

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**Present:**

Justice Syed Hasan Azhar Rizvi  
Justice Musarrat Hilali  
Justice Shahid Bilal Hassan

**C.P.L.A.No.287-P of 2025**

*(Against the order dated 04.02.2025 passed  
in C.R.No.342 of 2022 with CM No.1069 of 2022  
by Peshawar High Court, Peshawar)*

*Hidayat Khan and others*

... *Petitioner(s)*

*Versus*

*Mst. Nasreen and others*

... *Respondent(s)*

For the Petitioner(s):      Mr. Manzoor Khan Khalil, ASC

For Respondent:              N.R.

Date of Hearing:              24.04.2025

**ORDER**

**SHAHID BILAL HASSAN, J.** Seeking indulgence of this Court while granting leave to appeal against the order dated 04.02.2025 passed in C.R.No.342 of 2022 by the Peshawar High Court, Peshawar, the petitioner(s) have brought the instant petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973,

2. Facts, in concision, leading to filing of the instant petition are as such that the petitioner(s) instituted a suit for declaration of title germane to the disputed property, fully detailed in the plaint, on the strength of a gift deed dated 02.10.1988, purportedly executed by their predecessor in interest namely Dawai Khan and they further sought declaration of invalidity against the inheritance mutation of Dawai Khan and the inheritance mutation No.7030 by Madad Khan in favour of Mst. Nasrin Begum, which was stated to have been attested on 21.01.2014. The suit was contested by the defendant Madad Khan, whereas the remaining respondents/ defendants conceded the claim of the petitioner(s) by filing their respective conceding written statements. Divergence in pleadings of the parties was summed up into issues and both the contesting parties adduced and produced their evidence in pro and contra. On conclusion of trial, the trial Court vide judgment and decree dated 31.01.2019 dismissed suit of the petitioner(s), which was assailed by

preferring an appeal but the same resulted in dismissal vide judgment and decree dated 03.01.2022 and this scenario led the petitioner(s) to file revision petition before the High Court but to no avail in their favour as the same was dismissed, too through the order impugned before us.

3. Heard at length and record has been gone through.

4. It is an irony that despite being a Muslim Society, we have, out of greed, shunned the teachings of Islam especially in respect of matters of inheritance involving property/land of the deceased propositus and such designs are achieved by using a tactic as to gift, tamleek by the deceased propositus. When such situation arises and a person knocks the door of the Court in order to get his/her lawful right(s)/share from the legacy of propositus, the Court(s) have to ponder upon and plunge deep into the facts of the case, so as to fetch the truth by evaluating and scrutinizing evidence of the parties. As such, when such a transaction is put under challenge, the following principles are to be fulfilled and considered:

a) Beneficiary of the impugned transaction of gift/transfer of immovable property(s) bears the heavy onus to prove the transaction<sup>1</sup>;

b) The beneficiary of a gift has to plead and prove three mandatory ingredients of gift i.e. declaration/offer by the donor, acceptance of gift by the donee and delivery of possession in pursuance of the gift<sup>2</sup>;

c) The possession of immovable property by one of the siblings/L.Rs. to the exclusion of other legal representatives will be treated as constructive possession on behalf of all others unless proved otherwise<sup>3</sup>;

---

<sup>1</sup> Muhammad Sarwar v. Mumtaz Bibi and others (2020 SCMR 276); Mst. Parveen (deceased) through LRs v. Muhammad Pervaiz and others (2022 SCMR 64); Mst. Hayat Bibi and others v. Alamzeb and others (2022 SCMR 13) Islam ud Din (deceased) through L.Rs. and others v. Mst. Noor Jahan (deceased) through L.Rs. and others (PLJ 2016 SC 616), Phull Peer Shah v. Hafeez Fatima (2016 SCMR 1225); Peer Baksh through L.Rs. and others v. Mst. Khanzadi and others (2016 SCMR 1417) Amjad Ikram v. Mst. Asiya Kausar and 2 others (2015 SCMR 1), Ibrahim Kamal v. Mst. Malooka Bibi and others (2012 SCMR 1), and Khaliqdad Khan and others v. Mst. Zeenat Khatoon and others (2010 SCMR 1370).

