

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD. **JUDICIAL DEPARTMENT.**

Civil Revision No. 150/2013.

Malik Muhammad Ali, etc.

Versus

Mulazim Hussain, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	25.04.2019.	Malik Waqar Mehmood Awan, Advocate for petitioners. Nemo for respondents

Through this Civil Revision, the petitioners have assailed the judgment & decree dated 30.05.2009, passed by learned Civil Judge, 1st Class (West), Islamabad, whereby suit filed by petitioners was dismissed. The petitioners have also assailed the judgment & decree dated 19.04.2013, passed by learned Additional District Judge (West), Islamabad, whereby appeal against judgment dated 30.05.2009 was also dismissed.

2. Learned counsel for the petitioners *inter-alia* contends that petitioners' forefather namely Malik Ellahi Bux, plaintiff No.1 in the main suit transferred the land by way of gift deed in favour of petitioners No.2 to 6 vide registered Gift deed at S.No.7417, dated 02.12.1990 before the Joint Sub-Registrar, Islamabad regarding land measuring 05 Kanal 13 Marlas situated in Khewat No.129, Khatooni No.329, Mouza Jhangi Syeddan, Tehsil and District Islamabad; that on the basis of said gift deed mutation 2475 was incorporated in the Revenue record but same was cancelled by the Revenue

Officer on 29.06.1994 without issuance of notice which persuaded the petitioners to file suit; that respondents contested the said suit by way of filing written statement and learned trial Court without appreciating the record dismissed the suit vide impugned judgment dated 30.05.2009, which was further upheld by the learned Appellate Court despite the fact that overwhelming documentary evidence was available on record, which clearly spells out that mutation was illegally cancelled by the Revenue Officer; that both the Courts below have exercised their jurisdiction in illegal manner, which could only be rectified through instant civil revision.

3. No one has put appearance on behalf of respondents' side and as such instant matter is pending since 2013 and name of counsel for respondent Malik Mumtaz Ahmed, Advocate is reflected in the cause list, therefore, this Court has no other option but to proceed against the respondents and even notice was issued in the name of learned counsel for respondents, therefore, propriety demands that instant matter be decided on the basis of available record.

4. Arguments heard, record perused.

5. Perusal of record reveals that petitioners predecessor in interest Malik Ellahi Bux gifted the land measuring 05 Kanal 13 Marlas situated in Khasra No.1413, Khatooni No.329, Khewet No.129, Khana Kasht, Mouza Jhangi Syeddan, Tehsil & District

Islamabad in the name of petitioners No.2 to 6 vide registered Gift deed at S.No.7417, dated 02.12.1990, registered before the Sub-Registrar, Islamabad and the same was incorporated in the register of mutation vide mutation No.2475 on 17.02.1993, however, said mutation entry was not sanctioned and cancelled vide order dated 29.06.1994, which persuaded the petitioners to file the suit for declaration and permanent injunction against the respondents. Respondents contested the suit in which they submitted detail of transfer of different shares of land and stated that gift deed was registered without considering the actual share of Malik Ellahi Bux, who transferred the land through gift deed beyond his legitimate share.

6. Learned trial Court after considering the background of the case recorded evidence whereby Malik Muhammad Ali/present petitioner No.1 appeared and recorded his stance referred above and took specific plea referred as under:-

مورخہ 22.12.1990 کو میرے والد نے ہم بھائیوں کو بذریعہ ہبہ نامہ نمبر 7417 پانچ کنال تیرہ مرلے اراضی منتقل کر دی۔ ہمیں یہ اراضی خانہ کاشت سے منتقل کی تھی۔ پٹواری نے ملی بھگت سے خانہ ملکیت کا گوشوارہ بنا دیا جبکہ اصل میں ہمیں یہ اراضی خانہ کاشت سے بذریعہ ہبہ نامہ منتقل ہوئی تھی۔ محکمہ مال نے انتقال کی تصدیق اس entry کی وجہ سے نہ کی اور نہ ہی ہمیں اس بابت اطلاع دی۔

7. The learned trial Court while considering the above referred evidence, dismissed the suit vide judgment & decree dated 30.05.2009, which was further

upheld by the Appellate Court vide judgment dated 19.04.2013.

8. I have asked the learned counsel for the petitioners to justify his position regarding gift deed as it is obligatory upon the plaintiffs/petitioners to prove the due execution of gift deed being beneficiaries of the said documents. Reliance is placed upon 2005 SCMR 135 (Mst. Kulsoom Bibi and another Vs. Muhammad Arif) as unregistered instrument would not carry any veracity unless its execution has duly been proved, if document has been denied by the other side. It is also requirement of law in terms of Article 17 read with Article 79 of Qanoon-e-Shahadat Order, 1984, whereby two attesting witnesses have to prove its execution, who are alive and capable of being giving/ recording evidence, whereas in this case registered gift deed was duly witnessed by Syed Mir Alam and Muhammad Sajjawal Khan being witness but both were not produced by the petitioners in the Court as witness.

9. The petitioner No.1 appeared as witness in his own favour without submission of any other witness including the revenue record officer to substantiate his plea that his father transferred the land as gift to him and other co-petitioners within legitimate right. However, petitioners have failed to fulfill the minimum requirement and his plea could not be substantiated in any manner. Contrary to this position respondents have taken specific stance that petitioners' father transferred

the land beyond his legitimate share and they filed application to the Tehsildar, Islamabad, who cancelled the Mutation No.2475 and in this regard respondents have placed the ownership proof as Ex.D1, order of cancellation of mutation as Ex.D2 and ownership schedule (گوشوارہ ملکیت) of Malik Ellahi Bux as Ex.D3.

10. Keeping in view the above background, it is apparent on record that minimum requirement has not been fulfilled by the petitioners' side, even essentials of gift have not been proved in this case, even the order of revenue officer has not been assailed in the revenue hierarchy rather a suit was directly filed before the Civil Court.

11. Keeping in view the above background, I have gone through the concurrent findings of the Courts below, which reveal that both the judgments & decrees passed by the lower Courts have been passed after appreciation of record and no illegality has been observed. The petitioners have failed to substantiate any of his plea through revenue record, therefore, instant petition is misconceived and the same is hereby dismissed.

(MOHSIN AKHTAR KAYANI)
JUDGE