

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**  
**Civil Revision Application No.S-192 of 2020**

*(Mst. Salma Parveen & others Vs. Muhammad Aslam & others)*

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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**Date of hearing and order: 27-05-2024.**

Mr. Tarique Hanif G. Mangi advocate for the applicants.

Mr. J.K Jarwar, advocate for respondent No.1.

Mr. Ali Raza Baloch, Assistant Advocate General, Sindh.

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**ORDER.**

***Adnan-ul-Karim Memon J:-*** This Civil Revision Application is directed against the Judgment and Decree dated 19.10.2020, passed by the Additional District Judge Kandiaro, in Civil Appeal No. 217 of 2018, whereby the appeal filed by the applicants was dismissed and the judgment and decree passed by the Senior Civil Judge Mehrabpur in F.C Suit No. 124 of 2017 was maintained.

2. The case of the parties is that respondent No. 1 is the brother of applicant No. 1 Mst. Salma Parveen, who challenged the gift deed dated 03-06-1993 executed in her favour by respondent No.1/Muhammad Aslam by filing F.C Suit No. 179 of 2015 (New No. 124 of 2017) *Re. (Muhammad Aslam Vs. P.O Sindh & others)*. Respondent No. 1 also challenged Revenue Entry No. 1100 in deh Form-VII-B of Deh Langreji Taluka Kandiaro, District Naushahro Feroze, alleging therein that he is the legal heir of the late Allah Bux, who owned and possessed an agricultural land bearing S.No. 277, measuring 4-15 acres & 232 measuring 4-5 acres, total area 8-18 acres situated in deh Langerji, Taluka Kandiaro, District Naushahro Feroze. He further averred that his father Allah Bux passed away leaving behind two sons namely Ghulam Muhammad and Jan Muhammad, who in his lifetime transferred his land to the extent of

50 paisa share in favor of Ghulam Muhammad while the remaining 50 paisa share transferred in the name of his grandsons namely Muhammad Saleem, Muhammad Akram, and Muhammad Aslam all sons of Jan Muhammad in equal share viz. 01-17 acres, such revenue entry was kept in revenue record, since then plaintiff/ Muhammad Aslam (respondent No.1 herein) was in peaceful possession of the suit land; that Muhammad Aslam approached to defendant No.3/Mukhtiarkar Revenue Kandiaro for changing of Khata of land in favor of his sons but Mukhtiarkar failed to do so, later on respondent No.1 Muhammad Aslam came to know that his sister Mst. Salma Parveen was also claiming that the suit land belonged to her based on a gift deed dated 03-06-1993 allegedly executed in her favour on the premise that respondent No.1. Muhammad Aslam gifted his share from suit land S.No. 232 & 277 situated in Deh Langeri Taluka Kandiaro to her and the same was purportedly registered before Sub-Registrar Kandiaro. It is further alleged that neither respondent Muhammad Aslam gifted suit land to Mst. Salma Parveen nor she remained in possession of suit land, but she with malafide intention and ulterior motive prepared a false, fake, and fabricated gift deed in her favor in respect of suit land in collusion with applicant No.2 Ali Jan. He further averred in the memo of the plaint that respondent Muhammad Aslam approached to defendant No.4/Sub Registrar Kandiaro and informed him about fraud committed by the applicants and got published a notice in the daily newspaper regarding such fraud. He further averred that plaintiff/Muhammad Aslam along with his sons namely Muhammad Naeem and Muhammad Waseem visited the office of defendant No.3/Mukhtiarkar Revenue whereby he found that applicants were available there for changing Khata in the name of applicant No. 1 Mst. Salma Parveen. It is urged that applicants were trying to sell suit land to someone else based on said false, fake gift and filed a revenue appeal before defendant No.7/Additional Deputy Commissioner-I Naushahro Feroze for seeking directions to maintain the record of rights in her favor based on said fake and

forged gift deed, subsequently, he passed the order dated 30-09-2015 and directed defendants No. 3 & 8/Mukhtiarkar Revenue and Assistant Commissioner Taluka Mehrabpur to affect a fresh entry in revenue record of rights in favor of applicants, who made such entry in their favor compelling respondent No.1 Muhammad Aslam to file F.C Suit No. 179 of 2015 before Senior Civil Judge Mehrabpur, which was dismissed vide judgment and decree dated 24-09-2018 while the registered gift deed in the name of the applicants was also canceled, which was challenged by the applicants by filing Civil Appeal No. 217 of 2018 Re. Mst. Salma Parven and another Vs. Muhammad Aslam and others which was too dismissed by learned Additional District Judge (MCAC) Kandiaro vide judgment and decree dated 19-10-2020, which is impugned by the applicants before this Court by filing the instant Civil Revision Application.

