

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.1779 OF 2024

(Against the judgment dated 04.11.2024 of the Peshawar High Court, Abbottabad Bench passed in Civil Revision No.102-A of 2008)

Syed Uzair Shah, etc.

...Appellants

Versus

Mst. Surriya Begum (late) through LRs, etc.

...Respondents

For the Appellants: Syed Amjad Shah, ASC & Sh. Mahmood Ahmad, AOR.

For the Respondents: Mr. Tahir Hussain Lughmani, ASC.

Date of Hearing: 24.02.2025

ORDER

MIANGUL HASSAN AURANGZEB, J.- Through the instant appeal, the appellants have called into question the judgment dated 04.11.2024 passed by the Peshawar High Court, whereby civil revision petition No.102-A/2008 filed by the predecessor of the private respondents against the judgment and decree dated 31.05.2008 passed by the learned appellate Court, was allowed and the judgment and decree dated 10.10.2007 passed by the learned civil Court decreeing the suit for declaration filed by the predecessor of the private respondents, was restored. The appellate Court had allowed the appeal preferred by the appellants against the said judgment and decree dated 10.10.2007 and had consequently dismissed the suit filed by the predecessor of the private respondents.

2. The predecessor of the private respondents, Mst. Surriya Begum, had filed a suit praying for a declaration to the effect that she is the lawful owner of 909 acres of land described in the title of

the suit on the basis of a gift from her father, Syed Noor Ahmed Shah. Although there is no gift deed on the record but the documents tendered in evidence by the Land Reforms Authorities show that 909 acres of land equivalent to 9,997 Produced Index Units ("**PIUs**") had been gifted by Syed Noor Ahmed Shah to his daughter, Mst. Surriya Begum.

3. On the promulgation of Martial Law Regulation No.64 ("**MLO No.64**") / West Pakistan Land Reforms Regulations, 1959, Syed Noor Ahmed Shah was required by the Land Reforms Authorities to file a declaration as to his total land holding. In his declaration dated 13.04.1959, he had declared that he had owned 4,058 acres comprising of 46,397 PIUs out of which he retained 3,149 acres equal to 36,000 PIUs whereas 909 acres equal to 9,997 PIUs had been gifted by him. As a result of the said declaration, no land was resumed from him as his total land holding minus the land that had been gifted by him fell below the maximum limit of landed property which could be retained by him. In terms of paragraph-9(a) of MLR No.64, a land owner could retain land equivalent to 36,000 PIUs.

4. After the demise of Syed Noor Ahmed Shah, his landed property including the land which he had gifted devolved on all his legal heirs and in this regard, inheritance mutation No.9,660 was attested on 07.12.1994. This gave a cause to Mst. Surriya Begum to file the suit claiming a gift of 909 acres of land in her favour by her late father. Her suit was decreed by the learned civil Court on 10.10.2007. The learned civil Court had examined documents that had been tendered in evidence by Girdawar (Land Reforms, Mansehra) (PW-2), which show that 909 acres of land equivalent to 9,997 PIUs had been gifted by Syed Noor Ahmed Shah to his daughter, Mst. Surriya Begum.

5. The learned appellate Court reversed the said judgment and decree and dismissed Mst. Surriya Begum's suit primarily on the ground that she and / or her legal heirs had not been able to prove that she / they were given possession of the land, which she had claimed had been gifted to her by her father. The High Court allowed the revision petition filed by Mst. Surriya Begum's legal heirs and dismissed the judgment and decree dated 31.05.2008 passed by the learned appellate Court. Furthermore, the judgment and decree dated 10.10.2007 passed by the learned civil Court in favour of Mst. Surriya Begum's legal heirs was restored.

6. The documents produced from the record of the Land Reforms Authorities are of pivotal significance in the instant case. They set out the position taken by Syed Noor Ahmed Shah in his declaration that he had gifted 909 acres of land equivalent to 9,997 PIUs to his daughter, Mst. Surriya Begum. A declaration as to the landholding of a land owner has been judicially recognized as a 'decisive step' in the process of land reforms.¹ True, that such gift was not incorporated in the revenue record, and after Syed Noor Ahmed Shah's demise, inheritance mutation No.9,660 was attested on 07.12.1994 showing Syed Noor Ahmed Shah's entire land including the land gifted to Mst. Surriya Begum to have devolved on all his legal heirs. However, at no material stage did Syed Noor Ahmed Shah in his lifetime revoke the declaration made by him on 13.04.1959 before the Land Reforms Authorities. This declaration was infact an admission by him as to the gift made by him in favour of his daughter.

7. Had Syed Noor Ahmed Shah not declared before the Land Reforms Authorities that he had gifted 909 acres of land equivalent

¹Qazalbash Waqf Vs. Chief Land Commissioner (PLD 1990 SC 99), Muzammil Shah Vs. Deputy Land Commissioner, Mansehra (PLD 2001 Peshawar 92), Syed Mohsin Naqvi Vs. Federal Land Commission (2010 YLR 3248)

to 9,997 PIUs, his land in excess of 36,000 PIUs would have been resumed by the Land Reforms Authorities for allotment to sitting tenants. At no material stage did the Land Reforms Authorities and / or any sitting tenant dispute the declaration made by Syed Noor Ahmed Shah that he had gifted 909 acres of land, equivalent to 9,997 PIUs, to his daughter. It is the recognition of the said gift by the Land Reforms Authorities that resulted in Syed Noor Ahmed Shah escaping the resumption of his land beyond 36,000 PIUs in favour of the government. The other legal heirs / descendants of Syed Noor Ahmed Shah who were defendants in the suit had also not challenged the declaration dated 13.04.1959 and / or the documents maintained by the Land Reforms Authorities under which the gift in favour of Mst. Surriya Begum had been recognized and accepted.

8. As regards the question that Mst. Surriya Begum and / or her legal heirs had not been able to prove that they were in possession of the gifted land, it is not disputed that in 1959, Mst. Surriya Begum was a minor being 11 years of age. In the impugned judgment, the High Court has recognized the well settled principle that where the donee is a minor and the donor is the minor's guardian, it is not necessary for the completion of a valid gift under Islamic law to put such donee in actual physical possession of the gifted property. In the case of Kaneez Bibi Vs. Sher Muhammad (PLD 1991 SC 466), this Court held *inter alia* that in cases where the father is the donor for a daughter and / or a minor living with him, strict proof by the donee of transfer of physical possession, as in other type of cases, is not insisted upon. Furthermore, in the case of Riaz ullah Khan Vs. Asghar Ali (2004 SCMR 1701), this Court held the objection as to the non-delivery of possession of the gifted property by a person to a wife or to a ward

to be immaterial. In the instant case, the declaration made by Syed Noor Ahmed Shah before the Land Reforms Authorities is an admission as to the factum of the gift in favour of his daughter, who was a minor when the said declaration was made.

9. In the result, we find no merit in this appeal and the same is accordingly dismissed, but in the circumstances of the case, there will be no order as to costs.

Islamabad, the
24 February 2025
~~Not~~ approved for reporting
Sanaullah*