

*Judgment Sheet*

**IN THE PESHAWAR HIGH COURT, ABBOTTABAD  
BENCH  
JUDICIAL DEPARTMENT**

*Civil Revision No. 39-A/2013*

***JUDGMENT***

Date of hearing.....**20.10.2025**.....

Petitioner (Misri Khan) By Mr. Zaheer Khan Jadoon, Advocate.

Respondents (Mst. Farooq Jan & others) by Mr. Gul Shahreen Khan Jadoon, Advocate.

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**SADIO ALI, J.-** Through the instant civil revision petition, the petitioner has challenged the judgment & decree dated 12.11.2012 passed by learned Additional District Judge-II, Abbottabad, whereby, the gift mutation No. 6489 attested on 21.08.1998 shall be cancelled to the extent of share of the plaintiff and proforma defendant No. 5 only, while rest of the judgment and decree of civil court is maintained.

2. Brief facts of the case leading to the filing of the instant civil revision are that the plaintiff/petitioner filed a suit seeking declaration that gift mutation No. 6489 dated 21.08.1998 in favour of respondent/defendant No.1 was forged, fictitious, and the result of fraud and collusion with revenue authorities. He claimed ownership of

the suit property by inheritance from his father and sought cancellation of the impugned mutation and correction of the revenue record. The respondents/defendants were duly summoned, out of them, respondents No. 1 appeared and submitted his written statement, whereas proforma defendant No. 5 filed cognovit. In view of the pleadings of the parties, the learned trial Court framed as many as seven (08) issues and thereafter the parties were asked to produce their respective evidence which they have accordingly led and after hearing the arguments, the learned trial Court decreed the suit of petitioner/plaintiff vide judgment and decree dated 15.07.2011. The respondent/ defendant being aggrieved of the aforesaid judgment and decree preferred an appeal which was partially accepted by learned Additional District Judge-II, Abbottabad vide impugned judgment and decree dated 10.06.2009 which judgment and decree has now been challenged by the petitioners/plaintiff through the instant revision petition.

3. Arguments heard and record perused.

4. Upon thorough scrutiny of the record and evaluation of the evidence adduced by both parties, it unequivocally emerges that mutation No. 6489 dated 21.08.1998, purportedly a gift mutation, was attested in favour of respondent No.1 on the basis of an alleged oral gift by her father, Akbar Khan. The foundational facts regarding this alleged transaction are, however, shrouded in doubt and uncertainty. Respondent No.1, being the sole beneficiary of the impugned mutation, bore the onus to establish the original transaction of gift through unimpeachable, confidence-inspiring, and legally admissible evidence. It is settled proposition of law that when a mutation is challenged on the ground of fraud, forgery, or misrepresentation, the beneficiary of such mutation must independently prove the original transaction that formed its basis.

5. In the instant case, respondent No.1 has miserably failed to discharge this legal burden. The record reveals that although she produced two marginal witnesses to support her claim, their depositions are contradictory and inconsistent on material particulars, such as the time, place, and

manner of the alleged declaration acceptance and delivery of possession. Such discrepancies seriously undermine the veracity of the alleged gift transaction. Furthermore, neither any independent witness from the locality nor any documentary evidence substantiating the transfer of possession was brought on record. The learned appellate court, despite observing that the respondent No.1 did not prove the alleged gift strictly in accordance with law, proceeded to partially accept the appeal merely on the basis that the other proforma respondents had not challenged the mutation. Such reasoning is manifestly erroneous and contrary to settled judicial principles, as the mere silence or non-appearance of co-heirs cannot validate an otherwise void or fraudulent transaction.

6. Equally significant is the admitted fact that the suit property, comprising Khasra Nos. 295 and 301, has remained in the continuous possession of the petitioner and his brother. The respondent No.1, on the other hand, failed to demonstrate possession of even an inch of the disputed land. Under Muhammadan Law, possession by the donee is an essential ingredient

for the completion of a valid gift (hiba). In the absence of delivery and acceptance of possession, the gift remains incomplete, inoperative, and unenforceable. The respondent No.1's own statement that she is unaware of the Khasra number wherein her residential house stands further exposes the weakness of her claim and negates her assertion of possession or ownership pursuant to the alleged gift.

7. It is, therefore, manifest that the findings of the learned appellate court are based on misreading and non-reading of evidence and a misconception of law. The court below erroneously treated the mutation as if it were a sale transaction and partially maintained it to the extent of some respondents, despite the entire mutation having been tainted by fraud and misrepresentation. Once a transaction is found to be fraudulent, it cannot be partially sustained, fraud vitiates even the most solemn proceedings.

