

SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Justice Amin-ud-Din Khan
Justice Shahid Waheed

C.A.113-L/2010

(Against the judgment dated 07.07.2003 passed by the Lahore High Court, ~~in~~ **Lahore** in CR No.43/1991)

Mst. Ramzanu Bibi

...Appellant

Versus

Ibrahim (deceased) through L.Rs, etc

...Respondent(s)

For the Appellant(s) : Mr. Muhammad Shahzad
Shaukat, ASC
Syed Fayyaz A. Sherazi, AOR

For the Respondent(s) : Sahibzada Anwar Hameed, ASC

Date of Hearing : 25.03.2025

ORDER

Shahid Waheed, J: This appeal, by leave of this court, is brought forward by the unsuccessful plaintiff, who has raised significant concerns regarding the ownership of a parcel of land she inherited from her mother, Mst. Jimmy. The appellant alleges that the land was wrongfully and deceitfully recorded as having been gifted by her to Ibrahim (respondent No.1) and Shadi (represented herein by his legal heirs, respondents No.2 to 5) under mutation No.914 dated 24th of September, 1974, (Ex.P-2). To substantiate her claim, the appellant argues that respondents No.1 to 5, the purported beneficiaries of this alleged gift, failed to discharge their pleadings burden; that they also did not present adequate or compelling evidence to prove the claimed gift; and, that even so, the courts below have dismissed her claims, prompting her to

seek redress through this appeal. The matter raises important questions about property rights, the standards of proof required to establish a gift, and the implications of fraudulent conveyance, and as such, to examine them, leave was granted.

2. A few undisputed facts need to be stated to better understand the appellant's gravamen. Mst. Jimmy was Ibrahim and Shadi's cousin. She married Jummay Khan, and from that wedlock, the appellant, Ramzanu Bibi was born. Mst. Jimmy inherited 33 kanals and 16 marlas of land from her father, Nawaz Khan. Upon her death, her land devolved upon her husband, Jummay Khan (respondent No.6), daughter, Ramzanu Bibi, and sister, Mst. Millie. The land measuring 16 kanals and 18 marlas of Mousa Boharwal Kalan, Tehsil Chunian, District Kasur, came into the appellant's share. On 24th of September, 1974, the Revenue Officer sanctioned two mutations. The first was inheritance mutation No.913, by which Mst. Jimmy's land was devolved upon her legal heirs. This mutation was sanctioned on the identification of Toolay Khan, Lambardar, and Heera Khan, Patidar. This mutation does not reflect the presence of Ramzanu Bibi. The second was mutation No.914 (Ex.P-2), which reflected that Ramzanu Bibi's land was transferred to Ibrahim and Shadi based on an oral gift. This mutation was sanctioned on the identification of Rahim Khan, Lambardar (DW-4), and Gonga, Patidar (DW-3). It carried

the thumb impression of Ramzanu Bibi and Jummay Khan. The appellant first challenged the gift mutation No.914 (Ex.P-2) before the Collector, Chunian, but he, by his order dated 20th of January, 1979 (Ex.P-3), dismissed her appeal with the observation that she had a remedy before the Civil Court. Following this, the appellant, on 18th of February, 1979, instituted her suit and sought a declaration of title by declaring the mutation No.914 (Ex.P-2) illegal and ineffective upon her rights. By submitting a joint written statement, the respondents traversed the allegations. They posited that the appellant, of her free volition, appeared before the Patwari and recorded the fact of making a gift. Her statement was recorded by the Patwari on 14th of September, 1974, in his Roznamcha Waqiyati at serial No. 499 (Ex.D-1).

3. Before addressing the questions that come up for determination, and appreciating the evidence brought on record for their resolution, it is essential to clarify that an oral gift is legally permissible. The entry into the Rozenamcha Waqiyati does not itself serve as the instrument of the gift. Even if a mutation—based on an entry in the Rozenamcha Waqiyati—is attested, this documentation does not confer ownership rights. This Court has consistently held that mutation proceedings are not judicial in nature; they are administrative processes that merely embody the ownership changes to ensure the realisation of land revenue but do not inherently confer

title to the property involved.¹ Consequently, when the authenticity of any mutation is brought into question, it is incumbent upon the parties asserting their rights through the mutation to refer back to the original transaction that led to the mutation's attestation. They must then substantiate their claims concerning this original transaction, which underpins the entry and validation of the mutation.² In this particular case, respondents No.1 to 5, who were identified as beneficiaries under mutation No.914 dated 24th of September, 1974, (Ex.P-2), had the burden to demonstrate the validity of the original transaction. This entailed meeting a threefold burden. Firstly, there was a pleading burden; these respondents ought to have articulated all relevant facts and material particulars regarding the purported gift in their written statement. Secondly, they had the burden of producing evidence, which means presenting documents or testimony supporting their claims. Thirdly, they carried the burden of persuasion, effectively convincing the court of the legitimacy of their assertions regarding the original gift transaction. It is pertinent to note that these burdens are not abstract legal formalities—they form the bedrock

