IN THE PESHAWAR HIGH COURT, PESHAWAR
[JUDICIAL DEPARTMENT]

C.R. No.581-P/2022

Muqarab Khan and others……..…..Petitioners

Vs

Akhtar Zeb and others…….. ……..Respondents

Present: *Mr. Khaled Rehman, Advocate for the petitioners.*

Mr. Atta-ur-Rehman, Advocate, for the respondents.

Date of hearing: **13.10.2025**

Date of announcement: **22.10.2025**

JUDGMENT

MUHAMMAD IJAZ KHAN, J.- Through this revision petition, petitioners have challenged the judgement and decree of learned Additional District Judge-VII, Mardan dated 18.01.2022, whereby the appeal filed by the present petitioner was dismissed and thereby maintained the judgement and decree of the Civil Judge-X Mardan dated 23.12.2019, who vide the same had dismissed suit No. 400/1 filed by the present petitioner and had decreed suit No. 399/1 filed by respondents No. 1 to 3.

2. Precisely, the facts leading to the filing of the instant petition are that initially the present petitioners / plaintiffs filed a suit No. 400/1 for declaration to the effect that the parties are the legal heirs of a common predecessor namely, Gul Meer and as such they are owner in possession of the property being his legal heirs to the extent of their respective shares in the property measuring 34 Kanals 06 Marlas fully mentioned in the heading of the plaint. It is further pleaded that the predecessor-in-interest of respondents No .1 to 3 namely, Shams-ul-Qamar who is the brother of the present petitioner and father of respondents No. 1 to 3 at the back of the petitioner / plaintiff had attested a fake and forged power of attorney bearing No. 13, Bahi No. 4, Jild No. 57 and on the basis of said power of attorney has executed a gift mutation No. 774 attested on 17.04.2001 in favour of Mst. Subhania (mother of the plaintiffs and of the said Shams-ul-Qamar) and also attested another gift mutation No. 76 on the same date i.e. 17.04.2001 by defendant No. 4, Mst. Subhania in favour of defendants No. 1 to 3, despite the fact that the petitioners/ plaintiffs have not authorized their brother Shams-ul-Qamar for the

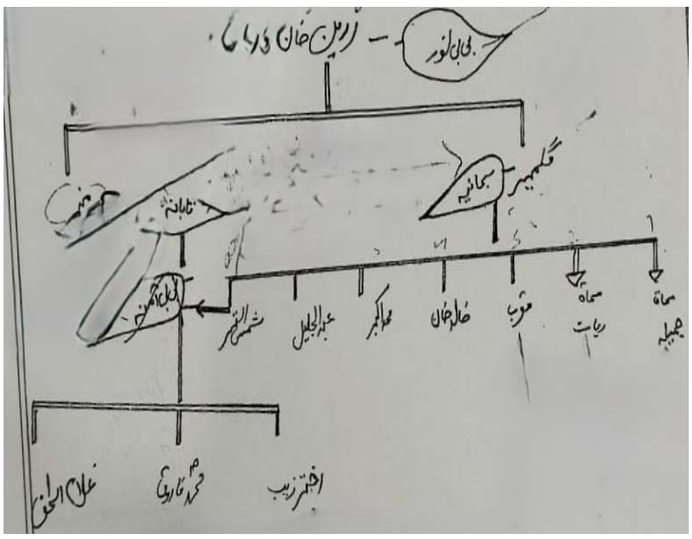
execution of any gift, however, he intentionally, illegally and with ill-designed has transferred the suit property in favour of his sons, therefore, petitioners/plaintiffs have approached to the court for declaring gift mutations as illegal, unlawful and thus ineffective upon their rights and to declare that the petitioners/plaintiffs are entitled for their respective shari-share in the suit property, which suit was duly contested by the respondents/defendants by filing written statement.

