

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Shahid Waheed
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Miangul Hassan Aurangzeb

Civil Appeal No. 156-P of 2013

(On appeal from the judgment dated 27.05.2013 of the Peshawar High Court, Peshawar passed in Civil Revision No. 1211/2011)

Muhammad Israr. ... *Appellant*

Versus

Jehanzeb and others. ... *Respondents*

For the Appellant: Mr. Shah Faisal Nasapi, ASC.

For the Respondents: Mr. Zia-ur-Rehman Khan, ASC.

Date of Hearing: 24.02.2025.

ORDER

Muhammad Shafi Siddiqui, J. The controversy in hand revolves around a dower deed whereby one Mst. Kishwara claimed herself to be the owner and consequently gifted the property on 26.11.1997 in favour of one Muhammad Israr. The prime consideration was and is whether she has successfully proved the title by virtue of dower deed allegedly executed by her husband Masahib Shah on 24.06.1960.

2. On this count alone we have heard the learned counsel for the appellant and perused the material available on record. The consequence of a dower deed in the shape of gift deed (under challenge) could only be materialized if the dower deed is proved. Once such dower deed stands proved only then the question of conveying title by whatever means including but not limited to gift deed would have been possible.

3. The two suits; one filed by Muhammad Israr and the other filed by one Jehanzeb were consolidated. Earlier the suit filed by Muhammad Israr for

declaration was consented by Mst. Kishwara in respect of 4 ½ *marlas* of land on 09.02.1999, which was challenged by Mst. Naseem and Marifat Shah under section 12(2) of the Code of Civil Procedure, 1908 ('CPC') and challenge was successful. Later on, Jehanzeb filed a suit for declaration-cum-possession *via* partition on 08.10.2008. The two suits were then consolidated. Mst. Kishwara was the maternal aunt of Muhammad Israr, who obtained a consent decree in a span of 9 days from the civil court stated above. On consolidation of the two suits, the Civil Judge, Charsadda *vide* consolidated judgment dated 18.05.2010 dismissed the suit filed by Muhammad Israr (Civil Suit No.13/1), whereas, decreed the suit of Jehanzeb (Civil Suit No.12/1). Both the parties aggrieved by the said consolidated judgment and decree filed their respective appeals before the Additional District Judge, Charsadda. The two appeals were consolidated and a common judgment was passed dated 30.05.2011. Appeal of Muhammad Israr (Civil Appeal No.65/13) was accepted and his suit was decreed, whereas, the other appeal (Civil Appeal No.74/13) filed by Jehanzeb was dismissed. Consequently, Jehanzeb challenged the consolidated judgment and decree of the first appellate court in a civil revision before the Peshawar High Court, Peshawar.

4. We have perused the impugned judgment carefully. The jurisdiction vested with the revisional court was exercised under section 115 of the CPC and revisional court was competent to exercise all the said enabling powers under section 115 of the CPC which it did.

5. The dower deed which is more than thirty years old claimed to have presumption of genuineness but that presumption is always rebuttable by the party questioning genuineness thereof. Indeed the unsuspecting character of a document, its proper custody and other circumstances are the foundation to raise presumption of its execution, however, if *prima-facie*,

the dispute to its execution and proper custody is raised then it becomes the duty of the court to determine the question of its genuineness. The presumption is thus discretionary and not mandatory in terms of the case of Allah Ditta v. Aimna Bibi (2011 SCMR 1483). The presumption of correctness of a document available under the Qanun-e-Shahadat Order, 1984 in respect of thirty years old document, subject to above, is only in respect of a signature and every other part thereof in handwriting of a particular person. Rest of the contents which are not in the handwriting would then become the subject matter of proof. The other aspect of the matter which germane to the requirement of law is that the subject document should be produced by person having proper custody in terms of Article 100 of the Qanun-e-Shahadat Order, 1984. Production of document purported or proved to be thirty years old from "proper custody" was the condition precedent; until and unless such condition is met, no presumption as to the signature, contents or any part of such document to be duly executed/attested, would arise. Indeed the subject document was produced by scribe who, for the purposes of the present controversy does not have a proper custody.

6. The outcome of evidence recorded in the trial court was that Muhammad Israr remained unsuccessful in establishing that a dower deed was executed whereby a title of Masahib Shah in respect of house measuring 4 ½ *marlas* was conveyed to Mst. Kishwara as dower. It may have been a matter of record that a gift deed was executed subsequently, but it is an undeniable fact that under a gift deed a title could only be conveyed if the donor is enjoying such title. The donor being Mst. Kishwara was unable to satisfy through reliable evidence that by virtue of a dower deed the title of the house was conveyed to her. It may have been several decades old instrument but that alone would not succeed if a doubt is created about the

genuineness of the document. The corroborative evidence should have been made available before the trial court and first appellate court. The trial court found it to be a case of lack of evidence and consequently dismissed the suit of Muhammad Israr whereas the suit for partition filed by the Jehanzeb was decreed by the trial court. The first appellate court reversed the findings whereas the revisional court restored it. It was within the competence of the revisional court to see whether (i) the courts below had exercised jurisdiction not vested in it or (ii) the courts below have failed to exercise jurisdiction so vested or (iii) the courts below have acted in the exercise of its jurisdiction illegally or with material irregularity. Indeed, when the dower deed came for consideration, it remained an unsuccessful attempt as far as proving of the instrument is concerned. It may have been "produced" as stated above but the fact remained that it was not "proved" to the satisfaction of the trial court and that of the revisional court.

7. We do not exercise the jurisdiction to re-appraise the evidence for another view. The jurisdiction exercised by the revisional court and the conclusion drawn is the outcome of the record available in terms of the evidence. We, therefore, are not inclined to interfere in the conclusion drawn by the revisional court which in fact has restored the conclusion of the trial court while deciding the two suits *vide* consolidated judgment dated 18.05.2010.

8. In view of the foregoing, this appeal is dismissed.

Judge

Judge

Judge

Islamabad:

24.02.2025

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Approved for Reporting