¹ Nirman Singh v. Lal Rudra Partab Narain Singh (AIR 1926 PC 100), Hakim Khan v. Nazeer Ahmad Lughmani And 10 others (1992 SCMR 1832), Muhammad Akram and another v. Altaf Ahmad (PLD 2003 SC 688), Muhammad Iqbal and another v. Mukhtar Ahmad through L.Rs. (2008 SCMR 855), Peer Baksh through LR and others. v. Mst. Khanzadi and others (2016 SCMR 1417), Muhammad Sarwar v. Mumtaz Bibi and others (2020 SCMR 276), Faqir Ali & others v. Sakina Bibi & others (PLD 2022 SC 85)


² Sher Baz Khan v. The State (PLD 2003 SC 849), Peer Baksh through LR and others. v. Mst. Khanzadi and others (2016 SCMR 1417), Muhammad Sarwar v. Mumtaz Bibi and others (2020 SCMR 276), Faqir Ali and others v. Sakina Bibi and others (PLD 2022 SC 85)

of fairness in civil litigation. The burden of pleading ensures proper framing of issues; the evidentiary burden establishes factual basis; and the burden of persuasion is the ultimate determinant of legal entitlement. Now, let us examine how the respondents addressed and discharged each of these critical burdens.

4. In the first instance, our focus must be directed towards the content of the written statement provided by the respondents concerning the gift in question. It is important to emphasise that this transaction was conducted orally with an illiterate woman, Ramzanu Bibi. Given these circumstances, the respondents were responsible for disclosing two crucial and material facts in their written statement. The first required disclosure pertained to the specifics of the gift transaction. The respondents were obligated to clearly articulate the date, time, and location of the transaction, as well as the names of the witnesses, who were present when Ramzanu Bibi purportedly proposed to gift her inherited land, and the respondents affirmed their acceptance of this gift at that time.³ The second critical point that needed to be stated was whether Ramzanu Bibi genuinely understood the implications of the gift she was making. The respondents were required to aver that this /

³ Bashir Ahmed v. Muhammad Rafiq (2002 SCMR 1291), Muhammad Sarwar v. Mumtaz Bibi and others (2020 SCMR 276), Muhammad Nawaz and others v. Sakina Bibi and others (2020 SCMR 1021), Atta Muhammad and others v. Mst. Munir Sultan. (deceased) through her LRs and others (2021 SCMR 73), Farhan Aslam and others v. Mst. Nuzba Shaheen and another (2021 SCMR 179)

act was a sequel of Ramzanu Bibi's voluntary, intelligent, and conscious decisions.⁴ Upon thoroughly reviewing the respondents' written statements, it becomes evident that these crucial details were not furnished. This significant omission severely undermined their position and turned out to be detrimental upon evaluating their subsequent evidence. During the course of the trial, five witnesses were presented by the respondents to support their claims: DW-1 (Muhammad Afzal, Patwari), D-W-2 (Muhammad Shabbir, Patwari), DW-3 (Gonga), DW-4 (Rahim Khan, Lambardar), and DW-5 (Ibrahim, one of the respondents). However, none of these witnesses provided the requisite details concerning the transaction needed to validate the gift. In particular, DW-5, one of the alleged recipients of the gift, in his examination-in-chief only disclosed that Ramzanu Bibi had gifted her land to him. Notably absent from his testimony was any indication that he had formally accepted the gift, as well as the names of witnesses who were present during the proposal and acceptance of the gift. Moreover, DW-5's statement did not indicate whether the gift resulted from Ramzanu Bibi's informed understanding based on independent guidance. This lack of supporting detail suggests that the respondents had significantly failed to meet their burden of proof regarding

 ⁴ Mst. Farid-un-nisa. v. Munshi Mukhtar Ahmad and another (AIR 1925 PC 204), Tara Kumari v. Chandra Mauleshwar (AIR 1931 PC 303), Janat Bibi versus Sikandar Ali and others (PLD 1990 SC 642), Muhammad Sae v. Mst. Sharaf Elahi and another (2010 SCMR 1358), Muhammad Yaqoob vs. Mst. Sardaran Bibi and others (PLD 2020 SC 338)

the validity of the gift transaction recorded in mutation No.914 dated 24th of September, 1974, (Ex.P-2). As a result, the foundation of their defence stood critically weakened.