3. During the pendency of the said suit, the respondents No.1 to 3 alongwith their predecessor-in-interest namely, Shams-ul-Qamar also filed suit No. 399/1 to the effect that the parties are successors of Zarin Khan, who had two sons namely Gul Meer and Maneer and both the sons of Zarin had passed away during his life time, however, since Maneer was having only one daughter namely Mst. Amana (mother of the respondents) and a widow as his legal heirs, whereas Gul Meer was having five sons and two daughters i.e. the present petitioners. This suit was also contested by the present petitioners by filing written statement and thus the learned trial court vide order dated 11.02.2019, consolidated both these suits

and proceedings were initiated in suit No. 400/1 filed prior in time and as such consolidated issues were framed and thereafter both the parties recorded their respective evidence and ultimately the suit No. 400/1 filed by the present petitioners was dismissed, whereas suit No. 399/1 filed by the respondents No. 1 to 3 was decreed vide one of the impugned judgement and decree dated 23.12.2019. Petitioners being aggrieved of the aforesaid consolidated judgement, preferred an appeal to the Court of learned Additional District Judge-VII, Mardan, however, the same was also dismissed vide second impugned judgment and decree dated 18.01.2022, hence, the instant petition.

4. Arguments of learned counsel for the petitioners were heard in considerable detail and record perused with his able assistance.

5. In order to fully understand the controversies between the parties, it would be relevant to first understand their inter-se relationship, therefore, the undisputed pedigree-table of the parties as available on page-17 of the instant petition is reproduced as under:-



The aforesaid pedigree-table of the parties would show that both the parties are successor of one Zareen Khan who was their grandfather and the said Zareen Khan was having two sons namely, Gul Meer and Maneer. The present petitioners and the predecessor-in-interest of respondents No.1 to 3 namely, Shams-ul-Qamar are the sons of said Gul Meer, whereas Mst. Subhania is their mother. As against this, Maneer was not having any male son and was having one daughter namely, Bibi Amna and a widow Mst. Tabana. It is also an admitted fact that the said Bibi Amna had married to his first cousin namely, Shams-ul-Qamar, who is the predecessor-in-interest of present respondents No.1 to 3.

6. Keeping in view the aforesaid inter-se close relationship in mind, it is the case of petitioners /

plaintiffs as averred in the Suit No.400/1 that their brother namely, Shams-ul-Qamar (who is the father of respondents No.1 to 3 and husband of Bibi Amna) had prepared a fake power of attorney and on the basis of the said power attorney, the said Shams-ul-Qamar had initially executed a gift mutation No.774 attested on 17.04.2001 in favour of Mst. Subhania (their mother) and on the same date, another gift mutation No.776 was also attested vide which the said Mst. Subhania has transferred that property in favour of respondents No.1 to 3 who are the sons of said Shams-ul-Qamar and who had acted as attorney of the present petitioners. It is also the case of petitioners / plaintiffs that they had never intended to make a gift of their property in favour of Mst. Subhania (their mother). It was also the case of petitioners/plaintiffs before this Court that even if the power of attorney was a genuine document even then in the stated affairs their attorney namely, Shams-ul-Qamar was required to have been sought a special / express permission / consent from the petitioners / plaintiffs for transferring of their property initially in favour of Mst. Subhania and then in favour of his sons i.e. respondents No.1 to 3,

whereas the case of respondents No.1 to 3 was that since Mst. Amna was the only daughter of Maneer, therefore, as per the oral settlement and on the basis of unregistered deed (which has never been produced in the Court) the suit property has been transferred in the names of her sons i.e. respondents No.1 to 3, therefore, with this background and admitted positions of this case, now this Court would proceed to analyze the legal and factual aspect of this case.

7. As far as the case of petitioners / plaintiffs is concerned, it is their case that their brother namely Shams-ul-Qamar (predecessor-in-interest of respondents No. 1 to 3) had prepared a fake power of attorney (Ex.PW-1/D-1) and on the basis of the said power of attorney, he had executed two mutations i.e. Mutation No. 774 attested on 17.04.2001, vide which the property of the petitioners was shown gifted in favour of their mother and on the same date, another gift mutation No. 776 was also entered and executed, vide which the said gifted property in favour of their mother had been transferred as a gift in the name of present respondents No.1 to 3, (who are the sons of said Shams-ul-Qamar). Both the courts below have

appreciated the available record and evidence of the parties in the context that since the said power of attorney (Ex.PW 1/D-1) which was executed in the year, 1987 is a registered documents and as the respondents /defendants have proved the execution of the aforesaid two mutations No. 774 (Ex.PW 3/1) and 776 (Ex.PW 3/2), therefore, full legal worth have been attached to the same, however, they have failed to appreciate the established law on the subject that if an attorney / agent intends to transfer the property of his principal in favour of a person of which the said attorney is the ultimate beneficiary then in such eventuality such attorney has to obtain a special permission from his principal, therefore, keeping in view the aforesaid established jurisprudence on the subject what Shams-ul-Qamar (the predecessor-in-interest of the respondents No. 1 to 3) was required that he should have been obtained a special permission from his siblings (the present petitioners) and as admittedly he has neither sought any such permission nor he has brought the execution of impugned gift mutation into their notice, therefore, such transactions even if entered and executed in the revenue record would be lacking any legal

