

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

**Civil Revision No. 334/2015**

Mian Muhammad Shafi Javed etc.

Versus

Muhammad Fahad etc.

<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>
<b>(01)</b>	20.12.2019	Hafiz Liaqat Manzoor Kamboh, Advocate for the petitioners.

**Mohsin Akhtar Kayani J.** Through instant civil revision, the petitioner has assailed the judgment dated 20.10.2011, passed by learned Civil Judge, 1<sup>st</sup> Class, Islamabad and judgment and decree dated 29.05.2015, passed learned Additional District Judge (West), Islamabad, whereby suit filed by the petitioner has been dismissed concurrently.

2. Learned counsel for representing the legal heir (petitioner No.1-A of petitioner) inter-alia contends that Mian Muhammad Shafi Javed/petitioner filed suit for Declaration and Perpetual Injunction against Muhammad Fahad/respondent No.1 (real son), whereby Mian Muhammad Shafi Javed had challenged the transfer of suit House No. 198, Street No. 46, Sector F-11/3, measuring 500 s.q yds, comprising of double storey in the name of Muhammad Fahad/respondent No.1 in the office of CDA/respondent No.2 on the ground of fraud, misrepresentation, undue influence in his lifetime, however, during the pendency of the suit petitioner

Mian Muhammad Shafi Javed died on 07.11.2009, whereby Mian Muhammad Sami (petitioner No.1-A) and respondents No. 1-A to 1-D were impleaded as parties. It has further been contended that the learned Trial Court as well as learned Appellate Court have not considered the evidence in its true perspective, whereby question of fraud was proved on record and respondent No.1 has failed to justify any valid reason for the transfer of the suit property in his name nor any valid justification was brought on record as to why the late father Mian Muhammad Shafi Javed of the petitioner and respondents, deprived other legal heirs including present petitioner by transfer of suit property in the name of Muhammad Fahad/respondent No.1 only. It has lastly been contended that the question of fraud has been proved by the petitioner as well as from the record of CDA/respondent No.2, which has further been corroborated by the medical evidence referred on record i.e. Ex.P1 to Ex.P54.

3. Arguments heard, record perused.

4. From the perusal of record, it has been observed that Mian Muhammad Shafi Javed was owner of House No. 198, Street No. 46, Sector F-11/3, measuring 500 s.q yds, who transferred the suit property in the name of Muhammad Fahad/respondent No.1 (real son) vide transfer letter dated 05.05.2007, issued by the respondent No.2/CDA, which has been brought on record by the plaintiff Mian Muhammad Shafi Javed through Mark-A. Mian Muhammad Shafi Javed was father of

present petitioner No. 1-A) namely Mian Muhammad Sami and respondent No.1/Muhammad Fahad and respondents

No. 1-A to 1-D (real sons and daughters), who died on 07.11.2009. During the pendency of the civil suit, he challenged the transfer of the suit house in the name of respondent No.1/Muhammad Fahad mainly on the ground that transfer of suit property in the name of respondent No.1 is result of fraud, misrepresentation and undue influence. After the demise of late Mian Muhammad Shafi Javed, Mian Muhammad Sami transposed in his position being plaintiff, whereas other legal heirs have been impleaded as respondents as 1-A to 1-D in the main suit as well as before this Court in the instant civil revision.

5. The meticulous review of plaint disclosed that late Mian Muhammad Shafi Javed acknowledges that he has transferred the suit property in the name of Muhammad Fahad/respondent No.1 vide CDA letter No.CDA/EM-F-11/3 (198)/83/6128 dated 05.05.2007, Islamabad, whereby the particular plea taken by the late Mian Muhammad Shafi Javed has been reflected in para-5, 6 of the plaint in the following manner:-

5. *That the plaintiff has never transfer the suit house in favour of the defendant No.1, never got recorded his statement, never applied in any manner, never signed any paper, never moved any application to the concern authority CDA.*
6. *That in any case any paper is signed or thumb impressed by the plaintiff in respect of the transfer of the suit house by the plaintiff in favour of the defendant then it due to undue influence and misrepresentation. The defendant No.1 is real son of the plaintiff and had good terms with plaintiff. The plaintiff had*

*blind faith and trust in defendant No.1 being the real son. The plaintiff had never sign any paper knowing and understanding it for the transfer of the suit house. The plaintiff is unable to read, sign and understand anything.*

6. The above referred stance spells out that late Mian Muhammad Shafi Javed claims that he never executed any document, nor submitted transfer application in the office of CDA and at the same time, he claims that any document signed or any thumb impression made by him was result of undue influence and misrepresentation.

