

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Qazi Faez Isa

Mr. Justice Amin-ud-Din Khan

Civil Petition No. 659 of 2019

*(Against the judgment dated 10.01.2019 of
the Lahore High Court, Rawalpindi Bench
passed in C.R.No.532-D/2012)*

Atta Mohammad and others.

... *Petitioners*

Versus

*Mst. Munir Sultan (deceased) through
her L.Rs and others.*

... *Respondents*

For the Petitioners:

Mr. Muhammad Siddique Awan, ASC.
Syed Rifaqat Hussain Shah, AOR.

For the Respondents:

Not represented.

Date of Hearing:

10.12.2020.

ORDER

Qazi Faez Isa, J. Fateh Khan and Mst. Noor Bari were married and had a daughter, namely, Mst. Munir Sultan; the couple subsequently divorced. On the death of her father Mst. Munir Sultan filed a suit seeking her inheritance as per *shariah* from the estate of Fateh Khan and challenged three *gift* mutations (Nos. 449, 451 and 452, all attested on 11 March 1998) whereby Fateh Khan was shown to have gifted his entire land to his second wife and two sons from her, respectively Mst. Naik Bakht (petitioner No. 3), Atta Mohammad (petitioner No. 1) and Mohammad Akram (petitioner No. 2). In the plaint Mst. Munir Sultan also arrayed her four step-sisters (daughters of Fateh Khan and Mst. Naik Bakht), however, they had not been gifted any land. The suit was initially dismissed, however, the learned Additional District Judge, Jand, District Attock allowed Mst. Munir Sultan's appeal and decreed her suit and the Rawalpindi Bench of the Lahore High Court upheld the appellate court's judgment and decree; it is against these two concurrent judgments that this petition for leave to appeal is filed.

2. The learned counsel states that the learned trial court Judge had rightly dismissed the suit of the respondents; that the petitioners had established the *gifts* made in their favour, and in this regard referred to the copies of the *gift* mutations and the *roznamcha waqiyati* (daily diary register); and, that the possession of the land throughout remained with the petitioners, which further confirms the making of and acceptance of the *gifts*.

3. With the assistance of the learned counsel we examined the referred documents and heard him. Fateh Khan at the time of his death was over ninety years of age and the purported *gifts* were made a few months before he passed away. The *gift* mutations show that Fateh Khan himself reported that he had gifted the lands but the mutations do not mention when and where he had made the said *gifts* nor as to when and where the same were accepted by the petitioners. Not a single one of the documents referred to by the learned counsel were signed or thumb impressed by Fateh Khan. The particulars of the *gift* were also not mentioned in the written statement filed by the petitioners to the plaint. The witnesses to the *gifts* were Sher Ahmed Khan, who testified as DW-3, and Mohammad Afzal, who did not testify.

4. The *burden of proof* to establish the *gifts* was on the beneficiaries of the *gifts*, not the donees. However, two of the donees, namely, Mohammad Akram and Mst. Naik Bakht did not testify and only Atta Mohammad testified, but he did not testify as an attorney of the other two donees. The material particulars of the *gifts*, including when and where the lands were gifted, accepted and possession of the lands delivered was not mentioned in the gift mutations, in the *roznamcha waqiyati* (daily diary register), in the written statement or any other document. The burden to prove the *gifts* was on the petitioners who failed to discharge such burden. The *gifts* were also extremely suspect, having purportedly been made by an extremely old gentleman of over ninety years of age who was in poor health and also on whose state of

mind serious questions had been raised. It is also inexplicable why he would want to deprive five of his daughters from his inheritance.

5. As regards the learned counsel's contention that the petitioners' possession of the land confirms the purported *gifts* we cannot bring ourselves to agree with it. Merely because step-brothers and step-mother of the plaintiff (and the brothers and mother of four co-defendants) were in possession of the land does not mean, let alone establish, that the land was gifted to them. However, it does confirm that they took advantage of their gender and position. It also shows that they disregarded two concurrent judgments given by two courts against them. It has become all too common to keep legal heirs deprived and to disobey judgments on the pretext that a higher forum has been approached even when the operation of the impugned order/judgment has not been suspended. Needless to state merely challenging an order/judgment does not suspend its operation. Probably the petitioners will now await the execution of the decree against them and file untenable objections therein, and if their objections are dismissed to commence another round of litigation assailing such order. Judgments and decrees of courts of competent jurisdiction must be abided by.