weightage. In a case[1], the Apex Court has held that it is established law that holder of a general power of attorney must obtain special permission from the principal when alienating the principal's property, either in their own favor or in the name of their relatives. In the present case, there is no evidence on record to suggest that Petitioner No. 01 sought special permission from the principal to alienate the suit land in favor of his sons and the sons of his brother. In the absence of such permission, the legality and propriety of the alleged sale deed in favor of these individuals is highly doubtful. It was also observed by the Apex Court that in the case of *Maqsood Ahmad and others v. Salman Ali (PLD 2003 SC 31)*, the Court has held that:--

> *"13. With reference to the context of power of attorney we have pointed out to the learned counsel for appellants that as appellant Maqsood Ahmad had been authorized to deal with the affairs of the property including the financial powers, therefore, if he wanted to transfer the land in respect whereof allegedly respondent appointed him as attorney to deal with his property, it was incumbent upon him to have sought prior approval of the Principal before transferring the land on the name of his brother Muhammad Ayub being the close relative of the attorney in order to make it a valid transaction in terms of section 211 read with section 215 of the Contract Act..".*

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[1] *Allah Bakhsh deceased through L.Rs and others v. Muhammad Riaz and others (PLD 2025 SC 63)*

In the case of *Jamil Akhtar and others v. Las Baba and others (PLD 2003 SC 494)*, it was observed by the Apex Court that:

> *"8. It is a settled principle of law that whenever a general attorney transfers the property of his principal in his even name or in the name of his close fiduciary relations, he has to take special permission from the principal."*

Thus, it has been consistently ruled that the attorney would require prior permission, approval and consent of the principal when he wants to transfer the property in the name of his close relatives. In the case at hand, entire evidence was scrutinized by the trial court and appellate court but not even an iota of evidence is available on record to demonstrate receipt of any such prior permission. Similarly, in another case[2], the Supreme Court of Pakistan has held that it is a settled law by now that if an attorney intends to exercise right of sale/gift in his favour or in favour of next of his kin, he/she had to consult the principal before exercising that right. The Court further held that the consistent view of this Court is that if an attorney on the basis of power of attorney, even if "general", purchases the property for himself or for his own benefit, he should firstly

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[2] *Mst. Shahnaz Akhtar and another v. Syed Ehsan-ur-Rehman and others (2022 SCMR 1398)*

obtain the consent and approval of principal after acquainting him with all the material circumstances. Likewise, in another case[3], the Supreme Court has held that it is settled law that an attorney cannot utilize the powers conferred upon him to transfer the property to himself or to his kith and kin without special and specific consent and permission of the principal. It is an equally settled law that the power of attorney cannot be utilized for effecting a gift by the attorney without intentions and directions of the principal to gift the property, which intentions and directions must be proved on record. Same view was adopted by the Apex Court in another case[4].

8. It was also noted that the said shams-ul-Qamar who was the attorney of the present petitioners had acted in such a manner which shows his hidden intention of giving benefits to his children as it is part of the record that both these gift mutations No. 774 (Ex.PW 3/1) and 776 (Ex.PW 3/2) have been attested on the same date i.e. 17.04.2001 and the contents of these mutations would further show that through the former mutation, property of all siblings was shown

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[3] *Ijaz Bashir Qureshi v. Shams-Un-Nisa Qureshi and others (2021 SCMR 1298)*

[4] *Mst. Naila Kausar and another v. Sardar Muhammad Bakhsh and others (2016 S C M R 1781)*

gifted in favour of their mother namely, Mst. Subhania, whereas through the latter mutation, the same property has been shown gifted from Mst. Subhania to his sons i.e. the present respondent No. 1 to 3, therefore, his this conduct was not above the board and the same prima facie lacks a good faith on his part.

