

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

**MR. JUSTICE MIAN SAQIB NISAR, HCJ**  
**MR. JUSTICE UMAR ATA BANDIAL**  
**MR. JUSTICE MAQBOOL BAQAR**

**CIVIL APPEAL NO. 634-L OF 2012**

(Against the judgment dated  
25.04.2012 of the Islamabad High  
Court, Islamabad passed in RFA  
No.43/2011)

Mrs. Khalida Azhar

*Appellant(s)*

**VERSUS**

Viqar Rustam Bakhshi and others

*Respondent(s)*

For the Appellant(s) : In person a/w  
Dr. Azeem Azhar Raja, Adv HC (son)  
Dr. Aneeqa Azhar Raja, Adv HC  
(Daughter)

For Respondents No. (1-12) : Ch. Khursheed Ahmed, Sr. ASC  
(R-13) : Mian Muhammad Hanif, ASC  
(R-14) Ms. Amber Gillani, AC Dina  
M. Matloob, Patwari,

Dates of Hearing : 17 & 18.01.2017

**JUDGMENT**

**MAQBOOL BAQAR, J.** The appellant's father namely, Rustam Ali Bakhshi who passed away on 20.02.1978 was, besides the appellant, survived by a widow, namely Mst. Sultana Rustam Bakhshi, who also passed away on 11.08.1988, one son namely, Viqar Rustam Bakhshi, the respondent No. 1, and two daughters, namely Mrs. Parveen Waheed, the respondent No. 2, and Mrs. Gulfreen Riaz, who too passed away in August 2005 and is now represented by her legal heirs, the respondents No. 3 to 7.

2. The deceased Rustam Ali Bakhshi, according to the appellant left behind the following properties and assets:

(i) Certain agricultural lands in villages, Garh Mahal, Raju Pindi, and Chak Almas, Tehsil Dina, District Jhelum **(The agricultural lands)**. The agricultural lands were in fact jointly owned by the deceased along with his mother, two brothers and one sister;

(ii) House No. 3, Street No. 98, F-7/1 Islamabad, approximately measuring 4 canals, which was jointly owned by the deceased with his wife **(The House No. 3)**;

(iii) Distribution Agencies, for District Attock, for the products of Pakistan Tobacco company, and Liver Brothers Limited, respectively **(The distribution agencies)**;

(iv) Inventory/Stocks at shop No. B1/69/A-49, Main Civil Bazar, District Attock **(The stock in business)**;

(v) Plot No. 142 measuring 6000 square yards, Jinnah Abad Town Scheme, Abbottabad **(the Abbottabad Plot)**;

(vi) Various shares, Bonds, Units and Bank accounts **(The other assets)**.

3. The agricultural lands were, in the year 1973, purportedly transferred by its owners, Rustam Ali Bakhshi, his brothers, one sister and their mother in favour of respondent No. 1, through gift mutations purportedly attested on various dates of May & November 1973. Whereas House No. 3 was, through a purported registered gift deed dated 29<sup>th</sup> October, 1980, (Exh. D/2), allegedly executed by the appellant, her mother Mst. Sultana Rustam Bakhshi, her two sisters Mrs. Parveen Waheed, the respondent No. 2, and late Gulfreem Riaz, the mother of respondents No. 3 to 7, transferred in favour of respondent No. 1. And according to respondent No. 1, upon the death of Rustam Ali Bakhshi the distribution agencies in his name were terminated, and

the respective companies appointed some other persons as their agents instead. Whereas the stocks in business were sold by the widow of the deceased, who owned the shop, being shop No. B1/69/A-49, Main Civil Bazar, District Attock, where such stocks were lying. The Abbottabad plot was sold by respondent No. 1 as a purported attorney of late Mst. Sultana Rustam Bakhshi, and also of the appellant, the respondent No. 2, and late Mrs. Gulfreem Riaz, (collectively called the legal heirs of the deceased). Respondent No. 1 claims to have paid the sale proceeds of the Abbottabad plot to late Mst. Sultana Rustam Bakhshi, whereas the amount lying in the bank account of late Rustam Ali Bakhshi was, according to the respondent No. 1, withdrawn through a succession certificate issued by a competent court of law, with the consent of all the legal heirs of the deceased.

