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Women's Right to Property: Selected Case Law

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WOMEN'S RIGHT TO LEGAL PROPERTY

CASE LAW BOOK - 2021

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Relevant Statutes: Dissolution of Muslim Marriages Act 1939, Muslim Family Laws Ordinance 1961, West Pakistan Muslim Personal Law Shariat Act 1962, Muslim Family Laws Ordinance 1961, Married Women's Property Act 1874, the Dowry and Bridal Gifts Act 1976.

KHULA AND DIVORCE

PLD 1959 566 Lahore

Mst. Balqis Fatima vs Najm Ul Ikwam Qureshi

Facts: In the instant case, a full bench of the Lahore High Court revisited the law of khul' in Islam.

Issue: Is a wife was entitled to dissolution of marriage on restoration of what she has received from the husband in consideration of the marriage?

Analysis: The Court answered the question in the affirmative by giving a fresh interpretation to verse 2:229, saying it allows judicial and state involvement when a wife wants a divorce and the husband refuses. He further stated that there would be no point in referring the matter to a judge and in requiring him to make a determination if, in the end, he would be powerless. The Court conclusively stated that the judge would be entitled to dissolve the marriage without the husband's consent.

Conclusion: The wife can dissolve the marriage without consent of husband per the rules of khula.

2018 PLD 34 Peshawar

Muhammad Arshad Khan vs. Mst. Kulsoom Riaz

Facts: This case was related to suit for dissolution of marriage by Khulla and recovery of dowry articles. The Family Court granted Khulla in place of which the wife would receive gold ornaments as dower.

Issue: The Petitioner (husband) contended that the Appellate Court had incorrectly observed that gold ornaments could be considered as consideration for dissolution of marriage in-lieu of Khulla. As per the record, in her cross-examination, the Respondent revealed that she was never mistreated nor did the Petitioner ever misbehave with her, and admitted that she went for a honeymoon and participated in a jirga on behalf of the Petitioner for effecting compromise between the parties. The Respondent's witness admitted the factum to the jirga that the Petitioner or any member of his family didn't take back the dower from her in his presence. The Petitioner produced a Nikkahnama and relied on a marriage agreement in which payment of 60 tolas of gold and four shops were stated to have been received by the Respondent.

Conclusion: The Family Court held the wife responsible for the separation and no evidence was provided to prove the cruel treatment. Therefore, the wife was legally bound to return the dower (24 tolas of gold and four shops) and the husband would retain the list attached by him. The impugned judgment of the Appellate Court was modified by the High Court and the Constitutional petition was allowed.

2018 CLC 875 Peshawar

Muhammad Iqbal vs. Mst. Nazia Iqbal

Facts: This case pertained to the dissolution of marriage decreed in the absence of the Petitioner. The Petitioner, the former husband, challenged the impugned decree on the ground that no proper reconciliation proceedings took place. The counsel, appearing in behalf of the Petitioner, argued that the Petitioner as well as the Respondent reside in Canada, so reconciliation in the court could not take place.

Issue: Can the dissolution of marriage be challenged because no reconciliation proceedings took place?

Analysis: Section 10(4) of the Family Courts Act 1964 allows courts to grant a decree of dissolution bearing in mind the strained relationship of the spouses. In the instant case, the Respondent was unwilling to reside with her then husband and it was noted that she could not be forced under any circumstance. There was also evidence that the Respondent had also remarried after such dissolution, so it appeared that there was no reason to interfere with the impugned decision.

Conclusion: Dissolution cannot be challenged on the basis of technicalities. The petition was dismissed.

2019 YLR 2298 Supreme Court Azad Jammu & Kashmir

Asghar Ahmed Khan vs. Safeena Parveen

Facts: The Petitioner appealed the decision of the Family Court decreeing dissolution of marriage, maintenance, past maintenance, and recovery of dowry articles in favor of the Respondent. The Appellant argued that the impugned decision was passed based on the non-reading of evidence and dissolution of marriage on the ground of Khulla was decreed without determination of consideration. It was further stated that the element of cruelty as was alleged by the Respondent and the witnesses was not proven, therefore the marriage could not have been dissolved on the grounds of Khulla. It was also alleged that the Appellant was under the assumption that the marriage was dissolved on the grounds of Khulla when in reality it was done so on the grounds of Cruelty, and therefore the consideration was not to be determined beforehand.

Issue: Can dissolution of marriage through Khula be granted without a determination as to consideration, particularly where there is cruelty? What constitutes cruelty?

Analysis: The Courts rebutted the argument of an alleged absence of cruelty by perusing the unanimous statements of the witnesses. The Court further recalled the Islamic obligation of a husband to maintain his wife through case law and literature, "that being so a husband is obliged to pay even the arrears of maintenance if not paid during the subsistence of the marriage if the wife has not given any cause for their non-payment." The Court observed as follows:

"Thus, the argument of the counsel for the appellant that the element of torture could not be proved, is ill-founded. It may be observed here that the cruel attitude is not confined only to the extent of physical violence, it includes the mental torture, hateful attitude of husband or other inmates of the house and also includes the circumstances in presence of which the wife is forced to abandon the house of her husband. … 'Under Clause (a) of ground (viii), if the husband treats the wife with cruelty, assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment, then too, the wife is entitled to have a decree of dissolution of marriage. The reading of aforesaid section reveals that marriage can be dissolved on all the grounds or any one of them if proved by the wife. Ground (viii) of Section 2 of the Act makes it abundantly clear that it is not necessary that there shall be physical ill-treatment rather the cruel conduct and cruel treatment is a valid ground for dissolution of marriage…Cruelty by conduct of a spouse also justifies the grant of divorce. This Court in a case reported as Syed Imtiaz Hussain Shah and another v. Mst. Razia Begum and 3 others [2011 SCR 233], observed as under:--

"……. The argument advanced on behalf of the appellant that the factor of cruelty is not proved because none of the witnesses stated that he has witnessed any sign of injury caused by the appellant on the person of the respondent". Such an argument is itself indicative of the cruel mentality. For proof of cruelty infliction of injury is not required by law. In matrimonial matters, the Courts have been treated false allegation against a wife to be a cruelty which results into mental torture and loss of mutual confidence.'

In another case reported as Muhammad Shariful Islam Khan v. Mst. Suraya Begum and others [PLD 1963 Dhaka 947] it was observed in Para 13 as under:--

'13. The view of mine also finds support in the dissolution of Muslim Marriage Act (Act VIII of 1939). Many grounds for divorce by a suit by the wife have been provided for in this Act. One of them is cruelty. Cruelty can be physical and mental. Mental Cruelty is the worst. The false allegation by the husband of a chased women as to chastity of a chased woman cuts to the heat.'… The trial Court has observed that cruelty is not proved. The plaintiff and her witnesses categorically stated in their Court statements that the husband habitually assaults and beats the plaintiff and made her life miserable by cruel conduct."

Conclusion: Yes. The Court held that cruelty is not confined to physical violence but also mental torture, hateful attitudes of the spouse and family, among others.

2019 MLD 720 Karachi

Zahid Hussain vs. Mst. Farhana

Facts: This case involved a petition involving the suit for the dissolution of marriage. The petition contended that the Trial Court had committed an illegality in granting the dissolution as they had no jurisdiction to do so. Petitioner stated the Respondent did not ordinarily live at the residence provided to the Courts.

