent No. 1 in exchange of land measuring 12 Kanals. However, at the same time, it was also admitted that Deputy Commissioner had allowed correction of mutation in favour of the Petitioner.

5. The Trial Court framed issues and recorded respective evidence of the parties. The pivotal issue was as to whether Respondents No. 1 and 2 were owners in possession of the suit property to the exclusion of the Petitioner and if so, the impugned orders passed by the revenue officials were liable to be set aside.

6. The Trial Court after appraisal of evidence on record held that Respondent No. 1 had proved his case and he was entitled for decree of declaration as prayed for. It was observed that although the suit property was gifted for Dispensary by the Petitioner and Respondent No. 1 in different shares yet later Respondent No. 1 gave 12 Kanals land in the year 1986 for the BHU with the condition that the suit property would be returned to him. Therefore, the return of the suit property to Respondent No. 1 was lawful especially when the same was gifted to the Province of the Punjab and the Petitioner could not claim it back as a matter of right. In this context, letter dated 01.01.1986 (Ex. P-10) was issued regarding return of the suit property to Respondent No. 1 and in furtherance thereof, the mutation dated 02.01.1986 (Ex. P-12) was duly sanctioned. Respondent No. 1 had produced the copy of mutation (Ex. P-2) which depicted that he

had transferred 12 Kanals of land to the Health Department of the Province of the Punjab for the BHU. The Application of the Petitioner (Ex. P-8) dated 12.01.1998 for correction of mutation sanctioned on 02.01.1986 was filed after a lapse of 12 years and was barred by time in terms of Article 14 read with Section 3 of the Limitation Act, 1908 as an order of the Government Officer can be challenged within a period of one year only. Accordingly, the suit was decreed.

7. The Appellate Court maintained the Judgment of the Trial Court on the same premises. It further discussed letter dated 01.01.1986 issued by District Health Officer, Dera Ghazi Khan to conclude that the word 'owner' depicted that the same was liable to be returned only to Respondent No. 1, otherwise, the word 'owners' should have been mentioned, if the suit property was intended to be returned in proportion to the original owners i.e. the Petitioner and Respondent No. 1. The Resolution of the District Council dated 08.07.1985 (Ex. P-3) was relevant, whereunder, the required land for construction of the BHU was donated by Respondent No. 1. Moreover, mutation No. 564 dated 02.01.1986 shows that the suit property was owned by the Provincial Government, as such, was in possession of District Council and was given to Respondent No. 1 in lieu of the land gifted by him for the BHU. Hence, the orders passed by the revenue hierarchy for correction of mutation in favour of the Petitioner were unlawful.

8. Arguments heard. Record perused.

9. The evidentiary resume of this case establishes that certain basic facts are admitted. The Petitioner and Respondent No. 1 jointly donated 03 Kanals, 16 Marlas and 03 Kanals, 09 Marlas of land, respectively, constituting the suit property for construction of Dispensary. Later, Respondent No. 1 separately gifted another piece of land measuring 12 Kanals for construction of the BHU in another Mouza. The Government abandoned the Dispensary and as such, the suit property became surplus property. The Health Department of the Government of the Punjab granted permission to return the suit property. Thus, the only question which requires determination is as to whether the entire suit property was lawfully transferred back to Respondent No. 1 considering that he had donated a separate piece of land measuring 12 Kanals for construction of the BHU or

the suit property should have been transferred to its donors in the same proportion in which it had been originally donated by them as concurrently held in the orders passed by the revenue hierarchy.

