

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE QAZI FAEZ ISA
MR. JUSTICE YAHYA AFRIDI

CIVIL PETITION NO. 957 OF 2020

*(Against the judgment dated 22.01.2020
passed by Lahore High Court, Multan Bench,
Multan in CR No.481/2012)*

Ghulam Qasim and others

...Petitioners

Versus

Mst. Razia Begum and others

...Respondents

For the petitioners: Mr. Aftab Alam Yasir, ASC
Syed Rifaqat Hussain Shah, AOR

For the respondents: Malik M. Latif Khokhar, ASC

For the respondents No. 2-3: Not represented

Date of hearing: 25.06.2021

ORDER

Qazi Faez Isa, J. This petition challenges the judgment of the Multan Bench of the Lahore High Court whereby the learned Single Judge set aside the concurrent judgments of the Subordinate Courts and decreed the suit of the respondent No. 1, who had claimed her inheritance as per Islamic law of inheritance, *Shari'ah*, in the estate of her father, the late Muhammad Yar. The learned counsel for the petitioners submits that the concurrent judgments were lightly set aside by the High Court in exercise of the court's revisional powers without appreciating the evidence on record and the fact that the suit was not maintainable because it was time-barred and respondent No. 1 was relying on a document, showing the purported date of death of Muhammad Yar as 15 May 1986, which document did not form part of her pleadings and was produced in evidence. He further states that Muhammad Yar was alive when the gift was made on 27 July 1986 and died on 28 May 1999; and refers to paragraphs (ii) and (v) of the plaint wherein the

respondent No. 1 did not assert that her father was already dead when the gift was made in favour of her brothers, the petitioner Nos. 1 and 2.

2. We have heard the learned counsel and with their assistance examined the documents on record. It is not disputed that the respondent No. 1 is a daughter of Muhammad Yar. However, the date of death of Muhammad Yar is disputed; the date is relevant and important because respondent No. 1 had alleged that her father was dead on the date that he is supposed to have made the gift. As regards the purported gift asserted by her brothers and their reliance on the gift mutation No. 88 dated 27 July 1986, both witnesses thereof produced by them testified that they had no knowledge of the gift and also admitted that Muhammad Yar had never attended the offices of the concerned revenue department to record his statement. They had also contradicted themselves with regard to the gift mutation document as they testified that Muhammad Yar had thumb impressed it and mentioned the number of his national identity card thereon, but the said mutation document contained neither. The witnesses did not assert that Muhammad Yar had gifted the property in his lifetime. As per the said mutation, the gift was made at the time of the gift mutation, that is when Muhammad Yar allegedly presented himself before the revenue authority. The purported donees of the gift were required to establish that Muhammad Yar had gifted the land in their favour and on this score they failed. However, since the learned counsel representing them had also argued the matter of the date of death of Muhammad Yar and contended that the suit was time-barred, we proceed to consider these points too.

3. The respondent No.1, through her counsel, produced Muhammad Yar's death certificate (exhibit P-4) which was issued by the concerned Union Council. The petitioners did not object to her counsel producing the death certificate. On the other hand, the petitioners Nos. 1 and 2 orally asserted that their father had died on 28 May 1999. Whether the document was properly exhibited

remains a moot question. The record of the Union Council was not summoned and the petitioners did not produce a contrary death certificate to exhibit P-4, which mentioned that Muhammad Yar died on 15 May 1986. Their oral assertion that Muhammad Yar died on 28 May 1999 was simply that and it was not so stated in the written statement and no documentary proof was tendered to support this date. There is no reason not to accept that Muhammad Yar passed away on 15 May 1986. Therefore, the said gift mutation dated 27 July 1986 was made after his death, and needless to state, Muhammad Yar could not have gifted the property after his death.