Issue: What qualifies as the ordinary residence of the wife?

Analysis: The Courts stated that the phrase of "ordinary residence" was an exception for wives in the West Pakistan Family Court Rules as it was deliberately coined bearing in mind the plight of women who are not accepted in the house of their parents after being ousted by their spouses. Furthermore, the Courts with reference to caselaw stated that the phrase did not require a permanent place of residence, rather a residence of few days would be enough. The standard of proof required for such would not be as high either. A claim on Oath which shouldered by individual support would suffice.

In the Trial Court case, a Commissioner was appointed per the jurisdictional complaints of the husband, in which information from the neighborhood as well as a witness stated that the wife had been residing at the disclosed location. The Courts also stated that when the marriage is dissolved by way of Khulla, it is established in precedent that residing somewhere for a day would also meet the "ordinary residence" criteria.

Conclusion: The Courts stated that the phrase of "ordinary residence" was an exception for wives, therefore, the petition was dismissed.

BRIDAL GIFTS AND DOWER

2020 PLD 269 Supreme Court

Fawad Ishaq & Others vs Mehreen Mansoor & Others

Facts: Sixteen years after the marriage, on 30th June 2011, Mehreen filed a suit claiming a house, measuring 1 kanal situated on plot No. 28 Abdara Road, University Town, Peshawar ("the Property"), or its prevailing market value of thirty-three million rupees, which she said constituted part of her dower (mehr) and as mentioned in clause 16 of the Nikahnama. The suit was filed in Family Court-II, Peshawar. Mehreen arrayed Haji Muhammad Ishaq Jan and Mst. Khurshida Ishaq, respectively her father-in-law and mother-in-law, as the only defendants in the suit. The suit was decreed by the learned Family Judge on 3rd May 2014. Both the father-in-law and mother-in-law filed separate appeals but both were dismissed, vide consolidated judgment dated 15th February 2017 of the learned Additional District Judge-X, Peshawar. Thereafter, they filed two separate writ petitions before the Peshawar High Court, Peshawar but these too were dismissed, vide impugned judgment dated 17th December 2018. It is against these three judgments that the two petitions under consideration have been filed; Mst. Khurshida Ishaq has filed Civil Petition for Leave to Appeal No. 155 of 2018 and Civil Petition for Leave to Appeal No. 154 of 2018 is filed by the two sons and one daughter of Haji Muhammad Ishaq Jan who had passed away.

Issue: Can a husband promise the wife property, as dower, in the Nikkah Nama when that property is not owned by him (but is owned by his mother)? Can a husband take away bridal gifts from wife?

Analysis: The bridal gifts given at the time of marriage are the wife's property, these can be added to but not subtracted by the husband. It is also recommended that husbands make wills to provide for their wives. A chasm existed between a woman's position in Islam to that which prevailed till a century ago in Europe and America where upon marriage a wife stood deprived of her property, which became that of her husband to do with it as he pleased. However, in the Muslim world the situation was altogether different and this has been the position since over fourteen hundred years. Muhammad Mustafa (peace be upon him) was employed by lady Khadijah bint Khuwaylid (may Allah be pleased with her), the first convert to Islam, who spent abundantly from her personal wealth in the cause of Islam; she retained her properties and wealth after her marriage to the Prophet (peace be upon him). In Islamic societies Muslim ladies not only retained their properties but also their identities after marriage.

Conclusion: Mst. Khurshida i.e. the mother of the husband was not a signatory to the Nikahnama nor had she, at any stage, agreed to transfer the Property to Mehreen. Mst. Khurshida's husband could not have made a commitment on her behalf with regard to the Property. Mehreen undoubtedly had a valid claim against her husband with regard to the dower promised by him at the time of marriage, as mentioned in the Nikahnama, and could claim the value of the Property from him however she elected not to do so but instead lay claim to the Property. Be that as it may, Mehreen could still claim from her husband any part of her dower which remains unpaid. Moreover, any and all bridal gifts given at the time of marriage are and will remain the wife's property.

2019 MLD 112 Lahore

Mst. Iram Shahzadi vs Muhammad Imran Ul Haq

Facts: The instant case pertained a petition calling into question the decision of the Family Judge Lahore. The facts of the case were that following the dissolution of a marriage, the Judge Family Court held that the Petitioner/Husband was entitled to recover the 22 Tolas of Gold given to the Respondent from her in laws, reversing an earlier decision. The Petitioner in the instant case (the Wife) contests such decision on the grounds of illegality, stating that the Gold ornaments were bridal gifts and not dower, and therefore the husband wasn't entitled to them.

Issue: Can the Petitioner recover the Gold ornaments gifted to his ex-wife?

Analysis: Upon perusal of the Nikkah Nama, the Courts stated that the Gold Ornaments did not make part of the Dower and in fact were to be construed as bridal gifts. With reference to Section 2(A) of the Dowry and Bridal Gifts Act 1976, it was stated that the bridal gifts in addition to dowry are the possessions of the Wife.

Conclusion: No. The dissolution of marriage on the grounds of Khula could be done in consideration of her unpaid dower, which she was willing to relinquish. However, bridal gifts were the property of the woman. The Judge Family Court decision was set aside as being illegal and the petition was allowed.

2009 YLR 1823 Lahore

Najeeb Ullah vs Mst. Makhdoom Akhtar

Facts: In the instant case, the Petitioner filed a suit for dissolution of marriage on the basis of Khula. The court ordered the return gold ornaments as consideration of Khula — a decision that was struck down by the Appellate Court. The Respondent and the Petitioner in the instant case appealed before this Court contending that the Respondent had signed an Iqrar Nama for the return of gold ornaments if she demanded Khula. The Courts found the signing of such a document doubtful considering the Respondent's statement that such was obtained for employment purposes.

Issue: Are bridal gifts liable to be returned as consideration for Khula?

Analysis: In relying upon Islamic Principles, the Courts stated that if the husband wanted to divorce the wife, he cannot get dower back. But if the wife is adamant on divorce, she should return it so as to seek separation. In the instant case, the gold ornaments were held as not being included in the Haq Meher and relying upon the principle that bridal gifts are the absolute property of the wife, the Courts dismissed the petition.

Conclusion: Bridal gifts are the wife's absolute property. The petition was dismissed.

See also: 2018 CLC 1350 Lahore; 2011 PLD 260 Supreme Court; PLD 2016 Lahore 425; 2011 YLR 1033 Peshawar.

2018 C L C 1337 Islamabad

Facts: Through the instant revision petition, the petitioners, Syeda Mehwish and her mother, Mst. Kaneez Zahra, impugn the order dated 28.11.2015, passed by the Court of the learned Additional District Judge, Islamabad, whereby the petitioners' appeal against the judgment and decree dated 02.12.2014, passed by the Court of the learned Civil Judge, Islamabad, was dismissed. Vide the said judgment and decree dated 02.12.2014, the learned civil Court decreed respondent No.2's suit to the extent of gold ornaments (i.e. 12 bangles (150.4 grams), necklace set (114.3 grams), gold ring (6.8 grams), gold chain (35.8 grams), and jhoomar (24.9 grams) or their value at the prevailing gold rate.

Issue: Whether the plaintiff is entitled to recover gold ornaments, Zar-e-Khula and valuable items as mentioned?