4. It was in the year 2006 that the appellant through suit No. 139/2006 sought a declaration that the aforementioned properties and assets constitute the estate of her late father Rustam Ali Bakhshi, and that the property bearing House No. 10, Street No. 27, F-6/2, Islamabad (**The House No. 10**) has in fact been purchased by respondent No. 1, ostensibly in the name of his wife, Mrs. Azra Viqar Bakhshi, the respondent No. 8, from the funds generated by the former from the income of the properties and assets of late Rustam Ali Bakhshi. A further declaration was sought by the appellant that the aforesaid gift deed, as well as the gift mutations, whereby the agricultural lands were transferred in the favour of respondent No.1, are forged and fraudulent, and sought cancellation thereof. She also sought a decree for possession through partition of the aforementioned properties in accordance

with her inheritance share therein. The suit was contested by the respondents. The learned Single Judge of the Islamabad High Court after recording evidence of the parties and hearing them, dismissed the suit. The appellant's appeal against the said dismissal also was dismissed by a Division Bench of the Islamabad High Court, which judgment has been impugned by the appellant before us.

5. We have heard the arguments of the learned counsel for both the parties and have perused the record of the case with their assistance.

6. Admittedly House No. 3, was jointly owned by late Rustam Ali Bakhshi and his wife late Mst. Sultana Rustam Bakhshi. After the death of Rustam Ali Bakhshi on 20.02.1978, his 50% share in the said property devolved upon his widow, late Mst. Sultana Rustam Bakhshi, and his son, the respondent No. 1, and daughters, the appellant, respondent No. 2, and late Mrs. Gulfreem Riaz, the mother of respondents No. 3 to 7. The said property, as noted above, was on the basis of a registered gift deed dated 29<sup>th</sup> October, 1980 (Exh. D/2), transferred in the name of respondent No. 1. It was through the 4<sup>th</sup> amended plaint filed on 27.02.2009 that the appellant sought the said deed to be declared, forged and fraudulent, and prayed for its cancellation. She claimed that it was only on 07.09.2006, that she came to know about the alleged execution and existence of the purported gift deed, through a written statement filed by the respondents.

7. Refuting the allegations, the respondents submitted that the property has in fact been gifted by the legal heirs of late

Rustam Ali Bakhshi, including the appellant, to respondent No. 1, through registered gift deed dated 29<sup>th</sup> October, 1980 (Exh. D/2), and it is for such reason that the appellant has remained silent for a period of almost 26 years. Through the said gift deed late Mst. Sultana Rustam Bakhshi, in addition to her 1/8<sup>th</sup> share of inheritance from her husband in the said property, has also gifted away her entire original 50% share therein to respondent No. 1.

8. Though the appellant produced nine (9) witnesses and examined herself as PW-11, but as would be seen from the forthcoming analysis of the relevant evidences could not bring anything on record to impeach the veracity of the gift deed and/or to create any doubt regarding the factum of gift as claimed by the respondents.

9. On the other hand, the respondent No. 1, in order to prove the gift and the execution of the gift deed, produced Raja Zahid Hussain, the marginal witness of the deed, as DW-2, who was known to the family and was familiar with the executants/donors, he testified to the veracity of the gift deed. He remained steadfast during his cross examination. Chaudhry Muhammad Ali, the Sub-Registrar, who registered the gift deed appeared as DW-1 and stated that he had registered the gift deed which was signed by the donors in his presence, and that at the time of execution and registration of the document he had satisfied himself regarding the identity of the donors/executants.

10. In her evidence, respondent No. 2, the eldest daughter of late Rustam Ali Bakhshi, verified the fact that she, along with her mother and two sisters, including the appellant, has signed the gift

deed (Exh. D/2) on 29<sup>th</sup> October, 1980, and that they had also signed the power of attorney dated 12.12.1978 (Exh. D/3), without any pressure or persuasion by Defendant No. 1, or anyone else. She testified that the appellant signed the gift deed and also the power of attorney in her full view. Whereas the respondent No. 4, the second eldest child of late Mrs. Gulfreen Riaz, who passed away in the year 2005, appeared as DW-4, and recognized the signatures of her mother on the gift deed (Exh. D/2), as well as on the power of attorney (Exh. D/3) as her true and genuine signatures. She deposed that she was familiar with her mother's signatures as she has often seen her signing various documents like, bank cheques, and her school reports.

