JUDGMENT SHEET
THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

IInd Appeal No. 16 of 2007
along with M.A. Nos. 08 and 09 of 2007

(Mst. Munawar and another v Abdul Aziz and others)

Appellants:	Mst. Munawar and Mst. Mehtab through Mr. Abdul Ghafoor Hakro and Mr. Yahya Arbab, Advocates.
Respondents Nos.1to4:	Abdul Aziz & others through Mr. Imdad Ali Unar and Mr. Shahzad Ali Daudpoto, Advocates.
Respondents Nos.No.5to7:	Province of Sindh and others through Mr. Allah Bachayo Soomro, Additional A.G. Sindh.
Date of Hearing:	26.10.2026 and 02.11.2026.
Date of Judgment:	10.11.2026.

JUDGMENT

MUHAMMAD HUMAYON KHAN, J. - This appeal under s. 100 of the CPC, against conflict judgments of two learned Courts below, has arisen in the backdrop of a dispute as to the ownership of the following property owned by Mst. Aisha (deceased): (i) agricultural land measuring 67-08 acres in Deh Bukerani, Taluka Tando Allahyar (described in the memo of appeal) and (ii) urban property bearing City Survey No. 1439/22 in Ward-A, Hyderabad. The property is hereinafter referred to as the "suit property." The Appellants and the Respondents Nos. 1 to 4 have rival claims to the suit property in the sense that the Appellants claim to have been gifted the said property by Mst. Aisha during her lifetime by a Gift Deed dated 03.05.1982 (hereinafter the "disputed gift deed") followed by a mutation made in 1987, after her death; whereas the Respondents Nos. 1 to 4 claim their right on the basis of inheritance.

2. The Respondents Nos. 1 to 4 filed F.C. Suit No. 18 of 1988 challenging the said gift deed and claiming the ownership of the suit property before the learned Senior Civil Judge, Tando Allahyar. The

suit was for declaration, cancellation, possession and permanent injunction, and in which it was pleaded as follows:

i) Mst. Aisha widow of Haji Muhammad Ayub was the owner of the suit property. She died on 07.05.1984 and left behind Allah Dino son of Khamiso as her sole legal heir being maternal uncle.

ii) She had a brother, Haji Ahmed, who died in the same year some 17 days before her death.

iii) Allah Dino died on 12.08.1987 and left the Respondents Nos. 1 to 4 as his legal heirs.

iv) The Appellants in order to grab the suit property managed a fraudulent Gift Deed in back dates, i.e. 03.05.1982, which was presented in November 1987 before the Respondents Nos. 6 and 7 for mutation in favour of the Appellants.

v) Such entries were made on 09.11.1987.

vi) The Respondents Nos. 1 to 4 filed objections on 17.02.1988 and put their claim as legal heirs and challenged the gift deed as fraudulent and manipulated.

vii) Late Allah Dino lived with Mst. Aisha in her house and permitted the Appellants to live in the same house which was a part of the suit property. The Appellants took advantage of the same and also misused the employees of the agricultural land owned by Mst. Aisha and took over the illegal and unlawful possession of the said property.

3. Against the suit, the Respondents Nos. 5 to 7 did not file their written statements and were declared *ex parte*, while the Appellants filed their written statements and denied the suit of the Respondents Nos. 1 to 4 by stating as follows:

i) The suit of the Respondents Nos. 1 to 4 is time-barred.

ii) (Late) Allah Dino, through whom the Respondents Nos. 1 to 4 have claimed inheritance, was alive for more than three years after the death of Mst. Aisha but he did not challenge the gift deed. Consequently, the Respondents Nos. 1 to 4 are not entitled to challenge the same after his death.

iii) The Appellants have remained in possession of the suit property throughout the time after the death of Mst. Aisha. The Respondents Nos. 1 to 4 have never remained in possession of the suit property.

iv) The suit is barred under s. 11 of the Sindh Revenue Jurisdiction Act, 1876, as well as s. 172(2) of the Sindh Land Revenue Act, 1967.

v) The suit is not properly stamped. The gift was complete in all respects under Muhammadan Law and the suit would not lie against it.

vi) Mst. Aisha died without any of the suit property to be inherited by any person.

vii) The Respondents Nos. 1 to 4 had moved the Mukhtiarkar for mutation, who invited objections in Daily "Ibrat" on 09.11.1987. The Appellants filed their objections along with photostat copy of the disputed gift deed.

viii) The said gift deed was attested by the then Civil Judge and ACM, Hyderabad, on 03.05.1982 and by Hamiduddin Khan, Advocate/Notary Public.

ix) The stamp paper of the gift was purchased from Ferdous Khan, Stamp Vendor, Sessions Court, Hyderabad, and the NICs of the donor and donee are mentioned on the gift deed.