Analysis: Since there is plenty of case law in support of the proposition that the gifts or benefits given to a wife at the time of the marriage or during the subsistence of the marriage become her personal property and belongings, the Court took the view that a husband would have no right to recover such gifts whether through a suit for recovery filed before a Family Court or a Court of plenary jurisdiction.

However, a husband will be well within his rights to institute a suit for the recovery of gifts from the wife which were given to her in lieu of dower and entered as such in the Nikahnama.

Conclusion: The learned Court below committed a jurisdictional error by holding that petitioner No.1, having obtained a decree for dissolution of marriage on the basis of khula, was bound to return the gifts received from respondent. benefits and gifts given to the petitioner by her husband were the petitioner's absolute property, which could not be taken away from her.

See also: PLD 2006 272 Karachi; PLD 2012 43 Lahore; 2013 CLC 276 Lahore; 2017 YLRN 402 Karachi

2018 MLD 1811 Peshawar

Muhammad Abbas vs. Mst. Sawaira & Another.

Facts: This case was related to the Suit for dissolution of marriage and recovery of dower. The plaintiff/Respondent/wife sought for dissolution of marriage on the basis of khulla. Four tolas of gold ornaments in place of dower, half paid was kept in custody of the third party by the Petitioner. The Defendant/Petitioner/husband contended that the Trial Court dissolved the marriage on the basis of khulla, however, it did not issue an order of return of dower. Whereas the Respondent argued that she developed hatred towards her husband because of his attitude and therefore applied for dissolution of marriage on the basis of khulla.

Analysis: The Court noted that the ultimate query is to be resolved in between the departed husband and wife their relations being ended on the ground of Khulla. The concept of Khulla has been enshrined in Verse No. 229 of Sura-e-Baqarah in the Holy Qur'an which reads as follows:-

Translation: "229. Divorce must be pronounced twice and then (a woman) must be retained in honour or released in kindness. And it is not lawful for you that ye take from women aught of that which ye have given them; except (in the case) when both fear that they may not be able to keep within the limits (imposed by) Allah. And if ye fear that they may not be able to keep the limits of Allah, in that case it is no sin for either of them if the woman ransom herself. These are the limits. (imposed by) Allah. Transgress them not: For whoso transgrassed Allah's limits, such are wrong-doers." For the grant of Khulla which is an indefeasible right of any married woman to separate her ways leaving dower with her husband, while reconciliation proceedings were under way, by that time it was observed by the learned Judge Family Court that by all means this tie of the wedlock cannot be sustained for the abstinence of Mst. Sawaira as she had taken for granted to dissolve the marriage even if she has to return the dower amount. The Two Courts observed the demeanor of the Petitioner (former husband) was not amenable. They also noted that Mst. Sawaira had no love left for her husband Muhammad Abbas, besides being dragged in criminal case this may be the reason for her seeking annulment to dissolve the marriage on account of Khulla. she is being frightened may not be killed by her parents, therefore, she is residing at Dar-ul-Aman for some length of time. As dower of Ms. Sawaira has never been paid to her and 2 tolas golden ornaments which were given to her at the time of marriage by her husband is kept with a 3rd party for its safe custody by the Petitioner himself under an admission and the remaining 2 tolas golden ornaments have never been paid to her, therefore the Petition (for return of dower) has no force.

Conclusion: The Court had the power to refuse to give orders on the return of the dowered property/amount to the husband: "Court has the powers to refuse the return of the dowered property/amount to husband or to release him from payment of dower where due to his cruelty she was compelled to resort to Khulla". And in this case, the Mst. Sawaira was lodged into a Darul Aman due to fear at the hands of the Petitioner and her own parents.

See also: 2003 PLD 146 Peshawar

RETURN OF DOWRY ARTICLES

2017 S C M R 393 Supreme Court

Shafique Sultan vs Mst. Asma Firdous

Facts: Mst. Asma Firdous, respondent No.1, filed a suit against the petitioner for recovery of maintenance allowance for two minor children and return of dowry articles valuing Rs.217,710/-. The petitioner contested the suit. He took the stance that he was not in a position to provide maintenance to the minors and no dowry was given to the respondent by her parents at the time of her marriage with him. After recording evidence, the Judge, Family Court, Toba Tek Singh decreed the suit vide judgment and decree dated 21.12.2009 in the following terms:-
"The suit of the plaintiffs is decreed to the effect that plaintiffs Nos.2 and 3 are entitled to recover Rs.1500/- per month each from the date of institution of the suit till their marriage with 10% annual enhancement in future maintenance. Plaintiff No.1 is also entitled to recover the dowry articles as per list Ex.P2 excluding the articles mentioned at serial Nos.18 and 20. In case of non-delivery of dowry articles plaintiff would be entitled to get 65% of their price mentioned in the list Ex.P2, except of gold ornaments of which she is entitled to get value mentioned in Ex.P2. No order as to costs."

Issue: Can oral evidence be sufficient to make a claim for dowry articles?

Analysis: The petitioner submited that the respondent could not establish her claim regarding dowry articles because the entire case of the respondent was based upon oral evidence which was not supported by any cogent, confidence inspiring or independent evidence. He further submitted that neither receipts for purchase of dowry articles were placed on record nor their authors were produced in evidence before the trial Court. The trial Court as well as the High Court examined the evidence produced by the parties in its true perspective. The respondent appeared as PW.1 and gave details of dowry articles and placed her affidavit on record as Ex.P1. She was subjected to lengthy cross-examination but nothing helpful to the petitioner could be brought on record. She also produced Abdul Rashid as PW.2 who categorically stated that dowry articles as per list (Ex.P2) were given to the respondent by her parents at the time of her marriage with the petitioner. As opposed to this, other than denying delivery of dowry articles, the petitioner did not produce any evidence of any nature to substantiate his position. The Court found that there were no dowry articles beyond the financial resources of the respondent's family. Giving dowry articles to daughters is in line with custom/tradition and practices which are deeply rooted in our society and are followed by parents of all classes irrespective of their financial status. Learned trial Court as well as the High Court have, however, been careful and circumspect in decreeing the suit to the extent of 65% of the value of dowry articles claimed by the respondent on the ground that the marriage lasted 6-1/2 years and the value of the dowry articles underwent depreciation on account of use.

Conclusion: Yes. There was no reason to interfere with the Orders of the Trial Court and the High Court. Moreover, the provisions of Qanun-e-Shahadat Order, 1984 are not stricto sensu applicable to family matters. As such, the argument of learned counsel for the petitioner regarding proof of receipts and the effects of non-production of authors of such receipts, in the specific facts and circumstances of the present case is misconceived.

2017 S C M R 321 Supreme Court

Haji Muhammad Nawaz vs Samina Kanwal & Others

Facts: The judgment of the appellate Court dated 31.1.2004, reveals that the suit for recovery of dowry articles was decreed as per the list Ex.P-1, or in the alternative the costs of dowry articles at Rs.8,31,700/-, which remained unsatisfied for a period of over one decade. Therefore, an execution application was filed by respondent No.1 and the same was allowed by the Civil Judge 1st Class, Sialkot vide order dated 04.12.2013 in the following manner:-
"Now to come up for payment of all the remaining dowry articles mentioned at Sr. Nos.23, 28, and 9 (A VCR only) of list Ex.PI on the date already fixed i.e. 13.12.2013. It is made clear that golden ornaments

mentioned at Sr. No.23 shall be paid either in the shape of golden ornaments or in alternative price thereof as per market value of the gold at the date of its payment."
Issue: The executing Court cannot go beyond the decree, therefore, is the course for execution of decree followed by the three Courts below is unwarranted by law?

