

**IN THE HIGH COURT OF SINDH CIRCUIT
COURT HYDERABAD**

Present:
Mr. Justice Aziz-ur-Rehman.
Mr. Justice Muhammad Faisal Kamal Alam.

C.P.No.D- 741 of 2015

Muhammad Haroon s/o Muhammad Ameen

V/S

Province of Sindh through Secretary [L.U],
Board of Revenue & 4 others

- ...
- Mr. Jagdish R. Mullani, Advocate for Petitioner.
 - Haji Khan Muhammad Kashmeri, Advocate for Respondent No.5.
 - Mr. Allah Bachayo Soomro, Additional A.G.

Date of hearing: 29.10.2018.

Date of judgment: 03.12.2018.

J U D G M E N T

AZIZ-UR-REHMAN, J: Through this Constitutional Petition Under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner herein viz. Muhammad Haroon s/o Muhammad Ameen [*Respondent No.1 in Appeals before the Revenue Forums*] *`inter-alia`* wants this Court to declare the *`impugned order`* dated

16.04.2015 [Annexure `A' to the MoP], passed by Additional Deputy Commissioner-I, BADIN besides, as being against the law of `natural justice`, illegal, without lawful authority and of no legal affect. The prayers sought by the Petitioner in the `Memo of Petition` [In short MoP], read as follows:-

“a. To declare the impugned order dated 16.04.2015 passed by respondent No.2 which is exparte, against the principle of natural justice, illegal, void, malafide, court nonjudice without lawful authority and have no legal affect.

b. To restrain Mukhtiarkar Matli to implement the impugned order dated 16.04.2015 passed by Additional Deputy Commissioner-I, Badin, further he may also be restrained not to issue Sale Certificate, or create third party interest with respondent No.5 by herself, agent, servant, subordinates, assignees, attorney etc. in any manner whatsoever till decision of petition. [Underlining is ours]

c. Any other relief which this Honourable Court deem fit and proper be awarded.”

2. The brief relevant facts leading to the filing of the instant Petition are that; the Petitioner herein, claims to be a `Zamindar` and `small Khatedar` by profession having agricultural land bearing Survey Nos.117/2, 3 & 4 area 11-35 acres, Survey No.120/3 area 4-00 acres, Survey No.121/4 area 3-32 acres, 150/1&2 area 4-38 acres, total area 24-25 acres [50 paisa share] which comes to 12-12-1/2 acres, situated in Deh Talli, Taluka Matli, District Badin [hereinafter called land in question]. Per Petitioner`s version, Block No.94/AB and others admeasuring 60-15 acres, situated in Deh Talli, Taluka Matli, was on the Khata of Respondent No.5`s father namely Muhammad Younus Khan Pathan who during his life time gifted his entire aforementioned

land / immovable property[ies] to his L.Rs including the Respondent No.5 lady herein, vide entry No.44 of VF VII-B.

3. As averred in the Memo of Petition, the Petitioner herein, is uncle of Respondent No.5 lady herein. Respondent No.5, who is niece of the Petitioner, according to Petitioner`s version, was living/residing with the Petitioner since, her childhood [*i.e. when her age was 5-6 years*], and attained the age of puberty while, she was residing with family members of the Petitioner.

4. Per `assertions` made in MoP, the Petitioner, on account of his wife`s death, contracted second marriage, due to which, Respondent No.5 lady herein, became un-happy thus, she, thereafter, started living in the house of Petitioner`s son-in-law. As averred, in the Memo of Petition, the son-in-law of the Petitioner, has no cordial relationship with the Petitioner. The Respondent No.5 lady herein [*Appellant in Appeals before Revenue Forums*], as per Petitioner`s version, on the `instigation` of Petitioner`s son-in-law, opted to move an Appeal under Section 161 of Sindh Land Revenue Act, 1967, before the Assistant Commissioner, Matli, in 2015, for cancellation of Gift claimed to be made orally by Respondent No.5 lady herein, in favour of the Petitioner i.e. sometime, in the years, 1990-1991. The Assistant Commissioner/Assistant Collector Grade-I, Taluka Matli, called a report from Mukhtiarkar and also recorded the statement of Respondent No.5 lady herein namely Mst. Parveen Akhtar D/o Muhammad Younus Khan *interalia* in respect of the so-called `confirmation` and `alienation` of gift, claimed to be made, by Respondent No.5 lady herein, in favour of Petitioner.

5. The main stand of the Petitioner herein [*Respondent No.1 in Appeals before the Revenue Forums*], before the learned Additional Deputy Commissioner, Badin, was to the affect and extent that the Appellant/Respondent No.5 lady herein, about 24 years back has orally gifted her agricultural land [*50 Paisas share*], which comes to 12-12-1/2 acres, situated in Deh Tali, Taluka Matli, District BADIN [*land in question*] in favour of the Petitioner who since then, is in cultivating possession of the land in question and paying land revenue etc. Per Petitioner`s version, the gift in favour of the Petitioner is complete in all respects and no fraud etc, as alleged by Respondent No.5 lady herein, has been committed. Moreover, the land in question, has already been sold out to one KAMBHO KHAN S/O DARYA KHAN through a registered sale deed dated 21.01.2015. The stand of the Petitioner, as claimed, has also been supported by one Muhammad Yaseen [*who as stated to be step brother of Respondent No.5 herein*].

6. The Respondent No.5, per Petitioner`s claim, was just like a daughter, when a Gift was made in her favour by her father viz. Muhammad Younus Khan Pathan and that too when she was residing in the house of the Petitioner. Per Petitioner`s version, at the time of `GIFT` by her father viz. Muhammad Younus Khan Pathan, Respondent No.5 lady herein, then was major. The Respondent No.5 viz. Mst. Parveen Akhtar, as claimed by the Petitioner, on account of `love` and `affection` through a `gift statement` allegedly, recorded in presence of witnesses had gifted her share in favour of the Petitioner, where-upon, an Entry No.48 dated 27.10.1991, was made in VF VII-B. According to the Petitioner`s claim, such `alienation of gift` is not only

valid but also in accordance with Mohammadan Law, as such, the same is an `irrevocable Gift`.

7. In contra, the case of Respondent No.5 lady herein, as pleaded/narrated in both the Appeals filed under Section 161 of Sindh, Land Revenue Act, 1967, before the forums i.e. [i] Assistant Commissioner/Assistant Collector GRADE-I, Taluka Matli and [ii] Additional Deputy Commissioner-I, BADIN, was that an agricultural land bearing S.No.117 and others, admeasuring 24-25 acres, situated in Deh Tali, Taluka, Matli, District Badin [*00-50 paisa share*] of which comes to 12-12-1/2 [*land in question*] belonging to Respondent No.5 herein, was originally, owned by the father of the Respondent No.5 namely Muhammad Younus. Upon his death the `fotikhata` was changed/mutated in favour of his legal heirs vide Entry No.44 DF VII-B. The Respondent No.5 herein [*Appellant before Revenue forums*], sometime in the year, 2015, came to know that the `khata` of the land in question has been changed to the name of Petitioner herein, on the basis of alleged `gift statement`. Per Respondent No.5`s version, the Petitioner herein, ex-facie, in collusion with Revenue staff has fraudulently changed the Khata vide Entry No.48 dated 27.10.1991, in his name. The change of Khata per Respondent No.5`s stand besides, bogus is liable to be cancelled. The Respondent No.5 lady, thus constrained to file an Appeal under Section 161 of Sindh Land Revenue Act, 1967, before the Respondent No.3 herein [*Assistant Commissioner/Assistant Collector Grade-I*]. The Respondent No.3 herein, nevertheless, dismissed the aforesaid appeal filed by Respondent No.5 lady, on 10.03.2015. The `relevant portion` of Order dated 10.03.2015, reads as follows:-

...

“The Mukhtiarkar (Revenue) Matli under his letter No.AM/110 dated 03.03.2015 has reported that he has verified the relevant record and visited the site, which reveals that applicant Mst. Parveen Akhtar gifted the land in question to Muhammad Haroon and same land is in cultivating possession with Muhammad Haroon since the gift. He is paying land revenue etc. At present Muhammad Haroon sold out the same land to other person. He further reported that the statement book of Deh Tali (old) is missing. [Underlining is ours]

From perusal of relevant revenue record, objections filed by respondent, statement of witness namely Muhammad Yameen and report of Mukhtiarkar (Revenue) Matli, it appears that appellant gifted the land in question to respondent in the year 1991. The respondent Muhammad Haroon remained in possession of that land. Now after 24 years period appellant challenged the gift entry to which one mandatory ingredient is completed. However, as for statement/declaration and acceptance Mukhtiarkar has reported that the old record is missing. Since the gift challenged is old, one time barred and not maintainable. Hence the appeal is hereby dismissed.” [Underlining is ours]

...