7. On the other hand, Muhammad Fahad/respondent No.1 has contested the suit by filing the written statement on record, wherein he contends that he is in possession of the suit house and has also entered into lease agreement with one Muhammad Yasin and is paying the taxes, installed PTCL connection bearing no. 2225176 in his name and defended the transfer of suit property in his name. The other legal heirs i.e. 1-A to 1-D except present petitioner have also filed written statement, wherein they have taken a categorical stance that their father Mian Muhammad Shafi Javed has transferred the suit house in the name of Muhammad Fahad/respondent No.1, being the younger son in the family members and deceased/father had great love and affection towards him, who gifted the suit house to the Muhammad Fahad/respondent No.1 with consent of all other family members.

8. The issues were framed and Mian Muhammad Sami/present petitioner entered into witness box as

PW-1 on behalf of Mian Muhammad Shafi Javed and recorded his evidence, whereby he acknowledged the demise of his father on 07.11.2009 and has also acknowledged the relationship of respondents No.1, 1-A to 1-D (impleaded as legal heirs) of late Mian Muhammad Shafi Javed.

9. Present petitioner while appearing in witness box as PW-1 contends that his father was owner of the suit house, constructed the same. He was sick since long having diabetes and hypertension, lack of sight and hearing problem and he never transferred the property in the name of respondent No.1, however, when he verified the status of the suit house in the office of CDA, it came to his knowledge that the suit house has been transferred on 05.05.2007 in the name of respondent No.1/Muhammad Fahad, which was challenged by him on the question of fraud.

10. During the course of cross-examination, petitioner acknowledges that they are five brothers and one sister, but none of them appeared as witness in the witness box with him. He denied that they did not agree with his stance. He also acknowledges that:-

یہ درست ہے کہ مکان متدعو یہ CDA میں ٹرانسفر ہوا ہے۔

11. The first floor of the subject property was leased out to Muhammad Yasin by respondent No.1 and respondent No.1 was living in the ground portion. He also acknowledges that

یہ درست ہے کہ میرے دیگر بہن بھائیوں نے ٹرانسفر متدعو یہ کو challenge نہ کیا ہے۔

12. Petitioner No.1-A has also admitted that at the time of transfer of suit house in the CDA office, his

brothers and sister were witnesses and he has also not produced evidence to the effect that his father was suffering from any disease at the time of transfer of said property and respondent No.1 was living with the late father.

13. On the other hand, respondent side has produced Adil Hussain, Assistant Estate Management-I, CDA as Dw-1, who submitted the record of the CDA and contends that suit plot was transferred in the name of respondent No.1/Muhammad Fahad and it was transferred in his name on 05.05.2007 and he has also produced the original application for transfer of plot as Ex.DW-1/1 and application of Mian Muhammad Shafi Javed for transfer of the suit property through Ex.D1/2 alongwith reply of application Ex.DW1/3, he acknowledges that property was transferred by way of family transfer, which was in the name of respondent No.1 and the application for transfer contains the signatures of Muhammad Fahad only. Dw-1 further stated that Ex.D1/1 was contested/verified by Mian Muhammad Rafi/respondents No.1-A, son of Mian Muhammad Shafi Javed, however, clearance of NAB as Ex.Dw1/p1 was available on record.

14. Respondents have also produced Muhammad Yasin tenant of the first floor of the suit property as DW-2, he acknowledges that he was the tenant of respondent No.1/Muhammad Fahad through lease agreement and late Mian Muhammad Shafi Javed died in the same house. Respondent No.1/Muhammad Fahad also appeared as Dw-3 and has produced

transfer letter as Ex.Dw-3/1 and reiterated the stance that the property in question was transferred in his name and leased out the first floor to Dw-2/Muhammad Yasin. He has also produced property tax record as Ex-Dw-3/2, Ex.Dw-3/3 alongwith conservancy charges as Ex.Dw-3/4 to Ex.Dw-3/6, similarly he has produced telephone bills as Ex-Dw-3/7 and electricity bill as Ex.Dw3/8.

