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**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

Present:

**MR. JUSTICE UMAR ATA BANDIAL**

**MR. JUSTICE FAISAL ARAB**

**MR. JUSTICE IJAZ UL AHSAN**

A.F.R

**Civil Petition No.1950-L of 2018**

(On appeal from the Judgment/Order 28.06.2018 of the Honorable Lahore High Court, Lahore passed in Civil Revision No. 2569 of 2009).

Muhammad Sarwar

**Petitioner(s)**

**VERSUS**

Mumtaz Bibi, etc

**Respondent(s)**

For the Petitioner(s) : Kh. Muhammad Saeed, ASC

For the Respondent(s) : N.R

Date of Hearing : 03.10.2019.

**ORDER**

**IJAZ UL AHSAN, J-** The Petitioner seeks leave to appeal against the Order dated 28.06.2018 passed by the Lahore High Court, Lahore in Civil Revision No. 2569 of 2009. Through the impugned order, the Civil Revision filed by the Petitioner was dismissed.

2. The controversy leading up to this matter is that the two Respondents, *Mumtaz Bibi* and *Sabran Bibi*, real daughters of one *Karim Din*, filed a suit for Declaration alongwith possession and permanent and mandatory injunction as a consequential relief against the Petitioner, *Muhammad Sarwar*, who is their real brother. The Respondents claimed in

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their suit that their father was the owner in possession of land measuring 52 Kanals and 01 Marla ("**Suit Land**"), situated at *Mouza Mandiala, Tehsil Pasrur*, fully described in Para-1 of their plaint. Their father passed away on 12.09.1984 leaving the parties of this *lis* as his legal heirs. The Respondents, being daughters, were legally entitled to  $\frac{1}{2}$  share of the Suit Land which came to 26 Kanals. At this point that the controversy finds its genesis as the Respondents claim that they, being both illiterate and *Pardanashin*, were kept in the dark as the Petitioner, their real brother, got recorded a gift mutation No.252 dated 17.06.1985 ("**Gift Mutation**") in his own name as the beneficiary, with the help of Revenue Officials. They emphasized that their father had died on 12.09.1984, some 09 Months and 05 days before the Gift Mutation was attested. The Petitioner in his written statement, denied the Respondents claim and argued that their father had in fact died on 31.08.1989 and not on 12.09.1984. The Learned Trial Court did not agree with the Respondents claim and after deliberating on evidence presented by both parties, vide Judgment and Decree dated 13.10.2008 dismissed the Respondents suit. On appeal, the Learned Additional District Judge *Pasrur*, District *Sialkot* vide Judgment and Decree dated 26.10.2009, set aside the Judgment and Decree of the Learned Trial Court dated 13.10.2008 and decreed the suit of the Respondents as prayed for. Aggrieved, the Petitioner approached the Learned High Court which held that the Petitioner had been unable to successfully prove the ingredients of a valid gift and resultantly,

dismissed his Civil Revision vide the impugned Judgment dated 28.06.2018, hence this Petition to Appeal.

3. The Learned Counsel for the Petitioner argued that the Petitioner had successfully proved all the basic ingredients of a valid oral gift and is currently in physical possession of the Suit Land and that at no point in time since the death of their father until recently, did the Respondents object. Referring to the Impugned Judgment, the Learned Counsel argued that the Learned High Court has erred in holding that the Petitioner had failed to produce any marginal witnesses of the Gift Mutation when *Allah Rakah*, DW-1, was a marginal witness, *Rehmat Ali*, the second marginal witness had passed away and *Anwar Hussain* refused to appear. The Petitioner had made an application for inquiry regarding the wrong entry of his father's date of death in the Union Council records but the same has not been decided. He argued that the Respondents had presented a forged document; Exh.P8 obtained through fraud, to mislead the court. Learned Counsel concluded that the Petitioner had successfully proved all the ingredients of the Gift Mutation and thus, the impugned Judgment be set aside.

