

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Bench

Mr. Justice Jamal Khan Mandokhail

Mr. Justice Muhammad Ali Mazhar

Civil Appeal No. 1551 of 2017

(Against the judgment dated 18.09.2017 of the Lahore High Court, Rawalpindi Bench passed in CR No. 44-D of 2011)

Hayat Muhammad thr. LRs

...Appellant(s)

Versus

Muhammad Riaz

...Respondent(s)

For the Appellant(s): Mr. Muhammad Ilyas Sheikh, ASC

For the Respondent(s): Sh. Zamir Hussain, ASC

Date of hearing: 07.08.2023

JUDGMENT

Jamal Khan Mandokhail, J.- The predecessor of the appellants (the “predecessor”) filed a suit in the year 2007 for cancellation of gift mutation No. 525 dated 08 May 2001 (the “**mutation in question**”). The suit was decreed by the Trial Court and the Appeal filed thereagainst by the respondent was dismissed. A Civil Revision filed by the respondent before the Lahore High Court, Rawalpindi Bench was allowed. The judgments of both Courts were set aside and the suit of the appellants was dismissed by means of the judgment impugned, hence, this appeal.

2. Arguments heard and have perused the record. The record reveals that after incorporating the mutation in question in the revenue record from the predecessor’s name to the respondent’s name, a suit for possession through right of pre-emption was filed by the predecessor’s niece, namely Mst. Gulzar, against the respondent. In the said proceedings, the predecessor appeared before the Court as DW-1 on 14.11.2006 and recorded his statement on oath. He not only accepted the execution of the gift in favour of the respondent, but also affirmed the mutation in question. In his cross-examination, he reiterated that after gifting the property to the respondent, he has no concern of whatsoever nature with it. The suit for pre-emption by the predecessor’s niece was dismissed on 06.12.2006 and the judgment and decree attained finality. After four years of the said judgment and decree, the predecessor filed the present suit through which he has disputed the factum of gift on the ground

of fraud. He also claimed that possession of the property has not been handed over to the respondent, therefore, claimed that there is no valid gift.

3. "Gift" is defined in section 138 of the Muhammadan Law as: *"A hiba or gift is a transfer of property, made immediately, and without any exchange, by one person to another, and accepted by or on behalf of the latter."* The prerequisites of a valid gift are: (i) offer by the donor; (ii) its acceptance by the donee; and (iii) the delivery of possession. A valid gift comes into existence as soon as the three ingredients are completed. Under Muhammadan Law, any Muslim can make a valid gift of movable or immovable property orally, however, it may be reduced into writing as proof. The record suggests that upon the oral gift, the mutation in question was effected by the predecessor in the name of the respondent. As discussed above, that in the earlier suit for possession through right of pre-emption filed by the predecessor's niece against the respondent, the predecessor appeared before the court and made a statement under oath, acknowledging that he gifted the disputed property to the respondent and thereafter transferred it to the name of the respondent in the revenue record through the mutation in question. A copy of the said statement given by the predecessor was produced as evidence in the present proceedings, which remained unchallenged, therefore, it is strong proof of an oral gift, followed by the disputed mutation. His statement in the said litigation before the competent court of law proves his bona fide intention, free will, and consent and thereby, confirms the execution of a valid gift and acceptance of the mutation in question in the previous litigation. The said revenue record reflects that the predecessor himself appeared before the revenue authorities and signed the mutation in question in presence of the revenue authorities and the witnesses. The declaration of gift by the donor gathers strength by the civil transaction between him and the respondent with regard to transfer of the property through the mutation in question. Under such circumstances, the predecessor cannot resile from his deeds, hence, is estopped to challenge the validity of the gift on any ground.

4. Without prejudice to the above, as the predecessor has questioned the validity of the gift on the grounds of fraud and non-delivery of possession of the property in question to the respondent, therefore, the burden to prove such allegations was upon on him. Perusal of the statement of the predecessor before the Trial Court in the present proceedings reveals that he did not say anything with regard to fraud as alleged by him in the plaint, nor has he produced any evidence in this behalf, as such, the predecessor was unable to prove the allegation of fraud. Had the predecessor considered the mutation in question as a result of fraud, he would not have appeared before the court in the previous litigation, instead he accepted it as lawful and genuine. As far as the plea of the predecessor with regard to non-

delivery of possession of the property is concerned, as discussed hereinabove, since he conceded the factum of gift of the property and its possession in favour of the respondent, he cannot question the factum of possession. Earlier the Trial Court while relying upon the statement of the predecessor and other material available before it, dismissed the suit for pre-emption. In the said judgment, the Trial Court has held that the respondent is in possession of the property and has declared that it is a result of a valid gift. The said judgment has attained finality and has not been challenged by the predecessor or the appellants till date. Under such circumstances, the appellants have failed to prove their stance with regard to non-delivery of possession of the property to the respondent.

5. The predecessor and after his death, the appellants do not seek revocation of the gift through the present suit, however, the learned counsel states that since possession of the land has not been delivered to the respondent, therefore, the appellants can revoke the gift. The precondition for revocation of a gift as provided by section 167 of the Muhammadan Law is that it can only be revoked before delivery of possession. It implies that despite declaration of gift by the donor and its acceptance by the donee, the donor may change its mind and may not complete the gift by not delivering the possession. It is not so in the case in hand, because it has already been established that possession of the property has been delivered by the predecessor to the respondent much before the institution of the suit, therefore, a valid gift has been completed in all respects. Under such circumstances, the appellants are not entitled to ask for revocation of the valid gift. The Trial Court and the Appellate Court have erred in law and facts while decreeing the suit, whereas, the High Court on proper appraisal of the record was right in accepting the revision petition and dismissing the suit. The learned counsel for the appellants has not been able to point out any substantial question of law, illegality, procedural irregularity, or jurisdictional defect in the impugned judgment of the High Court, warranting interference.

Thus, in view of the above, this appeal is dismissed.

Judge

Judge