11. The said property was, in the year 1991, with the approval of the Capital Development Authority, partitioned into two plots/properties being plot/House No. 3, which plot the respondent No. 1 gifted to his son the respondent No.9 in the year 1997, and plot No. 3/A, which plot the respondent No. 1 gifted to his daughter, Amna Arshad, the respondent No. 10, who built a house therein, during the years 2000-2002, almost 22 years after the death of Rustam Ali Bakhshi.

12. In her evidence, recorded on 09.04.2009, the appellant denied execution and/or signing of the purported gift deed, and claimed that she came to know of the document only last year. During her cross examination, she deposed that she had cordial relations with her sisters and mother and that her mother loved her very much. She stated that she along with her children used to visit her mother quite often where respondent No. 1 also resided. She claimed that she has achieved her master's degree before her

marriage, but has remained a house wife and has never served anywhere. She further stated that her husband who was serving in a company is jobless since last two years, and is doing some private engineering work, and that she does not know about her husband's monthly earning. She stated that she owns House No. 129 in Lahore, which she purchased after selling her jewellery, but said that she does not have any receipt regarding such sale. She expressed ignorance as to whether or not her sister, the defendant No. 2, ever challenged or raised objection about the gift transaction in question. She acknowledged that in her written statement, her sister, Parveen Waheed, the respondent No. 2, admitted the execution of the gift deed and so also the legal heirs of her other sister, late Gulfreen Riaz, the respondents No. 3 to 7, have admitted the execution of the gift deed by their mother Mrs. Gulfreen Riaz. The appellant also admitted that her mother also never challenged the gift transaction before any forum. She expressed ignorance as to whether her sisters executed the gift deed in favour of respondent No. 1.

13. On the other hand, respondent No. 1 deposed that House No. 3, was gifted to him by his mother and three sisters, *vide* registered gift deed (Exh. D-2), which was signed by them as donors, and by himself as a donee, and that he intimated CDA about the gift deed, and the letter of change of ownership (Exh. DW-7/10) was accordingly issued by CDA on 16.02.1981. Respondent No. 1 further deposed that he had treated all his sisters, with great love and affection, more so the appellant as she was the youngest, and her relations with her husband were not good, who did not provide for her maintenance regularly, and he

had to care for her. He claimed that during the years 1983-84 he paid a sum of Rupees Eight lacs to the appellant, and that he got her son and daughter admitted in Govt. College, Lahore and kinnaird College, Lahore respectively. He stated that during summer vacations the appellant, along with her children use to come to and stay with him at House No. 3 many times. He produced a letter dated 07.07.1981, whereby his mother informed the concerned Gift Tax Officer, that she and her three daughters have, on 29.10.1980, gifted their respective share in House No. 3 to respondent No. 1, and submitted a Gift Tax Return along with a copy of the gift deed, for assessing the gift tax thereon. He also produced a copy of an order (Exh. DW-7/12) whereby assessment was made in pursuance of Exh. DW-7/11. He stated that the tax so assessed was paid by his mother on behalf of all the donors, however since the tax was mistakenly assessed on the full value of the property and the share inherited by him (respondent No. 1) therein was not excluded, his mother through letter, being Exh. DW-7/13, sought refund of the amount so paid in excess and thus a revised assessment was made through Exh. DW-7/14. He claimed that his father had given a Toyota Corolla car and also some jewellery to the appellant towards her dowry, as per his financial status. Respondent No. 1 further deposed that he accepted the offer of the gift made by his mother and sisters, five/six weeks before the execution of the gift deed. During his cross examination the respondent No. 1 stated that the payment of Rs. 8 lacs to the appellant was made by him by carrying the amount from Islamabad to Lahore. He explained that initially he paid Rs. 6 lacs to the appellant during the years 1983-84, and paid the remaining amount of two lacs, about a year thereafter, and that he did not



obtain any receipt of the payment from the appellant. He admitted not having mentioned the above payment in his written statement and stated that he has mentioned about the said payment in his reply to the applications filed by the appellant and also in his written reply filed in the year 2008. He denied the suggestion that he never paid the amount to the appellant.