4. From the pleadings of the parties, the learned Senior Civil Judge framed twelve (12) issues. At the trial, the Respondents Nos. 1 to 4 examined three (3) witnesses whereas the Appellants examined

only one (1). After the evidence, the learned Senior Civil Judge dismissed the suit by Judgment dated 05.05.1992 and Decree dated 06.05.1992. The Judgment and Decree of the learned Senior Civil Judge were challenged by the Respondents Nos. 1 to 4 in Civil Appeal No. 49 of 2007 which came up before the learned Additional District Judge-II, Hyderabad, and was allowed by him by Judgment dated 27.11.2007 and Decree dated 30.11.2007 (hereinafter referred to as the "impugned Judgment and Decree") and consequently the suit of the Respondents Nos. 1 to 4 was decreed as prayed.

5. Now, the Appellants have challenged the impugned Judgment and Decree before this Court in the present appeal under s. 100 of the CPC. I have heard Mr. Yahya Arbab for the Appellants and learned Mr. Imdad Ali Unar for the Respondents Nos. 1 to 4 as well as Mr. Allah Bachayo Soomro, the learned Additional Advocate General Sindh and have gone through the record.

6. Mr. Yahya Arbab argued, *inter alia*, that the impugned Judgment and Decree are erroneous on law and facts and require interference in second appeal. He contended the learned Additional District Judge had failed to appreciate that the Respondents Nos. 1 to 4 had their remedy before the revenue hierarchy against the mutation entries. He stated that the impugned Judgment was based upon a misappreciation of s. 11 of the Sindh Revenue Jurisdiction Act, 1876 and s. 172 (vi) of the Sindh Land Revenue Act as the same were attracted to the case; that the revenue proceedings were in fact initiated at the instance of the Respondents Nos. 1 to 4 and they were estopped from challenging the same order in civil court before allowing the revenue proceedings to end. He argued that the learned Additional District Judge failed to give his findings point-wise and violated r. 31 of O. XLI of the CPC. He contended that the disputed gift deed had been proved and all ingredients thereof have been established in evidence and even according to the pleadings of the Respondents Nos. 1 to 4, including declaration, acceptance and possession, but the same were fully ignored by the learned Additional District Judge. He argued that, according to the settled principles of the law, strangers cannot challenge a gift; that the Respondents Nos. 1 to 4 are not direct legal heirs of Mst. Aisha who died on 07.05.1984 while Allah Dino died on 12.08.1987 and as such they could not have challenged the gift of which they were not direct beneficiaries. He stated that, according to

Muhammadan Law, a written gift deed is not required to constitute a valid gift, therefore, in the present case the three ingredients were sufficient. He stated that the attesting witnesses of the disputed gift deed, Allah Dino and Haji Ahmed, and Mr. Hameeduddin, Advocate/Notary Public were dead and as such they could not be produced, whereas the name of the Civil Judge who attested the gift was not known to the Applicants. He stated that Mst. Aisha died on 07.05.1982, she executed the gift on 03.05.1982, while Allah Dino died on 12.08.1987 without any share and as such the question of inheritance in favour of the Respondents Nos. 1 to 4 does not arise. In support of his arguments, he relied upon the cases of *Pir Shah Abdul Haq through LRs and another v Muhammad Irfan and others* 2026 SCMR 1019, *Taj Wali Khan v Hukam Khan (decd) through LRs* 2025 SCMR 231, *Aamir Afzal and another v S. Akmal (deceased) through LRs and 2 others* 2024 SCMR 1649, *Hayat Muhammad through LRs v Muhammad Riaz* 2023 SCMR 2012, *Mst. Addan (Deceased) through LRs v Province of Sindh and others* 2026 SCMR 855, *Syed Masood Ali v Mst. Feroza Begum and another* PLD 2025 SC 339, *Abrar Ahmed and another v Irshad Ahmed* PLD 2014 SC 331, *Mst. Rabia Gula and others v Muhammad Janan and others* 2022 SCMR 1009, *Saadat Khan v Shahid-ur-Rehman and others* PLD 2023 SC 362, *Ghulam Mustafa v Mst. Mah Begum and others* 2024 SCMR 795, *Akhtar Nasir Ahmed v Province of Punjab and others* PLD 2024 SC 1268, *Syed Kausar Ali Shah and others v Syed Farhat Hussain Shah* 2022 SCMR 1558, *Province of Punjab and others v Zulfiqar and 8 others* PLD 2026 SC 269 and *Ghulam Asghar Khan v Muhammad Arif Khan and others* 2026 SCMR 929. He finally prayed for the appeal to be allowed, for the impugned Judgment and Decree to be set aside and for those of the learned Senior Civil Judge to be restored.

