

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Justice Shahid Waheed
Justice Musarrat Hilali

CIVIL APPEAL NO.26-Q OF 2017

[On appeal against the judgment dated 06.10.2017, passed by the High Court of Balochistan, Sibi Bench, in Civil Revision No.22 of 2016]

Mst. Sehat Bibi d/o late Daulat Khan

...Appellants

VERSUS

Bahar Khan s/o late Daulat Khan & 2 others

...Respondents

For the Appellants : Mr. Zahoor-ul-Haq Chishti, ASC

For Respondents No.1 & 3 Ex-parte

For Respondent No.2 : Mir Talal Rind, ASC

Date of Hearing : 01.12.2023

JUDGMENT

Musarrat Hilali, J. — This Civil Appeal, under Article 185 (2) (e) of the Constitution has been filed against the judgment and decree dated 06.10.2017 passed by the High Court of Balochistan in Civil Revision No.(s) 22 of 2016, with the following prayer:

“It is prayed that honourable court may graciously modify impugned judgment and decree of learned High Court: to cancel the 2nd Mutation No.222 dated 14.11.2001 and to substitute restoration of appellant’s 1/3rd share in agriculture lands of late Daulat Khan situated in Mouza Bostan Tehsil Sibi in place of 1/3rd share in sale price of agriculture land vide impugned judgment.”

2. Through the impugned judgment, Civil Revision filed by Mst. Sehat Bibi was accepted and the judgments and decrees passed by the Courts below were set-aside; resultantly the suit of the Appellant was decreed to the extent of her 1/3rd share out of the sale price of Rs.13,00,000/-.

3. Mst. Sehat Bibi (*the Appellant*) and Bahar Khan (*Respondent No.1*) were the only surviving legal heirs of late Daulat Khan (*original owner*), who died in 1980 by leaving behind agricultural property bearing No.56, Khatta No.39/39 (3 shares), Khatta No.40/41 (5 shares) and Khatta No.58/59 (18 shares) situated at Mohal and Mouza Bostan, Tappa Saddar, Tehsil and District Sibbi. However, Bahar Khan being son of late Daulat Khan took control of the property and transferred the entire property in his own name by way of alleged oral gift vide Mutation No.56 dated 24.03.1981 (*Ex.P/4-A*) while the Appellant being a *pardah nasheen* lady was kept ignorant of this fact. Bahar Khan, Respondent No.1, then sold the property to Muhammad Zakria, Respondent No.2 vide Mutation No.226 dated 14.11.2001 (*Ex.D/2-A*). On getting knowledge, the Appellant filed a suit for declaration, partition, cancellation of mutation entries, separate possession and permanent injunction against her brother Bahar Khan, Respondent No.1 and Muhammad Zakria, Respondent No.2, which was dismissed by the Trial Court and upheld by the Appellate Court but the High Court while accepting the revision of the Appellant vide judgment dated 06.10.2017 allowed her suit and set-aside the judgments and decrees of the two courts below. The High Court further directed Bahar Khan, Respondent No.1, to pay the share of the Appellant from Rs.13,00,000/- as per Sharia Law within a period of three months.

4. Learned counsel for the Appellants argued that being daughter of late Daulat Khan, she had an absolute right of inheritance to the extent of 1/3rd share in the property of late Daulat Khan. That the Mutation No.56 dated 24.03.1981 in favour of her brother Bahar Khan, Respondent No.1, was illegal being based on fraud and misdeclaration. That the grant of 1/3rd of sale price instead of 1/3rd share in the property of late Daulat Khan is contrary to law. That the denial of 1/3rd share in the agricultural land on account of 3rd party interest is not justified as only few plots (*comprising over 52067 sq ft*) equal to 1-1/4 acres were sold out of the entire property comprising over 97-0-98 acres. While concluding his arguments, learned counsel submitted that the impugned judgment and decree of the High Court be modified to the extent of 1/3rd share in the entire property of late Daulat Khan

instead of $1/3^{\text{rd}}$ share out of the sale price amounting to Rs.13,00,000/-.