Analysis: The grant of requisite relief regarding payment of price of golden ornaments at the prevalent market rate, in case the golden ornaments are not returned, is fully justified and it cannot be said that it amounts to going beyond the terms of decree by the executing Court. For this purpose, the ratio of judgment in the above cited case of Ayesha Shaheen (supra) is also fully applicable to the facts and circumstances of the present case.

Conclusion: The Executing Court was correct in making an Order as to present day market price of unpaid dowry articles i.e. gold ornaments and it has not gone beyond the scope of the original Order in doing so.

See Also: 2013 SCMR 1049

2006 SCMR 1136 Supreme Court

Zulfiqar Ali vs. Musarrat Bibi

Facts: In this case, the Petitioner (husband) claimed to have returned dowry articles to the Respondent (wife), relying on an agreement signed by two brothers of the wife. Plaintiff disagreed. The Appellate Court did not accept the agreement and directed the husband to return the articles. The judgement of Appellate Court was maintained by High Court.

Issue: Can the dowry articles be returned to a person other than wife?

Analysis: It was stated by the Supreme Court that the sister was not a party to the agreement and the brothers had denied their signatures on the agreement. Furthermore, the husband could not show any authority given by the wife to her brothers to enter into the agreement with the husband. Therefore, the judgement of High Court affirming the conclusion reached by the Appellate Court was not open to any exception.

Conclusion: No, unless specific authority was given by the wife to other parties to receive the dowry articles. Moreover, the brothers who had allegedly received dowry articles also denied their signatures. Dismissed.

2011 SCMR 1412 Supreme Court

Muhammad Jamil vs. Mst. Ishrat Bang

Facts: The Additional District Judge of District Toba Tek Singh granted the Respondent recovery of dowry articles. Petitioner appealed to Lahore High Court, which was dismissed.

Issue: Should the dismissal be overturned due to misreading of the record by lower courts?

Analysis: The Apex Courts affirmed the decision of the Judge Family Court as well as the Additional Judge, as the Courts could not have taken the witness' statements on behalf of the appellant in consideration as such witnesses were not produced to be cross examined by the

Respondent in the post remand proceedings. Upon the perusal of the limited evidence they had due to the aforementioned, the Apex Court reached a similar conclusion and therefore in deciding that there had been no misreading or non-reading of record by the Lower Courts.

Conclusion. No. The appeal was dismissed. The Court held that there was no misreading of the record by lower courts.

1995 S C M R 885 Supreme Court

Muhammed Tanzeel vs Mst. Khair un Nisa

Facts: On 26-6-1989 the respondent filed a suit for the recovery of her dowry articles or, in the alternative, for a decree in the sum of Rs.24,000 which represented the value of the articles. She stated that the petitioner had forcibly thrown her out of his house and had kept back her dowry articles which were given to her at the time of her marriage. The suit was resisted by the petitioner. He inter alia stated that the respondent had taken away her dowry articles with the assistance of her relatives while he was away from the house.

Issue: if the dowry articles given at the time of the marriage were in violation of the restrictions laid by the Dowry and Bridal Gifts Restriction Act, 1976?

Analysis: the argument regarding the violation of the restriction placed in Dowry and Bridal Gifts Restriction Act, 1976 appears these have been advanced here in order to deprive the respondent of her property. It is true that violations of the provisions of the sections 3 and 8, ibid, constitute offences under section 9 of the Act but then as provided by this very section the cognizance thereof cannot be taken by the Courts except on a complaint in writing made by or under the authority of the Deputy Commissioner within nine months from the date of the Nikah or Rukhsati, whichever is later. In this case, the Deputy Commissioner did not lodge any complaint within the prescribed period. It is also to be noticed that it is not the case of the petitioner that when at the time of the respondent's Rukhsti her dowry articles were being taken to his house he had made any protest with regard to their valuation a violation of section 3 of the Act.

Conclusion: The husband, who did not protest the violation of the Dowry and Bridal Gifts Restriction Act, 1976, cannot belatedly take such a plea and contend that she should not be allowed to take them back or receive their price as a violation of section 3 has taken place. This is clearly a dishonest plea. Moreover, As regards the list of dowry articles, it does not become inadmissible in evidence merely because a copy thereof was not handed over to' the Nikah Registrar.

2011 SCMR 1361 Supreme Court

Farzana Rasool vs. Dr. Muhammad Bashir

Facts: The background to the case at hand is that a matter of recovery of dower, recovery of dowry articles, and maintenance, initially before the Family Court. The matter was deferred to a bench of Arbitrators for resolution per a statement made by the Respondent through the consent of the Appellant. Per a transfer application filed by the Respondent, the District Judge Vehari gave the Arbitrators 15 days to decide, after which the matter went back to Senior Civil Judge Vehari. The latter disposed of the suits on the basis of the award decided by the Arbitrators. In this case, the Respondent is appealing the decision before the Lahore High Court.

Issue: Can the Arbitrators decision on dowry and maintenance be appealed on the grounds that such a matter could not have been referred to Arbitration?

Analysis: Respondent argues the former Court decision should be set aside as such a matter cannot have been referred to Arbitration. Appellant in the instant case appealed before the Apex Court. The court considered whether normal rules of evidence and procedure as are under the Evidence Act and Civil Procedure Code would apply to West Pakistan Family Court Act 1964. Upon perusing the preamble as well as distinguishing the procedure prescribed in it from ordinary procedure, the Apex Court held that the Act provides for a special procedure which aims to speedily and conveniently solve matrimonial matters and shorten the agony pertaining such. Therefore, the Court held that any method that wasn't expressly illegal or offended the rights of parties can be adopted by the Family Courts.

Conclusion:
No. The Defendant's conduct in objecting such decision of Arbitrators was condemned. The Supreme Court set aside impugned judgment and restored that of Appellate Court and Family Court in circumstances.

2012 SCMR 976 Supreme Court

Abdul Razzak vs. Shabnam Noonari

Facts: The background to this case pertains to the recovery of dowry articles and maintenance allowance initially decreed by the Family Court. The Petitioner appealed the decision before the Additional District Judge. The judge dismissed the appeal. Petitioner then appealed to the High Court of Sindh invoking Constitutional Jurisdiction pursuant to Article 199 of the Constitution of Pakistan which was also subsequently dismissed. The Petitioner brought this appeal before the Apex Court in stating that the lower courts did not take into consideration his financial status. The Supreme Court dismissed the leave to appeal upon the perusal of records and affirmed the initial decree as done after giving the evidence due attention.

Issue: Can the initial Family Court decree be appealed per the Petitioner's argument that his financial status was not considered in determining maintenance allowance?

Conclusion: No. Since the initial decree already considered the evidence in question. The Supreme Court dismissed the appeal.

2012 SCMR 641 Supreme Court

Tariq Saeed vs. Ifra Naz

Facts: The lower courts granted maintenance to ex-wife of petitioners without appreciating that she was no longer the wife of the Petitioner. However, the wife was also awaiting return of dower and rent on properties attached thereto.