4. Immediately on the death of a person, his/her legal heirs become owners of his estate under Muslim law. In the case of *Ghulam Ali v Mst. Ghulam Sarwar Naqvi*¹ it was held that:

The main points of the controversy in this behalf get resolved on the touchstone of Islamic law of inheritance. As soon as an owner dies, succession to his property opens. There is no State intervention or clergy's intervention needed for the passing of the title immediately, to the heirs. Thus, it is obvious that a Muslim's estate legally and juridically vests immediately on his death in his or her heirs and their rights respectively come into separate existence forthwith. The theory of representation of the estate by an intermediary is unknown to Islamic Law of inheritance as compared to other systems. Thus there being no vesting of the estate of the deceased for an interregnum in any one like an executor or administrator, it devolves on the heirs automatically, and immediately in definite shares and fraction.

The above-noted principle has been continuously affirmed, including in the cases of *Mst. Reshman Bibi v Amir*,² *Mirza Abid Baig v Zahid Sabir*,³ and *Farhan Aslam v Mst. Nuzba Shaheen*.⁴

5. Therefore, the contention that the possession of the land was with the petitioners and the suit filed in the year 2008 could not

¹ PLD 1990 SC 1, pg 12 I.

² 2004 SCMR 392, para 4.

³ 2020 SCMR 601, para 8.

⁴ 2021 SCMR 179, para 5.

challenge the gift mutation stated to have been made in the year 1986, as it was beyond the limitation period, will not in itself make the suit time-barred. This is because the possession by an heir is considered to be constructive possession on behalf of all the heirs. In this regard reference may be made to the case of *Ghulam Ali v Mst. Ghulam Sarwar Naqvi*⁵ where it was held that:

The heir in possession was considered to be in constructive possession of the property on behalf of all the heirs in spite of his exclusive possession, e.g., the possession of the brothers would be taken to be the possession of their sisters, unless there was an express repudiation of the claims of the sisters by the brothers.

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Circumstances may exist in which an inference of knowledge can be drawn, or in which the *laches* or negligence of the co-owners is so great that knowledge will be presumed but a case of that type would have to be exceptional. The law does not penalise a co-owner who relies on the honesty of his co-sharer, and therefore ordinarily the mere fact that he does not take the trouble to assert his rights as he may be entitled to, would not justify an inference of ouster.

The above-mentioned two-member Bench decision of this Court was also followed by a three-member Bench decision in the case of *Khair Din v Salaman*.⁶ Therefore, the *cause of action* would only accrue when the respondent was denied her rights, and it would be from such date that the time would start to run, the burden to establish this lay on the petitioners which they had also failed to establish. However, as observed in *Mst. Grana v. Sahib Kamala Bibi*,⁷ the law of limitation would be relevant when the conduct of the claimant demonstrates acquiescence and particularly when third party interest is created in the inherited property.

6. It is extremely regrettable that in the Islamic Republic of Pakistan, male heirs continue to deprive female heirs of their

⁵ PLD 1990 SC 1, pg 11 E & F.

⁶ PLD 2002 SC 677, para 6 A.

⁷ PLD 2014 SC 167 per Nasir-UI-Mulk J. See also Muhammad Rustam v. Mst. Makhan Jan, 2013 SCMR 299; Lal Khan v. Muhammad Yousaf, PLD 2011 SC 657; Atta Muhammad v. Maula Bakhsh, 2007 SCMR 1446; Aslam v. Mst. Kamalzai, PLD 1974 SC 207.

inheritance by resorting to different tactics and by employing dubious devices as was done in the instant case. The shares in the property of a deceased Muslim are prescribed in the Holy Qur'an and *Shari'ah*. Allah Almighty commands in the Holy Qur'an:

From what is left by parents and those nearest related there is a share for men and a share for women, whether the property be small or large – a determinate share.⁸

Allah (thus) directs you as regards your children's (Inheritance): to the male, a portion equal to that of two females; if only daughters, two or more, their share is two-thirds of the inheritance; if only one, her share is a half. For parents, a sixth share of the inheritance to each, if the deceased left children; if no children, and the parents are the (only) heirs, the mother has a third; if the deceased left brothers (or sisters) the mother has a sixth.⁹