8. The Respondent No.5 herein, thus again feeling `aggrieved` and `dis-satisfied` with order dated 10.03.2015, passed by the Assistant Commissioner/Assistant Collector Grade-I, Matli [*Annexure `B` to the MoP*], filed 2nd Appeal under Section 161 of Sindh, Land Revenue Act, 1967, before the Additional Deputy Commissioner-I, Badin, with a prayer for setting aside the `impugned order` of 10.03.2015. The learned Additional Deputy Commissioner, nonetheless, `allowed` the aforesaid Appeal filed by Respondent No.5 herein, under Section 161 of Sindh Land Revenue Act, 1967, vide `Impugned Order` dated 16.04.2015 herein [*Annexure `A` to the MoP*], whereby, not only Entry No.48 dated 27.10.1991, made in favour of the Petitioner herein, on the basis of some alleged GIFT, but also other subsequent entry[ies] was/were cancelled. Besides, the share of lady Respondent No.5 herein

[Appellant before the Revenue Forums], was ordered to be maintained vide Entry No.44 of VF VII-B of Deh Tali, Taluka Matli.

9. The `Impugned Order` dated 16.04.2015 [*Annexure `A` to the MoP*], per Petitioner`s stand is illegal, void and malafide, as the petitioner herein, besides, being a `lawful owner` of the land in question, has already obtained a `SALE CERTIFICATE` from the concerned Mukhtiarkar and, as stated, on the strength of such `SALE CERTIFICATE`, the Petitioner herein, has sold out the `land in question` to one Kambho Khan s/o Darya Khan Mari through a Registered Sale Deed dated 21.01.2015. Further, the Petitioner herein, as claimed, has also handed over the physical possession of the land in question to the said purchaser of land. The alleged sale out of the `land in question` it appears was also disclosed before the Assistant Commissioner/Assistant Collector Grade-I Taluka Matli, as well as, the Additional Deputy Commissioner-I, BADIN, in the two [2] Appeals filed by RESPONDENT No.5 herein, under Section 161 of Sindh Land Revenue Act, 1967.

10. Despite disclosure of the alleged `SALE` to one KAMBHO KHAN S/O DARYA KHAN MARI on 21.01.2015, Respondent No.5 herein, however, did not take any step to join the said purchaser in the Appeals filed under Section 161 of Sindh Land Revenue Act, 1967, before Revenue Forums though the said person was a `necessary` and `proper party`. Even both the learned Assistant Commissioner/Assistant Collector Grade-I, Taluka Matli and learned Additional Deputy Commissioner-I Badin, have failed to take any pain and/or otherwise, consider this aspect of the matter for an `effective determination` of the dispute over the `title` of the land in question. Moreover, while, passing

the impugned order dated 16.04.2015, by the Additional Deputy Commissioner-I Badin, no any opportunity of hearing was provided to the Petitioner herein [*Respondent No.1 in Appeal before learned Additional Deputy Commissioner-I*],BADIN.

11. Per assertions made in MoP, `no notice` was served upon the Petitioner herein, in Appeal under Section 161 of Sindh Land Revenue Act, 1967, filed by Respondent No.5 herein, before learned Additional Deputy Commissioner-I, Badin, as such, the `impugned order` dated 16.04.2015, according to Petitioner`s stand has been passed against the settled `principle of natural justice` thus the same is liable to be set-aside. Moreover, the Appeal filed by the Respondent No.5 herein, before the Assistant Commissioner Grade-I, Matli, under Section 161 of Sindh Land Revenue Act, 1967, as urged, by the Petitioner, was also hopelessly time barred. Per Petitioner`s stand, even the 2nd Appeal filed by Respondent No.5 herein under Section 161 of Sindh Land Revenue Act, 1967, was not only in-competent in law but also not maintainable. Nevertheless, it was entertained and decided on `merits` and that too without any notice to the Petitioner herein. The `Impugned Order` passed on 16.04.2015, per Petitioner`s stand is/was not only `corum non-judice` but seemingly, has also been passed without any lawful authority. Moreover, Respondent No.5 lady herein, has taken self-contradictory and self-conflicatory pleas before two Revenue Forums i.e. [i] Assistant Commissioner Grade-I, Matli and [ii] Additional Deputy Commissioner Grade-I, Badin which, as urged by the Petitioner, under the law of Land Revenue Act, 1967, are not permissible. The learned Additional Deputy Commissioner-I, Badin, nevertheless, allowed/decided the 2nd Appeal under Section 161 of

Sindh Land Revenue Act, 1967, in favour of Respondent No.5 herein on merits and consequently, cancelled the long standing entries of 1990-1991, in favour of the Petitioner which, as alleged, by the Petitioner were based on irrevocable alienation of gift.

12. The powers, thus exercised by the Additional Deputy Commissioner-I, Badin, in the appeal under Section 161 of Sindh Land Revenue Act, 1967, are nothing but an abuse of authority, as the disputed questions of fact `regarding title` and long standing entries made in the record of rights could not be determined/alterd on the ground of `fraud` etc. in Proceedings of `Summary nature` by a Revenue Officer/Revenue Court, except through a decree of a Civil Court. The powers assumed by the Additional Deputy Commissioner-I, in the case in hand, are not vested in him, as such, the `impugned order` dated 16.04.2015 [*Annexure `A` to the MoP*], besides, being not sustainable under the law, is liable to be set aside. For convenient purpose, the `relevant part` of Order dated 16.04.2015, is reproduced herein:-

...

“Perusal of record viz. entry No.44 of VF-VII B shows that Mohammad Younis has gifted his holding to his family including applicant 0-50 paisa share in B.No.117/2,3,4, 120/3, 121/4, 150/1,2 of Deh Tali taluka Matli. Further entry No.48 of VF VII of deh Taluka taluka Matli appears that same land entered in revenue record in the name of Mohammad Haroon s/o Muhammad Ameen on the basis of alleged gift statement in the year 1991. Perusal of order of learned Assistant Commissioner shows/reveals that he has not made proper enquiry in the matter without fact knowing, passed impugned order.

In view of the statement of lady appellant in which lady appellant clearly stated that she never gifted his alienated gift land to her maternal Uncle Mohammad Haroon s/o Muhammad Ameen on the alleged gift statement and never appear before any

Revenue forum, it appears that respondent has committed fraud and changed land in his favour through crook method. Therefore, I cancel the entry No.48 dated 27.10.1991 of VF VII B of deh Tali Taluka Matli in respect of alleged gift and subsequent entries if any with further order to maintain share of lady appellant vide entry No.44 of VF VII B of deh Tali Taluka Matli. [Underlining is ours]

...

13. The Petitioner herein, [Respondent No.1 before Revenue Forums] in two [2] Appeals filed by Respondent No.5 lady, under Section 161 of Sindh Land Revenue Act, 1967, before the Revenue forums i.e. [i] Assistant Commissioner/Assistant Collector Grade-I, Taluka Matli and [ii] Additional Deputy Commissioner-I, Badin thus, feeling `aggrieved` and `dis-satisfied` with impugned Order dated 16.04.2015, has approached this Court through the instant Petition *inter alia* with a `prayer` that not only the `impugned order` dated 16.04.2015 [Annexure `A` to the MoP], whereby, Entry No.48 dated 27.10.191, in favour of the Petitioner herein, was cancelled, be set-aside but the subsequent entries which were also cancelled through the `Impugned Order` be declared as `illegal`, `void`, `malafide` and `coram non-judice`. Besides, a restraining order against the concerned Mukhtiarkar, regarding issuance of any `SALE CERTIFICATE` and/or creating any 3rd party`s interest by/or at the behest of Respondent No.5 lady, her agents, servants, subordinates, attorney etc. in any manner whatsoever, was also sought in the Memo of Petition i.e. till the decision of the instant Petition in hand.

14. On 22.04.2015, when the above Petition came-up before the Court then while, granting the urgent application, the following order was passed:-

...

“3. Petitioner has challenged the ex parte order dated 16.4.2015 passed by respondent No.2. Learned counsel for petitioner argued that without notice the order has been passed and respondent No.3 cancelled the entries of gift. It is further contended that property in question was gifted by respondent No.5 to petitioner. Later on after passing 23-years, she has denied the oral declaration of gift. Issue notice to respondent as well as A.A.G. for 28.05.2015. In the meanwhile parties are directed to maintain status quo.” [Underlining is ours]

...

15. Later on, Respondent No.5 lady, upon service, filed her ‘Objections’ in response to the ‘Memo of Petition’ [In short MoP], as well as, ‘Counter Affidavit’ in answer to the Application, under Article 199 [4-A], of the Constitution of Islamic Republic of Pakistan, 1973, wherein, the alleged claim and stand taken by the Petitioner herein [Respondent No.1 before Revenue Forums], regarding the alleged ‘Oral Gift’, was specifically and vehemently denied. In the ‘Parawise Comments/Objections’ duly supported with an ‘affidavit’ of Respondent No.5 lady, the Petitioner herein, was called to be a greedy person. Per Respondent No.5’s version, the Petitioner herein, continuously kept his evil eyes over the ‘land in question’ owned and belonging to Respondent No.5 lady. The Petitioner by way of playing ‘fraud’ and cheating with Respondent No.5 lady herein, in collusion with Revenue staff managed to change the ‘khata’ of Respondent No.5 lady, in his favour on the basis of a bogus claimed Oral Gift. Per Respondent No.5’s stand, the ‘land in question’ was never gifted orally or otherwise, to the Petitioner herein or anyone else. The pleas/stand taken by Respondent No.5, in her ‘Para-wise Reply’/‘Objection’, nevertheless, was/were denied/controverted by the Petitioner herein, by means of filing an ‘Affidavit-in-Rejoinder’.

