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Judgment Sheet

LAHORE HIGH COURT

RAWALPINDI BENCH RAWALPINDI

JUDICIAL DEPARTMENT

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CIVIL REVISION NO.609-D of 2021

Ch. Muhammad Farooq (deceased) through his widow Mst. Nadia Farooq

Versus

Mst. Shazia Bibi and others

JUDGMENT

Date of Hearing	13.11.2025
Applicant by:	M/s Mujeeb-ur-Rehman Kiyani and Raja Ammar Jilani, Advocates.
Respondent No.1 by:	M/s Khurram Masood Kiyani and Syed Wajid Hussain Kazmi, Advocates.
Respondents No.2 to 5 by:	Proforma.

MIRZA VIQAS RAUF, J. This revision application in terms of Section 115 of the Code of Civil Procedure (V of 1908) (hereinafter referred to as “C.P.C.”) calls for scrutiny of concurrent findings of the two courts whereby suit for declaration, possession and injunction, instituted by the applicant was dismissed.

2. Facts, in brief, necessary forming background of this revision application are that a suit for declaration, cancellation of mutation No.9960 dated 28th February, 2001, separate possession and injunction was instituted by respondent No.1 (hereinafter referred to as “respondent”) against the applicant and others with the averment that she is owner in possession of the property forming part of Khasras No.663, 664,756,1304,1391,1395,1797 and 1893, situated in revenue estate of Lakhan Dehati, District Rawalpindi on the basis of oral gift. It is asserted that gift

mutation No.9960 dated 28th of February, 2001, sanctioned in favour of the applicant is the product of fraud and be declared as null and void, having no legal effect upon her rights. The suit was contested by the applicant, being defendant. The applicant then instituted a suit for declaration, possession and injunction claiming therein that he is owner of house measuring 01-kanal, forming part of Khasras No.1893/1304, situated in revenue estate of Lakhan Dehati, District Rawalpindi, which was gifted to him by his mother Taj Begum through mutation No.9960 dated 28th of February, 2001 and the **respondent** has no right, title or interest whatsoever in the the suit house. It appears that in response to the latter suit, the **respondent** did not submit her written statement and her right of defence was struck off by way of order dated 30th of July, 2012. Both the suits were, however, consolidated and multiple issues were framed. After framing of issues, both the sides adduced their evidence, on completion of which, suits of both the sides were dismissed as regards their ownership, however, gift mutation No.9960 dated 28th of February, 2001 was annulled and revenue officer was directed to pass mutation of inheritance of deceased mother of the applicant and **respondent** namely Mst. Taj Begum, in favour of all the legal heirs, as per their shares. The applicant, however, being aggrieved, preferred an appeal before learned Additional District Judge, Rawalpindi but it was dismissed by way of judgment and decree dated 16th of February, 2021; hence this revision application.

3. During the proceedings, learned counsel for the **respondent** raised an objection that the revision application is barred by time in the light of law laid down in the case ASAD ALI and 9 others v. The BANK OF PUNJAB and others (PLD 2020 Supreme Court 736), in pursuance of which applicant moved an application, i.e., C.M. No.722-C of 2023 seeking condonation of delay.

4. In this background, it would be apt to first address the preliminary objection, raised by the learned counsel for the **respondent**.

5. After having heard the learned counsel for the parties, it transpires that initially revision application was presented to the office on 6th May, 2021, well within time to which effect parties are even not at variance and on its presentation, the office raised multiple objections. As per the office report, the case file was received back by the learned counsel on 26th of May, 2021 so as to remove the office objections but it was refiled on 16th June, 2021 without removal of office objections. The office, thus, again repeated the objections on 25th of June, 2021 under diary No.9179 of 2021. The file was again received back by the learned counsel for the applicant on 12th of October, 2021, which was refiled after partial removal of the office objections on 15th of October, 2021 through diary No.15091 of 2021. The objections were again repeated on 25th of October, 2021 and the case file was received by the learned counsel for the applicant and it was refiled after complete removal of the objections on 27th of October, 2021, whereafter number was allocated to the revision application.

6. In order to properly comprehend the matter in issue, it would be advantageous to have a glimpse of Volume-V, Chapter-1 of the Rules and Orders of the Lahore High Court, Lahore (hereinafter referred to as "**Rules**"). Part-A relates to the proceedings in the High Court and deals with the judicial business relating to the presentation and reception of appeals, revisions, applications for review and other petitions. Rules 9 and 9-A of the **Rules** are directly related to the issue at hand, which are reproduced below for ready reference and convenience:-

9. **Power to return petition for amendment** – (i) The Deputy Registrar (Judicial) is authorized to return

memorandum of any suit, appeal, or petition, or application, etc.

- a) if it is not maintainable under any law; or
- b) if it is not properly constituted; or
- c) if it contains scandalous or objectionable language or material; or
- d) if it is not drawn up in conformity with the foregoing directions; or
- e) for amendment, making up of the deficiency or for filing requisite documents, within the time to be specified in the Objection Memorandum Appendix I(a), I(b) & I(c).

