

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE QAZI FAEZ ISA
MR. JUSTICE YAHYA AFRIDI

Civil Petitions No. 1319 of 2020 and 1410 of 2021

(Against the order dated 02.03.2020 & 23.12.2020 passed by the Islamabad High Court, Islamabad in F.A.O. No. 67 of 2019 and Regular First Appeal No. 64 of 2017)

Muhammad Farrukh Iqbal (in both cases)

...Petitioner

Versus

Mrs. Ayesha Iram, etc.

(in both cases)

...Respondent

For the petitioners:

Mr. Muhammad Koukab Iqbal,
AOR/ASC
With the petitioner in person.
(in both cases)

For the respondents:

N.R. (in both cases)

Date of hearing:

21.06.2021

ORDER

Qazi Faez Isa, J. CPLA No. 1410 of 2021 assails two concurrent judgments, respectively of the Trial Court and of the High Court acting as the Appellate Court. And CPLA No. 1319 of 2020 assails the execution proceedings pursuant to the two impugned judgments. A suit was filed on 31 July 2002 by the respondent No. 1 claiming her right to inheritance in House No. 18 situated on Street No. 27, Sector F-6/2, Islamabad (**'the House'**) asserting that it was owned by her late father, Col. Muhammad Safdar Iqbal, who died on 17 December 2000 and on his death it devolved on his legal heirs, that is, two sons and three daughters, the petitioner and the respondents herein. The petitioner filed his written statement alleging therein that the House was gifted to him by his father through 'Declaration of Oral Gift', a two page written document dated 2 September 2000 (**'the gift document'**).

2. The learned counsel submits that the gift document was validly executed and constituted a gift, was witnessed by two

daughters of the deceased and that the 'Acceptance of Gift' endorsed therein below was witnessed by two witnesses, namely, Shahid Ghani Mughal and Farrukh Saeed Qureshi; Shahid Ghani Mughal testified but the other witness Farrukh Saeed Qureshi could not do so because he had passed away and his death was confirmed by the death certificate produced in evidence. The learned counsel states that the courts did not appreciate that Farrukh Saeed Qureshi had passed away and further that the gift document was not one which came within the definition of a document under Article 17(a) of the Qanun-e-Shahadat, 1984 as it was not in respect of *financial or future obligation* but came under clause (b) of the said Article in respect whereof one witness may be accepted. He further submits that the learned Judge misread/non-read the relevant evidence and if the same was read properly the suit would have been dismissed.

3. In response to our query, the learned counsel states that the gift document did not require registration as *Muhammadian Law* prevails over the Transfer of Property Act, 1882 and the Registration Act, 1908 and referred to the case of *Bilawar Khan v Amir Sabar Rahman* (PLD 2013 Peshawar 38). He further states that a Muslim is not required to make a gift in a particular format and a gift can be made simply on a plain piece of paper.

4. We have heard the learned counsel and with his assistance examined the documents on the record. The Trial Court's judgment is comprehensive and the learned Judge gave a number of reasons for discounting the gift document, including that there was no signature or thumb impression of the donor on the first page while there were three thumb impressions, purporting to be of the donor, on the second page. The learned Judge also considered the documents produced by the petitioner which were stated to have been submitted to the Capital Development Authority ('CDA') in the year 1994 for transfer of the property in the name of the petitioner but held that the same were not produced through a witness of CDA and that it is unbelievable that the same were not acted upon for a period of six years. Therefore, the courts held that the gift in

favour of the petitioner was not established. Incidentally, the petitioner did not seek to challenge either CDA's refusal to transfer the House in his favour nor took any action to implement the gift document. Col. Muhammad Safdar Iqbal died on 17 December 2000 and the House stood in his name, and continued to stand in his name, when the suit was filed on 31 July 2002.

5. It is noteworthy that the petitioner relied on the said gift document and asserted that through it the House was gifted to him. Since the basis of the gift was the gift document we drew the attention of the learned counsel to Chapter VII of the Transfer of Property Act, 1882 and to its section 123, relevant portion whereof stipulates, that, *'For the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses.'* We questioned how the gift document could be used to gift the House. The learned counsel responds by submitting that the gift was made orally as mentioned in the gift document, which is titled 'Declaration of Oral Gift'. We have examined the gift document which states that the, *'DONOR, hereby gift the above said property...'*, that is, the House. It is thus clear that the gift document did not merely record an earlier oral gift but it was through the gift document that the House was purportedly gifted. The title of the gift document is inconsequential in view of its clear and unambiguous contents, which stated that the House was sought to be gifted by and through the gift document. The cited case of *Bilawar Khan* has no relevance to the facts of the instant case.

6. Section 17(a) of the Registration Act, 1908 requires that gifts of immovable property made by or through written documents require registration. Therefore, the gift document required registration. It would also require stamping pursuant to the Stamp Act, 1899. In the absence of the statutory requirement of registration of the gift document it could not be used to transfer the property to the petitioner.

7. Therefore, for the reasons mentioned above we are not inclined to grant leave because we have not been persuaded that the House had been gifted to the petitioner. Consequently, leave to appeal is declined and these petitions are dismissed.

Judge

Judge

Islamabad
21.06.2021
Arif

Approved for reporting