To deny an heir his/her share in the property left by the deceased is disobedience to Almighty Allah's decree and those who do so, while they may obtain a temporary benefit in this world, leave themselves accountable to divine punishment in the Hereafter. The verses dealing with the laws of inheritance are followed by two verses, the first which gives good tidings to those who abide by the '*limits set by Allah*'¹⁰ followed by the verse prescribing the torment of Hell for those who disobey: '*But those who disobey Allah and His Apostle and transgress His limits will be admitted to a fire, to abide therein: And they shall have a humiliating punishment.*'¹¹

7. This Court has repeatedly castigated attempts to deprive female heirs of their right to inheritance. In the case of *Atta Muhammad v Mst. Munir Sultan*¹² this Court noted that depriving female heirs of their inheritance has become '*all too common*' and directed the revenue authorities to be extra vigilant. In *Islam-ud-*

⁸ '*The Holy Qur'an, Text Translation and Commentary*' by Abdullah Yusuf Ali, *Surah An-Nisa* (4), verse 7.

⁹ Ibid, *Surah An-Nisa* (4), verse 11.

¹⁰ Ibid, *Surah An-Nisa* (4), verse 13.

¹¹ Ibid, *Surah An-Nisa* (4), verse 14.

¹² 2021 SCMR 73, para 5.

*Din v Mst Noor Jahan*¹³ the suffering and agony imposed upon female heirs was found to be most unfortunate. And, in *Khair Din v Mst Salaman*¹⁴ it was held that no benefit could be derived by those claiming rights against female heirs based on fraudulent transactions.

8. We sadly note that despite our repeatedly pointing out that effective measures must be put in place to protect the rights of inheritance of females, this has still not been done. Those few ladies who have the independence, determination and resources to take their brothers to court are left embroiled in slow grind litigation, as in the present case, which started in the year 2008 and took thirteen years to culminate, having seen its way through four courts. The adage *prevention is the best medicine* is equally applicable when female rights are impaired. The State must ensure the protection of rights which is far easier, cheaper and less wasteful of public resources than restoring rights through the courts, which is laborious, expensive and needlessly wasteful of resources. In this case, a sister's right to inheritance would have been safeguarded if the revenue authorities had exercised due care and caution, but this was not done. Either the revenue officials were inept and negligent or else complicit and corrupt, in either eventuality the system permitted the exploitation of the weak. This is all the more disconcerting in an Islamic Republic, the Constitution of which specifically protects property rights¹⁵ and enables the making of '*special provision for the protection of women and children*'.¹⁶

9. The people through their elected representatives enacted the Constitution of the Islamic Republic of Pakistan and in it set out the course for the country to take by setting out therein the Principles of Policy¹⁷ (**'Principles'**). These include enabling Muslim

¹³ 2016 SCMR 986, para 11.

¹⁴ PLD 2002 SC 677, para 6.

¹⁵ Constitution of the Islamic Republic of Pakistan, Articles 24 and 23.

¹⁶ Ibid, Article 25 (3).

¹⁷ Ibid, Part II Chapter II 2.

citizens to live their lives in accordance with Islam,¹⁸ and promoting '*Islamic moral standards*'.¹⁹ Depriving females of their inheritance prescribed by *Shari'ah* violates these Principles. Denying females their inheritance also undermines their economic independence, prevents a rise in their standard of living and concentrates wealth in male descendants, which offends another three Principles.²⁰ Economic deprivation of women prevents their full participation '*in all spheres of life*' which is another Principle²¹ which is violated. In *Employees of Pakistan Law Commission v Ministry of Works*, this Court held that provisions relating to Fundamental Rights ought to be interpreted harmoniously with the Principles of Policy²² and this was reiterated in *Lahore Development Authority v Imrana Tiwana*.²³ In *Beena v Raja Muhammad* it was held that the Principles represent '*the path and the destination that the nation has set for itself*'.²⁴ A three-member Bench of the Supreme Court in the case of *Attiyya Bibi Khan v Federation of Pakistan* held that '*Article 29 of the Constitution requires each organ or authority of the State to act in accordance with those Principles*'²⁵ and the same was echoed in *Farhan Aslam v Nuzba Shaheen*.²⁶