14. Ch. Ahmed Ali, Director (Administration), Chief Commissioner Office, Islamabad, produced by respondent No. 1 deposed that in the year 1980 he was posted as Naib Tehsildar, ICT Islamabad, and was also performing the functions and duties of Sub-Registrar, and Revenue Officer, Islamabad. He claimed that the gift deed (Exh. D/2) was presented before him for registration in respect of House No. 3, by Mst. Sultana Rustam Bakhshi, her three daughters, Mrs. Parveen Waheed, Mrs. Gulfreem Riaz and Mrs. Khalida Azhar, the appellant. All of whom have through the said deed, gifted their respective shares in the said house to respondent No. 1. He stated that all the three pages of the document bears the signatures of the donors/executants and, that the endorsement on the document, also bears their signatures, and that he also signed the certification on the last page of the document, which page also contains the registration number and the date of the registration of the document. During his cross examination, the Officer stated that the donors/executants were identified to him by the witness Raja Zahid Hussain, Naib Tehsildar, who was personally known to him and had also signed the document as a witness, and further that he also checked the Identity Cards of the executants, but he did not remember as to whether the Identity Cards shown were in original or/were photo

copies thereof, as it has been a long time. He further stated that as per his memory the document was firstly signed by Mst. Sultana Rustam Bakhshi. He denied the suggestion having ever served with defendant No. 1 in any department.

15. Raja Zahid Hussain who was examined as DW/2, deposed that during the year 1980 he was posted as Naib Tehsildar, Rawalpindi. He claimed that he personally knew the appellant and respondent No. 2, as well as their mother Mst. Sultana Rustam Bakhshi, and late Gulfreem Riaz, the executants of Exh. D/2. He claimed that his father's family and the family of late Rustam Ali Bakhshi, both lived in Attock, and had family relationship. He stated that he had identified the executants at the time of execution and registration of the document before the Sub-Registrar and that all the executants had signed each page of the document and also on its endorsement. During his cross examination, he stated that besides Exh. D/2, the executants had also appended their signatures in the relevant register. He stated that Exh. D/2 was presented before the Sub-Registrar at about 10-11 A.M. He stated that none of the executants was handicapped and that only late Sultana Rustam Bakhshi had some problem with her leg which was persisting since before the execution of the gift deed. He further stated that late Sultana Rustam Bakhshi had come to the office of the Sub-Registrar in a car with respondent No. 1 and her three daughters had accompanied her.

16. Mrs. Parveen Waheed, the respondent No. 2, in her deposition stated that it was, Exh. D/2, the gift deed, whereby she herself, her two sisters, namely, the appellant and late Gulfreem Riaz, and her mother late Sultana Rustam Bakhshi, gifted their

respective shares in House No. 3, she acknowledged her signatures on the said deed and deposed that the other donors had also appended their signatures on the document in her presence. She stated that Raja Zahid, who identified the executants, is known to her. The witness also verified the execution of the general power of attorney (Exh. D/3) in the same manner. During her cross examination, she stated that for execution of the gift deed she had appeared in the office of the Registrar, which was on the ground floor, and that she had willingly gifted her share in the house to respondent No.1, he being her brother. She also stated that a car was given to the appellant towards her dowry, and that some reasonable jewellery was also given to her. She further stated that Exh. D/3 was executed in Rawalpindi, and not in Islamabad and that she accompanied respondent No. 1 to the District Court, Islamabad for the execution of Exh. D/2, and similarly they went to Rawalpindi for execution of Exh. D/3, and appeared before the Sub-Registrar in his office on the ground floor in Rawalpindi. She deposed that except Exhs. D/2 & D/3, she has not signed any document relating to the property of her late father and that she has not signed any power of attorney in favour of any advocate after the death of her father. During her further cross examination she twice narrated and reaffirmed in details the sequence and the manner in which the executants appended their signatures on the gift deed. She further stated that she has not appeared in any Court for making any statement about the property of her late father after his death except for the execution of Exhs. D/2 & D/3 and also did not instruct anyone to make any statement on her behalf. She stated that the general power of attorney was executed by her on 12.12.1978, She stated that she has not

engaged any counsel in respect of present case. She denied a suggestion that she signed the documents Exhs. D/2 & D/3 at the instance of the respondent No. 1 or her wife, the respondent No. 8. She also denied that she executed the said two documents for an offer made by the said two respondents. She also stated that during their stay in Islamabad, the appellant, and late Gulfreen Riaz use to reside in the house of their mother and respondent No. 1.

