

**ORDER SHEET**

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

**Civil Revision Petition No.03/2015**

Ghulam Rabbani and three others  
Vs  
Nazir Ahmed and four others

<b>S. No. of order/ proceedings</b>	<b>Date of order/ proceedings</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
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(1) 09.01.2015 Syed Javed Akbar, Advocate for the  
petitioners.

The brief facts leading to filing of the present civil revision are that the petitioners namely Ghulam Rabbani, Abdul Rehman (now being represented through his legal heirs), Muhammad Zaman and Mehboob Elahi filed a suit for declaration and permanent injunction in the Civil Court, Islamabad against Nazir Ahmed (now being represented through his legal heirs), Bashir Ahmed and Karim Dad with respect to property measuring 6-Kanals, 18-Marlas bearing Khasra Nos.678 & 673 situated at Village Mera Sumbel Jaffar, Islamabad. The petitioners/plaintiffs contended in the plaint that one Ali Bukhsh S/o Khuda Bukhsh, predecessor in interest of the petitioners/plaintiffs as well as respondents No.1 to 3/defendants No.1 to 3 gifted the property in question to the petitioners/plaintiffs and respondent No.3 who are in possession of the same. It was further alleged in the plaint that defendants No.1 & 2/respondents No.1 & 2 got the property transferred in their favour through mutation No.1187 dated 28.02.1995 in equal shares. The petitioners/plaintiffs also claimed, in the suit, alongwith respondent No.3/defendant No.3 their entitlement to the sum of Rs.15,87,000/- being the compensation amount for the acquisition of the property. Respondents No.1 & 2 filed their written statement and contested the suit while respondent

No.3 conceded the claim of the petitioners/plaintiffs. Out of the divergent pleadings of the parties following issues were framed:

**ISSUES**

1. Whether the plaintiffs have not fixed court fee. If so what is correct valuation? OPD
2. Whether the suit is not maintainable? OPD
3. Whether the plaintiffs are owners in possession of suit land? OPP
4. Whether the plaintiffs are entitled for the injunction as prayed for? OPP
5. Relief.

On 28.11.1998 following additional issue was framed:

- 1-A. Whether the plaintiffs are estopped from their words and conduct to file the suit? OPD

On 13.06.2005 following additional issues were also framed:

- 4-A. Whether inheritance mutation No.1181/28.02.1995 is illegal, void against the law & facts and liable to be corrected? OPP.
- 4-B. Whether the plaintiffs are entitled to get their due share from compensation of suit land? OPP.

2. After framing of the issues one of the plaintiffs namely Ghulam Rabbani appeared as PW-1 and produced copy of mutation No.1187 as Ex.P-1 and copy of pedigree table/*Shajra-e-Nasb* was exhibited as Ex.P-2.

3. On the other hand Bashir Ahmed, one of the defendants appeared as DW-1 and produced Special Power of Attorney as Ex.D-1, copy of mutation No.1187 as Ex.D-2, copy of decision of civil suit as Ex.D-3, death certificate of Ali Bukhsh as Ex.D-4, copy of register *Haqdaran-e-Zamin* for the year 1988-89 as Ex.D5, copy of *Khasra Gardawri* as Ex.D-6 and copy of pedigree table as Ex.D-7. The learned Trial Court dismissed the suit of the petitioners/plaintiffs vide judgment and decree dated 24.05.2010. The petitioners/plaintiffs assailed the said judgment and decree in appeal which was also dismissed by the learned Appellate Court vide judgment and decree dated 03.07.2014.

4. The only submission made by the learned counsel for the petitioners is that the learned Trial Court as well as the

learned Appellate Court failed to frame proper and specific issue regarding gift made to the petitioners and respondent No.3 and as a result of which they could not adduce any evidence regarding the referred assertion. He further submitted that under Order XIV Rules 1 & 2 Code of Civil Procedure, 1908 (Hereinafter CPC) it is the duty of the Court to frame proper issues. In support of his contention learned counsel for the petitioners has placed reliance on Muhammad Yousaf and others. V. Haji Murad Muhammad and others PLD 2003 SC 184, Mst. Rasheeda Bibi and others. V. Mukhtar Ahmed and others 2008 SCMR 1384, Farida Zafar Zehri and others. V. Feroza Khanum and others 2007 SCMR 726 & Mst. Sughran Bibi and others. V. Mst. Jameela Begum and others 2001 SCMR 772.