16. In the Petition in hand, official Respondent No.3, has also filed `para-wise comments` for self and on behalf of Respondent No.1 vide A.A.G`s statement dated 18.06.2015. From the `para-wise comments` of Respondents No.1 & 2, Paras 4, 10 and 11, being relevant are reproduced here-in-below respectively:-

...

“Para-4: *That the contents of para No.4 regarding relationship of petitioner and respondent No.5 are denied due to lack of knowledge. However, respondent No.5 appeared in the Court of answering respondent and recorded her statement that she never appeared before the Mukhtiarkar nor recorded such statement of gift in favour of petitioner. She further contended that the petitioner was managing and looking after the disputed land on behalf of her. Apart from this the book statement of gift on the basis khata made in favour of petitioner is not available in the office of Mukhtiarkar Revenue which appears that respondent No.5 has not gifted land and entry of gift land maintained in the revenue record by fowls means and is void and null. [Underlining is ours]”*

“Para-10: *The contents of para-10 is replied in the scene that the notice were repeatedly issued upon the petitioner but he did not turn out to attend the Court. Meanwhile, the respondent No.5, recorded her statement denying the alienation of gift made by him to the petitioner which was managed fraudulently in collaboration and joining hand with the lower revenue forum. [Underlining is ours]”*

“Para-11: *That the contents of the petition as stated are not correct hence denied in as much as when the petitioner saw that respondent No.5 came in action for cancellation of gift he, therefore, managed sale against the suit land and exorted money. It is further submitted that petitioner has knowledge of appeal filed by respondent No.5 in this Court as the tapedar of the beat had gone for service of notice regarding date of hearing there petitioner was not found but the son of petitioner Muhammad Haroon refused to get it and the Mukhtiarkar (Revenue) Matli sent the said notice un-served for this office record. This practice of issuance of notice done thrice time but in spite of knowledge filing appeal against the order of AC Matli and the hearing, the petitioner remained intentionally absent. [Underlining is ours]”*

...

17. Likewise, Paras-3, 5 and 11 from the `para-wise comments` filed by official Respondent No.4 vide statement of learned A.A.G dated 19.06.2015, are also very much relevant, as such, the same are also reproduced here-in-below respectively:-

...

“Para-3: It is correct to say that entry No.44 of V.F VII-B, Deh Tali, Taluka Matli shows gift by Muhammad Younis s/o Muhammad Azeem, in favour of his family members. [Underlining is ours]

Para-5: As per record the gift entry No.48 dated 27.10.1991 is exist in V.F. VII-B of Deh Tali Taluka Matli. [Underlining is ours]

Para-11: As per note put at entry No.48 Khatedar Muhammad Haroon (the petitioner) sold out the said land to one Kambho Khan s/o Darya Khan Matri. The Khata was also kept in the record vide entry No.62 dated 19.03.2015 of V.F VII-B Deh Tali Taluka Matli. [Underlining is ours]”

...

18. Lastly, on 29.10.2018, when the instant Petition came-up before us then, we heard Mr. Jagdish R. Mullani, learned counsel for the Petitioner, Haji Khan Muhammad Kashmeri, learned counsel for Respondent No.5 lady and Mr. Allah Bachayo Soomro, learned Additional Advocate General Sindh and also gone through the available record with their valuable assistance.

19. Mr. Jagdish R. Mullani, learned counsel for the Petitioner while, advancing his arguments referred to the GIFT Entry No.48 dated 27.10.1991, existing in V.F VII-B of Deh Tali, Taluka Matli, allegedly made by Mukhtiarkar Matli/Assistant Collector, Matli in favour of the Petitioner herein, submitted that, no doubt, such Gift Entry No.48 dated 27.10.1991 has later on, been challenged by Respondent No.5 lady herein, before Assistant Commissioner, Matli/Assistant Collector

Grade-I, Matli, but as urged, after a lapse of 24 years. The `Oral Gift` on the basis whereof, such Entry No.48 has been made in the record of rights, nevertheless, was declared as false and bogus through the Impugned Order dated 16.04.2015. The 1st Appeal filed by Respondent No.5 lady herein, against the Gift Entry No.48 dated 27.10.1991, before the Assistant Commissioned/Assistant Collector Grade-I, Taluka Matli, it is needless to say, was dismissed vide order dated 10.03.2015 [Annexure `B` to the MoP]. The 2nd Appeal under Section 161 of Sindh Land Revenue, Act, 1967, filed by Respondent No.5 lady herein, however, was allowed by learned Additional Deputy Commissioner-I, Badin on 16.04.2015. [Annexure `A` to the MoP] i.e. the Impugned Order.

20. According to Mr. Jagdish R. Mullani, in terms of 1st proviso to Section 161 of Sindh Land Revenue Act, 1967, when an Original order is `CONFIRMED` in 1st appeal then, a further Appeal shall not lie. Thus, 2nd Appeal under Section 161 of Sindh, Land Revenue Act, 1967, before the learned Additional Deputy Commissioner-I, Badin, as urged by Mr. Jagidsh R. Mullani, was in-competent in law. The `impugned order` of 16.04.2015, as such, is not only coram non-judice, without jurisdiction/lawful authority but also is of no legal affect. In support of his contentions, reliance was placed on the cases of KHYBER TRACTORS (PVT.) LTD THROUGH MANAGER V. PAKISTAN THROUGH MINISTRY OF FINANCE, REVENUE AND ECONOMIC AFFAIRS, ISLAMABAQD [PLD 2005 SC 842] and S.M. WASEEM ASHRAF V. FEDERATION OF PAKISTAN THROUGH SECRETARY, M/O HOUSING AND WORKS,

ISLAMABAD AND OTHERS [2013 SCMR 338]. The relevant portions therefrom, respectively, read as follows:-

...

[a] PLD 2005 SC 842

“19.... because the question of jurisdiction of a forum is always considered to be very important and any order passed by a Court or a forum, having no jurisdiction, even if is found to be correct on merits, is not sustainable. The jurisdiction of a Court lays down a foundation stone for a judicial or quasi-judicial functionary to exercise its powers/authority and no sooner the question of jurisdiction is determined in negative, the whole edifice, built on such defective proceedings, is bound to crumble down as held in the case of Pearey Lal v. Nanak Chand (AIR 1948 PC 108), Pervez Iqbal v. Muhammad Hanif (1979 SCMR 367), Chief Settlement Commissioner v. Muhammad Fazil (PLD 1975 SC 331).” [Underlining is ours]

[b] 2013 SCMR 338:

“4..... it may be observed that there can be no cavil or two opinions that the right to appeal before a court of law is a right specifically conferred upon a litigant or an aggrieved person (effected person with the leave of the court if not a party to the lis) by law. It also is settled by now that such right can and shall only be exercised strictly in the manner and before the forum as is specified/stipulated by law. For the purpose of challenging an order of the learned single Judge of the High Court through an ICA, the only relevant law which provides for the exercise of such a right is section 3 of LRO 1972.” [Underlining is ours]

“6.... But keeping in view the established norms of justice, that an appeal should ordinarily lie before a forum higher than the one which has passed the judgment etc. the legislature in its wisdom and for the purposes of achieving the true object mentioned above, has stipulated that such "an appeal shall lie to a bench of two or more Judges of the High Court". This expression has vital nexus to the judicial empowerment of the forum which can hear the appeal. It has to be a Bench of two or more judges; and this is the absolute and unqualified command of the law. In this context, it may be mentioned that according to Article 175(2) of the Constitution of the Islamic Republic of Pakistan, 1973 "No Court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law". From the above quoted language of this Sub-Article, it is unambiguously clear that a bar, and a prohibition has been placed that "No" Court in

Pakistan shall exercise any jurisdiction in any matter brought before it until and unless, such jurisdiction has been conferred upon it by the Constitution itself or under any law. The word "save" appearing in the Sub-Article has clear connotation of the word "except" for the purpose of construing the above, meaning thereby that "No" Court shall have the jurisdiction except as has been conferred upon it by the Constitution and/or law. It is a settled law that any forum or court, which, if lacks jurisdiction adjudicates and decides a matter, such decision etc. shall be void and of no legal effect. Therefore, as per the clear command of section 3 ibid only a Bench of the High Court comprising of two or more Judges has the jurisdiction to entertain/hear the ICA. Unfortunately, there is a glaring example of the violation of the Article 175(2) of the Constitution, read with section 3 of LRO 1972 and thus the impugned order is without jurisdiction and thus void."
[Underlining is ours]

...

21. Moreover, per learned counsel for the Petitioner, the Impugned Order, dated 16.04.2015, passed by Additional Deputy Commissioner-I, Badin, is also against the principle of natural justice, as no reasonable notice, required in terms of Explanation [2] to Section 161 of Sindh, Land Revenue Act, 1967, was given to the Petitioner herein, [*Respondent No.1 before the Revenue Forums*]. In support of his contention, Mr. Jagdish R. Mullani, placed reliance on Section 161 [1] [b] and Explanation [2] to Section 161 of Sindh Land Revenue Act, 1967. To properly understand, the contention of Mr. Jagdish R. Mullani, regarding lack of jurisdiction by Additional Deputy Commissioner-I, Badin and violation of the principle of natural justice, we would like to refer to and reproduce herein, the entire Section 161 of Sindh Land Revenue, Act, 1967, as follows:-

....