17. Mrs. Seemi Arif, the respondent No. 4, who is a daughter of late Gulfreen Riaz, in her testimony stated that she can recognize the signatures of her mother as she often watched her signing different documents like cheques and her school reports. She saw Exh. D/3 and recognized Exh. DW-4/1-5 as the signatures of her mother therein. The witness said that it was through Exh. D/2 that her mother gifted her share in House No. 3 to respondent No. 1 and that Exh. D/3 is the document whereby her mother appointed the respondent No. 1 as her attorney. During her cross examination, she explained that her mother use to make her signature with normal frequency and with medium pressure on her pen. She stated that she is not aware as to whether her mother signed any document in relation to the property of her grandfather other than Exhs. D/2 & D/3. She denied having signed any document in relation to the present case other than the power of attorney that she has executed in favour of her husband.

18. As regards the agricultural land the appellant in her evidence claimed that she came to know about the transfer of agricultural lands in favour of respondent No. 1 only during the pendency of the suit and has been deprived of her inheritance

share in the said lands. During her cross examination, she expressed ignorance regarding the total area of the lands gifted to respondent No. 1 in the year 1997 in Garhmahl. She however stated that the area of the lands in the year 2001-02 was 508 kanals and 14 marlas but could not tell as to how much out of said 508 kanals and 14 marlas was purchased by respondent No. 1 and how much was gifted to him. She admitted that the orchard on the land has been grown by respondent No. 1, but then said that it was grown by their father. She stated that respondent No. 1 was looking after the lands, though without any permission. She further stated that she has not filed any suit or application for mense profit or share of the produce in respect of the subject land.

19. Mrs. Parveen Waheed, respondent No. 2 in her evidence deposed that she did not get any share in her ancestral property in District Jhelum as her father had gifted the same to respondent No. 1. She said that she was informed about the gift by her parents.

20. Sheikh Asif Rasheed, the Special Attorney of respondents No. 3 to 7, deposed that late Rustam Ali Bakhshi during his life time mutated the land in favour of respondent No. 1. He claimed that he was informed about the above transfer by respondent No.4.

21. The respondent No. 1 in his testimony deposed that his father, along with his two brothers, Anwar Ali Bakhshi and Ashraf Ali Bakhshi, sister Afzal Begum and mother Hashmat Bibi owned the agricultural lands. The said co-owners executed a general power

of attorney in favour of his father for the purpose of transferring their shares in the lands in his (the respondent No. 1's) favour. Whereafter, his father Rustam Ali Bakhshi transferred the lands jointly owned by the aforesaid in his favour. He also gave the details of the gift mutations and produced the relevant gift mutations as exhibited DW-7/1 to DW-7/5. He deposed that after the above transfer, he purchased some more land and the total area thus owned by him came to 512 kanals. He further deposed that at the time of transfer of the lands as above, the lands were scattered in small parcels in three different villages namely Garhmahl, Raju Pindi and Chak Almas, and he therefore sold such lands situated in villages Chak Almas and Raju Pindi and consolidated his holdings in village Garhmahl through exchange and sale purchase and thus became owner of a compact block instead. The above exercise, according to respondent No. 1, was commenced by him in the year 1974 and was completed during the life time of his father. He further deposed that all his sisters including the appellant and his mother use to visit his land in Garhmahal and that after the death of his mother the appellant along with her husband and children had visited his lands and stayed in his house there for about 3-4 days. He claimed that all his sisters knew about the transfer of ownership of the land in his favour by way of gift. During his cross examination the respondent No. 1 stated that other than the above mutations there is no document pertaining to the transfer of possession of the land to him. He expressed his ignorance if the lambardar or the union council member had signed the gift mutations. He however stated that the lambardar had identified the parties. He also expressed his ignorance as to whether the gift mutations have been signed by

any of the donors. He stated that he was unable to give the exact date when the donors made offer of gift to him and/or the date on which he accepted the same. He stated that he took over possession of the lands immediately after sanctioning of the mutation but could not give the date. He expressed his ignorance as to whether in the special powers of attorney being Exhs. P-51, 52, 53, 54, 55, 56, 57 and 58 his name was mentioned as a proposed donee. He stated that Muhamad Afzal, who informed the revenue officials about the gift was Manager (Mukhtiar) of his father and other donors. He further stated that he does not remember having given any share of any produce from the orchard in the land to the appellant.