5. It is an established principle that it is the duty of the Court to frame issues under Order XIV Rule 1 CPC. The judgments cited by the learned counsel for the petitioners support the referred position of the law. In the present case issues were framed by the learned Trial Court on the basis of pleadings of the parties. The petitioners in the plaint pleaded that the property in question was gifted by Ali Bukhsh in favour of the petitioners and respondent No.3 and in pursuance thereof the possession of the same was delivered to them and respondents No.1 & 2 in connivance with the revenue authority have procured mutation No.1181 dated 28.02.1995 in their favour. However, in the prayer clause of the plaint following prayer has been made by the petitioners:

*"Under the above mentioned circumstances, it is therefore, respectfully prayed that the decree for declaration to the effect that the plaintiffs alongwith defendants No.1 to 3 are legal heirs of deceased Ali Bakish S/o Khuda Bakhsh, Caste Awan, Resident of Village Maira Samble Jaffer, Tehsil & Distt. Islamabad in his estate in equal shares and inheritance mutation No.1187, dated 28.02.1995 is illegal and against the facts, as such liable to be corrected and compensation amount of Rs.15,87,000/- pertaining to acquired khasra No.678*

*measuring 5 kanals and khasra No.673 measuring 1 kanal & 18 marlas total measuring 6 kanals and 18 marlas is liable to be distributed amongst the legal heirs after correction of inheritance mutation in accordance with their due shares may kindly be passed in favour of the plaintiffs and as a consequential relief a decree for permanent injunction restraining the defendants No.1 & 2 from interference in the suit land in possession of plaintiffs and defendant No.3 be also passed in favour of the plaintiffs and against the defendants with costs throughout."*

6. The bare perusal of the above prayer shows that the relief sought by the petitioners is different from the facts pleaded by them in the plaint. However, keeping in view the assertions made in the plaint and contesting written statement filed by respondents No.1 & 2 with respect to the fact of gift, the learned Trial Court framed issue No.3 which pertains to ownership of the plaintiffs in the suit land. The petitioners led evidence accordingly, however, PW-1 appearing as witness did not utter even a single word about the fact of gift. DW-2 in his examination in chief deposed that the property was gifted by Ali Bakhsh however, denied the gift in cross-examination. It is pertinent to observe that during the course of trial and even in appeal no application or request otherwise was made for amendment in the issues by way of framing additional issue pertaining to gift specifically. The suit of the petitioners was filed in the year 1995 and the issues were framed in the year 1998 and at this belated stage after about 20 years it would be inappropriate for the petitioners to raise this argument, in civil revision, regarding non-framing of issue on the question of gift when they knew about the controversy all along and no prejudice has been caused to them as issue No.3, framed by the learned Trial Court, covered the controversy about the ownership and possession of the petitioners in the suit

land. Reliance in this regard is placed on the case of Mst. Sughran Bibi alias Mehran Bibi. V. Asghar Khan and another 1988 SCMR 4, Mehr Din (represented by his Legal Heirs). V. Dr. Bashir Ahmed Khan and 2 others 1985 SCMR 1 and Aqeel Hussain and others. V. Mst. Alia Bibi and others 2006 CLC 297.

7. The Hon'ble Lahore High Court in the case of Hafiz Riaz Ahmed and others. V. Khurshed Ahmed and others 2013 MLD 947, has held as under:

*"It is settled by the law that the pleadings of the parties are ever in their mind during the proceedings of the trial. The party cannot claim after a considerable delay that by not framing the proper issues, it was misled and could not produce the evidence in accordance with its pleadings, as a party is supposed to lead evidence oral as well as documentary in support of its pleadings. The framing of issues is to facilitate the parties with regard to matter in issue."*

8. The Hon'ble Supreme Court of Pakistan in the case cited as 1988 SCMR 4 observed as follows:

*"Apart from the fact that the petitioner has not been prejudiced it needs to be observed that it was also the duty of the parties to get proper issues framed, if they had any objection or suggestion regarding the framing of the issues."*

9. The Court in exercise of its jurisdiction under section 115 of CPC can only interfere with the orders of the subordinate courts on the grounds; that the courts below have assumed jurisdiction which is not vested in them, or have failed to exercise jurisdiction vested in them by law or that the courts below have acted with material irregularity in exercise of the jurisdiction. The petitioners in the present case have failed to point out any jurisdictional error by the learned Courts below and hence have failed to make out a case for interference.

10. In view of the above, this civil revision petition being devoid of any merit is dismissed *in limine* with no order as to costs.

**(AAMER FAROOQ)**  
**JUDGE**

\*M.Naveed\*



Approved for Reporting