

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Qazi Faez Isa

Mr. Justice Yahya Afridi

Civil Appeal No. 46-P of 2020

(On appeal from the judgment dated 03.02.2020 of the Peshawar High Court, Peshawar passed in Civil Revision No. 900-P/08)

Tahsinullah.

... *Appellant*

Versus

*Mst. Parveen (deceased) through
her L.Rs and others.*

... *Respondents*

For the Appellant:

Mr. Nasimullah, ASC.

(Through video-link from Peshawar)

Mr. Abdul Qayyum Sarwar, AOR (**absent**).

For the Respondents:

Nemo.

Date of Hearing:

25.11.2021.

JUDGMENT

Qazi Faez Isa, J. This appeal has been filed belatedly with a delay of one hundred and eighty-three days. Civil Misc. Application No. 855-P of 2020 has been filed to condone the delay on the ground that there was Covid-19 virus lockdown, which resulted in the delayed filing of the appeal. This Court has issued a Circular dated 22 July 2020 wherein in respect of the said virus and lockdown a certain period of time has been excluded, but even if such period is excluded, the appeal is still time barred. As the benefit of the said Circular has already been availed of and no other reason has been given to condone delay this appeal would have merited dismissal, but since there is no attendance on behalf of the respondents, we proceeded to examine the merits of the case to ensure that no injustice has been done.

2. The learned counsel states that Ghulam Haider was the father of the appellant and had gifted his lands to the appellant *vide* gift/*tamleek* mutation No. 5341, attested on 4 June 1983, however, the gift mutation was assailed for no good reason by respondent Nos. 1 to 6, the sisters of the appellant (**'the sisters'**), by filing a suit which was decreed and the appeal

against the same was allowed on the ground that the suit was belatedly filed, however, the well-reasoned judgment passed by the learned Judge of the Appellate Court was set aside by the learned Judge of the High Court in the Civil Revision filed by the sisters for no good reason.

3. We have examined the said mutation wherein the acceptance of the gift by the appellant is not mentioned. It also came in evidence that Ghulam Haider had made the said gift on 3 May 1983, the very same day that he died. The burden to establish the gift lay upon the appellant, which he failed to discharge and the fact that it was made by his father on the very day that he died makes it extremely suspect and unreliable. Upon the death of a Muslim his/her legal heirs become the owners of the estate left by him/her and possession of any one of the co-owners is deemed to be the possession by all. This coupled with the fact that the sisters themselves had filed a suit in their lifetime was sufficient to sustain it and the reason given by the learned Judge of the Appellate Court for setting aside the judgment of the Civil Judge was not sustainable, which was rightly set aside through the impugned judgment. Neither the judgment of the Civil Judge nor that of the learned Judge of the High Court can be faulted.

4. This appeal being meritless is dismissed on merits as well as being time barred with costs throughout. We enquired from the learned counsel whether the sisters were still alive and he stated that out of six sisters only two survive. It is a matter of great regret that the laws of Almighty Allah and the law of Pakistan was not abided by the appellant, who brought forth a fictitious gift in his favour by depriving the legal heirs of their respective shares as prescribed by Islamic *Shari'ah* and on the basis of such manipulation the appellant managed to remain in possession till date, that is, after a period of almost thirty-eight years. However, the learned counsel states that since possession is with the appellant, execution has been filed. This is most unfortunate. First, retaining by fraudulent means the property and then compelling his sisters/their legal heirs to retrieve their God ordained share by filing execution proceedings. Therefore, we direct the District Collector, Charsadda, who we are informed to be the concerned Collector, to implement the decision of the Trial Court, which was sustained by the High Court and to endorse the names of the legal heirs of Ghulam Haider as per their respective shares prescribed by Islamic *Shari'ah* and to

deliver possession to the respective parties within three months from today. Copy of the judgment passed today be sent to the respondents and to the District Collector, Charsadda for information and compliance.

Judge

Judge

Bench-II
Islamabad:
25.11.2021

Approved for Reporting
(M. Tauseef)