(ii) The order of the Deputy Registrar (Judicial) returning the memorandum of any suit, appeal, petition or application may be challenged before the Chief Justice or Judge nominated by the Chief Justice on administrative side whose decision shall be final and shall not be assailed in any other proceeding before the High Court.

9-A. Display of the List. – A list of petitions, appeals, etc., ordered to be returned shall be notified on the Notice Board and petitions, appeals, etc., not received back within seven days of the publication of the list shall be placed before a Judge of the High Court for orders on a date to be notified by including such petition in a motion cause list. It is made clear that any delay in placing such petition before the Court or issuing the list shall not furnish any justification for non-receipt of the returned petition in time and non-compliance of the objection taken within time specified by Deputy Registrar (Judicial).

It is manifestly clear from the above that in terms of Rule 9 of the **Rules**, the Deputy Registrar (Judicial) of the High Court is authorized to return a memorandum of any suit, appeal, or petition, or application including revision application in case it is suffering from any deficiency in terms of clauses ‘a to e’ of the Rule 9 of the **Rules**. Such an order can be assailed before the Chief Justice or a Judge nominated by the Chief Justice on administrative side for the said purpose, whose decision shall be final and shall not be challenged in any other proceeding before

the High Court. In exercise of such powers, the Deputy Registrar (Judicial) raised objections, for the rectification of which, the file was received back, but the objections were not rectified within the allocated period. It is an admitted position that the objections were removed after availing multiple opportunities by the applicant and file was finally presented on 27th of October, 2021 to the office and it was thus accordingly assigned number. The emphasis of learned counsel for the applicant, however, is that even if the file was not refiled within the time prescribed by the office, it cannot be adjudged as time barred unless due compliance is made to Rule 9-A of the **Rules**. In support whereof, he has made reference to the cases of FARMAN ALI vs. MUHAMMAD ISHAQ and others (PLD 2013 Supreme Court 392), CHIEF EXECUTIVE, PESCO DEPARTMENT, GOVERNMENT OF KHYBER PAKHTUNKHWA, PESHAWAR and others vs. AFNAN KHAN and others (2021 SCMR 2100) and ROBINA KAUSAR vs. MUHAMMAD LATIF (2025 CLC 911), to which effect, it is observed that in all the referred cases, facts were bit different as compared to the case at hand and as such, same are not attracted in the present case.

7. The proposition crept up before this Court is quite similar to the case of *ASAD ALI* supra wherein a larger Bench of Supreme Court of Pakistan, while distinguishing the fact of the case of *Farman Ali* supra, held as under:-

25. While going through Sabran Bi's case, we notice that distinction has been drawn between a situation where after raising of objections by the office the petitioner does not receive back the file and a situation where the petitioner receives back the file. The cases cited in which the petitioner had received back the file after raising of objections by the office and had not returned the same within the time allocated by the office and which were therefore held to be time-barred, were held to be distinguishable from cases where the file had

not been received back. It was held that where the file had not been received back would not be held to be time-barred and such cases should be fixed before the court for appropriate Orders for non-prosecution or any order in terms of Order VII, Rule 11 of the Civil Procedure Code. It is also instructive to note that the LDA judgment which as aforesaid was of three learned Judges of this Court was distinguished on the ground that it pertained to a situation where the file had been taken back by the Counsel, meaning thereby that in the instant case where the file had been taken back, even according to Sabiran Bi *ibid*, the matter had to be decided in terms of the LDA case *ibid*, which holds that failure to remove the objections within the time fixed (*where the file had been received back*) renders the appeal to be time-barred if in the time period between the raising of objections and removal thereof the period of limitation expires.

In other words, when upon raising the objections by the office, a party himself receives back the case file, there remains no need to proceed in terms of Rule 9-A of the **Rules**. Rule 9-A *ibid* would only come into play when, after the objections are raised by the office, it is ordered that file be returned to the party concerned but such party did not turn up to receive the file, office is obliged to notify such objections on the notice board, and if, despite such notice, the file is not received back within seven days of the publication of the list, the matter shall be placed before a Judge of the High Court for orders and a date to be notified by including such case file in a motion cause list. The contentions of learned counsel for the applicant, on the strength of Rule 9-A of the **Rules** are, thus, misdirected and ill-founded. The revision application, as a result, is barred by time, and, as such, the application, i.e., C.M. No.722-C of 2023 is hereby **dismissed**.