7. On the other hand, Mr. Imdad Ali Unar vehemently opposed the appeal and stated that the impugned Judgment and Decree are in accordance with the law. He began his arguments by stating the rival claims of both the parties, i.e. firstly the claim of the Respondents Nos. 1 to 4 on the basis of the inheritance of the parties and secondly the disputed gift deed in favour of the Appellants. He argued, *inter alia*, that the ownership of Mst. Aisha is admitted and the relationship of the Respondents Nos. 1 to 4 with her is also admitted; that the disputed mutations were executed on the basis of the

disputed gift deed almost three (3) years after the death of Mst. Aisha as well as her uncle, Allah Dino, who died in 1987; that the statements of the attesting witnesses were not recorded before the Mukhtiarkar at the time of making of the mutation entries. As such the said entry was/is in violation of s. 42 of the Sindh Land Revenue Act; that admittedly the beneficiaries of the disputed gift deed are the Appellants, however, they have failed to produce any witnesses, scribe, stamp vendor or the officials who have attested the same; that the Respondents Nos. 1 to 4 came to know about the alleged gift in the year 1987 when the application for mutation was made; that the cause of action arose to the Respondents Nos. 1 to 4 in November 1987, as such the suit was filed within time under Art.120 of the Limitation Act; that it has been admitted by the Appellants during evidence that the Appellants had been residing in the suit property with Mst. Aisha since she did not have any male or female heir and she treated the Appellants as their children. He stated that according to settled law this kind of possession did not constitute delivery for purposes of gift. On this proposition he relied upon *Hidayat Khan and others v Mst. Nasreen and others* PLD 2025 SC 502; that the possession of the agricultural land has not been proved according to the evidence of the Appellants. The Appellant No. 1 has herself admitted that the agricultural land was on lease to one Maqbool Ahmed; that the factum of offer has not been deposed upon or pleaded; that the Appellants being beneficiaries of the gift had the burden to prove the same by producing attesting witnesses. On this proposition he relied upon *Abdul Majeed and others v Mst. Khalida Bibi* 2026 SCMR 587, *Mst. Rasheeda Bibi and others v Mukhtar Ahmed* 2008 SCMR 1384, *Khaliqdad Khan v Mst. Zeenat Khatoon* 2010 SCMR 1370 and Farhan Aslam v Mst. Nuzba Shaheen 2021 SCMR 179; and that the Judgment and Decree of the learned Additional District Judge are well-reasoned and do not require interference. It is settled law that in the event of conflict findings, the findings of the appellate Court are to be preferred. In support of this, he referred to *Muhammad Hafeez and another v District Judge, Karachi* 2008 SCMR 398 and *Rao Abdul Rehman v Muhammad Afzal* 2023 SCMR 815. Finally, Mr. Imdad Ali Unar prayed for the appeal to be dismissed and for the impugned Judgment and Decree to be maintained.

8. In my view, the following points arise for the determination of this appeal:

i) Whether the impugned Judgment was rendered in violation of r. 31 of O. XLI of the CPC?

ii) Whether the suit was barred under s. 11 of the Sindh Revenue Jurisdiction Act, 1872 and s. 172 of the Sindh Land Revenue Act, 1967?

iii) Whether the suit of the Respondents Nos. 1 to 4 was barred by limitation?

iv) Whether the disputed gift was proved by the Appellants as beneficiaries of the same?

v) Further, what was the effect of the absence of the parties' signatures on each page of the disputed gift deed?

vi) Whether, independently, the Appellants had been able to prove the transaction of gift according to the mandatory requirements of Islamic law?