22. From the foregoing, it can be seen that out of the various properties and assets held by the deceased the distribution agencies admittedly came to be terminated upon his demise. Whereas the inventory/stocks in trade were, as claimed by respondent No. 1, sold by Mst. Sultana Rustam Bakhshi, the widow of the deceased. Nothing was suggested on behalf of the appellant during the cross examination of respondent No. 1 to refute the respondent's such claim. Neither has the appellant disclosed the source of her information that the stocks were sold by respondent No. 1 and not by Mrs. Bakhshi, nor has she been able to say as to for what amount were the stocks sold or to give any other information pertaining to the alleged sale. The shop wherein the above inventory/stock in trade were kept was admittedly owned by Mrs. Sultana Rustam Bakhshi and according to the respondent No. 1 was sold by him on the instructions of Mrs. Bakhshi for an amount of Rs. 1,20,000/- (Rupees One Lac Twenty Thousand) which

amount he paid to Mrs. Bakhshi. Nothing to refute the above was suggested on behalf of the appellant during the cross examination of respondent No. 1. As regards the sale of the Abbottabad Plot and the amounts withdrawn from the bank accounts of the deceased , and the sale proceeds of the shares, the respondent No. 1 has deposed that the plot was sold with the consent of all the legal heirs of late Mr. Bakhshi and on the basis of power of attorney (Exh. D/3) executed by them, and similarly the succession certificate was obtained and the amounts from the bank accounts were withdrawn and so also the shares were sold with the consent of the legal heirs, who were paid their respective shares therein. The respondent No. 1 claimed that in fact he paid to the appellant amounts which were far in excess of her share. None of the above claims were even attempted to be refuted during the cross examination of respondent No. 1. It can therefore be safely concluded that the appellant has failed to justify her claim and/or to prove her allegations with regard to the distribution agencies, stocks in trade, the Abbottabad Plot, the shop owned by Mst. Sultana Rustam Bakhshi and the bank accounts, shares etc. held by late Mr. Rustam Bakhshi at the time of his death.

23. Whereas the appellant has denied having gifted her share in House No. 3 to the respondent No. 1. She claims to have come to know of the existence of the gift deed Exh. D/2 only through the written statement filed on behalf of the respondent No. 1 on 03.09.2006. House No. 3 was admittedly owned by the deceased and Mst. Sultana Rustam Bakhshi each having equal shares. The gift deed Exh. D/2 is a duly registered document. The same was executed and registered on 29<sup>th</sup> October, 1980, by all



the legal heirs of the deceased, including his widow Mst. Sultana Rustam Bakhshi and the appellant. Admittedly Mst. Sultana Rustam Bakhshi lived more than 7 years after the execution and registration of the said document but neither she nor any other executant thereof including the appellant challenged the same in any manner throughout. Though the appellant has claimed that she has been asking for her share in the estate of the deceased from time to time however, neither has she been able to produce any evidence and/or witness in that regard nor has even stated as to when, in what manner, and in whose presence she made such demands. Since the document, as noted earlier, was executed and registered in the year 1980 much before the coming into force, of the Qanun-e-Shahadat Order, 1984, and was, in terms of Section 68 of the Evidence Act, 1872, then in force required to be proved by producing one marginal witness only, the respondent No. 1 thus produced Raja Zahid Hussain who has witnessed the execution and registration of the document and has signed the same as such, as DW-2. The said witness has verified such execution and registration with all the necessary details. He, as deposed by him, and also by the respondent No. 2, knew all the executants of the document personally, as his family and the family of he executants knew each other well from the days when both the families lived in Attock. The other witness produced by the respondent No. 1 to verify the execution and registration of the gift deed was Chaudhry Muhammad Ali, the Sub-Registrar who registered the gift deed. He verified the execution and registration of the document by all the executants before him, and that he has first satisfied himself regarding their identity. He also deposed that the donors/executants were identified to him by the witness Raja

Zahid Hussain and further that he had also checked the identity cards of the executants. The cross examination of the above two witnesses conducted on behalf of the appellant, instead of causing any dent in their respective depositions, further strengthened the respondent No.1's case by brining forth the graphic detail pertaining to the time, place, manner and sequence the document was executed before them.