"161. APPEALS:- (1) Save as otherwise provided by this Act, an appeal shall lie from an original or appellate order of a Revenue Officer as follows, namely :-

(a) to the Assistant Collector of the first grade when the order is made by the Assistant Collector of the second grade; and

(b) to the Collector when the order is made by an Assistant Collector of the first grade;
[Underlining is ours]

(c) to the Commissioner, when the order is made by a Collector;

(d) to the Board of Revenue only on a point of law, when the order is made by a Commissioner: provided that

(i) When an original order is confirmed on first appeal, a further appeal shall not lie;

(ii) When any such order is modified or reversed on appeal by the Collector, the order made by the Commissioner on further appeal; if any, to him shall be final.

EXPLANATION (1)...

(2) An order shall not be confirmed, modified or reversed in appeal unless reasonable notice has been given to the parties affected thereby to appear and be heard in support of or against the order appealed from. *[Underlining is ours]*

(3) No Revenue Officer other than the Board of Revenue shall have power to remand any case in appeal to a lower authority. ”

....

22. Per Mr. Jagdish R. Mullani, learned counsel for the petitioner, apart from the `principle of natural justice` now under Article 10-A, of the Constitution of Islamic Republic of Pakistan, 1973 `due process` and `fair opportunity` of hearing is a fundamental right of each and every litigant. Mr. Jagdish R. Mullani while, advancing his arguments contended that by now it is a well settled `proposition` that a person cannot be condemned without providing him a `fair` and `proper opportunity` of hearing to meet the allegations leveled against him. In support of his contention, Mr. Jagdish R. Mullani, placed reliance on

the case of AFTAB SHAHBAN MIRANI V. PRESIDENT OF PAKISTAN and others [1998 SCMR 1863], wherein it was observed as follows:-

...

"12.... It may be observed that by now it is a well settled proposition that a person cannot be condemned without providing him a fair opportunity to meet the allegation. In this regard reference may be made to the case of Government of Balochistan through Additional Chief Secretary v Azizullah Memmon and 16 others (PLD 1993 SC 341), wherein after referring certain case law the following conclusion was recorded by this Court as to the right of access to Courts and justice:--

...

"12 Another aspect of the case is that by these provisions the rights of access to Courts and justice has been denied. This by itself is an infringement of fundamental rights which provide that every citizen shall be entitled to equal protection of law and will not be deprived of life or liberty save in accordance with law. An examination of Articles 9 and 25 read collectively does not permit the Legislature to frame such law which may bar right of access to the Courts of law and justice. This aspect of the case was considered in Sharaf Faridi v Islamic Republic of Pakistan (PLD 1989 Karachi 404) when after referring to Syed Abul A'la Maudoodi's case (PLD 1964 SC 673 at 710) and Ms. Benazir Bhutto's case (PLD 1989 SC 416) had observed as follows:-

'The right of 'access to justice to all' is a well-recognised inviolable right enshrined in Article 9 of the Constitution. This right is equally found in the doctrine of 'due process of law'. The right of access to justice includes the right to be treated according to law, the right to have a fair and proper trial and a right to have an impartial Court or Tribunal. This conclusion finds support from the observation of Willoughby in Constitution of United States, Second Edition, Vol.II at page 1709 where the term 'due process of law' has been summarised as follows:--

- (1) He shall have. due notice of proceedings which affect his rights.*
- (2) He shall be given reasonable opportunity to defend.*
- (3) That the Tribunal or Court before which his rights are adjudicated is so constituted as to give reasonable assurance of his honesty and impartiality, and*

(4) That it is a Court of competent jurisdiction. "

13. The above extract indicates what are the basic requirements of the doctrine "due process of law", which is enshrined inter alia in Article 4 of our Constitution. It is intrinsically linked with the right to have access to justice, which this Court has held inter alia in the above report as a fundamental right. This right inter alia includes the right to have a fair and proper trial and a right to have an impartial Court or Tribunal. A person cannot be said to have been given a fair and proper trial unless he is provided a reasonable opportunity to defend the allegation made against him. In the instant case the Returning Officer was seized of the question, whether respondent No.1 was qualified to be a candidate for the office of the President. His decision that respondent No.1 was not qualified to be elected as a member of the Parliament would have entailed his non-seating as a member of the Senate, which was a question of the nature, which could not have been adjudicated upon in a summary inquiry under Rule 5(3)(a) of the rules, particularly when the correctness of the contents of the interview was not admitted by respondent No.1." [Underlining is ours]

...

23. Mr. Jagdish R. Mullani, while, arguing his case next contended that the `Gift Entry of 27.10.1991`, called in question by Respondent No.5 lady herein, in appeal after about a period of 24 years, in fact was barred by time. Per learned counsel, even the 2nd Appeal, under Section 161 of Sindh Land Revenue Act, 1967 filed by Respondent No.5 lady herein before the learned Additional Deputy Commissioner-I, BADIN, was not accompanied with an application for `condonation of delay`, as such, the said Appeal under Section 161 of Sindh Land Revenue Act, 1967, was liable to be dismissed by Additional Deputy Commissioner-I, Badin, instead of allowing the same in favour of Respondent No.5 herein. On this aspect of the matter, Mr. Jagdish R. Mullani placed reliance on the case of MUHAMMAD ASLAM V. INSPECTOR GENERAL OF POLICE, ISLAMABAD and others [2011 SCMR 8], wherein, it has been observed as follows:-

...
“3.... The question of limitation cannot be considered a "technicality" simpliciter as it has got its own significance and would have substantial bearing on merits of the case. The law of limitation must be followed strictly.”
[Emphasis applied]

...

24. Respondent No.5 viz. Mst. Parveen Akhtar, it is an admitted position had called in question, the `gift mutation` by virtue whereof, the title of land in question owned by Mst. Parveen Akhtar [*Respondent No.5 herein*], was transferred/mutated in favour of the Petitioner herein, through Entry No.48 dated 27.10.1991 of VF VII-B of Deh Tali Taluka MATLI, on the basis of an alleged GIFT. Mr. Jagdish R. Mullani, nevertheless, contended that the question of validity or otherwise of gift, as agitated before the Two Revenue Forums under Section 161 of Sindh Land Revenue Act, 1967, does not fall within the domain of Revenue hierarchy rather, as urged, it falls exclusively within the jurisdiction of Civil Court. Since, a Civil Court of competent jurisdiction possesses a `plenary jurisdiction` thus it is a Civil Court having jurisdiction can only and validly dilate upon and determine the question of validity or otherwise, of GIFT, as the case in hand is, of-course, in accordance with law/evidence to be led by the parties concerned. Per Mr. Jagdish, the question regarding validity of a gift or otherwise, is essentially, an intricate question of title, which, indeed, cannot be decided without recording of evidence in `pro` and `contra` thereof. In this regard reference was made to the case of ABDUL MAJEED KHAN THROUGH L.Rs and others V. Ms. MAHEEN BEGUM and others [2014 SCMR 1524]. Being relevant Paras 6 & 7 therefrom, are reproduced here-in-below:-

...

"6. Admittedly the appellants had called in question the gift mutation by virtue whereof title of mutated land owned by Mst. Sandoor Bibi had been transferred to respondent No. 1, as such it exclusively fell within the plenary jurisdiction of Civil Court and the High Court has rightly held so as under:--

"4. Besides, the question of validity or otherwise of a gift is not the domain of the revenue hierarchy but it is the exclusive jurisdiction of Civil Court to dilate upon according to law. The question with respect to the validity of gift is essentially an intricate question of title which cannot be decided without recording of pro and contra evidence."

Moreover, the disputed questions of fact cannot be entertained by Revenue hierarchy, therefore, the High Court while exercising its constitutional jurisdiction has set aside impugned orders passed by respondents Nos. 2 - 4 as the same were passed without jurisdiction, illegal, having no lawful authority to adjudicate and determine the question of title which fell within the exclusive jurisdiction of the Civil Court, as such of no legal effect.

7. In the above perspective, we are of the considered opinion that the High Court has arrived at a right and just conclusion by accepting the writ petition and setting aside the orders passed by Revenue hierarchy being without jurisdiction. It is also a settled principle that where any orders or judgments passed by any Court or authority who has no jurisdiction or are barred to exercise such jurisdiction, such orders or judgments are deemed to have been passed illegally and in such circumstances the High Courts are justified in exercising its constitutional jurisdiction to rectify the same, thus, in the instant case the High Court has rightly exercised its Constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. In this regard, reliance can be placed upon the cases of Noor Muhammad, Lambardar v. Member (Revenue), Board of Revenue, Punjab, Lahore and others (2003 SCMR 708) and Haji Noorwar Jan v. Senior Member, Board of Revenue, N.-W.F.P. Peshawar and 4 others (PLD 1991 SC 131), the relevant portions therefrom are reproduced herein below:--

"8.It was further observed by this Court that any error on the part of Board of Revenue in understanding the law, in applying it or in laying down the law can and must be corrected in the Constitutional jurisdiction. If it is left uncorrected, it will result in subverting the rule of law,..... "

And,

***"19. The Board of Revenue at the apex of the Revenue hierarchy is charged with the statutory duty of interpreting the law, of applying it to individual cases coming up before it and laying down the law for the subordinates in the hierarchy to follow. Any error on its part in understanding the law, in applying it or in laying down the law can and must be corrected in the constitutional jurisdiction. If it is left uncorrected, it will result in subverting the rule of law*" [Emphasis supplied]**

...

