

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

**PRESENT:**

Mr. Justice Qazi Faez Isa  
Mr. Justice Syed Hasan Azhar Rizvi

**Civil Appeal No. 2613 of 2016**

*(On appeal from the order dated 03.11.2016 of the Lahore High Court, Multan Bench passed in Civil Revision No. 331-D/2013)*

*Muhammad Rafiq.* *...Appellant*

**Versus**

*Mst. Ghulam Zoharan Mai & another.* *...Respondents*

For the Appellant(s) : Raja Inaam Ameen Minhas, ASC.  
a/w Appellant.

For Respondent No. 1 : Mr. Tahir Mehmood, ASC.  
Syed Rifaqat Hussain Shah, AOR.

Respondent No. 2 : *Ex-parte.*

Date of Hearing : 17.03.2023

**JUDGMENT**

**Qazi Faez Isa, J.** The learned counsel for the appellant states that the High Court had allowed the Civil Revision without appreciating that gift of land in favour of the appellant was made through a registered gift deed dated 21 April 1993 by his father, namely, Ghulam Muhammad, therefore, the impugned judgment is not sustainable. By referring to exhibit P1 he states that this document was sufficient to establish the gift by the donor, Ghulam Muhammad, in favour of the donee (appellant herein) and the suit filed by the daughter and widow of Ghulam Muhammad (respondents herein) was misconceived. He submits that after the execution of exhibit P1, and on its basis, the gift was also recorded in the revenue records *vide* gift mutation No. 442, attested on 6 January 2008, therefore, the respondents should have arrayed the revenue authority of Tehsil Dunyapur, District Lodhran, where the land was situated, as a party to the suit, which was a necessary requirement of the law. He further states that since the plaintiffs had alleged fraud particulars of the fraud had to be provided, which was not done. It is next contended that the suit was not filed

during the lifetime of Ghulam Muhammad, and was filed beyond the prescribed period of three years.

2. We have heard the learned counsel, read the impugned judgment and examined the referred to documents. Exhibit P1 purports to be a photocopy of the register maintained by the sub-registrar of Lodhran. Primary evidence of the gift deed, purportedly executed by Ghulam Muhammad, would be the gift deed itself, but it was not produced. Exhibit P1 also does not constitute secondary evidence, which would have been a certified copy of the gift deed, but this too was not produced. Significantly, neither the gift deed (primary evidence) nor a certified copy thereof (secondary evidence) was produced and instead a photocopy of the sub-registrar's register was produced, and on this the appellant's claim of the purported gift was based. Incidentally, neither the sub-registrar nor any officer/official from his office was produced/summoned by the appellant to testify that the photocopy which was produced was a true/certified copy from the said register. The appellant did not produce any tangible evidence of the purported gift, let alone to have established it.

3. Upon death the estate of a deceased person devolves upon his/her legal heirs. In this case, the legal heirs of Ghulam Muhammad were his widow, son and daughter. Since the alleged gift was denied, it was for the beneficiary thereof (the appellant) to have established it. However, the appellant failed to establish the gift in his favour. And, on the basis of a document which had no legal significance the appellant sought to deprive his mother and sister of their inheritance. Shares in the inheritance of a Muslim deceased are prescribed in the Holy Quran.<sup>1</sup> Twenty years have passed since the death of Ghulam Muhammad during which time his widow (respondent No. 2) passed away. In depriving the other legal heirs the appellant acted dishonestly, illegally and violated Qur'anic injunctions.

4. As regards the contention of the learned counsel representing the appellant that the particulars of the alleged fraud

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<sup>1</sup> Al-Qur'an, Surah An-Nisa (4) verses 11 to 14 and 176.

were not provided, and that fraud was not established is not a valid argument. It was for the beneficiary of the gift, who was the appellant, to have established it. The appellant did not produce the gift deed or its copy, let alone establish the purported gift in his favour. What the appellant did, is what we have often noted on the part of some male heirs, which is to deprive female heirs of their inheritance, which constitutes fraud.

5. With regard to the contention that a gift mutation entry was made in the revenue record, which constituted independent evidence, this is a fallacious argument. If the revenue authority had changed the revenue record on the basis of exhibit P1 they did not act in accordance with the law.<sup>2</sup> They also did not issue notices to the heirs of Ghulam Muhammad to consider any objection that they may have had. To have acted on the basis of a purported extract from the sub-registrar's register and to have changed the revenue record on this basis was not permissible. If revenue officers/officials do not abide by the law governing them they can be taken to task for transgressing the law. The appellant fraudulently deprived the legal heirs of their share in the inheritance and then sought to reinforce the fraud by getting the revenue record changed and this was facilitated by the land revenue authority. The suffering of the respondents was perpetuated by officialdom.

6. We now attend to the contention of the learned counsel for the appellant that since cancellation of gift mutation No. 442, attested on 6 January 2008, by the revenue authority of Tehsil Dunyapur, District Lodhran was also sought the respondents had to array the said revenue authority as a defendant. The plaintiffs (respondents herein) were not obliged to array the said authority nor were obliged to produce/summon any officer/official of it as a witness because the respondents had denied the gift and did not rely upon the said gift mutation. It was the appellant who relied upon the purported gift and the said gift mutation, therefore, he had to establish the same. And, it was for him to have produced/summoned the concerned officer/official from the sub-

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<sup>2</sup> Land Revenue Act, 1967, section 42.

registrar's office and from the revenue authority, which he did not do. The objection to the belated filing of the suit is also not maintainable as the plaintiffs had stated recent knowledge and denial by the appellant and the appellant had failed to controvert this.

7. The appellant deprived his mother and sister from their inheritance. Many females do not have the wherewithal to approach the courts to obtain their rights. Those like the respondents that do, suffer, and often have to wait for years, to get what was rightfully theirs to begin with. The appellant proceeded on the assumption, like some male heirs do, that even if they eventually lose the case they would still get the usufruct of the land by illegally retaining its possession over the years spent in litigation.

8. This appeal should never have been filed and we have no hesitation in dismissing it, and do so with costs throughout. We also impose *special costs* in the amount of Rs.500,000 (five hundred thousand rupees) on the appellant as the defence taken by him was vexatious and false.<sup>3</sup> Costs to be paid by the appellant to the surviving respondent. If costs are not paid the same shall be recovered as arrears of land revenue from the appellant, and till costs are paid they shall continue to constitute a charge on the estate of the appellant.

9. Before parting with this judgment, we would want to say that learned counsel should reflect on how best to advise his clients, and not become an instrument to perpetuate injustice. Copy of this judgment be sent to the land revenue authority of Tehsil Dunyapur, District Lodhran and to the Senior Member, Board of Revenue, Punjab.

Judge

Judge

Islamabad  
17.03.2023  
Approved for Reporting  
Rabbani\*/

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<sup>3</sup> Section 35-B of the Code of Civil Procedure, 1908.