<sup>2</sup> Bilal Hussain Shah and another v. Dilawar Shah (PLD 2018 SC 698); Khalid Hussain and others v. Nazir Ahmad and others (2021 SCMR 1986); Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat, Peshawar and others v. Shah Faisal Wahab and others (2023 SCMR 1642); Mst. Tahira Samina and others v. Javed Saeed Tariq and others (2024 SCMR 24); Mst. Saadia v. Mst. Gul Bibi (2016 SCMR 662); Mst. Nagina Begum v. Mst. Tahzim Akhtar and others (2009 SCMR 623); Khalida Idrees and others v. Anas Farooq Chaudhary and others (PLD 2018 LAH 819); Mst. Rasheeda Bibi v. Mukhtar Ahmad and others (2008 SCMR 1384); Islam-ud-Din through L.Rs and others v. Mst. Noor Jahan through L.Rs and others (2016 SCMR 986); Mst. Shafqat Parveen v. Muhammad Iftikhar Amjad and others (2012 SCMR 1602); Rehmat Noor v. Zulqarnain (2023 SCMR 1645); Syed Ahmad v. Ali Akbar and others (2021 SCMR 743);

<sup>3</sup> Mst. Tahira Samina and others v. Javed Saeed Tariq and others (2024 SCMR 24); Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat, Peshawar and others v. Shah Faisal Wahab and others (2023 SCMR 1642); Agha

d) In case of oral transactions, it is compulsory for a beneficiary of oral transaction to prove the same through unimpeachable evidence by stating and averring mandatory material particulars in the pleadings i.e. time, date, venue/place, the witnesses in whose presence the alleged transaction was brought about<sup>4</sup>;

e) The oral transaction of transfer of immovable property (original transaction), be it sale, gift/tamleek, relinquishment or will etc. has to be proved separate from its incorporation/attestation in revenue record by way of sanctioning of the mutation since a mutation cannot by itself be considered a document of title<sup>5</sup>;

f) Where a gift, which excluded a legal heir, irrespective of whether such transaction is in the form of registered deed, the donee is required to prove original transaction and must justify the exclusion of a legal heir from the estate<sup>6</sup>;

g) Parties are bound by their pleadings; no amount of evidence can be led beyond the scope of pleadings; and in case any such evidence is brought on record, the Court cannot consider and rely upon the same and has to discard it<sup>7</sup>;

---

Syed Mushtaque Ali Shah v. Mst. Bibi Gul Jan and others (2016 SCMR 910); Fareed and others v. Muhammad Tufail and another (2018 SCMR 139);

<sup>4</sup> Muhammad Shafiq Ullah and others v. Allah Bakhsh (deceased) through L.Rs. and others (2021 SCMR 763), Saddaruddin (since deceased) through L.Rs. v. Sultan Khan (since deceased) through L.Rs. and others (2021 SCMR 642), Muhammad Riaz and others v. Mst. Badshah Begum and others (2021 SCMR 605), Atta Muhammad and others v. Mst. Munir Sultan (deceased) through her L.Rs. and others (2021 SCMR 73), Muhammad Yaqoob v. Mst. Sardaran Bibi and others (PLD 2020 S.C. 338), Jubilee General Insurance Co. Ltd. Karachi v. Ravi Steel Company, Lahore (PLD 2020 S.C. 324), Muhammad Nawaz and others v. Sakina Bibi and others (2020 SCMR 1021), Muhammad Sarwar v. Mumtaz Bibi and others (2020 SCMR 276), Moiz Abbas v. Mrs. Latifa and others (2019 SCMR 74); Naveed Akram and others v. Muhammad Anwar (2018 SCMR 1095); Allah Ditta and others v. Manak alias Muhammad Siddique and others (2017 SCMR 402), Peer Baksh through L.Rs. and others v. Mst. Khanzadi and others (2016 SCMR 1417); Muhammad Nawaz through L.Rs. v. Haji Muhammad Baran Khan through L.Rs. and others (2013 SCMR 1360) and Muhammad Nawaz through L.Rs. v. Haji Muhammad Baran Khan through L.Rs. and others (2013 SCMR 1300)