POINT NO. 1

9. It was argued at the bar that the impugned Judgment was written in a consolidated manner and the points for determination were each not determined separately and as such the same violates r. 31 of O. XLI of the CPC. In my view, this argument is misconceived for the reason that the learned Additional District Judge has done great labour in discussing each and every material aspect of the controversy. He has gone through the entire evidence as well as the applicable law in the consolidated judgment and, in substance, all points required have been determined properly. Consequently, the form of the judgment is not the decisive aspect anymore and the Court will be acting pedantically if the same was given undue weight. It is by now established that, if all material points are discussed and the judgment is well-reasoned, then r. 31 of O. XLI of the CPC will not be violated even if each point is not discussed separately: *Muzafar Iqbal v Mst. Riffat Parveen and others* 2023 SCMR 1652, *Mst. Zaitoon Bibi v Dilawar Muhammad through Legal Heirs* 2004 SCMR 877, *Muhammad*

Iftikhar v Nazakat Ali 2010 SCMR 1868, *Mst. Roshi and others v Mst. Fateh and others* 1982 SCMR 542, *United Bank Limited v Shoaib Ahmed and 5 others* PLD 2021 Sindh 394 and *Muhammad Azam v Mst. Khursheed Begum and 9 others* 2013 YLR 454 Sindh. Consequently, I hold that the impugned Judgment was not written in violation of r. 31 of O. XLI of the CPC and **POINT NO. 1** is answered in the negative.

POINT NO. 2

10. It was a contention of the Appellants is that the suit of the Respondents Nos. 1 to 4 was barred under s. 11 of the Sindh Revenue Jurisdiction Act and s. 172 of the Sindh Land Revenue Act. Without doubt, the jurisdiction of the revenue authorities is protected under s. 172 of the Sindh Land Revenue Act while under s. 11 of the Sindh Revenue Jurisdiction Act, it is provided that the civil courts shall not exercise their jurisdiction where the revenue authorities are provided with jurisdiction. However, the jurisdiction of the revenue authorities is summary in nature and cannot be invoked where the matter involves intrinsic questions of fact to be determined. In their suit, the Respondents Nos. 1 to 4 have not only sought declaration of title but have also made allegations of fraud and have sought cancellation of the gift deed and mutation entries. These are all matters beyond the summary domain of the revenue authorities and can only be resolved after recording of evidence. This principle has been conclusively discussed by the Supreme Court in *Abdul Majeed Khan through LRs and others v Mst. Maheen Begum and others* 2014 SCMR 1524 in the following manner (para 6):

> "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: -
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> > '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 the gift is essentially an intricate question of title which cannot be decided without recording of pro and contra evidence.'
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> 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."

Earlier, the same principle was laid in *Nazir Ahmad and another v Maula Bakhsh* 1987 SCMR 61 in the following manner (para 3):

> "3. So far as the jurisdiction of civil court is concerned, it has been held by the trial Court and affirmed by all the Courts where a question of title or ownership of land or any immovable property is involved then the Civil Court alone, to the exclusion of the Revenue Officer or Revenue Court is competent to decide it. In this case it was not so much the demarcation of the land as the title in immovable property which was in issue. The civil court rightly took cognizance of the matter and proceeded to decide it."

11. Learned Counsel for the Appellants sought to argue that the Respondents Nos. 1 to 4 had themselves invoked the jurisdiction of the revenue authorities and as such they were estopped from going to the civil court without completely exhausting the revenue hierarchy. I am afraid this argument is misconceived since it is already well-settled that there is no estoppel against the law: *Justice Muhammad Farrukh Irfan Khan v Federation of Pakistan and others* PLD 2019 SC 509 (5 judges), *Muhammad Hanif Abbasi v Jahangir Khan Tareen and others* PLD 2018 SC 114 and *Muhammad Ikhlaq Memon v Zakaria Ghani and others* PLD 2005 SC 819. It is also well-settled that jurisdiction is the creation of the law and consent or acquiescence does not confer jurisdiction: *Muhammad Ishaq, Deputy Director, Benazir Income Support Programme v Fardayaz Khan and others* PLD 2026 SC 508 and *Muhammad Salman v Naveed Anjum* 2021 SCMR 1675.