25. Lastly, Mr. Jagdish R. Mullani prayed for allowing the petition in hand and consequently, for setting aside the `impugned order` dated 16.04.2015, [Annexure `A` to the MoP], passed by the learned Additional Deputy Commissioner-I, Badin, in 2nd Appeal filed by Respondent No.5 lady herein, under Section 161 of Sindh, Land Revenue Act, 1967, otherwise, as urged, by Mr. Jagdish R. Mullani, the Petitioner herein [*Respondent No.1 before the Revenue Forums*], not only be seriously prejudiced but also stand deprived of his valuable right in respect of the `land in question` which comes to 12-12-1/2 acres situated in Deh Tali Taluka Matli, District BADIN, as now, the said Entry No.48 dated 27.10.1991 in favour of the Petitioner herein, has been cancelled vide `Impugned Order` dated 16.04.2015, [Annexure `A` to the MoP].

26 Conversely, Haji Khan Muhammad Kashmeri, learned counsel for Respondent No.5 lady herein, while, advancing his arguments, emphatically argued that the Respondent No.5 lady viz. Mst. Parveen Akhtar D/o Muhammad Younus is older than, the Petitioner. Per learned counsel, Respondent No.5 lady herein, during her minority, no doubt, was brought-up by her Grandmother. Haji Khan Muhammad Kashmeri, next contended that the Respondent No.5 lady, has never

Gifted the `land in question` to the Petitioner, as claimed, or anyone else. The Petitioner`s claim over the `land in question` is without any foundation. On the basis of a false/forged and fake Entry No.48 of 27.10.1991 made collusively in Form No.VF VII-B by Mukhtiarkar concerned, the Petitioner herein, doesn`t become an owner of the land in question. Evidently, the alleged `Gift statement` on the basis whereof, Entry No.48 dated 27.10.1991, has been made, in the record of rights, in favour of the Petitioner, is not available in the revenue record. Since, the Respondent No.5 lady, besides, being an `illiterate`, `Parda Nasheen` old lady, the Petitioner, as such, somehow, succeeded in `defrauding` Respondent No.5 herein. `Ex-facie`, the Petitioner herein, with a `malafide intention` is trying to usurp, the land in question of Respondent No.5.

27. The Respondent No.5, on getting the knowledge sometime in the year, 2015, about the `fraudulent change` of `khata` on the basis of a `forged` and manipulated Gift statement, which un-disputedly, is not available in the record of revenue, constrained to file an appeal under Section 161 of Sindh, Land Revenue Act, 1967, before the learned Assistant Commissioner/Assistant Collector Grade-I Taluka, Matli. The said Appeal of Respondent No.5 however, was erroneously, dismissed on 10.03.2015, by Assistant Commissioner/Assistant Collector Grade-I, Taluka Matli, ignoring the materials available on record. Needless to say, as per the Mukhtiarkar (Revenue) Matli`s REPORT, the `statement of book GIFT`, on the basis whereof, khata was changed in favour of the Petitioner is not available in the office of the Mukhtiarkar Revenue. No doubt, this is/was a sufficient proof of fact that no any GIFT, as alleged, by the Petitioner, was made in favour of the Petitioner in

respect of the land in question. The alleged Entry No.48 dated 27.10.1991 thus, in favour of the Petitioner herein, is nothing but a bogus and forged Entry.

28. The Respondent No.5 lady, thus, feeling `aggrieved` and `dissatisfied` with Order dated 10.03.2015, [*Annexure `B` to the MoP*], filed an appeal under Section 161 of Sindh, Land Revenue Act, 1967, before the Court of Additional Deputy Commissioner-I, Badin, who thereafter, upon recording the statement of Appellant [*Respondent No.5 herein*], and appreciating the other material/evidence available on record before him in its` true perspective, rightly passed the `Impugned Order` dated 16.04.2015 herein, whereby, not only Entry No.48 dated 27.10.1991 of Village Form VII-B of Deh Tali, Taluka, Matli made on the basis of `alleged Gift`, was cancelled but also the subsequent entries if any. Besides, all the concerned were directed to `maintain share` of the Respondent No.5 vide Entry No.44 of Village Form VII-B of Deh Tali, Taluka, Matli intact. The Additional Deputy Commissioner-I, Badin, also held in his Order dated 16.04.2015 [*Annexure `A` to the MoP*], that the Petitioner herein, did `commit fraud` by changing/mutating the `land in question` in his favour by means of collusion with staff of Revenue Department.

29. On filing of the appeal before the Additional Deputy Commissioner-I, Badin, the petitioner herein, no doubt, was issued NOTICES THRICE, but the Petitioner did not come forward to contest the Appeal filed under Section 161 of Sindh Land Revenue Act, 1967, by Respondent No.5 lady herein, seemingly, with ulterior motives. Evidently, the instant Petition has been filed merely, on the basis of a `forged Entry No.48 dated 27.10.1991`. The Book Statement

of so-called `GIFT` on the basis whereof, `KHATA` has been changed/made in favour of the Petitioner herein, however is not available in the Office of Mukhtiarkar Revenue. Manifestly, Respondent No.5 lady herein, has never Gifted the land in question, as claimed by the Petitioner herein. The Entry of so-called `GIFTED` land in question, made in the `revenue record`, is nothing but a result of `fraud` and `foul play`. The said Entry No.48 dated 27.10.1991, thus not only is null, void but also is of no legal effect. Needless to say, Entry No.48 dated 27.10.1991, has rightly been cancelled vide Impugned Order dated 16.04.2015 [*Annexure `A` to the MoP*] as it was found without any foundation/basis.

30. According to Haji Khan Muhammad Kashmeri, learned counsel for Respondent No.5, since, Respondent No.5 herein, is a `Parda Nasheen` and old lady as such, while, trusting upon the Petitioner [*who is maternal uncle of the Respondent No.5*], gave the `land in question` to the Petitioner merely, for cultivation purpose and of its` looking-after. The Petitioner, nevertheless, proved himself a greedy and dishonest person by defrauding the Respondent No.5 lady herein by means of the aforesaid Entry No.48 dated 27.10.1991. The Petitioner in the year 2015, not only denied the share in crop of land belonging to Respondent No.5 lady but also started to claim himself as the owner of the land in question on the basis of the said forged Gift Entry No.48 of 27.10.1991. The Petitioner, per Respondent No.5`s stand, is a `fraudulent person` as apart from his bogus and false claim over and in respect of the land in question, the Petitioner has also usurped the land of his real sisters. In this regard, civil cases, as per statement of 15.04.2015, recorded by Respondent No.5 herein before the Additional

Deputy Commissioner-I, Badin, are pending adjudication before the learned Senior Civil Judge, Matli. The Petitioner herein, with a sole `aim`, `object` and intention to usurp the land of Respondent No.5 has not only managed a bogus and false Entry No.48 of 27.10.1991 in the revenue record but also is in a drill to justify the same, otherwise, the `Impugned Order` dated 16.04.2015, besides, being legal, has been passed by learned Additional Deputy Commissioner, Badin-I, Badin, competently and lawfully.

31. Per Haji Khan Muhammad Kashmeri, the Respondent No.5 lady, as soon as, got knowledge in the year, 2015 about the aforesaid `fraud` committed by the Petitioner with her then, she promptly, opted to file an Appeal under Section 161 of Sindh, Land Revenue Act, 1967, before the Assistant Commissioner/Assistant Collector Grade-I, Taluka Matli, with a prayer that `bogus` and `false` Entry No.48 dated 27.10.1991, be declared as cancelled. The learned Assistant Commissioner/Assistant Collector Grade-I, Matli, however, `dismissed` the aforesaid Appeal mainly, on the ground that the GIFT Entry No.48, under challenge is very old one i.e. of 27.10.1991. Per Haji Khan Muhammad Kashmeri, the learned Assistant Commissioner/Assistant Collector Grade-I, has absolutely failed and/or ignored the factum of missing of the `STATEMENT Book` of Deh Tali [old] / DECLARATION` of the alleged `GIFT` in favour of the Petitioner herein, in the Revenue record though to that effect a Report/Letter No.AM/110 dated 03.03.2015 of Mukhtiarkar [Revenue] Matli, was available before him. Even, the factum of missing the `Statement Book` of Deh Tali [old] has been mentioned in the 2nd line at top of Page 2 of Order dated 10.03.2015 [*Annexure `B` to the MoP*]

passed by Assistant Commissioner/Assistant Collector Grade-I, Taluka, Matli.