9. It would also be relevant to mention here that since both these mutations were gift mutations, therefore, the beneficiary of these mutations i.e. respondent No. 1 to 3 or for that matter their father namely, Shams-ul-Qamar was required to prove the original incident of gift i.e. as to when, where and in whose presence the present petitioner being donor had intended to gift their property in favour of their mother. The written statement submitted to the instant suit as well as the contents of the plaint filed by the respondents No. 1 to 3 would show that they have not even uttered a single word regarding the incident of gift and thus, the essential ingredients and specifications for a valid gift i.e. declaration of the donor and its acceptance by the donee and of course delivery of possession are apparently missing in the present case, therefore, on this score too the gift

mutation could not be treated as valid one. In a case[5] the Apex Court has held that we have noticed that the petitioner failed to mention the date, time and place of the alleged gift. Further, he omitted to mention the names of witnesses in whose presence his father allegedly gifted the property in his favour and disinherited his sisters (Respondents). Likewise, there was no mention of acceptance of the gift in presence of witnesses in the written statement as required by law. It is settled law that the onus to establish the factum and ingredients of the gift is on the beneficiary who claims such gift and which is denied or challenged by the other legal heirs. Similarly, the Apex Court in its judgment rendered in the case[6] has held that indeed, if a document in the form of memorandum of gift has been executed between the parties (donor and donee) as an acknowledgment of past transaction of oral gift, its non-registration will not have much bearing as regards its authenticity or validity, but the other important thing is the proof of fulfillment of three conditions of a valid gift "offer", "acceptance" and

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[5] *Muhammad Srawar vs. Mumtaz Bibi and others reported as 2020 SCMR 276*
[6] *Mst. Saadia vs. Mst. Gul Bibi reported as 2016 SCMR 662*

"delivery of possession. Likewise, in a case[7], the Apex Court has held that we may also observe that the said document cannot be categorized as a gift as the necessary ingredients of gift were not established, including the acceptance of the alleged gift of the said properties.

10. As far as the case of respondent / defendant namely, Shams-ul-Qamar is concerned, it is their case that since Zarin Khan had two sons namely, Gul Meer and Maneer and then Maneer has only one daughter namely, Bibi Amna, therefore, after the death of Maneer, his widow namely Mst. Tabana made a request to Zarin Khan in the year, 1968 that since she is only one daughter and has no source of income, therefore, he transferred the suit property measuring 34 kanals and 06 marlas vide un-registered gift deed in favour of Mst. Bibi Amna. It is further the case of respondents / defendants that it was then in the year, 2000 when all the LRs of Gul Meer i.e. the present petitioners asked Shams-ul-Qamar being their attorney to make transfer of the aforesaid 34 kanals and 06 marlas land in favour of daughter of Maneer i.e. Bibi Amna but because by

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[7] *Islam-ud-din through L.Rs and others vs. Mst. Noor Jahan through L.Rs and others reported as 2016 SCMR 986*

then she had passed away, therefore, the transfer was made in favour of her sons i.e. the present respondents. In support of the aforesaid two incidents whether taken place in the year, 1968 through an un-registered deed or in the year, 2000, the respondents / defendants have miserably failed to produce any convincing and trustworthy evidence as it is their case from the very inception that the said property was gifted in favour of Bibi Amna through an un-registered deed, however, the said gift deed has never been produced before the Court what to speak of disclosing the names of their witnesses or producing them in Court. Similarly, respondents / defendants have also been failed to produce any convincing evidence with respect to their verbal assertion as pleaded by them to the effect that in the year 2000 the present petitioners being LRs of Gul Meer had asked Shams-ul-Qamar to transfer the suit property in favour of Bibi Amna or for that matter her sons i.e. the present respondents.

11. It would also be relevant to mention here that respondents / defendants have produced Redi Gul as DW-1, Sartaj Ali as DW-2 and Muhammad Farooq, respondent No.2 for himself as well as attorney for

the rest of the respondents as DW-3, however, none of them have uttered a single word that as to when, where and in whose presence their common predecessor namely, Zarin Khan had gifted the suit property to Bibi Amna. Similarly, they have also not uttered a single word about the execution of any un-registered deed which was the foundation of the case of the respondents / defendants as was pleaded by them in para-9 of their plaint. Likewise, they have also not uttered a single word that in their presence the LRs of Gul Meer i.e. the present petitioners has asked Shams-ul-Qamar to transfer the suit property in favour of sons of Bibi Amna, therefore, they have miserably failed on all score to prove all those facts which they have pleaded in their written statement as well as in their counter plaint.