24. The gift deed, as noted earlier, has been executed by four (4) persons, one of whom, being the mother of the remaining donees, and the donors, as noted earlier, passed away in the year 1988, about eight (8) years after the execution thereof. Another executant/donor, namely, Mrs. Gulfreen Riaz, the mother of the respondents No. 3-7 also passed away in the year 2005. The only surviving executant/donor other than the appellant, namely Mrs. Parveen Waheed, the respondent No. 2, who is the eldest daughter of the deceased, in her testimony verified having signed and executed the gift deed as well as the power of attorney dated 12.12.1978 (Exh. D/3), and that all the remaining executants thereof have signed the documents in her full view. As noted earlier also, she denied a suggestion that she signed the documents Exh. D/2 and D/3 at the instance of the respondent No. 1 or her wife the respondent No. 8. She also denied that she executed the said two documents for some offer made to her by the said two respondents.

25. Mrs. Seemi Arif, the respondent No.4 who is a daughter of late Gulfreen Riaz, explained as to how she recognized the signatures of her mother on the said two documents as being her real and true signatures. She deposed that it was through the gift

deed Exh. D/2 that her mother Mrs. Gulfreen Riaz gifted her share in House No. 3 to the respondent No. 1, and that she also appointed the said respondent her attorney through Exh. D/3. The cross examination of the said two respondents, instead of being of any avail to the appellant, further strengthened and verified the respondents claim on the one hand, and further discredited the appellant's claim with regard to House No. 3.

26. The respondent No. 1 through his evidence re-affirmed and reiterated his case with regard to House. No. 3 fully well. He also deposed that it was during the year 1983-84 that he paid a sum of Rupees Eight lacs to the appellants which claim was re-affirmed by him during his cross examination, when he stated that such payment was made by him by carrying the amount from Islamabad to Lahore and further that initially he paid Rupees Six lacs to the appellant during the year 1983-84 and paid the remaining Rupees Two lacs about a year thereafter. The respondent No. 1 also deposed that he accepted the offer of the gift made by his mother and sisters five weeks before the execution of the gift deed. He also produced a letter dated 07.07.1981 whereby his mother informed the concerned gift Tax Officer that she herself and her three daughters, on 29.10.1980, gifted their respective shares in House No. 3 to the respondent No. 1 and, submitted gift tax return along with a copy of the gift deed for the assessment of the gift tax. He produced the assessment made in pursuance of the said letter as Exh. DW-7/12, along with another letter, Exh. DW-7/13, whereby his mother sought refund of the amount assessed and paid in excess, and produced DW-7/14 whereby the assessment was accordingly revised, the authenticity

and veracity of the above letter was not denied by the appellant in any manner.

27. Undisputedly House No. 3, was, with the approval of Capital Development Authority, bifurcated/partitioned into two plots/properties, in the year 1991, one of which, that retained the original number, i.e. House No. 3, was in the year 1997 gifted by respondent No. 1 to his son, the respondent No. 9, and the other, bearing plot No. 3/A, was gifted by respondent No. 1 to his daughter, Amna Arshad, the respondent No. 10, who in the year 2000-2002, built a house therein. However, there is absolutely no evidence that the appellant, despite being an educated lady, with a master's degree, objected to the same, or sought her share in the property or for that matter in any of the assets left behind by the deceased.

28. Among the executants of the gift deed and the general power of attorney it is only the appellant who has denied execution of the document, and that too after a lapse of more than 26. Although Mst. Sultana Rustam Bakhshi survived for about ten (10) years after execution of the power of attorney (Ehx. D/3), and eight (8) years after the execution of the gift deed neither Mst. Sultana Bakhshi nor any of the other executants challenged any of the two documents throughout. There appears to be no reason, and none was suggested for that matter, as to why the only surviving sister of the appellant, the respondent No. 2 and the daughter of the deceased sister, the respondent No. 4 would depose against the stance of the appellant by acknowledging the veracity and authenticity of the two documents more so when the appellant claim that she has/had cordial relation with her sisters.

29. It may also be relevant to note here that though the appellant has denied having signed the aforesaid two documents and has termed them as forged and fictitious, and thus it would have been in her interest had the authenticity, or otherwise of the disputed signatures been verified by a hand writing expert, in fact she herself ought to have made a request for such test/comparison. However she resisted the order dated 26.05.2010 passed by the Court for such comparison/ test through a revision before the Lahore High Court, and persisted in her opposition by filing a petition before this Court against dismissal of her revision, which petition was, by consent, disposed of with direction for early disposal of the case. This further lends credence to the claim of the respondents that the said two documents have in fact been signed and executed by the appellant also, as otherwise there seems no reason for her opposing the verification/comparison as ordered by the Court.

