

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**Present:**

Mr. Justice Qazi Faez Isa

Mr. Justice Amin-ud-Din Khan

**Civil Petition No. 4459 of 2018**

*(Against the order dated 10.10.2018 of the  
Lahore High Court, Multan Bench passed in  
C.R.No.423-D/2011)*

*Farhan Aslam and others.*

*... Petitioners*

**Versus**

*Mst. Nuzba Shaheen and another.*

*... Respondents*

For the Petitioners:

Raja Imtiaz Ahmed Kiyani, ASC.  
Syed Rifaqat Hussain Shah, AOR.  
a/w Petitioner No.1.

For the Respondents:

Not represented.

Date of Hearing:

27.11.2020

**ORDER**

**Qazi Faez Isa, J.** The respondents are respectively the daughter and widow of Mansab Khan who is stated to have died in the year 2006. They were denied their inheritance in the estate of Mansab Khan because it was alleged that he had gifted his land to the sons of his brother Muhammad Aslam, namely, Farhan Aslam, Muhammad Akram and Kamran Aslam. The respondents were therefore constrained to file a suit seeking the properties inherited by them and challenged the *gift*. The suit was decreed on 26 May 2009, however, the Appellate Court set aside the judgment and decree and remanded the case back to the Trial Court. On remand, the suit was again decreed by the learned Judge of the Trial Court on 23 December 2010; appeal against the same was dismissed and so too the civil revision by the learned Judge of the High Court through the impugned order dated 10 October 2018. It is against these three concurrent decisions that the instant petition has been filed.

2. The learned counsel representing the petitioners states that the Appellate Court had not entertained the applications filed by the

petitioners for leading additional evidence to establish their possession of the land.

3. We have heard the learned counsel and with his assistance examined the documents on record. After a full-fledged trial the learned Judge of the Trial Court had concluded that the purported donees of the *gift* (petitioner Nos. 1, 2 and 3), who were the defendants in the suit, had failed to establish the stated *gift*. It is trite law to state that the beneficiaries of a gift have to establish it. Two of the donees were stated to be minors, however, the third was an adult but he did not come forward to testify that the *gift* was made in his favor, he accepted it and received possession of the land. Instead, his father testified but did not provide particulars of the *gift*, including when and where the *gift* was made; he also did not testify as an attorney. The judgment had also correctly noted that there was no reason for a father and a husband to disregard his own flesh and blood and wife and *gift* away all his land to his nephews. The impugned judgments and order are in accordance with law and the only reason put forward for the grant of leave is the denial of the stated applications. However, even if it be accepted that the donees were in possession of the subject land this in itself did not establish the purported *gift*. Instead all that it shows is that a daughter and a widow were deprived from their inheritance.

4. It is most unfortunate that rather than supporting the widow and her daughter in the hour of their greatest need their relatives, the petitioners, turned into predators to deprive them of their rightful inheritance, and have successfully managed to do so for sixteen long years. A widow and a daughter were deprived because of the acquisitive greed of the petitioners who were facilitated and enabled by the revenue authorities in recording the making of a fictitious *gift* mutation. The petitioners did not abide by the decisions, all of which were in favour of the respondents and challenged each one of the three courts; those of the Subordinate Courts and then impugned the order of the High Court.

5. Presumably, the petitioners will now wait for the said judgments/order to be implemented through the Trial/Executing court and they may then resort to filing unwarranted objections to the

execution application. 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*<sup>8</sup> 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."

10. For the aforesaid reasons, this petition is dismissed with costs throughout payable to the respondents by the petitioners Nos. 1, 2, 3 and 5 through the Trial/Executing Court. In case the impugned judgments have not been complied with and the respondents have still not received their shares in the inheritance of the late Mansab Khan, the Executing Court shall ensure that the execution proceedings are promptly attended to and concluded. Copies of this order to be sent to the respondents for information and to the learned Judge of the Trial/Executing Court for information and compliance.

Judge

Judge

*Bench-IV*  
Islamabad  
27.11.2020

Approved for Reporting  
(M. Tauseef)