

(Appellate Jurisdiction)

Mr. Justice Syed Mansoor Ali Shah  
Mr. Justice Jamal Khan Mandokhail  
Mr. Justice Athar Minallah

*(Appeal against judgment and decree dated 06.05.2022 of the Lahore High Court, Lahore passed in Civil Revision No.224476 of 2018)*

... Appellants

## Versus

... Respondents

For the appellant:            Mr. Uzair Karamat Bhandari, ASC

For the respondents: Mr.Zulfiqar Abbas Naqvi, ASC  
Mr. Muhammad Ejaz Jamal, ASC  
Mr. Arshad Ali Ch., AOR.

Date of hearing: 17.01.2024

## JUDGMENT

**Athar Minallah, J.-** The appellants have assailed the judgment dated 06.05.2022 of the High Court whereby concurrent findings recorded by two competent courts were set aside while exercising revisional jurisdiction under section 115 of the Code of Civil Procedure Code, 1908 ('CPC').

2. The dispute was regarding the residential property (**'property'**) described in the plaint filed by the respondents. The property was purchased by Major (rtd.) Muhammad Afzal (**'predecessor-in-interest'**) on 15.10.1959. The appellants are siblings and they were born out of the second marriage of the predecessor-in-interest. The second wife had passed away during the life time of the predecessor-in-interest. Respondent No.1, S. Akmal, was born out of the marriage contracted with the first wife i.e respondent No.2, Ms. Saleha Afzal. The

predecessor-in-interest passed away on 18.02.2005. The latter had executed a Memorandum of oral gift (**'Memorandum'**), dated 04.02.1974, and it was duly registered with the Sub-Registrar, Lahore on 05.02.1974. It was recorded in the Memorandum that the property was orally gifted in favour of the appellants in 1962 and the respective shares/portions were also expressly mentioned therein. The Memorandum was produced at the trial and it was exhibited as Exh.P-23. The original Memorandum and its certified copies were also produced. Pursuant to the execution of the Memorandum, the property was transferred in the record of Model Town Cooperative Housing Society (**'Society'**) pursuant to separate applications which had been filed by the predecessor-in-interest on 22.11.1975. The Society issued separate letters and share certificates in favour of the appellants *vide* letter dated 05.01.1976 and 04.01.1976 respectively. The appellants were recorded as owners of the property. The predecessor-in-interest, *vide* his letter, dated 29.08.1998, addressed to the Society, had acknowledged the factum of gift in favour of the appellants. As would be explained later, this letter was produced during the trial and a copy of the same was kept on record after the Court had examined the original document produced by the witness, who had entered the witness-box on behalf of the Society. It appears from the record that the relationship between respondent No.1/plaintiff No.1 and the predecessor-in-interest remained strained and acrimonious. However, the predecessor-in-interest had gifted two houses in favour of respondent No.1/plaintiff No.1 situated in Islamabad. After the predecessor-in-interest passed away, the respondents filed a suit for partition of the property on 30.03.2005. The respondents had also made a reference in the plaint to the property having been gifted in favour of the appellants. The suit was contested by the appellants and specific reference was made to the

Memorandum. Subsequently, on 25.06.2005 the respondents filed a suit seeking declaration, injunction and cancellation of the Memorandum. The subsequent suit was filed on 25.06.2005 and the appeal before us has arisen there from. The trial Court, *vide* order dated 21.06.2011, had framed nine issues out of the divergent pleadings and on conclusion of the trial the suit was dismissed *vide* judgment and decree dated 10.06.2017. The appeal filed by the respondents on 03.07.1997 did not succeed and it was dismissed by the appellate court *vide* judgment and decree dated 21.06.2018. The concurrent findings of fact and law rendered by two competent courts were challenged before the High Court, invoking its revisional jurisdiction. The High Court allowed the petition and set aside the concurrent findings *vide* the impugned judgment dated 06.05.2022.

3. We have heard the learned counsels and with their able assistance perused the record placed before us.

4. The respondents had sought a declaration regarding the Memorandum and its cancellation was also prayed for. It was pleaded in the plaint that they were in possession of the property and that they had been dispossessed. It was also asserted in the plaint that after the filing of the suit for partition, the Memorandum was fraudulently prepared so as to deprive the appellants of their hereditary rights. It was pleaded that the Memorandum was fabricated. A plain reading of the plaint shows that the assertion of fraud was of a general nature and the particulars thereof had not been stated. During the trial, the initial burden of proving the factum of fraud or fabrication could not be discharged by the respondents. It is noted that there was no reference in the plaint to the oral gift made in the year 1962 and, therefore, an issue in this regard had not been framed. The initial burden to prove that the Memorandum of gift was forged and fabricated was on the

respondents. The respondents were also not able to establish that at any time during or after the lifetime of the predecessor-in-interest they had remained in possession of the Property let alone having been dispossessed. It is not disputed that the transfer of shares by the Society in the name of the appellants was not challenged by the respondents. It is also not disputed that the appellants were minors when the oral gift was made in their favour by the predecessor-in-interest in 1962. The respondents had made a reference to the property having been gifted in favour of the appellants in the earlier suit filed for seeking partition. They had asserted in the subsequent suit that the factum of execution and registration of the Memorandum came to their knowledge during the trial of the earlier suit. The trial Court, after proper appreciation of the evidence brought on record, dismissed the suit and the appeal was also dismissed subsequently.

