

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE SHAHID BILAL HASSAN
MR. JUSTICE MIANGUL HASSAN AURANGZEB

C.P.L.A.No.990 of 2022

[against order dated 25.01.2022 passed in
C.R.No.3308 of 2022 by Lahore High Court,
Lahore]

Abdul Majeed and others

...Petitioner(s)

Versus

Mst. Khalida Bibi (deceased) through L.Rs. and
others

...Respondent(s)

For the Petitioner(s) : Mr. Ajmal Raza Bhatti, ASC

For the Respondent(s) : N.R.

Date of Hearing : 24.06.2025

ORDER

SHAHID BILAL HASSAN-J: This petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973 has been brought against the judgment dated 25.01.2022 passed by Lahore High Court, Lahore while deciding revision petition bearing No.3308 of 2022.

2. Brief facts, giving rise to the instant petition are as such that respondents/plaintiffs instituted a suit for declaration with perpetual and mandatory injunction against the present petitioner(s)/defendant(s) by maintaining therein that Imdad Ali, predecessor of the parties, was owner of agricultural land measuring 244-Kanals, falling in Khewat No.97/98, Khatuni No.286 to 291 situated at Chak No.26/E.B. Tehsil Arifwala, District Pakpattan Sharif, who died about 10/12 years ago, leaving behind three daughters and two sons; therefore, by operation of law, the respondents/plaintiffs became owner in land to the extent of their shares measuring 104-Kanals 11-Marlas in the inheritance with constructive possession; that the respondents being females, simple, illiterate and *parda* observing ladies did not take interest in the affairs of the suit property as the same was in the possession of their brother(s) who used to give them

the share of produce. Purportedly, on 2nd May, 2009, the respondent(s) approached the concerned Halqa Patwari for seeking a copy of record of rights for securing some loan from Zarai Taraqiyati Bank when it transpired that land had already been alienated through gift deed Nos.162/1 & 901/1 dated 27.02.1992 & 21.09.1993 and they are no more owners of the land, as such, petitioners committed fraud with them and both these documents of gift deed are based on fraud prepared only to deprive the respondent(s) ladies from their inherited share(s) whereafter mutation Nos.835 & 884 dated 27.02.1992 and 19.01.1994 respectively were entered in the revenue record. Petitioner(s) mortgaged the suit property to Zarai Taraqiyati Bank, Arifwala vide mutation No.993 & 1650 against loan of Rs.3,34,400/- and Rs.3,32,800/- respectively. That both the alleged registered gift deeds are result of fraud, misrepresentation, void and inoperative upon the rights of the respondent(s)/plaintiff(s).

Petitioners defended the gift transaction as well as the mutations whereof on the factual and legal parlances and pleaded the validity, genuineness of the transaction. Out of divergent pleadings of the parties, the learned trial court framed issues, recorded the evidence of both the parties and vide judgment & decree dated 08.05.2021 decreed the suit of the respondent(s). The appeal (No.32-ADJ-2021) of the petitioner(s) was also dismissed by the learned appellate court vide judgement & decree dated 08.12.2021. Aggrieved by this the petitioner(s) filed a revision petition in the Lahore High Court, Lahore which was dismissed through the order impugned before us.

3. Heard.

4. The basic ingredients for a valid gift are: offer, acceptance and delivery of possession¹. In the present case, reply to paragraph No.2 of the plaint by the present petitioner(s) in their written statement deals with the purported gift made by the deceased Imdad Ali, propositus, in favour of petitioners/defendants. For ease of reference, the same is reproduced in verbatim as under:-