**10.** It was specifically pleaded in the plaint that Respondent No. 1 had proposed to the Petitioner to donate the required land for construction of the BHU jointly and take back the suit property but the Petitioner declined the proposal. The Petitioner had specifically stated in his written statement that Respondent No. 1 had donated 12 Kanals of land voluntarily and unconditionally for construction of the BHU and the donation was never in exchange of the suit property. Even otherwise, the share of suit property of the Petitioner could not have been exchanged without his consent and no person has any right to deprive the Petitioner from his share in the suit property. The oral evidence on record is in line with the referred pleadings. This fact clearly established that the Petitioner had never consented to any proposal regarding reversion of the suit property to Respondent No. 1 to his exclusion. No such proposal was ever floated by the Government. There is also nothing on record that the suit property was exchanged with the gifted land of the BHU. Respondent No. 1 had never informed the District Council that the suit property was collectively gifted by the Petitioner and Respondent No. 1. As such, Respondent No. 1 as member of the District Council had maneuvered the resolution in his favor on wrong facts and without the knowledge and consent of the Petitioner. Even otherwise, the Resolution of the District Council was not binding, rather, was in the nature of a recommendation which can neither preempt the law nor could have divested the Petitioner from his legal entitlement regarding his share in the suit property. The mutation attested by Respondent No. 1 in favour of the Government clearly depicted that he had gifted 12 Kanals of land for the purpose of construction of the BHU and when the said property would become surplus, he being the only donor can legitimately claim it back. As such, the orders passed by the revenue hierarchy reverting the suit property in proportion to the donation of the Petitioner and Respondent No. 1 are in consonance with law.

**11.** The interpretation extended by the Appellate Court to the word 'owner' with reference to letter dated 01.01.1986 to the effect that it depicted that the suit property was allowed to be returned only to

Respondent No. 1 is completely misplaced. This was merely an internal letter conveying approval of return of the suit property based on proceedings initiated by Respondent No. 1 without the knowledge of the Petitioner. It was not determination of entitlement of the suit property in favor of Respondent No. 1. The said letter even wrongly mentions the measurement of the suit property as 06 Kanals. Therefore, the effect of the said letter was not more than permission to return the suit property having been abandoned after the extinguishment of the purpose of donation.

**12.** It is also noted that observation of the Trial Court to the effect that challenge to mutation No. 564 dated 02.01.1986 was barred by time under Article 14 of First Schedule to the Limitation Act, 1908 is misplaced. This is on account of the reason that referred Article is applicable to suits instituted to set aside an act or order of an officer of the Government in his official capacity not otherwise expressly provided for which prescribes limitation of one year from the date of the act or order, whereas, the Petitioner had moved an application for correction of mutation under Section 166 of the Punjab Land Revenue Act, 1967 for which no limitation was prescribed. Jurisdiction conferred to revenue authorities under the said Section was wide enough to correct clerical or arithmetical errors. For reference, see case titled, “Dildar Ahmad and others v. Member (Judicial-III) BOR, Punjab, Lahore and another” (2013 SCMR 906).

**13.** Generally, a valid and complete gift is not retractable without the consent of both parties or by a decree since retraction of gift as a deed of conveyance is the very opposite of conveyance. Section 167 of Muhammadan Law by D. F. Mulla enunciates this principle. Gift is essentially without consideration. It is of two kinds, *Hiba* pertaining to corpus of property or *Hiba* pertaining to *Areeat*, which is a transfer of some limited interest for a limited time with the objective to allow the enjoyment or benefit of usufruct of gifted property. Any condition attached to a valid completed gift falling within the ambit of first kind is considered void, whereas, lawful conditions are recognized with respect to second kind of gift. Section 170 thereof defines *Areeat* as grant of a license, resumable at the grantor’s option, to take and enjoy the ‘usufruct’ of a thing. It follows that an *Areeat* is not a complete and absolute transfer of ownership but a temporary license in the nature of revocable and conditional transfer of

ownership allowing the benefit of ‘usufruct’ without any consideration. The grantor’s option can be validly capped or made conditional. As such, in common parlance, it may be termed as a conditional gift which operates and is revocable subject to conditions attached thereto. The determination as to whether a gift relates to ‘corpus’ or ‘usufruct’ of the property depends upon the facts and circumstances of each case to be inferred from relevant evidence after discovering the real intention of the donor and no hard and fast rule can be laid down for this purpose. For reference, see discussion on gifts in Chapter 11 of “D. F. Mulla’s Principles of Islamic Law (Muhammadan Law) with “Survey of Case-Law” from the Superior Courts”, Seventh Edition by M. Mahmood and Jawad Mahmood); and D. F. Mulla’s, Principles of Muhammad Law, Pakistan Edition by Dr. M. A. Mannan”. The Apex Court in case titled, “Muhammad Nawaz and others v. Muhammad Khan and others” (2005 SCMR 710) recognized and endorsed the two types of gift in terms of ‘corpus’ and ‘usufruct’ of the property. It was held that where a condition is attached to a gift of ‘corpus’ of the property, the gift is valid and the condition attached thereto is illegal. However, when gift is regarding ‘usufruct’ of the property, any condition attached thereto is valid and is liable to be given effect. In case titled, “Abdul Rehman and 68 others v. Province of Punjab through Collector, Bahawalpur and 23 others” (2009 YLR 753), it was held that a conditional gift never becomes absolute and always remains subject to the condition on the basis of which it is made.