4. We have heard the learned counsel for the petitioner and examined the record with his assistance. At the very outset, we have noticed that the petitioner failed to mention the date, time and place of the alleged gift. Further, he omitted to mention the names of witnesses in whose presence his father allegedly gifted the property in his favour and

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disinherited his sisters (Respondents). Likewise, there was no mention of acceptance of the gift in presence of witnesses in the written statement as required by law. It is settled law that the onus to establish the factum and ingredients of the gift is on the beneficiary who claims such gift and which is denied or challenged by the other legal heirs.

5. Further, on the basis of the alleged oral gift, a gift mutation bearing No.252 dated 17.06.1985 was sanctioned in favour of the petitioner. In terms of Section 42 of the Land Revenue Act, 1967, it is obligatory that a mutation of this nature be sanctioned in *Majlis-e-Aam* so that every person of the village may have knowledge of such alienation and the possibility of fraud, collusion or secretly undertaken transaction may be eliminated. It is clear from the record that the aforementioned provisions of Section 42 *ibid* were not followed. It is also noticeable that the concerned *Tehsildar* who had allegedly sanctioned the mutation namely Rehmat Ali and another witness of the mutation namely Anwar Hussain (*Patidar*) were material witnesses of the alleged gift mutation. They were however not produced for any valid reason. Therefore the presumption of Article 129 of the Qanoon-e-Shahadat Order by reason of withholding of the best evidence can also be drawn against the Petitioner. The petitioner also failed to independently prove the validity of the alleged gift mutation. This Court has held in a number of judgments that where the validity of a gift mutation is challenged, it is incumbent upon

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the beneficiary not only to prove the validity and legality of the gift mutation by producing all relevant evidence but it is also necessary that the gift itself be proved through cogent and reliable evidence. Both the said requirements were admittedly not met. Neither the alleged oral gift was proved by any credible evidence nor was the legality or validity of the alleged gift mutation proved by producing credible evidence.

6. There is another important aspect of the matter. Exh.P-8 (*Death Certificate of Karam Din*) indicates that he passed away on 12.09.1984 whereas the alleged gift mutation was entered and sanctioned on 10.02.1985 approximately four months after his death. This patent discrepancy itself negates the case of the petitioner regarding the property being gifted to him by way of oral gift and thereafter a gift mutation being sanctioned on the basis of such oral gift. It is also evident from the record that the learned counsel for the petitioner was confronted with the *Death Certificate* of Karam Din deceased and the discrepancy pointed out, however, no satisfactory or legally acceptable explanation was forthcoming. None has been offered even before us.

7. The case of the petitioner had to stand on its own legs, which it miserably failed to do. However, the Respondents successfully proved through documentary evidence that their father had died on 12.09.1984 whereas the alleged gift mutation was entered and sanctioned on 10.02.1985 four months after his death which unequivocally shows that the gift mutation as



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well as the alleged oral gift was fictitious and the result of fraud. Further, as opposed to two witnesses produced by the petitioner, the Respondents produced four witnesses in addition to documentary evidence. The evidence produced by the petitioner lacked credibility, was inconsistent and was found unworthy of reliance. On the contrary and on the balance of probability the evidence produced by the Respondents was reliable, stood the test of cross-examination and fully supported the case of the Respondents. Further, the learned appellate Court discussed in detail the oral as well as documentary evidence and passed a judgment and decree in favour of the Respondents by applying the correct principles of law and appreciation of evidence. The learned High Court found no illegality or perversity in the judgment of the learned appellate Court and therefore refused to interfere on the basis of valid, cogent and legally sustainable reasons.

8. After hearing the learned counsel for the petitioner and carefully scrutinizing the material on record, we have not been able to persuade ourselves to arrive at a conclusion any different from the one reached by the learned High Court. The learned counsel for the petitioner has also not been able to convince us that there was any legal, procedural or jurisdictional error, defect or flaw in the impugned judgment of the High Court that may furnish basis for grant of leave to appeal.

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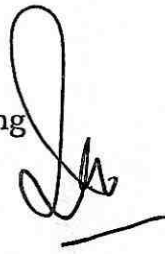
9. For reasons recorded above, we do not find any merit in this petition. It is accordingly dismissed. Leave to appeal is refused.

**ISLAMABAD, THE**

03.10.2019

ZR/\*

Not approved for reporting



26/10/19