5. That apart, the appellant had challenged the legitimacy of the gift mutation, asserting that it was executed under conditions of fraud and collusion. These serious allegations warrant a thorough examination, urging the necessity to lift the veil surrounding the purported transaction to uncover the underlying motivations that prompted the gift. While it is indeed true that a donor is not legally obligated to provide a rationale for their decision to make a gift, it is generally uncommon for a gift to be made without some form of explanation or justification—unless the donor suffers from a serious impairment in mental capacity.⁵ The importance of providing a reason for making a gift is amplified in light of empirical studies, which indicate that superficial or frivolous gifts are often made, particularly to disadvantage female family members and undermine their inheritance rights. Consequently, the courts retain the power to scrutinise the motives and circumstances surrounding a gift, ensuring that rightful ownership is protected and that established lines of inheritance are respected. In this case, when we pierce the veil and investigate the essence of the

⁵ Barkat Ali v. Muhammad Ismail (2002 SCMR 1938), Faqir Ali and others v. Sakina Bibi and others (PLD 2022 SC 85)

transaction, we find ourselves questioning the genuine intent and purpose behind the gift. The respondents, tasked with justifying the decision of Ramzanu Bibi to gift her land to them, failed to provide any compelling rationale in their written statement regarding the implication of mutation No. 914 (Ex.P-2). Nonetheless, during his testimony before the trial Court, respondent No.1, Ibrahim (DW-5), claimed that Ramzanu Bibi transferred her land for the sake of Allah, suggesting that the motivations for the gift stemmed from a desire to please God Almighty rather than genuine affection for the donees. If it was indeed Ramzanu Bibi's intention to secure blessings from God, it would be implausible that she would ignore the needs of her husband and children, effectively denying them their rightful shares in the land.⁶ The murkiness further deepened as the respondents failed to provide any evidence demonstrating that they were economically disadvantaged or in dire need of support—factors that might have influenced Ramzanu Bibi's decision to gift her land. Ultimately, this leads us to conclude that the primary objective behind this gift was to strip the appellant of her legitimate inheritance rights unfairly. As such, we are poised to hold that the gift made to the respondents was unjust and void ab initio, emerging from circumstances tainted by fraud and deceit. /

⁶ Muhammad Ashraf v. Bahadur Khan and others (1989 SCMR 1390), Faqir Ali and others v. Sakina Bibi and others (PLD 2022 SC 85)

6. Another facet of this case unveils itself in the form of an insincere alleged gift transaction, revealing a fraudulent scheme to deceive the appellant, Ramzanu Bibi. While describing the facts of this case, we noted that two mutations were sanctioned on 24th of September, 1974. The first of these, mutation No.913, pertained to the inheritance of Mst. Jimmy, which transferred the disputed land to Ramzanu Bibi. This mutation is particularly significant for two factors. Firstly, it is noteworthy that Ramzanu Bibi was absent during the approval process of this mutation. Secondly, the sanctioning of this mutation relied solely on the identification and confirmations provided by Toolay Khan, the Lambardar, and Heera Khan, the Pattidar. This scenario confounded the immediately following mutation No.914. This second mutation was approved with Ramzanu Bibi present, relying on the identification of Rahim Khan, the Lambardar (DW-4), and Gonga, the Pattidar (DW-3). This inconsistency begs an important inquiry: if Ramzanu Bibi was present at the approval of mutation No.914, why was her presence not recorded in mutation No.913? Furthermore, why was it deemed necessary to involve a different Lambardar and Pattidar in the latter mutation? Ramzanu Bibi contended that she had neither made any gift to the respondents nor was she present when mutation No.914 was sanctioned. To address her concerns and assert her claims, she petitioned the trial Court,

under Article 59 of the Qanun-e-Shahadat, 1984, for a forensic analysis comparing her thumbprint on mutation No.914 with a verified sample. Here, we will pause to highlight and underscore fingerprint's vital role in revealing on individual's true identity. Whether concerning living persons or those who have passed away, known or unknown persons, fingerprints serve as critical evidence to support or challenge the claim of the parties involved in civil cases. The practice of utilizing fingerprints for identification, called dactyloscopy, has gained widespread acceptance and has become an indispensable tool to law due to its straightforward nature and cost-effectiveness. Dactyloscopy operates on the foundational principle that no fingerprints are alike and that an individual's fingerprint patterns remain constant throughout their life. This uniqueness makes them an invaluable asset in forensic science. It appears that the trial Court was conscious of the significant implications of fingerprint analysis in the case at hand, and, therefore, it had granted the appellant's request, leading to an expert's evaluation (Exh.P-1) that conclusively demonstrated that the thumbprint on mutation No.914 differed from Ramzanu Bibi's verified print on the sample paper. It is to be noted that for examination and comparison purposes, the fingerprint expert must prepare or get prepared enlarged photographs of the disputed and the specimen thumb impressions to the same scale. The best enlargements for