10. The Principles especially protect the under-privileged and aim at ameliorating the condition of the vulnerable and establish the well-being of the powerless. Therefore, non-adherence to the Principles affects those who are most in need of protection, those at the mercy of predators. The Principles are '*the conscience of the Constitution and the basis of all executive and legislative action*' as held by an eleven-member Bench of this Court in the case of *Benazir Bhutto v Federation of Pakistan*.²⁷

¹⁸ Ibid, Article 31(1).

¹⁹ Ibid, Article 31(2)(b).

²⁰ Ibid, Article 38 (a).

²¹ Ibid, Article 34.

²² 1994 SCMR 1548, pg. 1552 (C).

²³ 2015 SCMR 1739, para 32.

²⁴ PLD 2020 SC 508, para 11.

²⁵ 2001 SCMR 1161, para 9.

²⁶ 2021 SCMR 179, para 8.

²⁷ PLD 1988 SC 416, pg. 489.

11. Almost half a century has passed since the 1973 Constitution came into effect which stipulates that the State has '*to act in accordance with those Principles*'.²⁸ The President and Governors are required to annually submit '*a report on the observance and implementation of the Principles of Policy*'²⁹ but they are not doing so. A three-member Bench of the Supreme Court in the case of *Jawad Beg v The State*³⁰ had also drawn attention to this failure to comply with this constitutional provision. The reports to be submitted by the President and Governors are a '*mandatory duty*',³¹ akin to a performance audit of the Government.³² When the required reports are not submitted by the President and the Governors respectively to the Parliament and the Provincial Assemblies, then these legislative bodies may not possess information which would help them to legislate where there are weaknesses and disparities. It is expected that the President and the Governors shall fulfil their constitutional duty, in this regard, under Article 29(3) of the Constitution.

12. The learned Judge of the High Court had comprehensively dealt with the purported gift and rightly concluded that both the Subordinate Courts had completely misread the evidence and that the making of the gift was not established. At this juncture, the learned counsel for the petitioners brings forth another point. He submits that in the plaint, the respondent No. 1 had claimed that her share in the estate of Muhammad Yar was one-third but as Muhammad Yar had two sons and two daughters (his widow had pre-deceased him) the share of a son would be twice that of a daughter and as such the respondent No. 1 would be entitled to one-sixth share in Muhammad Yar's estate. The learned counsel representing the respondent No. 1 submits that the inheritance mutation in respect of Muhammad Yar's estate has as yet not been prepared and that respondent No. 1 does not claim anything more

²⁸ Ibid, Article 29(1).

²⁹ Ibid, Article 29 (3).

³⁰ 1981 SCMR 341, para 21.

³¹ *Nasreen Khetran v Government of Balochistan*, PLD 2012 Balochistan 214, para 11.

³² Ibid, para 12.

than what the Islamic law of inheritance applicable to those of the *Sunni Hanafi fiqh* grants to her.

13. Therefore, we uphold the decision of the learned Judge of the High Court. Gift mutation No. 88, dated 27 July 1986, should be cancelled immediately, if not done so already. We further direct the concerned department to promptly prepare the inheritance mutation of the late Muhammad Yar and record the rights of his legal heirs in accordance with *Sunni Hanafi fiqh* of Muslim personal law and to deliver possession to them as per their respective shares without further loss of time as the respondent No. 1 has already been deprived of her inheritance for far too long and indisputably been made to suffer. Resultantly, subject to the aforesaid clarification, leave to appeal is declined and this petition is dismissed with costs throughout payable by petitioner Nos. 1 and 2 to the respondent No. 1. Copy of this order be sent to the concerned revenue authority for information and compliance.

Judge

Judge

Islamabad
25.06.2021

Approved for Reporting
Arif