

Form No: HCJD/C.

JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Civil Revision No.370 of 2014

Muhammad Irfan etc.

Vs.

Mst. Parveen Akhtar

Petitioners by: Ch. Imtiaz Ahmed Gujjar, Advocate.

Respondent by: Mr. Muhammad Mahboob Alam,
Advocate.

Date of Decision: 13.01.2022.

AAMER FAROOQ, J.- Respondent namely Parveen Akhtar filed a suit for permanent injunction against the predecessor-in-interest of the petitioners with respect to the land measuring 32-Marlas, Ehata No.17, Khasra No.484 situated in Abadi Deh, Sangjani, Tehsil and District, Islamabad in Scheme, ‘Zulfiqar Ali Bhutto Pakistan Peoples Party” floated by Government of Punjab Department of Noabadiyat, Lahore in the year 1975. The case of the respondent was that the said property was allotted to her father who died and left behind one son and four daughters as legal heirs and her share in the property is 6-Marlas, 5-Sarsahi. It was also alleged that her father gifted a constructed house in his life to the plaintiff/respondent in which she is residing for the last many years. The said suit was dismissed by the learned Trial Court vide judgment and decree dated 15.07.2013. The appeal was preferred by the respondent which

was partially allowed vide the impugned judgment dated 30.09.2014. Hence, the petition.

2. Learned counsel for the petitioners, *inter alia*, contended that the respondent alleged gift in her favour and on the basis thereof claimed to be in possession of the house constructed on the portion of the property in question. It was contended that no evidence was submitted *qua* the gift, hence the basis of possession and permanent injunction failed. It was also contended that the respondent is a co-owner in the property and nothing more.

3. Learned counsel for the respondent submitted that the only claim of the respondent with respect to the property in question is that permanent injunction be issued regarding her possession.

4. Arguments advanced by the learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

5. The factual background leading to filing of the instant petition has been mentioned hereinabove, therefore, need not be reproduced. Admittedly, the parties are co-owners in the property allotted to their predecessor. The respondent claimed to be in possession of a constructed house pursuant to gift by her father; however, there is nothing on record by way of evidence substantiating her claim of gift. As already noted, she is one of

the co-owners of the property which is unpartitionable and the law is, till such time the property is partitioned, every co-owner is presumed and entitled to be in possession of every corner of the property; however, it is equally settled proposition of law that parties are bound by their pleadings; the respondent claimed to be in possession on the basis of gift for which there is no evidence. Hence, there is no justification or basis for issuance of permanent injunction as claimed in the suit by the respondent. The learned Appellate Court erred in accepting the appeal of the respondent by misreading and non-reading of evidence on record, hence the judgment impugned suffers from material irregularities in exercise of jurisdiction.

6. For what has been stated above, the instant civil revision is allowed and the impugned judgment dated 30.09.2014 is set aside. Consequently, the suit filed by the respondent stands dismissed.

(AAMER FAROOQ)
JUDGE

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