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examination are Two, Three, or Four diameters so that ridges of the impression may not loose definition or sharpness. Muhammad Idrees, the expert fingerprint analyst (PW-1), presented his findings (Exh.P-1) to the trial Court, explaining the scientific methodology that led him to conclude the incongruity between the thumbprint on mutation No.914 and that of Ramzanu Bibi. He furnished a comparison chart of image enlargements and a sheet of thumbprints obtained in open court. His report and statement indicate that the fingerprint analysis was in accordance with approved standards. The respondents could not gain anything in their favour during cross-examination of this expert and therefore failed to counter this forensic evidence. It is now widely acknowledged that the science of identifying thumb impressions has developed to such an extent that today it is an exact science and does not admit of any mistake or doubt.⁷ As such, the report (Exh.P-1) affirmed Ramzanu Bibi's objections and reinforced the notion that the purported gift transaction underlying mutation No.914 was indeed rooted in deceit. We hold the view that the courts below, by not adequately considering this aspect of the matter, allowed adroit manoeuvres to flourish, thereby depriving a rightful claimant of her property. This omission represents a grave infraction of justice and a violation of Ramzanu /

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⁷ Mangal Sen v. Emperor (AIR 1929 Lahore 210), Himachal Pradesh Administration v. Shri Om Prakash (AIR 1972 SC 975), Jaspal Singh v. State of Punjab (AIR 1979 SC 1708)

Bibi's fundamental right to her land, as preserved under Article 24 of the Constitution.

7. Fraud and justice never dwell together (*fraus et ius nunquam cohabitant*). This pristine maxim brings us to examine whether the factor of time limitation was rightly held to be a significant obstacle to the rectification of fraud, particularly given the specific facts and circumstances of the case at hand. A thorough review of the records reveals that this time limitation was pivotal in influencing the courts below to dismiss the appellant's suit. We say, with the utmost respect, that this approach was misguided, for such an approach had failed to remedy the underlying wrong stemming from fraud and left the appellant's rightful claims unaddressed. In light of this, it becomes essential to emphasise that in these situations, the courts must act as protectors of justice, wielding their authority to effectively restore the rights of aggrieved individuals rather than merely producing perfunctory rulings that sidestep the essence of justice. Therefore, the courts must seize any justifiable reason that might allow for removing obstacles impeding fair resolutions. This ensures that individuals are granted their rightful claims. To deviate from this crucial principle invites the potential for societal corruption and lawlessness—an outcome that must be rigorously avoided. Fraud, by its very nature, unravels all aspects of any transaction, regardless of how solemnly it may have been conducted under the law.

Consequently, any transaction born of deceit must be declared void, allowing the matter to be judged based on its substantive merits. This is particularly important to prevent the entrenchment of fraudulent actions, regardless of any time limitation issues.⁸ Doing so would have helped to nix the fraud, ensured that the respondents did not gain any illegal benefits from their illicit actions, and guaranteed that the aggrieved appellant received what was rightly due to her.

8. Notwithstanding what has been stated above, we find that the appellant's suit was timely, even based on the respondents' stance. It is to be noted that on 17th of February, 1979, the appellant brought her legal action seeking a declaration of title, aiming to set aside mutation No. 914, which had been sanctioned on 24th of September, 1974, and to obtain a decree for possession of the property in question. Taking stock of these essential facts, the trial Court, agreeing with the respondents, held that because the appellant challenged the mutation on the grounds of fraud and had admitted in her statement as P.W.2 that she had knowledge of the transaction three years before the time she approached the Collector for annulment of the mutation, her case fell under the stipulations of Article 95 of the Limitation Act of 1908,