12. Accordingly, I hold that the suit of the Respondents Nos. 1 to 4 was not barred and was rightly held to be maintainable by the learned Additional District Judge. **POINT NO. 2** is answered in the negative.

POINTS NOS. 3 TO 6

13. These points are interconnected and, for convenience, are being decided together. I will first deal with the merits of the case and subsequently with limitation as the aspect of limitation turns entirely on the findings to be recorded on the merits, that is to say, proof of the disputed gift deed and, independently thereof, of the oral gift. Since

the Appellants were the sole beneficiaries of the disputed gift, burden lay on them to prove its authenticity through convincing evidence. Reference may be made to *Abdul Majeed and others v Mst. Khalida Bibi (Deceased) through LRs and others* 2026 SCMR 587, *Farhan Aslam and others v Mst. Nuzba Shaheen and another* 2021 SCMR 179, *Wali Muhammad Khan and another v Mst. Amina and others* 2018 SCMR 2080, *Muhammad Idrees v Mst Zeenat Bibi* 2005 SCMR 1690 *and Aurangzeb through LRs and others v Muhammad Jaffar and another* 2007 SCMR 236.

14. In *Abdul Majeed* (supra), the Supreme Court has recently dealt with a similar situation. There were competing claims by the parties, one respecting the right of inheritance while the other on the basis of an alleged gift by the propositus. The Supreme Court observed in this context (para 6; emphasis in original):

> "The matter in hand pertains to inheritable property because admittedly the property in question was owned by Imdad Ali, propositus of the parties, so the petitioner(s) being alleged donees were under heavy burden to prove valid execution of oral gift because they cannot take benefit from the shortcomings in the evidence of respondents rather they had to stand on their own legs. [footnote 7: *Mushtaq Ul Aarfin and others v. Mumtaz Muhammad and others (2022 SCMR 555).*]"

The Supreme Court also observed that the factum of oral gift and the mutation or deed of gift are independent and need to be proved separately. It was held as follows in para 5:

> "5. Gift has two parts namely: the fact of the oral gift which has to be independently established by proving through cogent and reliable evidence the three necessary ingredients of a valid gift as noted above and secondly mutation on the basis of an oral gift has to be independently established and proved by adopting procedure provided in the Land Revenue Act, 1967 and the Rules framed thereunder as well as the evidentiary aspects of the same in terms of the Qanun-e-Shahadat Order, 1984…"

As such, in my view the Appellants were under heavy burden to independently establish firstly the factum of oral gift and secondly the gift deed and the mutation that were made pursuant to the said oral gift, if any ever took place. Both of these matters do necessarily overlap.

15. I have perused the evidence in this context and in my view the learned Additional District Judge has arrived at the correct

conclusion. The first point is that the disputed gift deed was executed in the presence of two marginal witnesses, namely Haji Ahmed Memon and Allah Dino Khan Memon, however, both of them have died according to the record and as such they were not produced. Now, since the disputed gift tends to have been executed in 1982, when the Qanun-e-Shahadat Order, 1984, was not in existence, the requirement was to produce at least one (1) marginal witness to prove the same under s. 68 of the Evidence Act, 1872 (see, e.g. *Mst. Rasheeda Begum v Muhammad Yousaf* 2002 SCMR 1089 and *Muhammad Feroz Akhtar v Muhammad Nasim Akhter* Suit No. 1161 of 2009 (Judgment dated 09.02.2024; SHC; unreported), however, upon the death of both witnesses, the Appellants ought to have produced other reliable supporting evidence. It will be seen that the disputed gift deed was purportedly attested by (i) Mr. Hameeduddin Khan, Advocate, and (ii) Civil Judge and City Magistrate, Hyderabad on 03.05.1982, the same date on which it is shown to have been executed. However, these two witnesses were not produced in evidence by the Appellants to prove the attestation and execution of the disputed gift deed. The evidence of the Appellants is completely silent as to whether the said persons were alive or dead, traceable or otherwise, and capable or not of giving evidence. Even the name of the Civil Judge and City Magistrate who purportedly attested the said gift deed has not been brought on the record. In my view, after the death of the two marginal witnesses, the disputed gift deed could not have been proved without the production of the said two witnesses (or, alternatively, without explanation of their non-production), and their non-production is fatal to the case of the Appellants. Rather, the Court is fair to draw an adverse inference under Art. 129 (g) of the Qanun-e-Shahadat Order, 1984 (equivalent to s. 114 (g) of the Evidence Act, 1872 (since repealed)) against the Appellants that the two witnesses, i.e. the notary public and the Civil Judge, if produced would not have supported the execution of the disputed gift deed. Reference may be made to *Sher Ayaz Khan alias Sheraz Khana through LRS and others v Gul Najeeb Khan* 2025 SCMR 380 and *Abdul Majeed* (supra).