5. The High Court, while exercising its revisional jurisdiction under section 115 of the CPC, has set aside the concurrent findings of facts and law rendered by two competent Courts. In the opinion of the High Court, the onus of proving the execution of the Memorandum was on the appellants and they had failed in discharging such onus. It is noted that rule 4 of order VI of the CPC explicitly provides that in all cases in which the party pleading relies, *inter alia*, on fraud, shall state in the pleadings particulars with dates and items if necessary. It is settled law that the parties are required to plead all facts that may constitute a cause of action for any relief or in defence, as the case may be. A party which alleges a fact has to prove the same and the ingredients of fraud have to be narrated and stated by giving particulars thereof. It is settled law that fraud must be specifically alleged and its particulars unequivocally stated. This Court has consistently held that general allegations, however strong the words may be, are insufficient to

constitute an assertion of fraud and that vague allegations in a plaint are not enough.<sup>1</sup> In the case before us the assertion regarding fraud was of a general nature and no particulars had been stated in the plaint. The concurrent findings had correctly appreciated that the general allegation of fraud was insufficient. Moreover, the initial burden was definitely not discharged by the respondents so that the onus could have shifted to the appellants. This crucial aspect appears to have escaped the attention of the High Court. The learned counsel for the appellants has rightly pointed out that the reliance by the High Court on the judgment rendered by this Court in Fareed's case<sup>2</sup> was misplaced because it was distinguishable. The facts of the case before us are distinguishable because, at the time of making of the oral gift in 1962, the appellants were minors. The observations of the High Court regarding the evidentiary value of the letter dated 29.08.1998 addressed by the predecessor-in-interest to the Society are not sustainable because they are not in consonance with the record of the trial Court. The letter was not disputed because it was relied upon by the respondents themselves. The original was produced by the witness who had entered the witness-box on behalf of the Society. It was an admitted document and the High Court was not justified in forming an opinion that the two competent courts could not have considered and relied upon it. The concurrent findings were based on proper appreciation of the evidence brought on record and the conclusions were drawn on the touchstone of the principle of preponderance of evidence. The concurrent findings did not suffer from any material irregularity nor misreading or non-reading of the evidence. The High Court was, therefore, not justified in setting aside the concurrent findings of the

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<sup>1</sup> Mst. Sahib Noor v. Haji Ahmed (1988 SCMR 1703)  
Muhammad Umar v. Muqarab Khan and another (1968 SCMR 983)  
Ghulam Shabbir v. Mst. Nur Begum and others (PLD 1977 SC 75)  
Tom Boevey Barrett v. African Products, Ltd. (AIR 1928 PC 261)

<sup>2</sup> Fareed and others v. Muhammad Tufail and another (2018 SCMR 139)

two competent courts in the circumstances while exercising revisional jurisdiction.

6. It is settled law that while exercising jurisdiction under Article 115 of the CPC the High Court has to first satisfy itself: (i) that the order of the subordinate court is within its jurisdiction, (ii) that the case is one in which the court ought to exercise jurisdiction; and that in exercising jurisdiction that court has not acted illegally, that is, in breach of some provisions of law, or with material irregularity by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision.<sup>3</sup> Section 115 applies only to cases in which no appeal lies, and where the legislature has provided no right of appeal. The manifest intention of the legislature is that the order of the trial court, right or wrong, shall be final, except in specific circumstances. It is, therefore, obvious that unless the case is not covered under Section 115 of the CPC and the High Court was satisfied in this regard, then in such a case no power could be exercised to interfere simply because it differs, however profoundly, with the conclusions of the subordinate court regarding questions of law and facts. The scope of jurisdiction of the High Court under Section 115 of the CPC is limited in relation to concurrent findings of the competent courts. The exceptions to this rule are when the findings are based on insufficient evidence, misreading of evidence, non consideration of material evidence, patent errors of law, consideration of inadmissible evidence, abuse of jurisdiction, when the conclusions drawn are perverse and based on conjectural presumptions. The erroneous decisions of fact are ordinarily not revisable and the mere fact that the High Court may differ on a question of fact or mixed question of law and

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<sup>3</sup> Kanwal Nain and others v. Fateh Khan and others (PLD 1983 SC 53)  
Umar Dad Khan and another v. Tila Muhammad Khan and others (PLD 1970 SC 288)

fact is not a valid ground for interfering with concurrent findings. Moreover, the concurrent findings recorded on the basis of evidence is not susceptible to further review to justify interference by the High Court in revisional jurisdiction. The interference by a High Court in such jurisdiction would not be justified on the ground that reappraisal of evidence might suggest another view of the matter unless there has been a gross misreading of evidence and material evidence was ignored.<sup>4</sup> In the case before us the High Court, while setting aside the concurrent findings, appears to have excluded from its consideration the principles enunciated by this Court while exercising original jurisdiction.

7. For the above reasons, this appeal is allowed and the impugned judgment of the High Court, dated 06.05.2022, is set aside. The listed CMA is accordingly disposed of. No order as to costs.

Judge

Judge

Judge

Islamabad

17.01.2024

APPROVED FOR REPORTING

M. Azhar Malik/Rameen Moin\*

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<sup>4</sup> Mai Rashid Beg v. Rehmat Ullah Khan and others (PLD 2001 SC 443)  
 Khan Mir Daud Khan and others v. Mahrullah and others (PLD 2001 SC 67)  
 Suleman v. Mst. Zeenat Jan and others (PLD 2003 SC 362)  
 Imam Din and others v. Bashir Ahmed and others (PLD 2005 SC 418)  
 Asmatullah v. Amanat Ullah thr. LRs. (PLD 2008 SC 155)  
 Atiq ur Rehman and another v. Muhammad Amin (PLD 2006 SC 309)  
 Ahmed Nawaz Khan v. Muhammad Jaffar Khan and another (2010 SCMR 984)  
 Administrator Thal Development and others v. Ali Muhammad (2012 SCMR 730)  
 Noor Muhammad and others v. Mst. Azmat-e-Bibi 2012 SCMR 1373