

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

F.A.O. No.121/2019
Safia Bibi
Versus
Matloob Hussain and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	02.07.2019	Malik Irfan Asif, Advocate for the appellant

Through the instant appeal, the appellant, Safia Bibi, impugns the order dated 24.05.2019, passed by the Court of the learned Civil Judge, Islamabad, dismissing her application under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure, 1908 ("C.P.C.") filed along with her suit for *"declaration, cancellation of mutations, recovery of possession and permanent injunction"*. In the said suit, the appellant had prayed for *inter-alia* a declaration to the effect that she is a co-owner to the extent of 2/11th share in the land measuring 61 *kanals* 16 *marlas* in Revenue Estate Tammah, Tehsil and District Islamabad ("the suit land").

2. Learned counsel for the appellant submitted that the appellant's father, Muhammad Shafi owned the suit land; that the appellant's brothers fraudulently transferred the suit land in their favour through mutation No.319 in the year 1990; that the appellant's father had never gifted the suit land to her brothers; and that since the appellant's father has died, she has been deprived of her inherited share in the suit land. Learned counsel for the appellant prayed for the appeal to be allowed and for the impugned order dated 24.05.2019 to be set-aside.

3. I have heard the contentions of the learned counsel for the appellant and have perused the record with his able assistance.



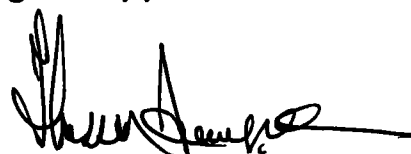
4. The gift mutations through which the suit land was transferred/mutated in favour of the appellant's brothers was attested in the year 1990 (i.e. more than twenty five years before the institution of the suit). The appellant has not been in possession of the suit land ever since then.

5. True, mutations and entries in the record of rights are not deeds of title, however, since the appellant has challenged mutation No.319 on the ground of fraud, she will have the opportunity to prove the same during the trial. It may be noted that the appellant has not given the particulars of fraud which resulted in the attestation of the gift mutation in question.

6. This is not a case where the suit property was owned by the appellant's father at the time of his death so as to give inheritance right therein to the appellant. It is a case of a belated challenge to gift mutation No.319. In her suit, the appellant has not even pleaded that she is a *pardanashin* illiterate lady. The pleadings are also vague as to when she came to know about mutation No.319.

7. After having gone through the impugned order dated 24.05.2019, I find the same to be well reasoned and lawful. Since the subject matter of the suit instituted by the appellant is immovable property, the doctrine of *lis pendens* comes to her aid.

8. In view of the above, the instant appeal is dismissed in *limine*. Nothing observed herein shall have any bearing on the decision of the learned Civil Court while deciding the appellant's suit.



(MIANGUL HASSAN AURANGZEB)
JUDGE