32. Haji Khan Muhammad Kashmeri, learned counsel for Respondent No.5 herein, next contended that even, the `subsequent sale` of `land in question`, by the Petitioner herein, to one KAMBHO KHAN S/O DARYA KHAN MARI, on 21.01.2015, if any, is illegal, null, void and has no sanctity in the eyes of law, particularly when, the Petitioner herein, has/had `no title` whatsoever, of the land in question, to sale the same. Lastly, Haji Khan Muhammad Kashmeri forcefully, contended that the Petitioner herein, has badly failed to exhaust the alternate remedy, available to him under Sections 161 & 164 of Sindh, Land Revenue Act, 1967, as such, the Petition in hand, on this ground, as well, is liable to be dismissed with heavy costs.

33. Mr. Allah Bachayo Soomro, learned Additional Advocate General Sindh, while, arguing the case on behalf of official Respondents submitted that Respondent No.5 lady herein, as evident from the record, did appear in the Court of Respondent No.2 herein, and recorded her statement on 15.04.2015, before the Additional Deputy Commissioner-I, BADIN. Per said statement, the Petitioner [*who is maternal uncle of Respondent No.5 lady*], did commit `fraud` with her. As per `statement` of Respondent No.5, the Petitioner herein, was managing and looking-after the `land in question` admittedly belonging to Respondent No.5 lady herein, for cultivating purpose only. The Entry No.48 of 27.10.1991, made in Record of Rights on the strength of the alleged `Gift statement`, is false and bogus. The `book statement of gift`, on the basis whereof, `khata` has been changed/made in favour of Petitioner, is not available in the record of Mukhtiarkar

Revenue which, as urged, is an `ex-facie proof` of the fact that Respondent No.5 lady herein, has never gifted the `land in question` to the Petitioner as claimed by him. Entry No.48 dated 27.10.1991 of VF-VII-B, made on the basis of so-called `GIFT STATEMENT` in the revenue record, is nothing but surely an outcome `fraud` and foul play. Moreover, the `Statement Book` of Deh Tali [old] is missing which means Entry No.48 of 27.10.1991 besides, void and null, is of no legal effect whatsoever.

34. Per learned A.A.G, `no doubt`, notices were issued to the Petitioner herein repeatedly but Petitioner despite of getting knowledge, did not come-forward/turn-up to attend the Court and contest the 2nd Appeal, under Section 161 of Sindh Land Revenue, Act, 1967. Even, in the `statement` recorded on 15.04.2015 by Respondent No.5 lady before the learned Additional Deputy Commissioner-I, Badin, she has specifically denied the alleged Gift and any kind of `alienation of gift` in favour of the Petitioner herein. According to Respondent No.5, Entry No.48 of 27.10.1991 in VF VII-B, has been fraudulently managed by the Petitioner herein with collaboration and joining of hands with the `lower staff` of Revenue Department. Per learned A.A.G, the `assertions`/`averments` made in the Memo of Petition [*In short MoP*], are not true. The Petitioner herein, as urged, by learned Additional A.G. when saw that Respondent No.5 lady upon getting knowledge in the year, 2015, was just to initiate action for cancellation of the Entry No.48 made in the Revenue record based on the alleged gift, then, he with `malafide intention`/`ulterior motives` somehow, managed the sale of land in question, indeed, in collusive manner. Further, the Petitioner herein, could not claim absence of knowledge regarding filing of the

2nd Appeal of Respondent No.5 herein, under Section 161 of Sindh Land Revenue, Act, 1967, before the Court of learned Additional Deputy Commissioner-I, Badin. Needless to say, per record, Tapedar of the beat, time and again had tried to get the notices served but Petitioner`s sons and nephews, then refused to receive the notices. This factum of the matter has not been denied. Even, the notices available on record, otherwise, also belie the Petitioner in his stand of non-service of notices upon him.

35. Per learned A.A.G. it is correct that Entry No.44 of V.F VII-B, Deh Tali, Taluka Matli, is based on `GIFT` made by Muhammad Younis s/o Muhammad Azeem, in favour of his family members including the Respondent No.5 lady herein. In the `revenue record`, Entry No.48 dated 27.10.1991 [now cancelled] though was existing in V.F. VII-B of Deh Tali Taluka Matli but the `Book statement of Gift`, on the basis whereof, `khata` was fraudulently changed/made in favour of the Petitioner herein, is not available in the record of Mukhtiarkar Revenue. Moreover, `per note`, put at that Entry No.48, Muhammad Haroon [*the petitioner herein*], the `land in question` sold out to one Kambho Khan s/o Darya Khan Matri and his Khata, has now been kept in his name vide Entry No.62 dated 19.03.2015 of V.F VII-B Deh Tali Taluka Matli.

36. Heard and perused the record.

37. Before proceeding further, at this juncture, we would like to refer to and reproduce here-in-below the `True English Translation of the Statement` of Respondent No.5 lady herein, as given/recorded on 15.04.2015, in `Sindhi language` before the Additional Deputy

Commissioner-I, Badin. The `True English Translation` of such statement dated 15.04.2015, reads as follows:-

“True Translation of Statement

Present namely Parveen Akhtar D/o Muhammad Younus w/o Hidayatullah resident of Village Fazalabad Colony Matli District Badin on solemn affirmation on oath that my father namely Muhammad Younus s/o Muhammad Raheem have agriculture land bearing Block No.112 and 117 and others situated at Deh Tili Taluka Matli. My father namely Muhammad Younus s/o Muhammad Raheem who BUKHSHSH/WITHDRAW SHARE in year 1991 to our brother and sisters and I also Bukhshsh survey/Block No.117/2,3,4,120/3,121/4 and 150/1,2 total area 24-25 acres out of which my due share 0-50 paisa and 12-12 ½ paisa. In which I am Pardanasheen lady and my land hand over to my maternal uncle Muhammad Haroon s/o Muhammad Ameen for look after for the cultivation of that agriculture land and who regularly given me my due profit/share but now in this year my maternal uncle did not pay my due share of crop thereafter I approached to my maternal uncle namely Haroon and asked about the crops from my maternal uncle, who annoyed and said to me that what is share? And you sold the due share to me, thereafter, I approached to the nekmards of the locality but till today no fruitful result came out, thereafter I sent, Jahan Bahadur to the office of Revenue Office where he inquired about land. Thereafter, who came to know the above said my share in the name of my maternal uncle Muhammad Haroon which I was withdrawn/bukhshsh to him (according to staff of revenue office) hence my maternal uncle committed fraud and cheating with me and my gifted share from my father namely Muhammad Younus who illegal and unlawful registered in his name in record of rights, now it is therefore I request your honour to please to reinstate my mutated land and give me justice.[Underlining is ours]

***Yours sincerely
Sd/-RHT
Mst. Parveen
CNIC No.41103-9624366-2***

***In our presence
Sd/- 15.04.2015
Additional Deputy Commissioner-I Badin.”***

38. Respondent No.5 lady, who appears to be an `old` and `Parada Nasheen` lady, as per `her statement` did authorize his maternal uncle [Petitioner herein] to `look-after` and supervise the agricultural `land in

question` belonging to Respondent No.5, only for `cultivating purpose`. This position is quite evident, from the aforesaid statement of 15.04.2015, recorded by her before the Additional Deputy Commissioner-I, Badin. Per said statement she was regularly paid her `due share` of crop, till the year, 2015. In the year, 2015, her `maternal uncle` namely Muhammad Haroon s/o Muhammad Ameen [*Petitioner herein*], in his own wisdom, however, refused her due share in the crop of the year, 2015, whereupon, Respondent No.5 lady, smelling some foul play, sent one Jehan Bahadur to the Revenue office for making inquiry in respect of the Respondent No.5`s land in question. Only, on inquiry, it revealed to Respondent No.5 lady herein, that on the basis of some alleged `Bakhshash`/`Oral Gift`, in favour of the Petitioner, `Khata` of the land in question admittedly, belonging to Respondent No.5 lady herein, [*i.e. 12-12 1/2 acres*], has been fraudulently changed to the name of Petitioner herein, through a fraud Entry No.48 dated 27.10.1991 of VF VII-B of Deh Tali, Taluka Matli. Since, Respondent No.5, who is an `illiterate`, old and `pardanashin lady`, thus got knowledge in the year, 2015, that is to say, when she was refused her share in crop, by the Petitioner herein. In such like scenario, the question of limitation, regarding cancellation of the said bogus and `fraud` Entry No.48 dated 27.10.1991, does not arise, particularly when even the `Book statement` of the alleged `GIFT`, is not available in the office of Mukhtiarkar Revenue. The Entry No.48, thereafter, was called in question through 1st Appeal filed by Respondent No.5 herein, under Section 161 of Sindh Land Revenue Act, 1967. The same however, was dismissed as time barred vide order dated 10.03.2015 [*Annexure `B` to the MoP*], passed by Assistant Commissioner / Assistant Collector Grade-I, Taluka, Matli, which order was rightly not

confirmed through the impugned order herein [*Annexure 'A' to the MoP*] passed by learned Additional Deputy Commissioner-I, Badin in Appeal preferred by Respondent No.5 lady. The cancellation of Entry No.48 of 27.10.1991, fraudulently managed/made in favour of the Petitioner herein, is not only proper but also quite in accordance with law.