30. In light of the above evidence there remains no doubt that House No. 3 was duly gifted by the widow and the three daughters of the deceased, including the appellant, to the respondent No. 1 and that the gift deed Exh. D/2 and the general power of attorney Exh. D/3 were duly executed and registered by the said donors. The appellant's challenge to the veracity and authenticity of the said two documents and her claim for a share in House No. 3 is, therefore, not sustainable.

31. In addition to the various properties and assets as listed in para 2 hereinabove, the appellant also claimed her inheritance share in House No. 10. She claimed that respondent No. 8, the wife

of respondent No. 1 is only an ostensible owner of the property, which has in fact been purchased by respondent No. 1, from the funds generated by the latter out of the income of the properties left behind by the deceased. However, she has not been able to produce any evidence to substantiate her claim in that regard.

32. Reverting back to the dispute regarding the agricultural land, though it is true, that like in respect of other properties and assets of the deceased, neither the appellant claimed any share therein over a long period of more than 28 years after the death of her father and till filing of the suit nor did she seek any share even in the produce thereof. She also did not object to the gift mutation attested in favour of the respondent No. 1 way back in the year 1978, although after having acquired the land respondent No. 1, proceeded to consolidate the same by way of sale, purchase and exchange and also enlarged his such land holdings by purchasing the land adjacent thereto and also developed an orchard and constructed a house therein, and it is also true that the respondent No. 2 who is the only surviving legal heir of the deceased in her deposition endorsed the respondent No. 1's claim of having acquired the agricultural land by way of gift. However, the said respondent was still required to prove a valid gift of the land by his father, grand mother, uncles and aunt in his favour to the exclusion of the other legal heirs of the deceased, it was absolutely necessary for the respondent No. 1 to have proved all the essential ingredients of the gift independent of the gift mutations, Exh. DW-7/1 to DW-7/5. He was essentially required to prove that the donees have offered to gift the subject land to him and that he accepted the said offer and that the possession of the lands was

delivered to him. He was also required to specify the date, time and place the offer was made and accepted by him, and also as to when the possession was delivered to him. However, neither has the respondent No. 1 divulged such details nor has he produced any person who witnessed the happening of any of the above. Although proving and verifying the authenticity of the gift mutation and its attestation, would not have been sufficient, without proving the transaction embodied therein, as noted above, however, the respondent No. 1 has failed even to prove the authenticity and veracity of the mutations and its attestation, as none who allegedly witnessed the attestation of the mutations been produced, neither the revenue officer nor the Lumbardars or the other witnesses whose names find mention in the attestation, or any of them who participated in the relevant jalsa-e-aam/assembly been produced by respondent No. 1, although there could have been a possibility that with the passage of long period of time, none of the above person may have survived, or may not have been traceable, but such also has not been claimed by respondent No. 1. He has also not been able to say positively as to whether the signature of the person who witnessed the gift attestations, were obtained by the revenue office in the register of mutation as required in terms of sub-section (7) of Section 42 of the West Pakistan Land Revenue Act, 1967. The respondent No. 1 thus having failed to prove the essential elements of gift in his favour, and having also failed to prove the authenticity and veracity of the relevant attestation, no valid gift of the subject land can be presumed in his favour, the respondent No. 1 is, therefore, liable to share the land with the appellant to the extent the appellant is entitled to inherit in accordance with Sharia, and also to pay to her the amount of

mense profit in respect of her such share in the land at the rate of Rupees eight thousands(Rs.8000/-) per acre, per annum, from the date commencing three years before the date of filing the suit by the appellant, and till the date the possession of the land to the extent of her share is delivered to her after proper partition and demarcation by the revenue authorities, which entire exercise shall be concluded within two months from the date hereof. In addition to the amount of mense profit the respondent No. 1 shall also pay to the appellant the amount of markup accrued thereon at the bank rate on year to year basis and till the time the entire amount is paid.

33. The appeal stands disposed of in the foregoing terms.

CHIEF JUSTICE

JUDGE

JUDGE

**ANNOUNCED IN OPEN COURT ON \_\_\_\_\_**  
**AT ISLAMABAD**

**JUDGE**

"APPROVED FOR REPORTING"  
*Rizwan*