

Stereo. H C J D A 38.
Judgment Sheet
LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

C.R No.55105/2023

Muhammad Naseem etc.
Versus
Asghar Ali Tabassum

J U D G M E N T

| | |
|-----------------|---------------------------------|
| Date of Hearing | 19.06.2025 |
| Petitioners by: | Mian Dawood, Advocate |
| Respondent by: | Mr. Abdul Qadus Rawal, Advocate |

Anwaar Hussain J: The petitioners and the respondent are real children of the deceased Bashir Ahmed, from two different wives. Petitioner No.2 and the respondent are from one mother, while petitioner Nos.1, 3, and 4 are from the other. The dispute revolves around the estate of deceased Bashir Ahmad, whose property was transferred through four distinct mutations bearing Nos. 1276 dated 23.01.2012, 1502 dated 23.01.2012, 1437 dated 21.05.2012, and 1532 dated 08.04.2014 pertaining to different parcels of land and a house. The aforementioned mutations are based on oral gifts made by the deceased, with the thumb impressions and photograph of the deceased as donor thereon and also carries the thumb impressions of the attesting witnesses. The deceased passed away on 13.04.2016, and the suit was instituted on 22.12.2016. It is not in dispute that the respondent (donee) was residing with the deceased at the time of his demise, whereas the petitioners had severed ties with their father/donor due to strained relations arising from disputes between the deceased and the mother of petitioners No.1, 3, and 4, on account of litigation related to maintenance and other issues between the deceased Bashir Ahmad and his second wife (stepmother of petitioner No.2 and real mother of the remaining petitioners). Interestingly, petitioner No.2 sided with the stepmother in said litigation. In their plaint, the petitioners

averred that the oral gifts and the subsequent mutations were fraudulent and the donor never appeared before the revenue officials for execution, registration and sanctioning of the mutations. Both the Trial Court and the Appellate Court below rejected this plea, dismissing the suit on 21.01.2022 and the appeal on 18.05.2023 respectively. Hence, present petition.

2. Mian Dawood, Advocate, learned counsel for the petitioners has relied upon the judgment of this Court reported as Liaqat Ali v. Shahnaz Akhtar (2025 LHC 693), arguing that where a gift is made with the intention to deprive other legal heirs, such transaction falls within the ambit of *zarar* (harm) and, in light of Quranic injunctions and Hadith, is liable to be set aside.

3. Conversely, Mr. Abdul Qadus Rawal, Advocate, learned counsel for the respondent has supported the concurrent findings, emphasizing that no particulars of fraud or collusion were pleaded or proved. He adds that the oral gifts were made out of natural love and affection of the donor, *qua* the respondent, in the presence of witnesses whose statements were duly recorded, and the written statement of the respondent elaborated upon the circumstances surrounding such gifts.

4. Arguments heard. Record perused.

5. At the outset, it is pertinent to observe that before the Courts below, it was not the main contention of the petitioners that a gift cannot be made on the basis of principle of *zarar* (harm) *albeit* the petitioners admitted that they severed ties with their father/donor, and also admitted the photograph and thumb impression of their father on the gift mutations. PW-1 stated as under:

”میرے والد صاحب اور 4 بہن بھائیوں کے ساتھ ساز باز ہو کر انتقال متدعو یہ ہوئے ہیں۔ از خود کہا کہ پٹواری سے مل کر ساز بازی ہوتی ہے۔ انور علی پٹواری صفدر علی بھٹی پٹواری اور شاہد گجر پٹواری کے ساتھ ساز باز ہو کر انتقال متدعو یہ کروائے گئے ہیں۔ میں نے دعویٰ ہذا میں مندرجہ بالا پٹواری کے نام نہ لکھوائے تھے۔ میں نے مندرجہ بالا پٹواری لوگوں کے خلاف محکمہ اینٹی کرپشن میں درخواست گزاری نہ دی تھی۔ میرے والد کی تاریخ وفات 24.04.2016 ہے۔ میرے والد صاحب نے اپنی زندگی میں دعویٰ بابت انتقال متدعو یہ نہ کیا تھا۔“

