

2020 Y L R Note 26

[Lahore]

Before Masud Abid Naqvi, J

MUHAMMAD SALEEM BHATTI---Petitioner

Versus

Mst. NARGIS SITARA and others---Respondents

C. R. No.51318 of 2019, decided on 16th September, 2019.

Gift---

----Ingredients of---Proof---Procedure---Contention of plaintiff was that his father had gifted suit property in his favour---Suit was dismissed concurrently--Validity---Onus to prove the existence of oral gift of suit property was on the plaintiff---Gift could be effected orally or through registered deed---Gift would be complete if three ingredients i.e. offer, acceptance and delivery of possession had been proved--Statements of witnesses produced on behalf of plaintiff were contradictory with regard to factum and genuineness of alleged oral gift---Alleged gift was an attempt to deprive the other legal heirs from their inheritance without any reason and justification---Plaintiff, in the present case, had failed to prove the ingredients of a valid gift---Both the parties were legal heirs of deceased and were entitled to the shares in accordance with law and sharia---Courts below had thoroughly examined the entire evidence produced by the parties---No defect, mis-reading or non-reading of evidence had been pointed out in the impugned judgments and decrees passed by the Courts below---Revision was dismissed in limine accordingly.

Barkat Ali through Legal Heirs and others v. Muhammad Ismail through Legal Heirs and others 2002 SCMR 1938 and Administrator, Thal Development through EACO Bhakkar and others v. Ali Muhammad 2012 SCMR 730 rel.

Mian Tariq Hussain for Petitioner.

ORDER

MASUD ABID NAQVI, J.---Through this order, I intend to decide instant civil revision along with connected Civil Revision No. 51500 of 2019 involving common questions of law and facts.

2. The plaintiff/petitioner filed a suit for declaration and injunction titled "Muhammad Saleem Bhatti v. Rasheedan Bibi' and others" with the averments that disputed house was constructed by his father namely Akbar Ali Bhatti with the amount of plaintiff/petitioner and later on orally gifted the same in his favour, hence, none of the other legal heirs of late Akbar Ali Bhatti are entitled to claim any legal share from the disputed house while the defendants Nos.1 to 5 including the mother of plaintiff/petitioner 8 and 9 filed contesting written statement (s) and defendant No. 7 and legal heirs of defendant No.10 filed conceding written statement(s).

On the other hand, respondent No.3/daughter of late Akbar Ali Bhatti filed a suit for possession through partition titled "Mst. Nargis Sitara v. Muhammad Saleem Bhatti etc." while the defendants in the said suit filed conceding written statement except plaintiff/ petitioner who filed contesting written statement.

3. Both the suits were consolidated by the learned trial court. After framing of consolidated issues, contesting parties adduced their respective evidence and the learned trial court vide consolidated judgment and decrees dated 08.05.2017 dismissed the suit of plaintiff/petitioner and decreed the suit of respondent No.3. Feeling aggrieved, the plaintiff/petitioner filed two appeals and learned Additional District Judge also dismissed the appeals vide consolidated Judgment and Decrees dated 09.05.2019, hence this civil revision as well as Civil Revision No.51500/2019.

4. I have heard the learned counsel for the plaintiff/petitioner who reiterated his arguments and perused the available record as well as have minutely gone through both the impugned judgments and decrees.

5. There is no denial of the fact that the contesting parties are the legal heirs of late Akbar Ali Bhatti and are entitled to the shares in accordance with law and sharia and onus to prove the issue No.1 about the existence of oral gift of disputed house heavily lies on the plaintiff/ petitioner. A valid gift can be effected orally or through registered gift deed but it is also a settled law qua the transaction of gift that it is the duty of beneficiary and a heavy onus lies on him to prove by convincing evidence, satisfying the judicial conscience of the court that transaction shown to be an oral gift was made by the donor in favour of donee. Under Mohammadan Law, a gift by a muslim would be complete, if the three necessary and inseparable ingredients are proved i.e. (i) declaration/offer by the donor (ii) acceptance of gift by the donee and (iii) delivery of possession under the gift but the plaintiff/ petitioner miserably failed to prove the basic ingredients of valid gift. In his plaint, the plaintiff/ petitioner claimed that family members were also present at the time when his father orally gifted the disputed house but neither he produced any family member as witness to support his claim nor any of them deposed in his favour. Both the witnesses namely Javed Iqbal and Maqbool Virk are admittedly disciples of late Akbar Ali Bhatti, with great respect/ religious attachment with Sajada Nasheen/ plaintiff/petitioner being son of their "Murshad" namely late Akbar Ali Bhatti and there exists contradictions in their statements about the factum and genuineness of alleged oral gift. It is quite intriguing to note that disputed oral gift deed is an attempt to deprive all the members of the Late Akbar Ali Bhatti from their inheritance, without any reason or justification especially female members of family including the widow of deceased who was thrown out of disputed house and relevant portion of cross-examination of plaintiff/petitioner/ PW-1 is reproduced as under:

In this regard, para of citation i.e. Barkat Ali through Legal Heirs and others v. Mohammad Ismail through Legal Heirs and others (2002 SCMR 1938) provides the guidance which is reproduced hereunder.

"In the wake of frivolous gifts generally made to deprive females in the family from the course of inheritance prevalent at present times, the courts are not

divested of the powers to scrutinize the reasons and justification for a gift so that no injustice is done to the rightful owner and no course of inheritance is bypassed".

6. With respect to interference in concurrent findings of the courts below, the Hon'ble Supreme Court of Pakistan in a case reported as Administrator, Thal Development through EACO Bhakkar and others v. Ali Muhammad (2012 SCMR 730) held that:-

"Concurrent findings of the trial court and appellate court, in favour of appellants were based on proper appreciation of evidence therefore, the same were not open to interference by the revisional court in exercise of its jurisdiction under section 115, C.P.C. which is primarily meant for correction of jurisdictional defect/error and material illegalities / irregularities, result-ing in miscarriage of justice to a party."

7. In the present case, no such defects have been pointed out by the learned counsel for the petitioners which would require interference by this Court. Nothing new has been brought before the Court in order to attack the validity of the impugned judgments and decrees. Learned courts below have thoroughly examined the entire evidence of the parties and thereafter pronounced the verdicts with well reasons. Neither any misreading or non-reading of evidence on record nor any infirmity, legal or factual, has been pointed out in the impugned consolidated judgments and decrees passed by the learned courts below, therefore, this civil revision along with connected Civil Revision No.51500/2019 is dismissed in limine.

ZC/M-204/L Revisions dismisce