16. The second point is relating to the comparison of signatures of Haji Ahmed on the disputed gift deed. The learned Additional District Judge has undertaken a well-reasoned and detailed comparison of the signatures of Haji Ahmed Khan on the disputed gift

deed as witness and found them to be managed and not comparing. The findings of the learned Additional District Judge are in para 20 of his judgment and read:

> "20. …In such circumstances the responsibility lies upon the Court to compare the signature of Executant with admitted signatures and the appellants in this regard have produced the Form-A of attesting witnesse Haji Ahmed through Registration Officer NIC Tando Allahyar at Ex.100. Admittedly the signature of Haji Ahmed is available at Ex. 100, which I have compared with signature of Haji Ahmed over Gift Deed Ex. 66 and I found that initial word 'H' does not tally with admitted signature of Haji Ahmed, as such, middle line of 'H' is quite different from each other and the signature of Haji Ahmed shows that middle line of 'H' connect next word 'a' whereas the Gift Deed Ex. 66 shows that initial word 'H' was written separately and subsequent words 'a, g, i' are written separately 'H' with different angle to the angle of same words over Ex. 100. It is further observed that next word of the signature starts with 'A' and middle line of 'A' starts at middle portion over Ex. 100 whereas the same word 'A' over Ex. 66 shows that middle line word 'A' starts from tail of 'A' and there is quite different between subsequent words 'h, m, e and d'.
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> 21. I have compared the signature of said Haji Ahmed over Ex. 111 and 112 which are admitted signatures of Haji Ahmed but they have got no resemblance with signature of Haji Ahmed over Gift Deed Ex. 66 but it appears to be similar to the signature of Haji Ahmed over Ex. 100, therefore, in such circumstances it appears that the Gift Deed was not executed in presence of attesting witness Haji Ahmed. The reliance for drawing my above conclusion is placed upon P.L.D. 1983 Karachi Page-431."

17. On the other hand, the findings of the learned Senior Civil Judge as to the signatures are on Issue No. 4 and read as follows:

> "…The Ex. 66 bears signatures of Haji Ahmed and according to P.W. Abdul Aziz the signature of Haji Ahmed on Ex. 66 has been forged by defendant No: 4 and 5 and he has got produced form 'A' of family of Haji Ahmed through D.W. Ilyas Registration Officer National Identity Cards Office, Tando Allahyar as Ex. 100, from the comparison of signatures of Haji Ahmed on Ex. 66 with Ex. 100 it is clear that these signatures have some resemblance therefore the version of P.W Abdul Aziz has not been proved that the signature of Haji Ahmed on Ex. 66 has been forged by plaintiffs after death of Mst. Ashia…"

It will be seen that the learned Senior Civil Judge has failed to give due consideration to the signatures of Haji Ahmed and his observations are *ex facie* cursory and vague in nature. He has, with all due respect, made no effort to examine and give reasons as to the lettering and strokes of the signatures which exercise has been undertaken at

length by the learned Additional District Judge and hence this Court is compelled to give preference to his findings. In any case, it is quite well-settled that, if there is conflict findings of fact between the first appellate and trial courts, the findings of the first appellate Court are to be preferred unless found to be based upon misreading or non-reading of evidence or against the settled principles of law. Reference may be made to *Rao Abdul Rehman (deceased) through LRs v Muhammad Afzal (deceased) through LRs and others* 2023 SCMR 815, *Muhammad Hafeez and another v District Judge, Karachi East and another* 2008 SCMR 398, *Madan Gopal and 4 others v Maran Bepari and 3 others* PLD 1969 SC 617 and *Kondiba Dagadu Kadam v Savitkibai Sopan Gujar* AIR 1999 SC 2213; 1999 (3) SCC 722.