5. As against that learned counsel for the Respondents controverted the submissions made by the learned counsel for the Appellants by contending that the property was transferred by way of oral gift to Respondent No.1 by his father during his life time, which was never objected to by the Appellant. That all the important issues were decided against the Appellant and the findings given by the Trial Court and upheld by the Appellate Court are based on proper appreciation of law. That the judgment and decree of the High Court suffer from illegalities and material irregularities, which are not sustainable and are liable to be set-aside.

6. Heard arguments advanced by learned counsel for the parties and perused the record with their able assistance.

7. Before proceeding further, it is important to mention here that Mst. Sehat Bibi, the Appellant, has only challenged the impugned judgment dated 06.10.2017 passed by the High Court whereby it allowed the revision of the Appellant and ordered Respondent No.1 to return the sale amount as per Appellant's legal share. In this scenario, the question arises before this Court is whether the Appellant being co-sharer is entitled to receive $1/3^{\text{rd}}$ share from the legacy of her father instead of receiving $1/3^{\text{rd}}$ share in the sale proceeds?

8. It is revealed from perusal of the record that late Daulat Khan, father of the Appellant (Sehat Bibi) and Respondent (Bahar Khan) died in the year 1980 leaving behind two legal heirs. It is an established principle of law that *legal heirs inherit property to the extent of his/her share the very moment his/her predecessor passes away*. Reference can be made to the case titled **Farhan Aslam and others v. Mst. Nuzba Shaheen and another** (2021 SCMR 179). Similarly, on the demise of Daulat Khan, his property was to devolve upon his son Bahar Khan and daughter Mst. Sehat Bibi, being the only surviving legal heirs. Nevertheless Respondent No.1 got attested Mutation No.56 dated 24.03.1981 in his favour on the basis of oral gift allegedly made by his father. We have perused Mutation No.56 dated 24.03.1981

(Ex.P/4-A), it is written therein that Bahar Khan is the only legal heir of late Daulat Khan and there is no other right bearer. Through this Mutation, Respondent No.1 deprived the Appellant from the inheritance and he further sold out some property to Respondent No.2 etc. Record shows that Respondent No.1 has failed to produce any witness to prove the alleged oral gift in his favour. Hence by withholding the best evidence adverse inference can be drawn under Article 129 (g) of Qanun-e-Shahadat Order, 1984 and it can, therefore, be reasonably concluded that the said inheritance mutation was procured in favour of Bahar Khan by fraud after the exclusion of the Appellant from the inherited property, with connivance of the revenue officials by concealing the fact of existence of the Appellant. Hence, Respondent No.1 could not make out a case claiming ownership of the entire property of his late father to the exclusion of the Appellant. *The Appellant being daughter of deceased landlord, could not be deprived of her right in inherited property by any illegal mutation sanctioned at the behest of male heirs.* Reference is placed on the case titled **Shahro and others v. Mst. Fatima and others** (PLD 1998 SC 1512).

9. According to the Muslim Law, on the demise of Daulat Khan, the Appellant was entitled to get 1/3rd share out of the entire property of her late father but the revenue officials illegally, fraudulently and dishonestly deprived the Appellant from her legal share by mutating the entire property in favour of Bahar Khan, Respondent No.1. The High Court, while setting aside the judgments and decrees of the Trial Court and the Appellate Court, completely failed to apply the law and granted only 1/3rd share out of the sale price of Rs.13,00,000/- to the Appellant. The grant of 1/3rd share out of the sale price and exclusion of the Appellant from the inheritance was against the law, therefore, while setting-aside the impugned judgment dated 06.10.2017 we hold that the Appellant is entitled to 1/3rd share out of the entire property of her late father. Resultantly, the Inheritance Mutation No.56 dated 24.03.1981 (Ex.P/4-A) and all subsequent mutations attested on the basis of said inheritance mutation are hereby cancelled as any superstructure built on weak foundation is not sustainable. The revenue authorities are, therefore, directed to mutate the entire property of late Daulat Khan afresh among his legal heirs i.e.

Bahar Khan and Mst. Sehat Bibi, strictly in accordance with law. It is further directed that the property already sold out by Bahar Khan, Respondent No.1 shall be made part of his share while mutating the estate of late Dault Khan. With the above observations, this appeal is allowed.

ISLAMABAD

01.12.2023

APPROVED FOR REPORTING

Hashmi