

Judgment Sheet

IN THE PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

J U D G M E N T

Civil Revision No.1213-P/2012.
Date of hearing.....27.06.2014

Muhammad Amin.... Vs....Mst: Shaista & others

Appellant(s) by.....Muhammad Amin.....

Respondent(s) by.....Mst. Shaista.....

MALIK MANZOOR HUSSAIN, J:- This revision petition has been directed against Judgment dated 13.09.2012, passed by the learned Additional District Judge-II, Nowshera, whereby the appeal filed by the petitioner was dismissed and the Judgment dated 11.04.2012, passed by the trial Court was maintained.

2. Briefly sated the facts giving rise to the instant petition are that the respondents No.1 & 2 filed a suit against petitioner and respondent No.3 to 30, for declaration and permanent injunction with respect to suit property, fully described in the heading of the plaint, which was contested by the petitioner while respondent No.3 to 30 filed cognovits.

After recording pro and contra evidence, the learned trial Court through Judgment dated 11.04.2012 dismissed the suit. Feeling dissatisfied petitioner preferred appeal which met the same fate, thus instant revision petition.

3. Learned counsel for the petitioner contended that the respondents/plaintiffs failed to prove the basic requirement of gift, therefore, suit filed on basis of gift deed was not maintainable. Further argued that no physical possession was transferred at spot at the time of gift, so gift was incomplete. Lastly it was argued with vehemence that it was for the beneficiaries of gift deed to prove the same by cogent evidence which they failed to discharge initial burden of proof.

4. Conversely learned counsel for respondents supported concurrent findings of both the Courts below and contended that Mustaqeem during his life time had not denied the execution of gift rather after his death all the legal heirs including the widow of Mustaqeem, except petitioner, admitted the transfer of property through gift.

Arguments heard and with the valuable assistance of learned counsel for the parties, record perused.

5. Admittedly the suit property was ownership of Mustaqeem. Claim of respondents 1 & 2 was based on gift deed dated 6.9.2006. Though the execution and validity of gift deed was admitted by the widow & other legal heirs of Mustaqeem (respondents 3 to 30) except the petitioner but the plaintiffs/respondents 1 & 2 also examined the scribe PW.2 Rahim Dad and the two marginal witnesses PW.5 & PW.6 Feroz & Misri respectively. Both the marginal witnesses were consistent with respect to execution of gift and nothing favourable could be extracted from the lengthy cross examination from petitioner side.

6. So far the question raised about the delivery of possession is concerned, that had been admitted by the petitioner himself while deposing as DW.2 with the clear term that the property is in possession of respondents No.1 & 2 through their tenants. Even otherwise there are certain exception where the

requirement of delivery of possession in strict sense can be dispensed with, as in the case of gift from parents to minors, husband to wife and father in law to daughter in law. In the case in hand the gift had not been challenged by the donor nor his widow but a third party. The petitioner is son of Moeenud Din, real brother of donor Mustaqeem. All the other legal heirs of Moeen Uddin have admitted the gift by way of cognovits as well as through their attorney statement which was recorded as DW.1.

7. The contention of learned counsel for petitioner that the gift deed was un-registered hence cannot effected, is without force of law. A valid gift could be effected even orally and under an un-registered instrument. Written instrument is not the requirement under the Muslim Law nor is the same compulsory registerable under the Registration Act, 1908. A written instrument in any case would not create a gift but was a mere evidence of the gift and as such would not require registration. Reliance can be placed on **“Umar Bibi Vs Bashir Ahmad” 1977 SCMR 154**, wherein it

was held that gift could be effected orally or under un-registered deed.

8. Both the learned Courts below have rightly decreed the suit of the respondents No.1 & 2 by properly appreciating the material before them & applying the correct law. The petitioner had not been able to show that the judgments of trial Court as well as learned appellate Court suffered from any illegality or based upon mis-reading or mis-appreciation of the material available on record.

In view of what has been observed above, no merit is found in the instant petition, which is accordingly dismissed.

Announced.
27.06.2014

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