39. Moreover, as evident from the record and also observed in the Orders passed by Revenue Authorities/Courts [*i.e Annexure-'A' and 'B' respectively to the MoP*], no any statement of `Bakhshash`/^Oral Statement`/^Declaration` of Donor and/or acceptance of `Donee` on the basis whereof, the said fraud Entry No.48 dated 27.10.1991, was made in the record of rights, is available in Revenue Record. Rather as reveals from the record it is MISSING. In view of this position, as well, the said Entry No.48 dated 27.10.1991, in VF VII-B of Deh Tali, Taluka, Matli, is not only fraudulent, bogus, baseless, but also is of no value and effect whatsoever. Further, merely, on the basis of an Entry No.48 dated 27.10.1991 in the record of rights, the Petitioner in no event, becomes the owner of the land in question.

40. Of-course, a `simple mutation` does not confer any title, as the case in hand is. Since, the Petitioner herein, has relied upon Entry No.48 dated 27.10.1991, as such, it is for him to prove and establish through evidence, the existence of the `original transaction`, on the basis whereof, the `entry in dispute` [*now cancelled*], was made in the record of rights. Moreover, the Petitioner herein, has badly failed to prove the alleged original Transaction of Gift. On this aspect of the matter, reliance can be placed on the case of MUHAMMAD AKRAM & another V/S ALTAF AHMED [**PLD 2003 SC 688**], wherein, the

Hon'ble Supreme Court of Pakistan, in Paras 8 and 11-A thereof, has observed as follows:

...

“8. It is a settled principle of law that a mutation confers no title. Once a mutation is challenged, the party that relies on such mutation(s) is bound to revert to the original transaction and to prove such original transaction which resulted into the entry or attestation of such mutation(s) in dispute. This often repeated principle of law is quite logical because a mutation not being a title' deed, is merely an evidence of some original transaction between the parties that had been struck somewhere prior to entry of a mutation. Respondent Altaf Ahmad has utterly failed to revert back to any transaction and bring on record any oral or documentary evidence thereof. The burden squarely lay on him to prove the transaction because the existence thereof has throughout been alleged by him in affirmative. He was bound to fail in the event of the non-proof of transaction. Only the trial Court realised it.” [Underlining is ours]

“11-A. In connection with the attestation of a mutation, most important entities are the Patwari Halqa who happens to enter the mutation and the Revenue Officer who happens to attest the same. Both of them were not produced and examined in Court. In the absence of these two officials the mutations cannot be said to have been proved.” [Underlining is ours]

...

41. Manifestly, under the baseless Entry No.48 dated 27.10.1991 of VF VII-B of Deh Tali, Taluka, Matli, the `land in question` of 12-12 ½ acres, [00-50 paisas share], belonging to Respondent No.5 herein, which is of a `potential value`, was made in the Revenue Record. Regarding the alleged GIFT, as noted in Order dated 10.03.2015, passed by Assistant Commissioner/Assistant Collector Grade-I, Taluka Matli, the `Statement Book` of Deh Tali however, is MISSING. The case of Respondent No.5 lady, as per `her statement` reproduced here-in-above is that Petitioner herein, [who is her maternal uncle] in fact was looking-after/supervising the land in question of Respondent No.5

[who is an old, illiterate and Pardanasheen lady], for cultivating purpose only. The Petitioner, nevertheless, in collusion with the Revenue staff and by way of playing `fraud` and `misrepresentation` managed the disputed Entry No.48 dated 27.10.1991, in the Record of Revenue in his favour. Per Respondent No.5's counsel, the said Entry No.48 since, was bogus/false and fraudulent, as such, the same was rightly cancelled vide `Impugned Order` dated 16.04.2015 [Annexure 'A' to the MoP]. The disputed Entry No.48 dated 27.10.1991 made in the Revenue record, in favour of the Petitioner herein, is nothing but the outcome of `collusion`, `fraud` and `mis-representation`. In this regard, we would like to refer to the Black Law Dictionary Fifth Edition wherein, words `Collusion`, `Fraud` and `Mis-representation` have been defined, as follows:-

...

“[a] `Collusion`:

An agreement between two or more persons to defraud a person of his rights by the forms of law, or to obtain an object forbidden by law. It implies the existence of fraud of some kind, the employment of fraudulent means, or lawful means for the accomplishment of an un-lawful purpose”.

“[b] `Fraud`:

A false representation of a matter of fact whether by words or by conduct, by false or mis-leading allegations, or by concealment of that which should have been disclosed which deceives and is intended to deceive another so that he shall act upon it to his legal injury... A generic term, embracing all multifarious means which human ingenuity can devise, and which are resorted to by an individual to get advantage over another by false suggestions or by suppression of truth, and includes all surprise, trick, cunning, dissembling, and any un-fair way by which another is cheated.”

“[c] `Mis-representation`:

Any manifestation by words or other conduct by one person to another that, under circumstances, amounts to an assertion not in accordance with facts.

An un-true statement of fact. An incorrect or false representation, that if accepted, leads the mind to an apprehension of condition other and different from which that exists. Colloquially it is understood to mean a statement made to deceive or mis-lead.”

...

42. It is needless to say, by now it is well settled law that `fraud` vitiates even the most solemn proceedings what to say about a `fraudulent` and `bogus Entry` in the Revenue Record. Moreover, it is also a settled proposition of law that `fraud` cannot be proved directly rather it is to be inferred from the surrounding circumstances and conduct of the parties. As far as, the contention of Mr. Jagdish R. Mullani, regarding non-joining of one KAMBHO KHAN S/O DARYA KHAN MARI, to whom the land in question, has allegedly been sold by the Petitioner is of no consequences under the facts and circumstances of the case in hand. Merely, an Entry made/managed in the Revenue Record and that too by means of `fraud` is without any foundation and is void abinitio with no legal effect. Any sale/super structure raised on the basis of a fraudulent entry in the Revenue Record without possessing any valid title, indeed, is bound to fall. Like-wise, the `question of limitation` under the facts and circumstances of the case, particularly when a fraud has been done with an `old`, `illiterate` and `Pardanasheen` lady [*Respondent No.5 herein*], does not arise. In the case in hand, ex-facie, `cause of action` has arisen in favour of Respondent No.5 lady herein, in the year, 2015, when she was refused her due share in cultivating crop by the Petitioner herein. On this aspect of matter, reference can be made to the case of REHMATULLAH and others V. SALEH KHAN and others [2007 SCMR 729], wherein, it was held/observed as follows:-

...

“4.... It is settled law when the basic order is without lawful authority then all the super structure shall fall on the ground automatically as law laid down by this Court in Yousaf Ali's case PLD 1958 SC 104 and Crescent Sugar Mills' case PLD 1982 Lah.1. It is by now settled law that limitation cannot run against void order. See Pakistan Post Office's case 1987 SCMR' 1119, Raja Muhammad Fazil Khan's case PLD 1975 SC 331 and Muhammad Masihuzzaman's case PLD 1992 SC 825. It is also settled law that question of limitation does not arise in inheritance cases. See Mst. Fazal Jan's case PLD 1992 SC 811 and Ghulam Ali's case PLD 1990 SC 1. It is pertinent to mention here that fraud vitiates even solemn orders as held by this Court in Muhammad Fazil Khan's case (supra). It is settled law that for non - impleading of party, suit cannot be dismissed as law laid down by this Court in Central Government of Pakistan's case. PLD 1992 SC 590. It is admitted fact that both the Courts below had held that mutation was proved to be fraudulent and thus, it was a question of fact on which both the Courts below including the High Court had rightly come to a conclusion to declare mutation as not genuine.”[Underlining is ours]

...

43. Mr. Jagdish R. Mullani while, referring to Explanation [2] of Section 161 of Sindh, Land Revenue Act, 1967, forcefully contended that in terms of Explanation [2], no Order shall be confirmed, modified or reversed in an Appeal filed under Section 161 of Sindh Land Revenue, Act, 1967, unless, a reasonable notice is given to the parties for to appear and be heard in support of or against the Impugned Order in the appeal. According to Mr. Jagdish R. Mullani, since, the impugned Order of 16.04.2015 [Annexure 'A' to the MoP], has been passed ex-parte against the Petitioner herein, as such, for want of such notice, the Impugned Order dated 16.04.2015, passed by Additional Deputy Commissioner-I, BADIN, is liable to be set aside. The contention of the learned counsel, as urged, in our view is not only mis-conceived but also mis-leading particularly when notice[s] as

required under *Explanation [2]* have been issued to the Petitioner. In 2nd Appeal filed under Section 161 of Sindh Land Revenue Act, 1967 by Respondent No.5, not once but thrice notices have been issued to the Petitioner herein. The True English Translation of such notices for ready reference are reproduced here-in-below:-

...

Notice

“[a] Namely Muhammad Haroon S/o Muhammad Amin Pathan resident of Ameenabad

Versus

Mst. Parveen Akhtar D/o Muhammad Younus Pathan resident of Ameenabad

Reference Letter No.320 dated 26.03.2015 issued by Deputy Commissioner-I Badin regarding the pendency of Appeal for the adjudication before this office which filed by Mst Parveen against you.