Issue: Can maintenance be granted to ex-wife till the return of dower?

Conclusion: Yes. The Apex Court stayed the execution of the maintenance on the condition that the dower amount be submitted before the executing Court, along with rent on the attached properties.

2012 SCMR 671 Supreme Court

Khadeeja Bibi vs. Abdul Raheem

Facts: The petitioner No.1 Khadeeja Bibi was formerly married to Abdul Raheem respondent No.1. The petitioners filed a consolidated suit seeking maintenance for the three children as well as return of dowry articles claimed by the petitioner No.1. The trial Court vide judgment dated 19-11-2009 decreed the suit for maintenance but did not pass the decree for articles of dowry or the value in lieu thereof. On appeal, the learned Additional District Judge vide judgment dated 23-2-2010 reduced the maintenance per child and also allowed the claim of the petitioner No.1 for articles of dowry to the extent of the value of Rs.1,50,000. The respondent filed Writ Petition No.7385 of 2010 which has been allowed. As a consequence, the decree for articles of dowry has been set aside on the ground that no issue in respect thereof was framed by the trial Court.

Issue: Can the Appellate Court refuse the plea based on whether a relevant issue had been framed at the lower Courts? And if the Court had come to the conclusion that no issue had been framed, should the mater have been sent back to the trial Court?

Analysis: It was held that no factual basis was brought on record to justify such annual increase in the initial trials. This case concerns a dispute about automatic increase in maintenance for minor children and dowry articles. The mother of minor children wanted to introduce evidence in the form of financial statistics including Sensitive Price Index (SPI) to persuade Family Court to grant annual increase in line with such statistical data. It was noted in the order of the Court dated 11-11-2011 reproduced in the Supreme Court Order was also sufficient to put the respondent to notice as to the claim of dowry articles made by the petitioner in the plaint.

Conclusion: The Supreme Court set aside judgments and decrees passed by High Court and Lower Appellate Court and remanded the case to Family Court with directions to decide the matter afresh after framing specific issues and recording of evidence with respect to the dowry articles as well as enhancement of maintenance awarded to the minor children and shall thereafter allow the parties to lead evidence before deciding the case afresh. During this period, the Apex Court directed that the maintenance at the rate of 2,000 per month shall continue to be deposited.

2013 SCMR 1049 Supreme Court

Mst. Ayesha Shaheen vs. Khalid Mehmood

Facts: The instant case pertained to a conflict in the market value of the dowry articles — 17 tolas of gold. Initially, the suit was decreed in the Appellant's favor per the market value of the ornaments. The Appellate Court overruled the decision. The Apex Court relied on its past jurisprudence where the market value for ornaments was held to be the current market value at the time, but further stated that each case was to rest on its facts and there wasn't a general rule established. It was stated that in the case at hand, the Appellant prayed for the recovery of the gold or its market value in return. As the Trial Court only granted the decree of a return of the ornaments, such would be alternatively satisfied by an amount that would enable her to purchase such from an open market, which in turn would be the market value.

Issue: How should the market value of dowry articles be determined?

Analysis: The principle was held that where the decree for delivery of good or its market value is granted, the value would be determined with reference to its date of payment, and such was distinguished from this case.

Conclusion: The appellant was held entitled to the current market value of the 17 tolas of gold and the impugned high court and appellate court decisions were set aside.

2014 PLD 335 Supreme Court

Mst. Shazia Begum vs. Additional District Judge, Islamabad

Facts: The petitioner on 25-3-2010 filed a composite suit before the Family Court Islamabad, claiming dissolution of marriage on the basis of cruelty; recovery of dowry articles valuing Rs.5,31,250 as mentioned in the list provided by her; recovery of the gold ornaments weighing 9 tolas, which were asserted to have been given to her as dower at the time of Nikkah but snatched by the respondent subsequently; a house, which she claimed was given in lieu of dower and the maintenance amount @ Rs.6000 per month with effect from 15-12-2008. The learned Family Judge seized of the matter, upon conducting the trial allowed the suit as was prayed for, except that the maintenance allowance was reduced to Rs.3000 per month till the Iddat period.

Issue: In the absence of evidence of having being given and then deprived of dower

Analysis: The Examination of Nikahnama showed that the house was never gifted to the wife or given to her in lieu of dower. As per the gold ornaments, evidence on record did not show they were forcibly snatched from her by the husband. About the dowry articles, a list of dowry articles was filed with the trial court conceding such articles (mentioned therein) as part of the petitioner's dowry and in his possession, thus the petitioner would be satisfied, if the dowry articles as per the list provided by the said respondent are returned, and if he fails to do so, the value of such articles/items which are not returned should be given to the petitioner as per her list of dowry articles (Exh.P/5). For maintenance, the petitioner was forcibly kicked out by the respondent from his house and therefore as per law he is bound to provide her maintenance, thus the amount awarded by the learned Family Court vide judgment dated 29-7-2011 should be sustained. The Apex Court took the view that the learned appellate as well as the constitutional court has not assigned valid reasons while discussing the evidence on the record in respect of the maintenance claim of the petitioner and such judgments therefore, cannot be sustained in law.

Conclusion: The appeal was allowed. The Supreme Court awarded the wife a lump sum amount of Rs.75,000 (rupees seventy five thousand) as against her claim of Rs.1,02,000, which was to be paid by the respondent to the petitioner within a period of one month. In the light of the above, the judgment and decree of the appellate court was affirmed in the writ jurisdiction by the learned High Court is modified to the extent of the maintenance and also for the recovery claim of the petitioner i.e. the suit of the petitioner with regard to articles of dowry shall stand decreed as per the list provided by the respondent and in case, the respondent is not in a position to return any articles/items in accord with the said list, he shall be liable to pay value/price with respect to such articles/items in the list of dowry articles brought on the record by the petitioner.

2016 PLD 613 Supreme Court

Mst. Yasmeen Bibi vs. Muhammad Ghazanfar Khan

Facts: In the case at hand, Column No. 17 of the Nikkah Nama between the parties specified a land to be transferred in the name of the Petitioner, and such was decreed by the Trial Court after finding it was within the jurisdiction of the Family Court as the Petitioner was residing within Multan at the time. Subsequently, the District Appeal Court set aside such decree, while the Judge of the Lahore High Court found that the Court did not have jurisdiction. The Apex Court refuted the argument.

Issue: What is the ambit of the jurisdiction of the Family Court? Can the Family Court decree on the transfer of land promised in the Nikah Nama?

Analysis: In refuting the High Court argument, the Apex Court relied on the preamble of the West Pakistan Family Courts Act 1964, establishing, in conjunction with caselaw, that the purpose of the Act

was to make matters simpler in matrimonial disputes. The Apex Court noted that "Before promulgation and enactment of the Muslims Family Laws Ordinance, 1961, and the West Pakistan Family Courts Act, 1964, such matters were dealt with by the Civil Courts or Criminal Courts with regard to the maintenance allowance, which was a cumbersome, lengthy and tiring procedure. For getting the final relief of her grievances, the wife had to wait for years for recovery of dower, maintenance and other ancillary matters." Having established the jurisdiction, the courts stated that in the instant case, the undertaking pertaining the land being transferred in her name per the Nikkah Nama was conclusive in nature and fell within the jurisdiction of the Family Court in Multan, where the wife was residing. Therefore, the District and High Court erred in their decisions as it set out to defeat the purpose of the legislation.