 ⁸ Land Acquisition Collector, Nowshera & Others v. Sarfaraz Khan & Others, (PLD 2001 SC 514), Raj Bibi v. Province of Punjab thr. District Collector, Okara (2001 SCMR 1591), Evacuee Trust Property Board v. Mst. Sakina Bibi and others (2007 SCMR 262), Peer Baksh through LRs and others. v. Mst. Khanzadi and others (2016 SCMR 1417), Muhammad Yaqoob vs. Mst. Sardaran Bibi and others (PLD 2020 SC 338)

and as such, the suit was barred by time. This view was flawed. This Article allows for three years from when the fraud becomes known to the party wronged. The fraud referenced in this legal provision pertains specifically to deceptive actions perpetrated against a party directly involved in the transaction in question. To put it another way, this Article applies only to cases where a party has been, by means of fraud, induced to enter into some transaction, execute some deed, or do some other act, and desires to be relieved from the consequences of such act. As it stands, the appellant did not participate in the fraudulent transaction that led to mutation No. 914. She was absent, and someone had impersonated her before the revenue officer to get the mutation approved, thereby keeping the appellant out of possession. Since the appellant was not a party to the mutation, she was not bound by it. The mutation, as stated above, does not confer title in favour of any party but constitutes merely an official record for fiscal purposes. As such, its illegal approval by the revenue officer had no bearing on the appellant's title and could be treated as a nullity. Given the situation, Article 95 was inapplicable to her case.⁹

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9. Now, it is necessary to determine which specific Article of the Limitation Act, 1908 is relevant and will govern the time limitations applicable to the /

⁹ Chunder Nath Chowdhry v. Tirthanund Thakoor and another (3 Calcutta 504), Tallapragada Sundarappa and another v. Boorugapalli Sreermalulu and another (30 Madras 402), Sheedi v. Muhammad Siddique and 2 others (PLD 1980 Lah 477)

appellant's case. A careful examination of the plaint reveals that the appellant's claim was based on her asserting ownership over the disputed property. Central to her allegations was the assertion of fraud, particularly that mutation No. 914 was sanctioned in her absence, accompanied by alleged collusion between the respondents and certain revenue officials. The legal framework governing such a claim, particularly for a suit seeking a declaration and a request for consequential relief—such as possession—falls under Article 120 of the Limitation Act, 1908. According to this Article, the limitation period for the suit begins when the right to sue accrues. The determination of when this right arises in a declaratory suit hinges significantly on the specifics of each case. It is important to understand that a declaratory suit that seeks to establish title to a particular property represents a subsisting right. The right to institute such a suit is a continuing right, remaining intact as long as the claimant (plaintiff) possesses rights to the disputed property. The pivotal point at which the right to sue accrues arises when the opposing party denies or challenges the specific rights associated with the property in question or at least exerts an unequivocal threat to infringe that right. However, in situations characterised by successive acts of denial, a new cause of action arises each time there is a significant challenge to the claimant's (plaintiff's) rights. In the context of the present case, it is

evident that the cause of action for the appellant emerged initially due to the respondents' attempts to disrupt the then-existing status quo by sanctioning mutation No. 914. This mutation was sanctioned on 24th of September, 1974, marking an important date of the accrual of the cause of action. However, one must recognise that a cause of action is rarely founded on a singular event; rather, it typically comprises a complex interplay of various facts. The appellant's plaint provides further insight, indicating that, following the sanctioning of mutation No. 914, the respondents actively continued to deny her rights despite her explicit renunciation of their claims. Consequently, the appellant was justified in delaying any legal action until the threat to her rights became overt and undeniable. This point accrued when the respondents formally denied her claim before the Collector. This event culminated in an order dated 20th of January, 1979 (Ex. P.3), directing the appellant to pursue her claim in the civil Court. Taking these facts into account, the appellant's suit, filed on 18th of February, 1979, was, indeed, instituted within the stipulated limitation period. Given this analysis, the judgments rendered by the Courts below are fundamentally flawed and cannot be upheld.¹⁰


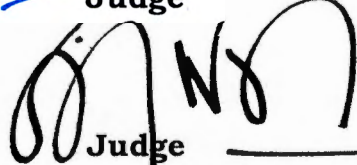
10. The result is that this appeal succeeds, and by setting aside the judgments and decrees issued by the /

¹⁰ Mt. Bolo v. Mt. Koklan (AIR 1930 PC 270), Gobinda Narayan Singh v. Sham Lal Singh (AIR 1931 PC 89), Izzat v. Allah Dita (PLD 1981 SC 165), Wali and others v. Akbar and others (1995 SCMR 284)

Courts below, we decree the appellant's suit with the requested relief. The respondents shall bear the costs of the appellant throughout.

Lahore
25.03.2025
APPROVED FOR REPORTING
Rashid*/Libah Nadeem LC

Q:


Judge

Judge