12. It would also be relevant to mention here that even if there was a genuine power of attorney on behalf of the present petitioners in favour of their brother namely, Shams-ul-Qamar and even if the suit mutation No. 774 (Ex.PW 3/1) and 776 (Ex.PW 3/2) have also been validly entered and executed, however, since the present petitioners have disputed the said mutations by pleading that the same are the

result of fraud, then in such eventuality the respondents / defendants being beneficiary of those mutations, were under duty to prove the same as per the requirement of Article 17 read with Article 79 of The Qanun-e-Shahadat Order, 1984. It is astonishing if not surprising that the respondents / defendants have produced only three witnesses and out of them DW-1 Redi Gul and DW-2 Sartaj Ali have based their statements on mere hearsay and as such the respondents / defendants have not produced even a single witness in support of these disputed mutations. It may be reiterated that the respondents / defendants being beneficiary of the said mutations were bound to produce the marginal witnesses of the same and in case of their failure, they could not be given the benefit of the same. It was also noted with great pain that though the petitioners have termed the said mutations as based on fraud but even then the two fora below have not appreciated this established jurisprudence that it was for the respondents / defendants being beneficiary of those mutations to have proved the same especially when the controversy between the parties is arising out of a legacy. The jurisprudence so far developed qua the

execution of a document as per Articles 17 and 79 of the Qanun-e-Shahadat Order, 1984 is consistent to the effect that any document which require by law to be attested especially those involving financial or future obligations cannot be used as evidence unless it is attested by at least two attesting witnesses and those witnesses are then produced in Court to prove the execution of document. In a case[8], the Apex Court considered Article 17 of the Qanun-e-Shahadat and held, that:-

> *7. ... the provisions of Article 17(2)(a) encompasses in its scope twofold objects (i) regarding the validity of the instruments, meaning thereby, that if it is not attested by the required number of witnesses the instrument shall be invalid and therefore if not admitted by the executant or otherwise contested by him, it shall not be enforceable in law (ii) it is relatable to the proof of such instruments in term of mandatory spirit of Article 79 of The Order, 1984 when it is read with the later. Because the said Article in very clear terms prescribes "If a document is required by law to be attested, it shall not be used as evidence until two attesting witnesses at least have been called for the purpose of proving its execution, if there be two attesting witnesses alive and subject to the process of the Court and capable of giving evidence".*
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> *8. The command of the Article 79 is vividly discernible which elucidates that in order to prove an instrument*

[8] *Tassaduq Hussain v Muhammad Din (PLD 2011 SC 241)*

which by law is required to be attested, it has to be proved by two attesting witness, if they are alive and otherwise are not incapacitated and are subject to the process of the Court and capable of giving evidence. The powerful expression "shall not be used as evidence" until the requisite number of attesting witnesses have been examined to prove its execution is couched in the negative, which depicts the clear and unquestionable intention of the legislature, barring and placing a complete prohibition for using in evidence any such document, which is either not attested as mandated by the law and/or if the required number of attesting witnesses are not produced to prove it. As the consequence of the failure in this behalf are provided by the Article itself, therefore, it is a mandatory provision of law and should be given due effect by the Courts in letter and spirit. The provisions of this Article are most uncompromising, so long as there is an attesting witness alive capable of giving evidence and subject to the process of the Court, no document which is required by law to be attested can be used in evidence until such witness has been called, the omission to call the requisite number of attesting witnesses is fatal to the admissibility of the document. ... And for the purpose of proof of such a document, the attesting witnesses have to be compulsorily examined as per the requirement of Article 79, otherwise, it shall not be considered and taken as proved and used in evidence. This is in line with the principle that where the law requires an act to be done in a particular manner, it has to be done in that way and not otherwise.