Conclusion: The Honourable Supreme Court held: "As in this case the landed property, given to the wife, or the undertaking given in the "Nikah Nama", to be transferred to her name is conclusive in nature and may be construed as a part of dower or a gift in consideration of marriage therefore, it was falling within the exclusive domain of the Family Court at Multan, as the wife was/is residing there, which has not been denied by the respondent, therefore, in our considered view, the District Appeal Court and the learned Judge in Chamber of the High Court, Multan Bench, Multan fell into legal error by holding the view to the contrary."

2017 SCMR 393 Supreme Court

Shafique Sultan vs. Mst. Asma Firdous

Facts: The aggrieved Petitioner in the instant case contested the decree pertaining the return of the dowry articles on the basis that such was supported by oral evidence only in the absence of any independent evidence or receipts.The instant case was presented before the Supreme Court by way of appeal in which the Lahore High Court decreed in the favor of the Respondent, and set aside the initial judgement.
Issue: Can the High Court decree pertaining to the return of dowry articles be overturned on the basis that the argument was only supported by oral evidence?

Analysis: The Courts, in assessing the judgement of the High Court, perused that there was a lengthy cross examination of the Respondent in which nothing beneficial to the Petitioner could be brought on record, while the second witness stated in his cross examination that the dowry articles were given to the Respondent at the time of her marriage. The latter was not cross examined on such, which was consequently presumed to be true as the Petitioner did not additionally produce any evidence to substantiate his claims as his claims were deemed unconvincing. It was further stated by the Apex Court that the dowry articles alleged by the Respondent were mostly articles of daily use and not to be considered beyond the means of the Respondent's family. The High Court was also stated to have been very diligent in their assessment as the suit was decreed to the extent of 65% of the dowry articles bearing depreciation in mind, while dowry claimed such as cows and calves were disallowed in the absence of evidence.

Conclusion: No. The High Court had henceforth correctly applied its judicial mind and no legal error or flaw was found. Consequently, the instant petition was dismissed.

2020 CLC 380 Quetta

Aziz Ur Rehman vs. Mst. Bibi Jameela

Facts: This case involves a suit regarding recovery of dowry articles and dower. Initially the Family Court decreed the suit, and Appellate Court dismissed the appeal. It was stated that it was not possible for the wife to keep the record of the purchased articles and prepare a list of dowry articles and obtain signatures of husband and the witnesses. The case at hand was preceded by a decree pertaining dowry articles in the favor of the Respondent, as the aggrieved Petitioner contended that the dowry articles had been

returned to the Respondent in the presence of the Assistant Commissioner with receipt. However, the Petitioner failed to prove his plea.

Issue: Can the recovery of dowry articles be appealed as there was no record of the purchases of dowry articles?

Analysis: The wife's solitary statement was sufficient to prove dowry articles. However, if the marriage wasn't consummated, then the wife would be entitled to half of the fixed dower only. The remaining half should be restored to the husband unless such a right was waved by him voluntarily.

Conclusion: Relying on the Supreme Court's jurisprudence, the Court held that it's not possible in our society to keep a list and track dowry articles, while relying on further caselaw to stipulate that solitary statement of a wife is enough to prove the existence of dowry articles. The suit was disposed of by modifying the value of the dowry articles to account for depreciation in their value.

2018 PLD 31 Supreme Court Azad Jammu & Kashmir

Shahzad Rauf vs. Shabana Yasmeen

Facts: In this case before the Supreme Court of Azad Jammu and Kashmir, the Petitioner is appealing a family court decree which passed the dissolution of marriage on the ground of cruelty and consequently ordered a return of dowry and dower articles. The Appellant contested such decision arguing that the dowry could not be recovered by way of a suit before the Family Court as such would not be possible for a dowry that was once paid and latterly taken back. Petitioner argued doing so would lead to it becoming a civil liability.

Issue: Can dowry could be recovered by way of a suit before the Family Court if it was once paid but later taken back?

Analysis: The Court relied on a multitude of cases of the opinion that once the nature of dower is fixed, it should not undergo changes, even if it is snatched, and would remain under the jurisdiction of the Family Court. It was further stated by perusing the preamble of the West Pakistan Family Court Act 1964 that the Jurisdiction of the Family Court per Section 5 pertaining the recovery of dower was exclusive and such would not be altered in the circumstance of a dower once paid and snatched back.

Conclusion: The Family Court rightly granted the decree of dissolution of on the grounds of cruelty. It was obligatory for the husband to pay his wife maintenance as she left his house on the grounds of cruel treatment subjected towards her. The appeal was dismissed since no illegality or infirmity was noticed in granting the decree of dowry.

MAINTENANCE

2018 YLR 2586 Lahore

Faiz Mustafa vs. Judge Family Court

Facts: This case pertained to a suit for recovery of maintenance. The Petitioner/father contended that the maintenance allowance of RS. 4,000 per month was quite exorbitant as he had no permanent monthly income. The Respondent said the Petitioner was running many side businesses and doing a job in a factory.

Issue: Is RS. 4,000 per maintenance too high?

Conclusion: The Family Court concluded that the monthly income of the Petitioner was approximately RS. 14,000 therefore it had rightly determined the quantum of maintenance allowance of the minor. The impugned decision could not have been called into question unless there was some illegality, perversity, or a jurisdictional effect, which wasn't present in the instant case.

2019 MLD 1936 Karachi

Mst. Naureen vs. Nadir Ali Rajpur

Facts: This case involves a suit for dissolution of marriage by way of Khulla, recovery of maintenance allowance for minor and wife (Plaintiff), and dowry articles. Plaintiff petitions Courts to raise the maintenance amount from Rs. 12,000 to Rs. 25,000 for herself and her daughter due to the Respondent's strong financial position and their daughter's school fees.

Issue: Should maintenance be increased as per the financial condition of the Respondent?

Analysis: The daughter studied in a reputed school and the Respondent's admissions corroborate his financial status, so the maintenance of the daughter was increased to Rs. 20,000. However, maintenance pertaining the Petitioner was dismissed. Per the law, a wife is not entitled to maintenance when she refuses to live with her husband without any lawful justification, as is the case here. Conclusively, Plaintiff only had to receive maintenance during her Iddat Period.

Conclusion: Yes**.** The maintenance of the minor was increased to Rs. 20,000. Maintenance of Plaintiff was not increased.

INTERIM MAINTENANCE

2009 MLD 790 Lahore

Dr. Sharjeel Iqbal Mirza vs Mst. Alia Yasmeen

Facts: In the instant case, the Petitioner appealed an order of interim maintenance stating the order was illegal and passed without his knowledge. However, the court found no appeal lay in the Family Court petition.

Issue: Can the Family Court grant an ex-parte order of interim maintenance?

Analysis: On the question of whether an ex-parte decree could be passed, the Court held that the litigant had a right of hearing only if he responded to the summons of the Court and procceded with their cases with serenity. The Courts stated that the Petitioner was just delaying proceedings and the interim maintenance cannot be appealed.

Conclusion: Yes. The petitioner/defendant is bound to pay maintenance accordingly. The petition was denied.

