

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT: Mr. Justice Qazi Faez Isa
Mr. Justice Sardar Tariq Masood

Civil Petition No. 1127/2020

(On appeal against the order dated 04.03.2020
passed by Lahore High Court, Lahore in C.R. No.
167103 of 2018)

Bashir Ahmad Anjum

Petitioner

Versus

Muhammad Raffique and others

Respondents

For the Petitioner: Mr. Tauseef Ijaz Malik, ASC
Mr. Ahmed Nawaz Ch., AOR (Absent)

Respondents: Not represented

Date of Hearing: 25.03.2021

ORDER

Qazi Faez Isa, J. Learned counsel states that a suit was filed by the petitioner's brother, Muhammad Raffique (respondent No. 1) challenging the gift mutation No. 1571 which was attested on 27 November 1997, whereby their father Khushi Muhammad gifted 49 *kanals* and 13 *marlas* to the petitioner. In addition to the petitioner and respondent No. 1, the other legal heirs of Khushi Muhammad were their three sisters (respondent Nos. 2, 3 and 4). The suit was decreed. The learned counsel submits that appeal against the decision of the learned Civil Judge was disposed of on a technicality by the learned Additional District Judge and the learned Judge of the High Court dismissed the civil revision for non-compliance as the petitioner had failed to arrange for his representation and also did not proceed with the case himself. Learned counsel states that the petitioner was neither heard on merits by the appellate nor by the revisional court.

2. The dispute pertains to the estate of Khushi Muhammad who died almost twenty two years ago. Since only one Court had

considered the case on merits, we spent some time to ensure that the petitioner was not wrongly deprived of the land which he stated was gifted to him. The said land was not directly gifted to the petitioner by his father, Khushi Muhammad, but was stated to have been gifted to him by Muhammad Safdar, who was stated to be Khushi Muhammad's attorney. On our query, the learned counsel stated that Muhammad Safdar was the petitioner's brother-in-law.

3. We have read the judgment of the learned Civil Judge who noted that the original power of attorney in favour of Muhammad Safdar was not produced. The learned Judge also noted that the official of the District Registration Office who came to testify denied his office having the record of the said power of attorney. The burden to establish that Khushi Muhammad had executed the said power of attorney lay upon the petitioner and all the more so as it was on its basis that the gift was made in favour of the petitioner. However, the original of the said power of attorney was not produced nor permission to produce secondary evidence was obtained. The repository of the record, that is, the District Registrar's Office denied execution of such power of attorney and it did not exist in their record. It also came in evidence that Khushi Muhammad at the relevant time was a very old man; the petitioner contended that he was in his eighties and the respondent No. 1 said that he was a hundred years old. The petitioner also gave no reason as to why his father, Khushi Muhammad, would execute a power of attorney, nor why he would not appoint anyone from amongst his two sons and three daughters. Moreover, if Khushi Muhammad was able to have gone to the District Registrar's office to execute the said power of attorney, he could easily have also gone to the Revenue Office to directly gift his land to the petitioner. It appears that the sole purpose of introducing the fictitious power of attorney was to get around the legal constraint of an attorney benefitting himself, which would have cropped up if the petitioner had produced a power of attorney in his own favour.

4. When a Muslim dies, his legal heirs become owners of his estate at the very moment of his death to the extent of their shares as determined by *shariah*. Sadly, the petitioner deprived his siblings of their inheritance and managed to do so for about twenty two years compelling an heir to file a suit to claim what was legally theirs. The petitioner then filed a frivolous appeal and followed it with a frivolous revision, which he did not want to get decided. The judgment of the learned Civil Judge is legally sound. And, with regard to the aforesaid points, no tenable rebuttal was forthcoming. In these circumstances, it would be highly unfair to keep legal heirs deprived of what they are entitled to, both under the law of Pakistan as well as under the law of Almighty Allah by permitting the petitioner to continue to abuse the process of the law and unnecessarily procrastinate matters. This petition is accordingly dismissed with costs throughout. Copy of the order passed today to be sent to the respondents.

Judge

Judge

Bench-IV
ISLAMABAD
25.03.2021
(Atif)

Approved for reporting