8. In contrast, the learned trial court had correctly appreciated the evidence in its true perspective, rightly holding that the alleged gift was not proved in accordance with law and that

the impugned mutation was the result of fraud and collusion with revenue officials. The trial court's findings were fully supported by the record and warranted no interference. In case of **"Muhammad Dawood Vs Mst. Sakeena Farooque alias Aziza and others"** reported as **2025 SCMR 1229** wherein the hon'ble court has held that :-

*"This Court further held that the onus was on the plaintiff to prove the gift deed in all three facets, i.e., declaration of gift by the donor, acceptance of gift by the donee, and delivery of possession of the corpus of gift. No valid gift of property could be made in the absence of these three essential ingredients. Failure of the plaintiff to prove the twin requirement of acceptance of gift and delivery of possession was fatal to her claim. In the same case, Justice Jawwad S. Khawaja (as he then was), while concurring in the conclusion, contributed an additional note and opined that where a donee claims transfer of immovable property by way of gift through an instrument purporting to transfer rights in praesenti, the instrument is compulsorily registrable under Section 17 of the Registration Act, 1908. Failing registration, the provisions of section 49 of*

*the Registration Act come into play and, as a consequence, the document does not operate to create any right, title or interest, whether vested or contingent in the property.”*

In case of **“Hidayat Khan and others Vs Mst. Nasreen and others”** reported as ***PLD 2025 Supreme Court 502***, wherein hon’ble court has held that

*“It is an irony that despite being a Muslim Society, we have, out of greed, shunned the teachings of Islam especially in respect of matters of inheritance involving property/land of the deceased propositus and such designs are achieved by using a tactic as to gift, tamleek by the deceased propositus. When such situation arises and a person knocks the door of the Court in order to get his/her lawful right(s)/share from the legacy of propositus, the Court(s) have to ponder upon and plunge deep into the facts of the case, so as to fetch the truth by evaluating and scrutinizing evidence of the parties. As such, when such a transaction is put under challenge, the following principles are to be fulfilled and considered:*

- a) *Beneficiary of the impugned transaction of gift/transfer of immovable*

*property(s) bears the heavy onus to prove the transaction<sup>1</sup>;*

*b) The beneficiary of a gift has to plead and prove three mandatory ingredients of gift i.e. declaration/ offer by the donor, acceptance of gift by the donee and delivery of possession in pursuance of the gift<sup>2</sup>;*

*c) The possession of immovable property by one of the siblings/ L.Rs. to the exclusion of other legal representatives will be treated as constructive possession on behalf of all others unless proved otherwise;<sup>3</sup>*

*d) In case of oral transactions, it is compulsory for a beneficiary of oral transaction to prove the same through unimpeachable evidence by stating and averring mandatory material particulars in the pleadings i.e. time, date, venue/place, the witnesses in whose presence the alleged transaction was brought about<sup>4</sup>;*

*e) The oral transaction of transfer of immovable property (original transaction), be it sale, gift/tamleek, relinquishment or will etc. has to be proved separate from its incorporation/ attestation in revenue record by way of sanctioning of the mutation since a mutation cannot by itself be considered a document of title<sup>5</sup>;*

*f) Where a gift, which excluded a legal heir, irrespective of whether such transaction is in the form of registered deed, the donee is required to prove original transaction and must justify the exclusion of a legal heir from the estate<sup>6</sup>;*

*g) Parties are bound by their pleadings; no amount of evidence can be led beyond the scope of pleadings; and in case any such evidence is brought on record, the Court cannot consider and rely upon the same and has to discard it<sup>7</sup>;*

*h) Mere efflux of time does not extinguish the right of inheritance, therefore, the question of limitation in case of inheritance and fraud is not attracted and becomes insignificant.”*

In this respect further reliance may be placed on the case of **“Mst. Sadigan Begum Vs Muhammad Siddique”** reported as ***2025 CLC 1158 Lahore.***

9. For the reasons stated above, this Revision Petition is allowed, and the impugned orders passed by the learned appellate court committed a grave illegality and material irregularity in the exercise of its jurisdiction by misinterpreting the law and facts of the case. The impugned judgment and decree of the learned

appellate Court is hereby set aside, and consequently, the order of the learned Trial Court dated 15.07.2011 is hereby upheld.

Announced:  
20.10.2025.

***JUDGE***

*Shahid\*/*