Similarly, in another case[9], the Apex Court held that there is no denying the fact that a deed witnessing an agreement to sell being a document involving financial obligation has to be proved in accordance with the requirements of Article 79 of The Qanun-e-Shahadat Order, 1984. What are its requirements for proving a document of this type can well be known by reading it which runs as under:-

> *"If a document is required by law to be attested, it shall not be used as evidence until two attesting witnesses [at] least have been called for the purpose of proving its execution, if there be two attesting witnesses alive, and subject to the process of the Court and capable of giving evidence:*
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> *Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provision of the Registration Act, 1908, (XVI of 1908) unless its execution by the person by whom it purports to have been executed is specifically denied."*

This Article in clear and unambiguous words provides that a document required to be attested shall not be used as evidence unless two attesting witnesses at least have been called for the purpose of

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[9] *Farid Bakhsh .vs. Jind Wadda and others (2015 SCMR 1044)*

proving its execution. The words "shall not be used as evidence" unmistakably show that such document shall be proved in such and no other manner. The words "two attesting witnesses at least" further show that calling two attesting witnesses for the purpose of proving its execution is a bare minimum. Nothing short of two attesting witnesses if alive and capable of giving evidence can even be imagined for proving its execution. Construing the requirement of the Article as being procedural rather than substantive would not only defeat the letter and spirit of the Article but reduce the whole exercise of re-enacting it to a farce. In the case *Hafiz Tassaduq Hussain (supra),* the Apex Court after defining the meanings of the word "attesting" in the light of *Black's Law Dictionary* and other classical books and case law held that a document shall not be considered, taken as proved or used in evidence, if not proved in accordance with the requirements of Article 79 of the Order. This aspect was also highlighted in the case of *Hafiz Tassaduq Hussain v. Muhammad Din through Legal Heirs (supra)* in the paragraph which reads as under: -

> *"To the same effect are the judgments reported as Qasim Ali v.*

> *Khadim Hussain through legal representatives and others (PLD 2005 Lahore 654) and Shamu Patter v. Abdul Nadir Rowthan and others (1912 (16) IC 250). Therefore, in my considered view a scribe of a document can only be a competent witness in terms of Articles 17 and 79 of the Qanun-e-Shahadat Order, 1984 if he has fixed his signature as an attesting witness of the document and not otherwise; his signing the document in the capacity of a writer does not fulfil and meet the mandatory requirement of attestation by him separately, however, he may be examined by the concerned party for the corroboration of the evidence of the marginal witnesses, or in the eventuality those are conceived by Article 79 itself not as a substitute".*

13. In order to defend the impugned mutation No. 774 (Ex.PW 3/1) and 776 (Ex.PW 3/2), it is the case of respondents / defendants that in fact after the death of their predecessor namely, Zarin Khan and then his wife namely, Bibi Noor, their properties have devolved only upon the present petitioners being legal heirs of Gul Meer vide Mutation No. 5882 (Ex.PW 3/D-12) and No. 5883 (Ex.PW 3/D-13) both attested on 14.09.1974 and thus when the LRs of Maneer were deprived from the legacy then the suit property was given to his daughter namely, Bibi Amna as compensation. In the given facts and

circumstances, if the respondents / defendants or for that matter their immediate predecessor considering themselves to be deprived of the legacy through the aforesaid two inheritance mutation of 1974 then the proper course for them was to have challenged the said mutations, however, as against this, they have acknowledge the said mutation on the ground that the suit property was transferred to Bibi Amna as compensation. Since the aforesaid two inheritance Mutation No. 5882 (Ex.PW 3/D-12) and No. 5883 (Ex.PW 3/D-13) both attested on 14.09.1974 have not been challenged in the instant proceedings, therefore, no finding could be passed over the same and as as stated hereinabove, on the other hand respondents / defendants have miserably failed the transfer of the suit property through an unregistered deed in the year, 1968 (as pleaded by them in para No.9 of their plaint) and then the incident of transfer of property through oral gift in the year, 2000 (as pleaded by them in para-10 of their plaint) has not been established through any legally recognized evidence, therefore, the learned trial court has wrongly decreed their suit.

14. In view of the above discussion, it is floating on the face of record that the two fora below while dismissing suit No. 400/1 filed by the present petitioners have proceeded on a totally wrong and illegal premises as they have appreciated the evidence of the parties in a context which is totally irrelevant keeping in view the inter-se relationship between the parties of being legal heirs from a common predecessor and then of principal and agent and as against this, they have wrongly decreed suit No. 399/1 as the respondents / defendants have relied on hearsay evidence-cum-incident of 1968 and of 2000 without establishing the same through a strong, confidence inspiring and trustworthy evidence.