18. The third important point is that the disputed gift deed is written on three (3) pages, however, only the last page has been signed although the first two pages bear the entire content of the declaration and the last page is only the signature page. Accordingly, the pages which are not signed bear the presumption that the content thereon has not been signed and executed as a part of the declaration of the disputed gift. In the case of *Akhtar Waheed v Muhammad Hussain and others* 2025 SCMR 551, there was a similar situation in relation to an agreement of sell whereby the first page of the agreement was not signed. The Supreme Court observed as follows (para 2; emphasis and special emphasis added):

> "2. We have heard the learned Counsel for the parties at some length. Learned counsel for the respondent is available as a caveator. **The alleged agreement consists upon two pages; first page does not contain signatures/ thumb impressions of any of the parties as well as witnesses, while page-2 contains signatures/thumb impressions which were also exhibited as Exh. PW-1/5, Exh/PW-1/8, etc. during the statement of the plaintiff/ appellant. <u>If first page of agreement is taken out of consideration, as it does not contain signatures/thumb impressions of any of the parties as well as of the witnesses, the suit for specific performance cannot be decreed.</u>** We have carefully gone through the findings recorded by the learned High Court whereby Civil Revision filed by respondent was accepted and his suit for cancellation of document was decreed whereas suit of the appellant for specific performance was dismissed. The learned High Court has thoroughly evaluated the documentary as well as oral evidence and on the basis of true interpretation of the evidence came to a conclusion which is in the light of law declared by this Court."

19. In another case, *Allah Bakhsh deceased through LRS and others v Muhammad Riaz and others* PLD 2025 SC 63, the Hon'ble Supreme Court arrived at the same conclusion and observed as follows while approving the findings of the High Court to the same effect (para 11; emphasis added):

> "11. As far as question of disputed sale deed is concerned, record reveals that **disputed sale deed is not even properly signed by the alleged attorney in accordance with the settled principles of law**. In this regard, learned High Court has rightly observed in the impugned judgment that: -
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> > **'The petitioners/defendants Nos. 03 to 10 produced sale deed containing six pages and out of six pages, first five pages have neither been signed by the alleged attorney/defendant No. 03 nor the alleged purchaser/defendants Nos. 03 to 10 and even the two attesting witnesses, who have signed sixth page, have not signed first five pages wherein terms and conditions of the disputed sale deed are written. It is settled principle of law that if the document is written on more than one page, then the parties must sign or put their thumb impressions on each page of document or otherwise the defendant are/were under legal obligation to connect the unsigned pages with signed/thumb marked page by producing evidence to prove the terms and conditions of disputed sale deed.'**
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> Thus, High Court has elaborately and comprehensively considered all the aspects of matter, legal as well factual. Normally, this Court does not interfere in the concurrent findings unless those are perverse, arbitrary, fanciful or capricious which, in our candid view, is not the position in the instant case."

20. Earlier, in the cases of *Iftikhar Ali and others v Riaz-ul-Haq alias Riaz Ahmed and others* 2023 YLR 854, *Zafar Iqbal and others vs. Mst. Nasim Akhtar and others* PLD 2012 Lahore 386 and *Mian Hassanullah (deceased) through LRs v Muhammad Sadiq and others* (Sindh; Second Appeals Nos. S-03 and 04 of 2016; Judgment dated 08.09.2023; unreported) the High Courts have made the same observations. I have also had occasion to follow this principle in the case of *Muhammad Ilyas v Muhammad Aslam and others* 2026 SHC MPK 1650 (Judgment dated 04.09.2026; Second Appeal No. S-56 of 2026; unreported). There, the Appellant was an unsuccessful plaintiff who had claimed specific performance of an agreement which was not signed except on the last page and apart from that bore even more defects. Consequently, I held the agreement to be fraudulent and

dismissed the appeal with costs while ordering the original agreement to be impounded.

21. In these circumstances, I hold that where an agreement, document or deed requiring execution is composed of multiple pages, all pages must be signed by the executant party (and preferably by the witnesses also) failing which the unsigned pages are to be deemed as doubtful and require independent and strong proof. If such unsigned pages are not independently proved through evidence to be the integral part and parcel of the entire deed or document, then the same cannot be relied upon with the potential result that the entire deed or document may become unenforceable and invalid. In the present case, it appears that the entire content of the gift deed is on the first two pages, while the last page only bears the names of the parties. In the absence of signatures on the first two pages, which for all intents and purposes are the main pages of the deed, the entire content of the gift has become doubtful and cannot be relied upon.