'یہ کہ ضمن نمبر عرضی دعوی غلط ہے۔ درسیب تسلیم نہ ہے لہذا انکاری ہے۔ مورث اعلیٰ مردی امداد علی نے اپنی زندگی میں ہی اراضی متدعو یہ مدعا علیہم کے مام بروئے رجسٹرڈ تملیک نمبری 162/1 مورخہ 27-02-1992 رجسٹرڈ تملیک نمبر 901/1 مورخہ 21-09-1993 تملیک ہو چکی ہے اور تحت رجسٹرڈ تملیک بحق مدعا علیہم انتقالات نمبری 835 مصدقہ مورخہ 27-02-1992 اور انتقال نمبر 884 مورخہ 19-01-1994 ہو چکے ہیں اور اسی کے تحت مدعا علیہم اراضی متدعو یہ پر بحیثیت مالک وقابلض متصرف ہیں۔'

¹ *Bilal Hussain Shah and another v. Dilawar Shah* (PLD 2018 Supreme Court 698) and *Khalid Hussain and others v. Nazir Ahmad and others* (2021 SCMR 1986)

Bare reading of the above excerpt goes to make it vivid and divulges that no description of making of offer as to gifting out of the disputed property to the petitioner(s) by deceased Imdad Ali, acceptance of the same by them (petitioners), venue and names of witnesses in whose presence such transaction took place, has been given, which are necessary to be pleaded and proved², even the same have not been deposed during evidence either by the petitioners or their witnesses because a party cannot lead any evidence beyond its pleadings³, wherein it has been held that:-

‘..... the parties are required to lead evidence in consonance with their pleadings and that no evidence can be laid or looked into in support of a plea which has not been taken in the pleadings. A party, therefore, is required to plead facts necessary to seek relief claimed and to prove it through evidence of an unimpeachable character.’

5. Gift has two parts namely: the fact of the oral gift which has to be independently established by proving through cogent and reliable evidence the three necessary ingredients of a valid gift as noted above and secondly mutation on the basis of an oral gift has to be independently established and proved by adopting procedure provided in the Land Revenue Act, 1967 and the Rules framed thereunder as well as the evidentiary aspects of the same in terms of the Qanun-e-Shahadat Order, 1984. The petitioner could not lead any cogent, strong, unimpeachable and confidence inspiring evidence with regards to first part of alleged oral gift⁴. Even, to prove the valid execution and attestation of the alleged registered gift deed, the petitioner(s) could not produce the stamp vendor, scribe, marginal witnesses, identifying witness, sub-registrar and revenue officials as well as Patwari, meaning thereby the best available evidence was withheld by the petitioner(s), which raises a serious adverse presumption under Article 129(g) of the Qanun-e-Shahadat Order, 1984 that had the said witnesses been produced in the witness box, they would not have supported the stance of the petitioner(s)⁵.

² *Mst. Ramzanu Bibi v. Ibrahim (deceased) through L.Rs. and others* (2025 SCMR 955)

³ *Zulfiqar and others v. Shahdat Khan* (PLD 2007 SC 582), *Muhammad Nawaz alias Nawaza and others v. Member Judicial Board of Revenue and others* (2014 SCMR 914), *Combined Investment (Pvt.) Limited v. Wali Bhai and others* (PLD 2016 SC 730) and *Saddaruddin (since deceased) through LRs. V. Sultan Khan (since deceased) through LRs and others* (2021 SCMR 642)

⁴ *Faqir Ali and others v. Sakina Bibi and others* (PLD 2022 Supreme Court 85)

⁵ *Barkat Ali through Legal Heirs and others v. Muhammad Ismail through Legal Heirs and others* (2002 SCMR 1938), *Ghulam Haider v. Ghulam Rasool and others* (2003 SCMR 1829) and *Fareed and others v. Muhammad Tufail and another* (2018 SCMR 139)

Apart from the above, nothing as to reason prompting the deceased Imdad Ali to gift out the disputed property to the present petitioner(s) excluding his daughters, lawful heirs, has been impleaded, asserted and proved by the petitioner(s), in their pleadings (written statement) and evidence because it is rare for a gift to be made without some reason(s) that could be affection and in reward of some sincere service⁶.