میرے والد صاحب 5/6 جماعت پڑھے تھے۔۔۔۔۔ میری والدہ ممتاز کے دعویٰ کی وجہ سے ہمارے ساتھ
تعلقات درست تھے البتہ میرے والد کے ساتھ تعلقات اچھے نہیں تھے۔۔۔۔۔ انتقال نمبر 1532 کی پشت پر
میرے والد کی تصویر ہے۔ اور اس پر میرے والد کے CNIC نمبر موجود ہے۔ پھر کہا کہ CNIC نمبر یہ والا نہ
ہے۔۔۔۔۔ ہم نے بشیر احمد کے دستخط وانگوٹھا جات انتقال متدعویہ کی بابت کروانے کی کوئی درخواست نہ دی
 ”

(Emphasis supplied)

No doubt that in the case of *Liaqat Ali supra*, this Court held that where an owner, especially a father, gifts away property to only one legal heir with the intention of depriving the other(s) out of hatred towards them alone, such transaction constitutes *zarar* (harm) and is void in light of Islamic principles. However, the factual matrix in *Liaqat Ali supra* was entirely different. In that case, the petitioner (donee) claimed to have received property as an oral gift on the ground that the father had abandoned the daughter/plaintiff, who had contracted marriage without the donor/father's consent. However, the evidence contradicted this claim: the mutation was based on a single witness who did not appear, and in this manner even the execution of the mutation could not be proved. Moreover, no evidence was led to demonstrate any long-standing affection or service by the donee towards the donor. Notably, the deceased father attended the second marriage of the allegedly estranged daughter (plaintiff), refuting the claim of discord between the donor and the deprived legal heir.

6. In contrast, the facts of the present case are clearly distinguishable. The oral gifts in this case were made through separate mutations spread over a period of two years, all attested by the witnesses and bearing the thumb impressions of the deceased father/donor along with his photograph. In fact, the petitioners admit execution of these mutations as evident from the testimony of PW-1 (petitioner No.1) and before this Court, learned counsel for the petitioners has mainly pleaded principle of *zarar* and ratio laid down in case of *Liaqat Ali supra* to discredit the concurrent findings of the Courts below.

7. Suffice to observe that, if a legal heir is deliberately and unjustifiably deprived of inheritance through a gift motivated solely by malice or bias, particularly, where the donee is one among several sons or daughters, such a transaction may fall within the mischief of *zarar* and be liable to be declared invalid. It would be a manifest error in such cases to uphold a gift that serves no purpose (love and affection) but the exclusion of others. However, when some children (the petitioners) have distanced themselves from their father, embroiled him in unwarranted litigation, and effectively severed familial ties, while another child (the respondent) remains devoted, provides companionship and support, and shoulders the responsibilities of care in old age, it is only natural that a father may incline towards the one who stood by him. In such circumstances, Islamic law does not restrain a Muslim owner from gifting his property to the child who has earned his trust and affection through personal service and care. *Prima facie*, it appears that the deceased, impressed by the conduct and care extended by the respondent (donee), chose to transfer his entire estate to him during his lifetime and the disobedience of the petitioners and their distancing from the donor in his life was only an ancillary aspect of the matter. Hence, such a transaction reflects not malice, but recognition of filial duty, and falls squarely within the autonomy of an owner preserved under Islamic jurisprudence as well as law of land.

8. Suffice it to observe that every case turns on its own facts. While the principles laid down in case of *Liaqat Ali supra* offer important guidance on inferring *zarar*/bias when a legal heir is excluded, their applicability depends on factual similarity. In the present case, the circumstances surrounding the oral gifts are materially different and suggest a *bonafide* transfer based on affection and the personal service of the respondent. Applying the observation and/or ratio laid down in case of *Liaqat Ali supra*, in all cases where a legal heir is deprived, without appreciating the factual distinctions

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may lead to unjust outcomes and would undermine the right of an individual to dispose of property during his lifetime in a lawful manner, based on natural love and affection.

9. In view of the above discussion, present petition is devoid of any merit, hence, the same is **dismissed**.

(ANWAAR HUSSAIN)
JUDGE

Approved for reporting

Judge

*A.B***