2009 CLC 980 Lahore

Abbas Ahmad vs Mst. Ayesha Aziz

Case: In the instant case, the Petitioner filed an appeal before the Constitutional Court claiming regarding an order to pay interim maintenance to his wife. The Petitioner argued that the Family Court could not fix maintenance without recording any evidence to such effect, and that his irregular payments did not constitute default.

Issue: Do irregular payments of interim maintenance constitute default and noncompliance of the Family Court's order decreeing payment of interim maintenance?

Analysis: The High Court held that the Petitioner had in fact made irregular payments, however, that did not amount to noncompliance of the interim order in a strict sense. The Court also held that fixing of interim and full maintenance rate must be done in consideration of the material facts and evidence. Furthermore, while willful disobedience of interim maintenance may call for penal sanctions, such sanctions were discretionary and not mandatory.

Conclusion: The High Court held that irregular payments did not amount to noncompliance of the interim order. Consequently, the High Court sent the case back to the Family Court ordering the Court to reassess the maintenance on the matter of merits such as social status, expenses, and earning position of the husband. The petition was allowed accordingly.

2010 YLR 3275 Karachi

Syeda Farhat Jahan vs Syed Iqbal Hussain Rizvi

Facts: This case pertained to the Respondent not having paid the previously ordered interim maintenance after the case was dismissed on the grounds of non-prosecution and dismissed by the Family Court. The Constitutional Court held that the lower court had erred in such dismissal.

Issue: Can the Family Court dismiss a maintenance case for non-prosecution after making an order as to interim maintenance? Consequently, can the order for payment of interim maintenance be appealed and can the payment be excused?

Analysis: The father is legally and morally obligated to maintain his minor children and such a duty cannot be excused by the Courts.

Conclusion: Father cannot be excused from payment of maintenance of his minor children. The High Court accepted the petition and ordered the father (Respondent) to pay arrears of interim maintenance.

2010 YLR 1702 Lahore

Rashid Kareem vs Judge Family Court

Facts: The case challenged a Family Court order for interim maintenance on the grounds of being non-speaking and excessive.

Issue: Can a Family Court interim maintenance order be petitioned per interlocutory appeal?

Analysis: The Courts in assessing such claims stated that it is the duty of a father to maintain their minor child and the Petitioner in this circumstance had not pointed out any illegality. It was further held that no statutory appeal was available, nor could one be assailed through a writ petition.

Conclusion: The Petitioner cannot appeal decision until the Family Court issued a final judgment. The petition was dismissed at this stage in trial.

2015 YLR 2364 Karachi

Tahir Ayub Khan vs Mst. Alya Anwar

Facts: In this case, the Petitioner contested the Family Court order of interim maintenance for being too exorbitant. The Respondent argued that the order could not be challenged pursuant to Section 14(3) of the West Pakistan Family Court Act 1964.

Issue: Can the Petitioner contest a Family Court interim maintenance order for being too exorbitant?

Analysis: The Courts in this circumstance conceded that a Constitutional Petition was maintainable against an interim order if such is void ab initio, without jurisdiction, fanciful and has been finalized. Here, the order was interim in nature and thus could not be challenged as no arbitrariness was present.

Conclusion: Petitioner could only appeal once the Court order had attained finality. Petition was dismissed.

IDDAT MAINTENANCE

1989 SCMR 119 Supreme Court

Muhammad Najeeb vs Talat Shahnaz

Facts: In this case, Petitioners appeal two conjoined decisions ordering Petitioners (husbands) to pay past maintenance, for when the wedlock was intact, to the wife after divorce. Petitioners appealed the High Court's dismissal of their case.

Issue: After divorce, can a wife file for and be granted past maintenance while the marriage was intact and for the Iddat period?

Analysis: The argument in the initial case pertained to Section 9 of the Family Laws Ordinance which spoke of husband and wife, on which ground it was argued that a wife could not have moved an application for maintenance. It was held by the Courts that such was incorrect. It was held that such was not raised before the Trial Court and therefore leave to appeal was dismissed.

Conclusion: Yes, the word 'wife' would cover her for past maintenance and for maintenance during Iddat period. There was no error in the judgement of the High Court.

1989 SCMR 1416 Supreme Court

Abdul Majid vs Humaira Bibi

Facts: The wife was abandoned by the husband within 4 days of marriage and then divorced by the husband within 10 months of the marriage. The Arbitration Council awarded maintenance to the wife for one year. The material facts of the instant case were of maintenance being granted to the Respondent following divorce, which was unsuccessfully challenged by the Petitioner in Apex Court.

Issue: Can the Arbitration Council make an order mandating payment of maintenance for one year after the divorce?

Analysis: The husband must maintain wife after divorce till the end of the Iddat Period.

Conclusion: The petitioner was liable to pay maintenance till the end of the iddat period, therefore there was no irregularity in the Order of the High Court which upheld the maintenance granted by the Arbitration Council. The petition was dismissed.

2007 SCMR 49 Supreme Court

Muhammad Sharif vs Additional District Judge

Facts: The instant case appealed the Lower Appellate Court ordering the Petitioner to compensate the Respondent for three years of past maintenance as well as maintenance iddat period. When such was upheld by the High Court, the Petitioner moved this constitutional petition before the Supreme Court on the grounds that past maintenance is not Islamic, arguing that the Lower Appellate Court had erred in law.

Issue: Can past maintenance and Iddat maintenance be sought after divorce? If so, then for how long and at what rate?

Analysis: When the wife is forced to live away from husband due to no fault of her own, she would be entitled to maintenance — as was the case at hand. Furthermore, the West Pakistan Family Court Act 1964 states that the Appellate Court had similar powers to a Trial Court. Thus, the Appellate Court did not err in issuing the order. Petitioner had not paid any maintenance.

Conclusion: Yes. The petition contesting payment of past maintenance was dismissed.

2016 SCMR 2069 Supreme Court

SHAHZAD YOUSAF VS FARZANA SHAHZAD

Facts: In the instant case, the Petitioner contested an order to pay maintenance to a minor child at Rs. 20,000, subject to a 10% annual increase. The High Court reduced the annual increase to 5%. The Petitioner argued for such maintenance to be exorbitant in light of an alleged financial crisis of his business. He also claimed the business he worked in was not his own.

Issue: Can Petitioner appeal annual maintenance increase on account of financial concerns?

Analysis: Perusing the evidence, the Courts considered that the Petitioner in his witness statement couldn't substantiate his claims of being in a business slump, nor could he substantiate not running the business at hand. Rather, the Respondent had produced evidence substantiating the Petitioner's strong financial position to pay the maintenance.

Conclusion: The Court maintained the initial court's decision to increase annual maintenance by 10% yearly. Petitioner's pleas to appeal were dismissed.

2017 CLCN 64 Karachi

Nadeem Ahmed vs Additional District Judge

Facts: The material facts of the instant case were of future and past recovery of maintenance and return of dowry articles being granted to the Respondent. The Petitioner contested such by stating that he earned a very limited income in which he supported dependent family, while the Respondent left on her own accord and was not entitled to maintenance. He further stated that the Courts did not pay due attention to dowry article receipts, which were supposedly fabricated.

Issue: Can payment of maintenance be excused based on the income of the husband? Can return of dowry articles be challenged on the basis of veracity of receipts? Who has to prove that the wife left the matrimonial house on her own accord?