<sup>5</sup> Mst. Brikhna v. Faiz Ullah Khan and others (2020 SCMR 1681), Muhammad Yaqoob v. Mst. Sardaran Bibi and others (PLD 2020 S.C. 338), Fazal Ellahi (deceased) through its Legal Heirs v. Mst. Zainab Bibi (2019 SCMR 1930), Ghulam Sarwar (deceased) through L.Rs. and others (2019 SCMR 567), Islam ud Din (deceased) through L.Rs. and others v. Mst. Noor Jahan (deceased) through L.Rs. and others (PLJ 2016 S.C. 616), Phul Peer Shah v. Hafeez Fatima (2016 SCMR 1225), Muhammad Ishaq v. Muhammad Shafiq and 9 others (2007 SCMR 1773), Haji Muhammad Anwar v. Muhammad Ahmed and others (2007 SCMR 1961), Rehmatullah and others v. Saleh Khan and others (2007 SCMR 729), Aurangzeb through L.Rs. and others v. Muhammad Jaffar and another (2007 SCMR 236), Mst. Janntan and others v. Mst. Taggi through L.Rs. and others (PLD 2006 S.C. 322), Muhammad Akram and another v. Altaf Ahmad (PLD 2003 S.C. 688), Muhammad Lehrasab Khan v. Mst. Aqeel un Nisa and 5 other (2001 SCMR 338), Muhammad Ihsaq and another v. Mst. Gazala Riaz and 8 others (1997 SCMR 974) and Mst. Noor Fatima and another v. Begum Bibi and another (1990 SCMR 629)

<sup>6</sup> Fareed and others v. Muhammad Tufail and another (2018 SCMR 139); Mst. Tahira Samina and others v. Javed Saeed Tariq and others (2024 SCMR 24)

<sup>7</sup> Moiz Abbas v. Mrs. Latifa and others (2019 SCMR 74); Saddaruddin through LRs v. Sultan Khan (Since deceased) through LRs and others (2021 SCMR 642) Muhammad Nawaz alias Nawaza and others v. Member Judicial Board of Revenue and others (2014 SCMR 914) Combined Investment (Pvt.) Ltd. V. Wali Bhai and others (PLD 2016 Supreme Court 730); Muhammad Iqbal v. Mehboob Alam (2015

h) Mere efflux of time does not extinguish the right of inheritance, therefore, the question of limitation in case of inheritance and fraud is not attracted and becomes insignificant<sup>8</sup>.

Now, when facts of the instant case are weighed on the touchstone of the principles settled by this Court in the precedents developed from decades with the evolution, it can safely be concluded and observed that the gift in the case in hand was conditional because the possession was not delivered to the petitioner(s) rather it is evident from the recital of the gift deed that the donor would retain the possession during his lifetime, meaning thereby one of the ingredient(s) of a valid gift was missing and when a document creates a future obligation(s) or right(s), it has to be compulsorily registered and when position remains otherwise, as in the present case, such document does not consider any right(s) in view of command of section 49 of the Registration Act, 1918 read with section 123 of the Transfer of Property Act, 1882; therefore, the learned High Court has rightly construed law on the subject in this regard. Moreso, when such a document, creating future obligation(s) and right(s) is executed, the same, when challenged, requires to be proved by producing two marginal witnesses as per mandate of Article 79 of the Qanun-e-Shahadat Order, 1984, which is lacking in this case as none of them was produced and the witnesses produced in the witness box for identification of their signature(s) were not sought to be produced as

---

SCMR 21); Messrs Essa Engineering Company Pvt. Ltd. and another v. Pakistan Telecommunication Company Limited and another (2014 SCMR 922)