3. It is inter-alia contended on behalf of the applicants that respondent No. 1 filed a time-barred suit and obtained a favorable order cancellation of gift deed by misleading the Court. He further contended that for cancellation of gift deed, the limitation as provided is three years, however the learned trial Court has failed and neglected to look into the aspect of the case that the gift deed was registered instrument executed by the respondent No. 1 on 08-06-1993, who is her real brother whereas he challenged the gift deed in the year 2015 on the purported plea that he was informed by the Mukhtiarkar concerned that there existed Revenue Entry in favour of the applicant No. 1 and the record of rights mutated in her favour by the order of the Revenue authorities, which purported cause accrued to him to file suit for Declaration, Permanent Injunction, Cancellation of Gift Deed dated 08-06-1993 and Revenue Order dated 30-09-2015 and Revenue Entry No. 1100 in Deh Form VII-B of Deh Langreji in favour of the applicant No. 1. Learned counsel further submitted that under Article 91 of the Limitation Act, the instrument is to be challenged within time and if not approached to the Court of law, the period of Limitation will come into the way as the right in the property had already been accrued in favour of the

applicant No.1. Per learned counsel the respondent No.1 approached the Civil Court after 22 years; as such the plaint filed by the respondent No. 1 ought to have been rejected under Order VII Rule 11 CPC as the suit was/is time barred, however trial Court dismissed the suit and ordered for cancellation of gift deed, which was/is illegality on the part of the trial Court on the premise that when the suit is dismissed, the instrument cannot be cancelled under the law as the Court has to declaration to the effect that such instrument was erroneously registered. He next argued that the official respondents produced the gift deed at Ex. 62, which shows that the gift deed was executed in the year 1993 all the ingredients of the gift were met, the gift was accepted, and possession thereof was taken over as this was agricultural land. He lastly prayed for allowing the Revision Application by setting aside both the judgments and decrees passed by the Courts below to the extent of cancellation of gift deed.

4. On the contrary, learned counsel representing the private respondents supported the impugned judgments and decrees passed by the learned sub-ordinate courts and submitted that applicant No. 1 Mst. Salma Parveen claims that her brother gifted the subject land in her favor; however, she failed to produce any evidence to show that gift was ever executed by respondent No.1 in her favor as no mutation was made in the year 1993; however, she succeeded to obtain favorable order from the Revenue authorities in the year 2015 based on purported plea of reconstruction of Revenue record, which was allegedly burnt in the assassination of Shaheed Mohtarram Benazir Bhutto and Mukhtiarkar concerned mutated the subject land in her favor in the year 2015, which triggered the cause to the respondent No.1 to file suit for Cancellation of the aforesaid instrument. He further submitted that the possession of the subject property was/is still lying with respondent No.1, which shows that the ingredients of the alleged gift deed were missing in terms of Islamic law. He further submitted that the trial Court framed the relevant legal issues to determine the genuineness of the gift and

upon evidence, the instrument was canceled and the appellant Court concurred with the view of the trial Court. He further submitted that there is no evidence on the file establishing three requirements of a valid Muhammadan gift and the evidence produced by the alleged donee fell short of the required standard of proof in a land dispute involving precious property. He added that merely preparing a gift deed is not sufficient to hold applicant No.1 entitled to the property in question as respondent No. 1 had never gifted his share to his sister Mst. Salma Parveen. On the point of limitation, he submitted that the cause of action accrued to respondent No.1 in the year 2015 when the Revenue record was mutated in favor of applicant No.1 Mst. Salma Parveen and respondent No.1 immediately filed suit for cancellation of instruments, as such suit was/is not time-barred under the limitation act. He prayed for dismissal of the Revision Application.

5. Learned AAG has submitted that the matter needs to be remitted to the trial court for decision afresh after allowing the applicants to lead the evidence as her side was closed by the trial Court vide order dated 18-08-2018 as they were not turning up to the Court without intimation; besides the trial court dismissed the F.C Suit No. 124 of 2017 by giving finding on issue No. 3 and ordered for cancellation of the registered gift deed Jiryan No. 484 dated 08-06-1993, which is illegality cannot be cured under the law and prayed for the decision of civil suit afresh on merits by allowing the parties to make their submissions on merit within reasonable time.

6. When confronted to the legal position of the case to the parties, after arguing the matter at some length both the parties reached at the consensus and seek disposal of the Revision Application in the terms that the learned trial court shall allow the applicants to lead evidence on the subject issues within two weeks and the trial Court, after hearing the parties, decide the fate of the subject civil suit afresh on merits and no further evidence is required

to be adduced, except the evidence of the applicants, which was closed vide order dated 18-08-2018.

7. If this is a position of the case, coupled with the proposition put forwarded by the parties, this revision application is allowed and both the impugned judgments and decrees of the courts below are set aside, the matter is remanded to the trial court for a decision afresh on merits by allowing the applicants to lead evidence on the subject issues within two weeks. The aforesaid exercise shall be completed within one month. However, it is made clear that if the applicants failed to adduce the evidence the trial Court shall be free to close the side of the applicants and proceed with the matter in accordance with law.

8. By consent this Revision Application is disposed of in the above terms with no orders as to costs. Let a copy of this Order be transmitted to the trial Court for compliance through swift mode.

**Judge**

Nasim/P.A