15. It would also not be out of place to mention here that civil disputes / cases are to be decided on the basis of preponderance of evidence and thus if the aforesaid yardstick is applied to the present case then the case of petitioners / plaintiffs on legal as well as factual is on very strong footing, whereas the case of respondents / defendants is standing in a total vacuum. In a case[10], the Hon'ble Apex Court has held that "in civil dispensation of justice, courts are

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[10] *Abdul Rehman & others vs. Mst. Allah Wasai & others (2022 SCMR 399)*

to adjudge the lis on the standard of preponderance of evidence produced by the parties. And the decision of the court would tilt in favour of the party having preponderance of evidence. As for the burden of proving a fact is concerned, it gains importance and relevance, only when no evidence is led by the concerned party or the Court is unable to take a decision, one way or the other, on the basis of evidence available on record of the case".

16. It would also be relevant to mention here that though in this case, there are concurrent findings as against the present petitioners, however, it is by now established jurisprudence that concurrent findings are not sacrosanct and if the same are the result of misreading or non-reading of evidence or misapplication of law on the subject or if the same suffer from illegalities or material irregularities then this Court in its revisional jurisdiction under section 115 CPC could upset and reverse the same. In a case[11], the Hon'ble Apex Court has held that it is essential to note that under section 115 of the Code of Civil Procedure (1908), the supervisory jurisdiction of the High Court in a civil revision

[11] *Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education, Peshawar and others vs. Latif Ullah Khan reported as 2021 SCMR 829*

petition is purely discretionary and rather limited. However, this Court has held on many occasions that such discretion must be exercised in a lawful and valid manner on the basis of well entrenched principles of the exercise of such discretion. Therefore, the High Court shall not arbitrarily refuse to exercise its discretionary powers, rather, it must satisfy itself as to whether jurisdiction has been exercised properly and whether the proceedings of the subordinate Court suffer from any illegality or irregularity. Similarly, in another case[12], the Hon'ble Apex Court has also held that before embarking upon to resolve the above proposition, we find it expedient, to briefly assess the nature of the jurisdiction of Courts in relation to civil revisions filed in terms of section 115 of the C.P.C. There can hardly be two opinions on the nature of revisional jurisdiction. It is a supervisory jurisdiction, which is vested in a higher forum (subject to the pecuniary jurisdiction of the case either the learned District Court or the learned High Court) and is exercised and/or is invoked for scrutiny if a 'case decided' by the Court subordinate to the higher Court's

[12] *Mandi Hassan alias Mehdi Hussain and another vs. Muhammad Arif reported as PLD 2015 Supreme Court 137*

jurisdiction, suffers from any defect in terms of exercise of its jurisdiction and/or on the ground(s) that the Court subordinate has acted in exercise of such jurisdiction illegally and/or with material irregularity. On the basis of the law enunciated and settled by this Court, there is wee room for doubt that being a supervisory jurisdiction, the higher forum which is approached (i.e. the revisional Court) is conferred with the power to ensure that the Court subordinate thereto (to the revisional court) conforms to the parameters of its jurisdiction. In other words the revisional jurisdiction is meant to rectify, to obviate, forefend and stave off the exercise of jurisdictional errors/defects and the illegalities and/or material irregularity committed by the subordinate Court in that regard. But the "case decided" (order/judgment assailed) has to squarely fall within the scope and the purview of section 115 of the C.P.C. It may however be categorically and unequivocally mentioned here, that approaching a higher Court in the revisional jurisdiction for the redressal of one's grievance, if the case is covered by section ibid (115, C.P.C.) is not a privilege, but is a valuable right of an aggrieved party. Obviously, such

exercise of revisional jurisdiction shall be subject to the rules of discretion; but the matter of approaching the revisional Court cannot be relegated to a mere privilege of the Court and not a right.

17. In view of the above discussion and exposition of law, this revision petition is allowed, the impugned judgments and decrees of the two fora below respectively dated 23.12.2019 and 18.01.2022, are set aside and consequently Suit No.400/1 filed by the present petitioners is decreed, whereas the suit No. 399/1 filed by the respondents / defendants is dismissed and it is directed that the suit property (34 Kanals and 06 Marlas) shall be distributed among all the legal heirs in accordance with their legal shares.

Announced on;
22.10.2025

Sd/-
JUDGE

(S.B) Hon'ble Mr. Justice Muhammad Ijaz Khan
Noor Shah