22. The Appellants have even remained unable to prove the oral gift independently. It is a well-established principle that an oral gift under the Muhammadan Law consists of three independent but cumulative acts, namely (i) offer, (ii) acceptance and (iii) delivery of possession. The sole witness for the Appellants was Mst. Munawar (DW-1; Exh-115; pp. 127 to 131 of the Trial R&Ps), however, her entire evidence is silent as to offer and acceptance, while on the delivery of possession she has deposed that the Appellants were already in possession of the suit property and the same continued with them. In *Ashiq Hussain and another v Ashiq Ali* 1972 SCMR 50, five judges of the Supreme Court sat to decide that a valid gift requires a conscious, unequivocal and distinct act of delivery of possession by the donor and mere recital of the same is insufficient. (Reference may also be made to *Mrs. Razia v Wajid Ali and 11 others* 1989 CLC 1274. In my view, the requirements to establish a valid gift must be strictly proved and the same cannot be presumed or surmised by the Court without any evidence.

23. In these circumstances, I hold that neither the disputed gift deed nor the ingredients of the oral gift independently were established by the Appellants as donees/beneficiaries. In fact, in view of my cumulative findings above, the Respondents Nos. 1 to 4 have

succeeded on the balance of probabilities to show that the disputed gift was probably fraudulent and sought to abridge the right of inheritance in favour of the Respondents Nos. 1 to 4 after the death of Mst. Aisha and therefore the suit ought to have been decreed as it rightly was.

24. Since the disputed gift deed remained unproved, the result is that the subsequent mutation entry found upon it would also be of no value. It is well-established that where the foundation is declared to be void, the entire superstructure standing thereon also becomes void: *Yousaf Ali vs. Muhammad Aslam Zia* PLD 1958 SC (Pak) 104, *Muhammad Iqbal through duly authorised Attorney vs. Muhammad Ahmed Ramzani and 2 others* 2014 CLC 1392 (Sindh; DB), *Faisal Jameel vs. The State* 2007 MLD 355 (Sindh; DB), *Dr. Zahid Ansari and others vs. Karachi Development Authority and others* PLD 2000 Karachi 168, *Raja Abdul Ghafoor vs. Province of Punjab* 2024 MLD 1995 Lahore and *Federation of Pakistan vs. Nasir Munir Ahmed and others* 2022 CLC 2072 Lahore.

25. Learned Counsel for the Appellant argued that the Respondents Nos. 1 to 4 were strangers to the property after the execution of the gift and as such they did not have *locus standi* to challenge the gift. However, I am afraid this argument fails for the reason that they have succeeded in proving that the gift was not executed by Mst. Aisha during her lifetime. In fact, they have succeeded on the balance of probabilities upon their plea that Mst. Aisha never executed the disputed gift deed and the same was rather executed after her death fraudulently and without her knowledge or that of her legal heirs. In the absence of any gift, the Respondents Nos. 1 to 4 naturally become entitled to inheritance through deceased Allah Dino and as such they were no longer strangers to the suit property. He secondly contended that the disputed gift was not challenged during the lifetimes of deceased Mst. Aisha or Haji Ahmed, however, for the same reason this argument must also be respectfully rejected. The gift was not executed during their lives and as such the question of them challenging it does not arise. It was invariably for those having knowledge (Respondents Nos. 1 to 4) to have challenged it within the limitation period. The period of limitation began to run from the date of knowledge of the Respondents Nos. 1 to 4 which is stated to be in November 1987 and as such the suit was within time for the purposes

of both Arts. 91 and 120 of the Limitation Act. It follows that **POINTS NOS. 3, 4 AND 6** are answered in the negative while **POINT NO. 5** is answered in terms of para 21 above.

26. For these reasons, **Second Appeal No. 16 of 2007** is **dismissed** while M.A. No. 08 and 09 of 2007 and any listed applications being infructuous are disposed of. There shall be no order as to costs.

27. Before parting, I may place on record my note of appreciation for Mr. Yahya Arbab, Advocate, who being junior counsel assisted the Court as well as for learned Mr. Imdad Ali Unar whose senior legal expertise was of great assistance to the Court.

JUDGE

Approved for reporting

Abdullahchanna/PS