6. Section 42(1) of the Land Revenue Act, 1967 (**'the Act'**) requires the person in whose favour the land has been transferred/alienated to report the same to the revenue authorities, which in the present case would have been the donees of the *gifts* but they did not do so. And, subsections (6) and (7) of section 42 of the Act require that before passing an order sanctioning change in the register of mutations in respect of any right which has been acquired the person from whom it is acquired should be identified by '*two respectable persons, preferably the Lambardar or members of Zila Council, Tehsil Council or Town Council or Union Council*' but the two said witnesses were not such persons. In the present case an extremely old man is stated to have gifted his property by excluding his five daughters. These unusual circumstances should have alerted the Revenue staff to be more cautious and before sanctioning the *gift* mutations they should have

ensured the identity of the donor, should have obtained a copy of his identity card, should have obtained his signature and/or thumb impression, should on account of his advanced age and frail state of mind ensured that the *donor* knew that he was making the said *gifts*. In the circumstances it would also have been prudent to have issued notices to the donor's daughters to bring it to their knowledge that their father was gifting away all his lands. The burden of proof to establish that the *gifts* lay on the petitioners, which they did not discharge. On the contrary there was sufficient material on record to suggest that the petitioners had acted dishonestly and *gift* mutations Nos. 449, 451 and 452 were illegally made in their favour.

7. Therefore, for the aforesaid reasons leave to appeal is declined and consequently this petition is dismissed. Since the petitioners deprived the other heirs of Fateh Khan from their share in inheritance for 22 years costs throughout are imposed on the petitioners. We expect the petitioners will now be remorseful and abide by the laws of inheritance rather than subject the respondents to further deprivation and act to minimize what may be visited upon in the Hereafter.

8. Mst. Munir Sultan died before she could enjoy what she had inherited from her father and now it is her legal heirs who are arrayed before us as respondents. Cases like the present one in which female heirs of a family are deprived of their legal inheritance come up before us far too frequently. Recently in the case of *Farhan Aslam v Mst. Nuzba Shaheen* (Civil Petition No. 4459/2018) this Court held:

5. ... Violating the law of inheritance, which in the case of Muslims is the *shariah*, and exploiting the most vulnerable members of society is wholly unacceptable. An heir inherits property to the extent of his/her share the very moment his/her predecessor passes away. But, the petitioners have audaciously managed to deprive the respondents of their inheritance from Mansab Khan.

6. Almighty Allah commands:

'Let those (disposing of an estate) have the same fear in their minds as they would have for their own if they had left a helpless family

behind; Let them fear Allah, and speak words of appropriate (comfort).'

'Those who unjustly eat up the property of orphans, eat up a fire into their own bodies: They will soon be enduring a Blazing Fire.'

(Respectively verses 9 and 10 of *surah An-Nisa* (4), translated by Abdullah Yusuf Ali, 'The Holy Qur'an, Translation and Commentary'.)

7. In the present case a widow and an orphan ('*yatama*' in Arabic) were deprived of their inheritance for over sixteen years which must have been excruciatingly painful for them. The petitioners did not abide by the aforesaid verses and forgot what had been made incumbent:

'And come not nigh [near] to the orphan's property, except to improve it'.

(Verse 152 of *surah* (6) *Al-Anam* of the Holy Qur'an, translation by Abdullah Yusuf Ali, 'The Holy Qur'an Translation and Commentary'.)

If the petitioners had remembered that they too will face Ultimate Justice they may have acted better.

8. The Constitution of the Islamic Republic of Pakistan (the '**Constitution**') safeguards *property* (including inherited property) under Article 24(1) of the Constitution and *protection* of women and children is guaranteed by Article 25(3) of the Constitution. The Constitution sets out the goals which the people of Pakistan have set out for themselves in the 'Principles of Policy', which include the protection of '*mother and the child*' (Article 35) and require the '*promotion of social justice and eradication of social evils*' (Article 37). Depriving a mother and her child from their inheritance does not protect them but preys on them. Such conduct is a prevalent social evil and inherently unjust. It is expected that the *organ* and *authority* of the State will act in accordance with the Principles of Policy as provided by Article 29(1) of the Constitution. Therefore, claims by orphans and widows alleging that they have been deprived of their inheritance must be expeditiously decided by the concerned *organ* and *authority* of the State, including the courts.

9. The revenue authorities must also be extra vigilant when purported *gifts* are made to deprive daughters and widows from what would have constituted their shares in the inheritance of an estate. The concerned officers must fully

satisfy themselves as to the identity of the purported donor/transferee and strict compliance must be ensured with the applicable laws, as repeatedly held by this Court, including in the cases of *Islam-ud-din v Noor Jahan* (2016 SCMR 986) and *Khalida Azhar v Viqar Rustan Bakhshi* (2018 SCMR 30). Purported *gifts* and other tools used to deprive female family members, including daughters and widows, are contrary to law (*shariah* in such cases), the Constitution and public policy. In *Abid Baig v Zahid Sabir* (2020 SCMR 601) this Court reiterated what it had held thirty years earlier in the case of *Ghulam Ali v Mst. Ghulam Sarwar Naqvi* (PLD 1990 Supreme Court 1), as under:

11. We cannot be unmindful of the fact that often times male members of a family deprive their female relatives of their legal entitlement to inheritance and in doing so *shariah* and law is violated. Vulnerable women are also sometimes compelled to relinquish their entitlement to inheritance in favour of their male relations. This Court in the case of *Ghulam Ali*⁸ had observed that 'relinquishment' by female members of the family was contrary to public policy and contrary to *shariah*. It would be useful to reproduce the following portion from the decision of this Court:

"Here in the light of the foregoing discussion on the Islamic point of view, the so-called "relinquishment" by a female of her inheritance as has taken place in this case, is undoubtedly opposed to "public policy" as understood in the Islamic sense with reference to Islamic jurisprudence. In addition it may be mentioned that Islam visualised many modes of circulation of wealth of certain types under certain strict conditions. And when commenting on one of the many methods of achieving this object, almost all commentators on Islamic System agree with variance of degree only, that the strict enforcement of laws of inheritance is an important accepted method in Islam for achieving circulation of wealth. That being so, it is an additional object of public policy. In other words, the disputed relinquishment of right of inheritance, relied upon from the petitioner's side, even if proved against respondent, has to be found against public policy. Accordingly the respondent's action in agreeing to the relinquishment (though denied by her) being against public policy

the very act of agreement and contract constituting the relinquishment, was void."

What this Court had stated in the case of *Farhan Aslam v Mst. Nuzba Shaheen* is equally applicable to the instant case.

9. In many cases dealt by us we painfully observe the deterioration and decline in the performance of the Revenue department, absence of proper record keeping and the erosion of a system of checks and balances. Suspect transactions are easily recorded and by disregarding the stipulated legal requirements. Even in cases where the Revenue staff has been complicit generally no consequences are visited upon them by the competent authority. The prevailing state of affairs is far from satisfactory. Bad, insufficient and/or easily manipulated records cause unnecessary litigation. Such litigation would be avoided if the Revenue department did its work properly. In the present case the inheritance matter of a person who died 22 years ago has come to this Court, the fourth court, because of the Revenue staffs' complicity, not following the law, not remaining vigilant and/or being careless. Time and resources of litigants, witnesses, counsel and the courts have been wasted. Time and resources which could have been put to more fruitful pursuits. Procrastinated litigation with questionable Revenue records often result in heightened tensions and parties have been known to resort to violence.

10. The Revenue department is a revenue generating department; it collects land revenue, taxes and charges fees, but has failed to provide to the public reliable and accurate record keeping. We can say from our own experience that entries in the Revenue records are difficult, if not impossible to read; are not clearly and legibly written; entries under different columns are squeezed or extend to other columns because insufficiently sized paper is used; and written on poor quality paper which easily fragments/tears. The use of reinforced paper has been discontinued and property records get damaged or destroyed by heavy rains, fires, vermin and riots because they are not safely stored in reinforced (fire-resistant) cupboards and apparently there is

no electronic backup in case of loss, damage or destruction. It may also be a step in the right direction if the name and designation of the concerned revenue official/officer making the entry is written and his stamp affixed under his signature. There also appears to be abject refusal to use technology in the twenty-first century, such as finger/thumb verification of the person divesting ownership and photographing those present, such technology cost is now very affordable. The record-keeping by the Revenue department needs to be improved to safeguard the valuable property rights of the people.

11. In the present case Punjab's Revenue department made wrong entries in the Revenue record, the Auqaf and Religious Affairs department failed to ensure Almighty Allah's command to protect the rights of *yatama* and the Human Rights and Minorities Affairs department did not protect the rights of vulnerable females (five daughters/sisters). This brings into question the billions of rupees spent on these departments. The Government of Punjab's 'Annual Budget Statement for 2020-2021' has earmarked an amount of about 1,737 million rupees for the Revenue department (Board of Revenue and Punjab Revenue Authority), an amount of about 579 million rupees for Auqaf and Religious Affairs department and an amount of about 200 million rupees for Human Rights and Minorities Affairs department. The very purpose of these departments is to serve the people, and not to become a self-serving and perpetuating bureaucracy.

12. The reason which has prompted us to highlight this issue is that there must be many other cases where rights, particularly of the weaker members of society (daughters and widows, the *yatama*,) are denied but who may not have the wherewithal to access a court of law or having failed in the first round (as in the present case when Mst. Munir Sultan's suit was dismissed) give up and/or may be faced with a formidable foe. Muslims must abide by God's law set out in the Holy Qur'an and *Sunnah* which gives a special status to '*yatama*' (orphans and widows), a duty which is also cast upon the State.

13. Copies of the order passed today to be sent to the respondents and to the trial/executing Court to ensure that the execution proceedings, if pending or when filed, are promptly disposed of. Copies be also sent to the Chief Secretary, Government of the Punjab, Senior Member Board of Revue, Secretary Revenue department, Secretary Auqaf and Religious Affairs department, Secretary Human Rights and Minorities Affairs department and to the Advocate-General Punjab for information and with the expectation that they will rise to serve the people by attending to the noted shortcomings of the said departments and enact measures which will prevent such and other fraudulent entries to be made in the Revenue records.

Judge

Judge

Bench-IV
Islamabad
10.12.2020

Approved for Reporting
(M. Tauseef)