<sup>8</sup> Mohammad Boota (deceased) through L.Rs., and others v. Mst. Fatima daughter of Gohar Ali and others (2023 SCMR 1901), Noor Din (deceased) through LR v. Pervaiz Akhtar and others (2023 SCMR 1928), Salamat Ali and others v. Muhammad Din and others (PLD 2022 S.C. 353), Syed Kausar Ali Shah and others v. Syed Farhat Hussain Shah and others (2022 SCMR 1558), Faqir Ali and others v. Sakina Bibi and others (PLD 2022 S.C. 85), Muhammad Sharif and others v. MCB Bank Limited and others (2021 SCMR 1158), Haji Wajdad v. Provincial Government through Secretary Board of Revenue, Government of Balochistan, Quetta and others (2020 SCMR 2046), Shabla and others v. Ms. Jahan Afroz Khilat and others (2020 SCMR 352), Ghulam Farid and another v. Sher Rehman through LR. (2016 SCMR 862), Syed Mehmood Ali Shah v. Zulfiqar Ali and 5 others (PLD 2013 SC 364) and Messrs Paramount Spinning Mills Ltd. v. Customs, Sales Tax and Central Excise Appellate Tribunal and another (2012 SCMR 1860), Muhammad Iqbal and 5 others v. Allah Bachaya and 18 others (2005 SCMR 1447), Muhammad Zubair and others v. Muhammad Sharif (2005 SCMR 1217) and Dr. Muhammad Javaid Shafi v. Syed Rashid Arshad and others (PLD 2015 SC 212); Peer Baksh through LR and others v. Mst. Khanzadi and others (2016 SCMR 1417); Khan Muhammad through L.Rs and others v. Mst. Khatoon Bibi and others (2017 SCMR 1476), Muhammad Mahmood Shah v. Syed Khalid Hussain Shah and others (2015 SCMR 869); Rehmatullah and others v. Saleh Khan and others (2007 SCMR 729), Arshad Khan v. Mst. Resham Jan and others (2005 SCMR 1859); Khair Din v. Mst. Salaman and others (PLD 2002 SC 677); Mst. Gohar Khanum and others v. Mst. Jamila Jan and others (2014 SCMR 801); Ghulam Ali and 2 others v. Mst. Ghulam Sarwar Naqvi (PLD 1990 Supreme Court 1)

secondary evidence by moving an application disclosing the incapability, inability or death of the marginal witnesses; therefore, this aspect of the case has also rightly been considered and pondered upon by the three Courts below, concurrently. Additionally, the scribe of the purported gift deed was also not brought into the witness box and the grandson of the scribe, who was produced as P.W.2, categorically admitted that his father was alive but being immediate successor of the scribe, he did not appear in the witness box and even the register maintained by the scribe was not brought on record through proper custody. All this establishes that the petitioner(s) could not prove their case by leading unimpeachable, confidence inspiring and strong evidence qua the purported gift deed.

5. More and above, the petitioner(s) could not plead and prove as to which were the circumstances and incidents that the propositus despite being a Muslim proceeded to deprive his legal heirs/sons and gifted out his property to the present petitioner(s)/grandsons/sons of Murad Khan. Pleading and proving of such facts was necessary and sine qua non, which are missing in the instant case.

6. The compendium of the above is that concurrent findings of the facts recorded by the trial Court and appellate Court and upheld by the High Court while rendering the impugned order (*refusing to make interference in exercise of revisional jurisdiction under section 115, Code of Civil Procedure, 1908*<sup>9</sup>) are not open to any interference by us. Therefore, no case of grant of leave is made out, consequent whereof the leave is refused and petition in hand stands dismissed.

Judge

Judge

Judge

Islamabad:  
24.04.2025  
'Approved for reporting'  
(M.A.Hassan)

---

<sup>9</sup> *Mst. Farzana Zia and others v. Mst. Saadia Andaleeb* (2024 SCMR 916) & *Salamat Ali and others v. Muhammad Din and others* (PLJ 2023 SC 8)