6. The matter in hand pertains to inheritable property because admittedly the property in question was owned by Imdad Ali, propositus of the parties, so the petitioner(s) being alleged donees were under heavy burden to prove valid execution of oral gift because they cannot take benefits from the shortcomings in the evidence of respondents rather they had to stand on their own legs⁷:-

'As far as the contention of learned counsel for the respondents-plaintiffs that the appellants-defendants have not succeeded in proving their claim is concerned, it is a well settled principle of law that the plaintiffs cannot get benefit from the weaknesses of the defendants alone, rather they have to prove their case on their own strength. The initial burden of proof was upon the respondents-plaintiffs which they did not discharge, but the learned High Court has burdened the appellants-defendants for proving their stance which is not a correct approach.'

Further, this Court in judgment⁸ has invariably held that:

'----- On the death of a Muslim his/her property devolves upon his/her legal heirs. However, if any heir seeks to exclude the other legal heirs, as in the instant case by relying on a purported gift the beneficiary of such gift must prove it.'

However, in the instant case, as observed above, the petitioner(s) have miserably failed to clearly articulate the date, time and location of the purported transaction of gift as well as names of witnesses, who were present when Imdad Ali, deceased propositus, allegedly proposed to gift out his property and the petitioner(s) affirmed their acceptance of the said gift at that time⁹.

⁶ *Barkat Ali v. Muhammad Ismail* (2002 SCMR 1938) and *Faqir Ali and others v. Saina Bibi and others* (PLD 2022 SC 85)

⁷ *Mushtaq Ul Aarifin and others v. Mumtaz Muhammad and others* (2022 SCMR 55)

⁸ *Mst. Parveen (deceased) through LRs. V. Muhammad Pervaiz and others* (2022 SCMR 64) and *Mst. Hayat Bibi and others v. Alamzeb and others* (2022 SCMR 13).

⁹ *Bashir Ahmed v. Muhammad Rafiq* (2002 SCMR 1291), *Muhammad Sarwar v. Mumtaz Bibi and others* (2020 SCMR 276), *Muhammad Nawaz and others v. Sakina Bibi and others* (2020 SCMR 1021), *Atta Muhammad and others v. Mst. Munir Sultan (deceased) through her LRs and others* (2021 SCMR 73) and *Farhan Aslam and others v. Mst. Nuzba Shaheen and another* (2021 SCMR 179)

7. Question of limitation has also rightly been responded to and addressed by three Courts below. This Court while responding to the question of limitation in such like suits in judgment¹⁰ has held that:

'..... A careful examination of the plaint reveals that the appellant's claim was based on her asserting ownership over the disputed property. Central to her allegations was the assertion of fraud, particularly that mutation No.914 was sanctioned in her absence, accompanied by alleged collusion between the respondents and certain revenue officials. The legal framework governing such a claim, particularly for a suit seeking declaration and a request for consequential relief – such as possession—falls under Article 120 of the Limitation Act, 1908. According to this Article, the limitation period for the suit begins when the right to sue accrues. The determination of when this right arises in a declaratory suit hinges significantly on the specifics of each case. It is important to understand that a declaratory suit that seeks to establish title to a particular property represents a subsisting right. The right to institute such a suit is a continuing right, remaining intact as long as the claimant (plaintiff) possesses rights to the disputed property.' (underline for emphasis)

8. For the foregoing discussion and reasons, there appears no illegality in the impugned judgment rendered by the learned High Court as well as judgments and decrees passed by the trial Court as well as first appellate Court, non-suiting the petitioner(s) while decreeing the suit in favour of the respondent(s)/plaintiff(s), concurrently, warranting interference by us. As such, no case for grant of leave is made out. Resultantly, the petition in hand stands dismissed and leave refused.

JUDGE

JUDGE

Islamabad, the
24th June, 2025
'APPROVED FOR REPORTING'
M.A. Hassan/*

¹⁰ Mst. Ramzanu Bibi v. Ibrahim (deceased) through L.Rs. and others (2025 SCMR 955)