8. Learned counsel for the applicant, however, persisted that even if a revision application is barred by time, it is the duty of

the Revisional Court to examine the record so as to adjudge that any of the subordinate courts have not committed illegality or material irregularity as contemplated in Section 115 of the **C.P.C.**

9. For advancement of ends of justice, I examined the record.

10. The suit property was originally owned by Mst. Begum Jan, on whose demise, her legacy devolved upon her legal heirs including Mst. Taj Begum (mother of the applicant and **respondent**) through inheritance mutation No.9649 dated 26th of July, 2000. As per claim of the applicant, his mother gifted the suit property to him through mutation No. 9960 dated 28th of February, 2001 (Exh:P1). Being aggrieved, the **respondent** not only challenged the said mutation but also asserted that the suit property was in fact orally gifted to her by her grandmother Mst. Begum Jan during her life time. She, however, failed to prove her claim with regard to ownership on the basis of oral gift. The applicant since has relied upon gift mutation, so being beneficiary, he was obliged to first narrate the actual transaction of gift which resulted into sanctioning of the impugned mutation. From the examination of the pleadings, it is quite obvious that the original transaction with regard to gift has nowhere been even pleaded. It is well established principle of law that whenever person(s) claim(s) title under gift orally or in writing, he/they has/have to independently plead the transaction of gift. Perusal of the plaint of the suit, filed by the applicant reveals that no date, time, place and names of witnesses in whose presence gift was made, were mentioned in plaint.

11. Needless to observe that for a valid gift there are three basic ingredients; offer by the donor(s), acceptance by the donee(s) of such offer and delivery of possession of the property subject matter of gift to the donee(s). From perusal of the statement of Muhammad Usman (DW-1), it is crystal clear that he also did not

state about the original transaction of gift. He did not utter even a single word concerning the transaction of gift. From the available evidence it is crystal clear that the applicant has remained unable to prove that the gift mutation was effected in a transparent manner. Reliance in this respect can be placed on BILAL HUSSAIN SHAH and another versus DILAWAR SHAH (PLD 2018 Supreme Court 698), and RAB NAWAZ and others versus GHULAM RASUL (2014 SCMR 1181). Needless to mention that applicant, being the beneficiary of the gift mutation, was obliged to produce cogent and confidence inspiring evidence but an iota of evidence was not produced by him to prove the genuineness and validity of gift mutation. It is also an established fact on the record that the applicant is not in possession of the suit property which is a *sine qua non* for a valid gift. Reliance to this effect can be placed on HAYAT (DECEASED through L.Rs vs. Mst. FATEH KHATOON (2023 MLD 665).

12. It is trite law that mutation(s) by itself does/do not confer any right or title upon the person(s) claiming benefit therein. Once a mutation is challenged, the party that relies on such mutation(s) is/are bound to revert to the original transaction(s) and to prove such original transaction(s) which resulted into the entry or attestation of such mutation(s) in dispute. This oft repeated principle of law is quite logical because a mutation not being a title deed, is merely an evidence of some original transaction between the parties that had been struck somewhere prior to entry of a mutation. Reliance can safely be placed on the cases of MUHAMMAD IQBAL and another versus MUKHTAR AHMAD through L.Rs. (2008 SCMR 855) and MUHAMMAD AKRAM and another versus ALTAF AHMAD (PLD 2003 Supreme Court 688).

13. There is yet another important aspect, the applicant has though relied upon the gift mutation but he did not enter into the witness box and instead examined his special attorney namely

Muhammad Usman as DW-1, without any just and sufficient cause of his absence. There is no cavil that a party cannot be bound down to appear in the witness box in all eventualities and evidence can be led through any duly appointed attorney but a party failing to enter into the witness box, is obliged to explain reasons for his non-appearance. In absence of any lawful justification, a negative presumption in terms of Article 129(g) of the Qanun-e-Shahadat Order, 1984 can be gathered against such party. Guidance in this respect can be sought from Mrs. ZAKIA HUSSAIN and another versus Syed FAROOQ HUSSAIN (PLD 2020 Supreme Court 401). The above principles have been reiterated by this Court in the case of ANJUMAN-E-ISLAMIA, SIALKOT through Khawaja Mahmood Ahmad, President, Anjuman-e-Islamia, Sialkot versus Hajji MUHAMMAD YOUNAS and 3 others (PLD 1997 Lahore 153).

14. There are concurrent findings of facts recorded by two courts which are, apparently, founded on proper appraisal of evidence. Scope of revisional jurisdiction under Section 115 of C.P.C. is quite limited where both the lower courts are unanimous in forming their view. This Court, being revisional court, cannot substitute the concurrent findings of the two courts of competent jurisdiction merely on the ground that from the perusal of evidence, some other view is possible. The exercise of revisional powers is always guided by the necessary pre-conditions laid down in the above referred provision of law. The scanning of evidence and the perusal of impugned judgments do not reflect any illegality or material irregularity, justifying interference by this Court. Reference in this respect can be made to GHULAM QADIR and others versus Sh. ABDUL WADOOD and others (PLD 2016 Supreme Court 712), Mst. ZARSHEDA versus NOBAT KHAN (PLD 2022 Supreme Court 21) and MUHAMMAD SARWAR and others versus HASHMAL KHAN and others (PLD 2022 Supreme Court 13).

15. In the wake of above discussion, instant revision application having no merits is **dismissed** with no order as to costs.

(MIRZA VIQAS RAUF)
JUDGE

Approved for reporting.

JUDGE

*M.Sajid**