**14.** Articles 23 and 24 of the Constitution of the Islamic Republic of Pakistan, 1973 (the “**Constitution**”) grants protection to property rights as a fundamental right of the citizens. The principles enshrined therein stipulate that every citizen shall have the right to acquire, hold and dispose of property subject to the Constitution and any reasonable restrictions imposed by law in the public interest. Further, no person shall be compulsorily deprived of his property save in accordance with law. It is further articulated that no property shall be compulsorily acquired save for a public purpose and after payment of due and adequate compensation. It, therefore, follows that the public welfare schemes initiated by the State for the benefit of its citizens are required to be executed after acquisition of land subject to determination and payment of due and adequate

compensation in accordance with law. However, due to financial constraints, it is customary for the Government to execute various welfare schemes, such as, farm to market roads, schools, health and provision of other civic facilities on land volunteered by the residents. Such schemes generally require that free of cost land must be transferred in the name of concerned Government Department before a scheme is executed. The land is generally mutated in the villages in the name of the concerned Government Department through gift mutation as a convenient mode of transfer of land to satisfy the mandatory condition of the concerned Government Department. The intention of the party while executing such a transfer is unequivocally restricted to benefit from the project and the gift of land is intrinsically linked to the purpose of donation. Such gift of land is liable to be construed as a limited or conditional gift which is valid till the life of the project. Such land, in all fairness and equitable considerations, must revert to the owners once the purpose of donation extinguishes and the project is abandoned. The principle of reversion is also recognized in terms of Article 493 of Chapter XIV (Acquisition of Land for Public Purposes) of Punjab Land Administration & Management Manual administered by the Board of Revenue, Punjab even with respect to unutilized lands that may have been acquired. Therefore, gifts regarding 'usufruct' of the property in the name of the State should be encouraged as this would give incentive and security to the donors to freely donate land to the Departments of the Government as the donors would know that the donated land would revert back to them including their legal heirs after the life of the project. Needless to reiterate that State is mandated by Article 3 of the Constitution to eliminate all forms of exploitation. The instant case squarely falls within the parameters of conditional gift which was restricted to the use of 'usufruct' of donated suit property till the life of the project and was lawfully allowed to revert back to the donors. The orders sanctioning correction of mutation to ensure the proportionate reversion to the donors are unexceptional. Therefore, it is obvious that the Courts below have misread the evidence on record as well as misapplied the law to decree the suit of Respondents No. 1 and 2 which resulted into grave miscarriage of justice. Hence, notwithstanding the concurrent findings of

facts recorded by the Courts below, interference is warranted to redress the unlawful deprivation of the Petitioner.

**15.** In view of the above, this Civil Revision is **allowed** and the concurrent impugned Judgments & Decrees dated 21.03.2007 and 26.02.2009 passed by the Courts below are set aside. Consequently, the suit of Respondents No. 1 and 2 stands dismissed. No order as to costs.

**16.** Office is directed to transmit a certified copy of this Judgment to the Senior Member, Board of Revenue, Punjab, Lahore who is directed to prescribe a clear mechanism of transfer of donated property for a limited purpose and time period under a preferred mode of transfer with the mechanism of its reversion to its owners after the life or purpose of the project to ensure due protection to the donors as well as to encourage such donations to meet the pressing communal and civic needs of the people amidst rising prices of immovable property. Compliance report shall be filed in this behalf with the Deputy Registrar (Judicial) of this Court within a period of three months from the date of this Judgment regarding any decision or steps taken in this behalf.

**(Abid Hussain Chattha)**  
**Judge**

Approved for reporting.

**Judge**

*\*Abu Bakker\**