Now you are requested to appear on 02.04.2015 at about 09:00 am before the undersigned.

*Sd/- 30.03.2015
Mukhtiarkar Revenue
Matli*

*Note:- Tapedar –A-Gaju
the undersigned served the notice
to the above mentioned person date and time
in Deh Tili and submit the record before this office
Sd/-30.03.2015 [Underlining is ours]
Tapedar-A-Gaju”*

“[b] To

The Mukhtiarkar Matli

Respected Sir,

The undersigned taken the notice and went to Muhammad Haroon but who was not present at that time and his nephew namely Muhammad Hassan refused to receive the notice of this office. [Underlining is ours]

*Sd/-
Tapedar-A-Gaju”*

“[c] To

The Mukhtiarkar Matli

Respected Sir,

The undersigned taken the notice and went to house/village of Muhammad Haroon but who was not present at that time and his sons were present there, but they did not receive the notice of this office. [Underlining is ours]

*Sd/-01.04.2015
Tapedar-A-Gaju”*

Notice

“[d] Namely Muhammad Haroon S/o Muhammad Amin Pathan resident of Ameenabad

Versus

Mst. Parveen Akhtar D/o Muhammad Younus Pathan resident of Ameenabad

Reference Letter No.366 dated 09.04.2015 issued by Deputy Commissioner-I Badin regarding the pendency of Appeal for the adjudication before this office which filed by Mst Parveen against you.

Now you are requested to appear on 15.04.2015 at about 09:00 am before the undersigned.

*Sd/- 10.04.2015
Mukhtiarkar Revenue
Matli*

*Note:- Tapedar –A-Gaju
the undersigned served the notice to the above mentioned person date and time in Deh Tili and submit the record before this office
Sd/-10.04.2015 [Underlining is our]
Tapedar-A-Gaju”*

...

44. No doubt, upon filing of the aforesaid Appeal under Section 161 of Sindh Land Revenue Act, 1967, notices as evident from the above, have been issued/served on the Petitioner herein. This factum is quite clear from the notices reproduced here-in-above. In view of this position, the contention of Mr. Jagdish R. Mullani, regarding `non-issuance` of notice[s] and/or non-providing of a `fair opportunity` of hearing and/or non-following the `due process` is without any substance, as such, repelled. The Petitioner herein, it is needless to say,

despite notices/knowledge about pendency of 2nd Appeal before learned Additional Deputy Commissioner-I, Badin, hold himself away from the proceedings seemingly, with an ulterior motive. Moreover, the `Impugned Order` dated 16.04.2015 [*Annexure `A` to the MoP*], whereby the `fraudulent` Entry No.48 of 27.10.1991, made in favour of the Petitioner, was cancelled `without confirming` the earlier Order dated 10.03.2015 [*Annexure `B` to the MoP*], passed by learned Assistant Commissioner/Assistant Collector-I, Taluka Matli, BADIN, has not only been passed competently by the learned Additional Deputy Commissioner-I, BADIN but the same also needs no interference under the exercise of jurisdiction of this Court under Article 1919 of the Constitution of Islamic Republic of Pakistan, 1973.

45. Further, under sub-section [2] of Section 7 of Sindh Land Revenue Act, 1967, a Deputy Commissioner of the District or the Officer for the time being performing such functions is the Collector of such District. Thus, the Appeal filed by of the Appellant [*Respondent No.5 herein*] under sub-section [2] [b] of Section 161 of Sindh Land Revenue Act, 1967, before the learned Additional Deputy Commissioner, BADIN, besides, being well competent in law also falls/fell within the jurisdiction of the learned Additional Deputy Commissioner-I, Badin. The contention of Mr. Jagdish R. Mullani, that the Additional Deputy Commissioner-I, Badin, has no jurisdiction to hear the Appeal against the Order of Assistant Commissioner/Assistant Collector Grade-I, Taluka Matli, is not in accordance with law, as such, the same cannot be accepted.

46. Manifestly, on the record, `no oral` or `documentary proof` is available wherefrom, the existence of any `GIFT` in favour of the

Petitioner herein, can be established. Being this is the position, it can be presumed that Entry No.48 of 27.10.1991, regarding the land in question, is motivated/managed one. The Petitioner herein, ex-facie, has attempted to deprive an `old`, `illiterate` and `Pardanasheen lady` [*Respondent No.5 herein*] from her land in question. In the case in hand, though Entry No.48 of 27.10.1991 was existed in the revenue record [now cancelled], but due to lack of its` justification, the same was rightly cancelled vide `impugned order` dated 16.04.2015 [*Annexure `A` to the MoP*], passed by learned Additional Deputy Commissioner-I, Badin.

47. As far as, the question regarding the existence/validity or otherwise, of a `GIFT` is concerned, the same, as being a disputed and controversial question of fact, cannot be looked into/decided by Revenue Court/Revenue Forums, muchless, in the `summary proceedings` otherwise, such use of power renders the provisions of Section 53 of the Sindh Land Revenue Act, 1967 and the provisions of Section 42 of Specific Relief Act, 1877 [*Act I of 1877*], irrelevant. Factual controversies, of-course, can only be resolved by a Civil Court which, under law has a plenary jurisdiction. Being relevant Sections 45 and 53 of Sindh Land Revenue Act, 1967 are reproduced respectively herein-below:-

...

***“45. Restriction on variations of entries in records:-
Entries in a record-of-rights shall not be varied in
subsequent records otherwise than by--***

***(a) making entries in accordance with facts proved
or admitted to have occurred;***

(b) making such entries as are agreed to by all the parties interested therein or are supported by a decree or order binding on those parties. [Underlining is ours]

"53. *Suit for declaratory decrees by persons aggrieved by an entry in a record:- If any person considers himself aggrieved by an entry in a record of rights as to any right of which he is in possession, he may institute a suit for a declaration of his right under Chapter VI of the Specific Relief Act, 1877 (Act I of 1877).*" [Underlining is ours]

...

48. The Petitioner herein, [who is maternal uncle of Respondent No.5 lady herein], no doubt, was looking-after/supervising the land in question but only for cultivation purpose. The `land in question`, it is needless to say, is belonging to Respondent No.5 herein, in the Revenue record as per Entry No.44 of VF VII-B of Deh Tali, Taluka, Matli. The role of the Petitioner over the `land in question` is quite evident from the statement of Respondent No.5 lady. The said statement of Respondent No.5 lady, recorded before the Additional Deputy Commissioner-I, Badin, it is worth to mention has gone unchallenged/un-rebutted. The Entry No.48 of 27.10.1991, under the facts and circumstances of the case in hand, since, was found managed, bogus and fraudulent, as such was rightly cancelled vide the `Impugned Order` dated 16.04.2015 [Annexure `A` to the MoP] by Additional Deputy Commissioner-I, Badin but, after thorough `investigation` including the recording of statement of Respondent No.5 lady herein.

49. The learned Additional Deputy Commissioner-I, Badin, while, cancelling the Entry No.48 dated 27.10.1991 of VF VII-B of Deh Tali, Taluka Matli District Badin in favour of the Petitioner, as being managed, bogus and fraudulent, rightly directed that the share of Respondent No.5 lady herein, vide original Entry No.44 of VF VII-B of

Deh Tali, Taluka Matli, be maintained/kept intact. The main grievance of the Petitioner herein, it appears to be, the cancellation of Entry No.48 of 27.10.1991 vide the `impugned order` dated 16.04.2015 [*Annexure `A` to the MoP*], passed by learned Additional Deputy Commissioner-I, Badin, but the Petitioner herein, in his own wisdom, instead of availing the remedies provided under Sections 161 and 164 of the Sindh Land Revenue Act, 1967, has opted to approach this Court by way of filing the instant Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. The instant Petition as `framed` and `filed` in our opinion is not only in-competent in law but also liable to be dismissed. In this regard, Reference can be made to the case of MUMTAZ AHMED and another V. ASSISTANT COMMISSIONER and another [**PLD 1990 SUPREME COURT 1195**], wherein it was held as follows:-

...

“Accordingly, without going into the validity of the order passed by the Assistant Collector or the approach of the High Court, we consider it fit to dismiss this petition on the alternate ground that the petitioners should not have approached the High Court without exhausting other remedies provided in law in the hierarchy of the Revenue Forums. The Writ petition being premature could be dismissed on this ground alone. Leave to appeal, accordingly, is refused.”
[Underlining is ours]

...

50. The case laws cited by Mr. Jagdish R. Mullani beside being distinguishable do not support the case of the Petitioner in hand.

51. For all the foregoing discussion/reasons, we do not find any justification to interfere with the `Impugned Order` dated 16.04.2015 [*Annexure `A` to the MoP*], passed by learned Additional Deputy

Commissioner-I, Badin, thus Petition in hand is dismissed alongwith the pending application[s].

52. The Petitioner herein, however, if so advised may seek remedy at/before the competent forums which would decide the matter on its` own merits strictly in accordance with law without being influenced by any observation made here-in-above.

53. Petition `stands dismissed` however, with no order as to costs.

JUDGE

JUDGE

Hyderabad.
Dated. 03.12.2018.

Tufail