15. During the course of cross-examination Dw-3 acknowledges that transfer letter as Ex.Dw-3/1 contains his picture, which was photographed in the office of CDA. Respondents have also produced Mian Muhammad Rafi as Dw-4, who is the oldest son of late Mian Muhammad Shafi Javed, who contends that his late father called all the brothers and sister in the year 2007 and expressed his desire for the transfer of suit house in the name of respondent No.1 and all the legal heirs (brothers and sister) have acknowledged their decision and resultantly, property was transferred in the name of respondent No.1, he also acknowledges that he is the witness of transfer of the suit property, when the suit property was transferred in the name of Muhammad Fahad/respondent No.1, he also acknowledges that at the time of transfer he signed as a witness. DW-4 further confirms that the suit property is in possession of respondent No.1 and Muhammad Yasin was his tenant, who was residing in the first floor.

16. Keeping in view the above background, it has been confirmed from the record that property was owned by late Mian Muhammad Shafi Javed, which

was subsequently transferred in the name of respondent No.1 vide transfer application Ex.Dw-3/1 dated 09.04.2007, which contains the photograph, signatures, thumb impression of Late Mian Muhammad Shafi Javed and respondent No.1 with their photographs, which was identified during the course of evidence. The separate application from Mian Muhammad Shafi Javed was also filed in the name of Director Estate Management, CDA as Ex.Dw1/2 with the claim that he transferred suit property in the name of respondent No.1 and the life of respondent No.1 was in danger and he intends to include the name of Mian Muhammad Sami in the said property, which was replied by the CDA vide letter dated 06.08.2007, whereby late Mian Muhammad Shafi Javed was informed that his request for inclusion could not be acceded to.

17. The entire record reflects that the suit property was transferred by late Mian Muhammad Shafi Javed in his lifetime voluntarily through his consent while taking into confidence the other family members, who acknowledge the transfer of the suit property in the name of Muhammad Fahad/respondent No.1.

18. As such the initial onus is upon Mian Muhammad Sami/petitioner No.1-A), who failed to justify the onus regarding question of fraud, misrepresentation and undue influence nor he is able to demonstrate from record that Mian Muhammad Shafi Javed was suffering from any disease in which his mental faculties could not understand nature of the act.



19. The documentary evidence qua the medical history of Mian Muhammad Shafi Javed appended with the record as Ex.P1 to Ex-P12 are the Lab test report of diabetes and his OPD treatment for his eyes, which do not reflect any serious ailment, through which it could be assumed that the property in question was wrongly transferred.

20. On the other hand, CDA authorities have acknowledged the transfer of the suit property in the name of respondent No.1 through a proper manner and no element of fraud/misrepresentation is visible on record.

21. I have gone through the concurrent findings of the learned Trial Court as well as learned Appellate Court, whereby issue No.1 has rightly been answered in favour of Muhammad Fahad/respondent No.1 in detail by the Trial Court and the findings given by the said Court were upheld by the learned Appellate Court in Regular First Appeal.

22. It is trite law, that the question of facts, which have been appreciated concurrently by the Courts could not be interfered in any manner in revisional jurisdictional under Section 115 CPC. Reliance is placed upon **2016 SCMR 24 (Nazim-ud-Ud and others Vs. Sheikh Zia-ul-Qamar and others).**

23. The petitioner has failed to discharge the onus qua the question of fraud as required in Article 117 of Qanun-e-Shahadat Order, 1984, failing which, he is not entitled for his relief as determined by the Courts below. Petitioner has also failed to produce any independent evidence to justify his plea and as such

no illegality or jurisdictional error has been highlighted during the arguments rather entire matter argued by the petitioner side reflects that it is personal vengeance and lust of the property, which persuaded the petitioner to challenge the valid transfer of property in favour of respondent No.1, despite the fact that his brothers and sister acknowledged that the property has been transferred in the name of respondent No.1 from the name of Mian Muhammad Shafi Javed.

24. The epitome of the discussion is that instant civil revision is misconceived and same is hereby **dismissed in limine.**

**(MOHSIN AKHTAR KAYANI)**  
**JUDGE**

RAMZAN