Analysis: On the question of maintenance, however, the Courts confirmed that the Petitioner was in fact earning as he claimed, and therefore the current maintenance rate was exorbitant. As per the claims of the receipts of dowry articles, the Lower Courts were stated to have rightly assessed the receipts, The Courts stated that the Respondent had produced evidence of abandonment by the Petitioner. The Petitioner, on the other hand, did not produce evidence that Respondent left the house on her own accord; nor did he make efforts to bring her back.

Conclusion: The High Court reduced the maintenance rate. The rest of the Petitioners claims were dismissed.

CHAPTER 2 – INHERITANCE

SUNNI INHERITANCE: DISPUTE ON THE DENOMINATION OF DECEASED

2018 MLD 1982 Lahore

Mst. Bhagan and others (appellants) vs. Ghulam (deceased) through L.R.S. and others (respondents)

Facts: The inheritance distribution was done according to Shia faith, claimants contended that the deceased were of Sunni faith.

Issue: Distribution of inheritance in case of dispute regarding the faith of deceased i.e. was deceased of Sunni or Shia faith.

Analysis: defendants were unable to prove the conversion of the deceased from Sunni to Shia. The funeral prayers of the deceased were led by a Sunni Imam, No receipt of the evidence provided by the defendants was given.

Conclusion: There was no illegality and material irregularity that had been pointed out in the impugned judgments passed by the Courts below and therefore, the second appeal was dismissed in circumstances.

PLD 2018 379 Islamabad

Muhammad Ahmed Khan and Others (appellants) vs. Mst. Nashid Anum Shahid and others (respondents)

Facts: the case involves distribution of inheritance according to Suni Fiqah. The deceased was issueless and left behind a widow and three full/real sisters.

Issue: Distribution of Inheritance

Analysis: There are three main categories, the parents and children, the siblings and the uncles and aunts of the relatives. Each category excludes the others.
The full/real sisters as sharers of the deceased cannot be excluded and are entitled to inherit as residuaries. The paternal uncles belong to the last category, i.e. the descendants of the grandfather, while the full sisters belong to the higher category i.e. descendants of the father of the deceased. The paternal uncles stood excluded from inheriting as residuaries out of the legacy of the deceased by the full/real sisters.

Conclusion: No legal infirmity having been pointed out in the impugned judgment of Trial Court appeal was dismissed.

2018 P L D 803 Lahore

Tahira Bibi Petitioner vs. Muhammad Khan & Others

See also In Chapter 4: *Gifts Resulting in Exclusion of Legal Heirs*

Facts: This application in revision is of the plaintiff and arises from a dispute relating to land measuring 27-Kanals 4-Marlas, which was owned by Ghulam Qadir, who was her real father and stepbrother of

defendant No.1, Muhammad Khan. Vide gift mutation No.3847 dated 16.06.1999 (Exh.P-3) and gift mutation No.3760 dated 17.02.1998 (Exh.P-4), land measuring 15-Kanals, 4-Marlas and 12-Kanals respectively stood transferred in the name of Mst. Fatima Bibi, who was mother of Ghulam Qadir. Subsequently vide mutation No.3846 dated 16.06.1999 (Exh.P-1) and mutation No.3850 dated 26.08.1999 (Exh.P-2), the land mentioned in mutations Nos.3760 and 3847 were transferred in the name of defendant No.1, Muhammad Khan, by way of oral gifts. On 12.04.2008 the plaintiff challenged the above transactions of gift through a declaratory suit on the ground of fraud and misrepresentation with the assertion that her deceased father, Ghulam Qadir being follower of Shia faith had never made any gift in favour of his mother Mst. Fatima Bibi. Subsequently, the defendant No.1 on 15.10.2008 instituted a suit under Section 9 of the Specific Relief Act, 1877, against the plaintiff and 4 others seeking a decree for possession. It was alleged in the plaint that the plaintiff along with four others had illegally dispossessed him (defendant No.1) from the suit land. During trial of the suits Muhammad Munir and Nazir filed application under Order 1 Rule 10, C.P.C. for their impleadment as defendants. Since they were cousins (Chachazad) of Ghulam Qadir, their application was allowed and they were impleaded as defendants Nos.2 and 3 in plaintiff's suit. The defendants Nos.2 and 3 also contested the allegations made in the plaint. They in their written statement maintained that Ghulam Qadir belonged to Sunni school of thought; and, that the plaintiff was entitled to inherit only ½ share of the property of her deceased father, Ghulam Qadir.

Issue: The prime fact in issue was as to what was the belief of the deceased, Ghulam Qadir, that is to say, whether in the matter of religious faith, he adhered to Shia faith or Sunni discipline? Secondly, the other fact in issue is whether the validity and burden of proof of veracity of the gift made to to the exclusion of legal heir would lie with the gift done?

Analysis: Issue 1: Having carefully examined the case-law on the question in issue, I am of the view that although the psychological fact, that is, faith of a person is incapable of direct proof and no principle of universal application is available to determine it yet diagnosis whereof may be made through: (i) direct disclosures by word of mouth by the deceased; (ii) circumstantial evidence of the conduct of the deceased; and (iii) opinion of witnesses. The plaintiff was required to produce the person(s) before whom Ghulam Qadir denounced Sunni faith. This was not done. None of the witnesses particularly deposed as to the mode or manner of performance by Ghulam Qadir of his alleged Shia faith, prayers, rites, its practices, ceremonies and mandates. The witnesses also failed to disclose their source, basis and reason that the deceased Ghulam Qadir was a Shia. The documentary evidence, that is, certificates (Mark-A to Mark-C) issued by different private Shia institutions were of no avail for two reasons: firstly, the scribes of these two certificates were not produced; and secondly, these private documents were tendered in the statement of the counsel, which itself is not permissible as per principle settled in the case of "Federation of Pakistan through Secretary Ministry of Defence and another v. Jaffar Khan and others" (PLD 2010 SC 604).
Issue 2: The burden of proof to prove the validity of the gift lies on the donee, as opposed to the claimant as the legal heirs have the first right on inheritance. It is also equally and undoubtedly true that the burden of proof may not be of much consequence after both the parties lay evidence, but while appreciating the question of burden of proof, misplacing of burden of proof on a particular party and recording findings in a particular way definitely vitiates the judgment as it has happened in the instant matter where the Courts below illegally and erroneously failed not to cast the burden on defendant No.1 by clearly misconstruing the whole case and thus resulted into recording of findings which are wholly perverse. It is settled principle of law that neither presumption of correctness nor that of truth to the contents of mutation is attached under the law. Once the existence of a transaction itself has been questioned by a party in suit, it was legal obligation of the person claiming benefit thereunder to prove the same.

Conclusion: All these facts show nothing but fraud on the part of defendant No.1, so as to deprive the plaintiff of her right of inheritance. Since the defendant No.1 had failed to justify the disinheritance of the plaintiff, the disputed gift mutations as per principle settled in the case of "Fareed and others v. Muhammad Tufail and another" (2018 SCMR 139) cannot be held valid. The impugned mutations were declared illegal and the plaintiff was entitled to her legal share as per the Sunni school from the inheritance of the deceased father. Revision was allowed in circumstances.

2016 M L D 185 Lahore

Sher Muhammad and others (petitioners) vs. Mst. Fatima and others (respondents)

Facts: The daughters of the deceased claimed for the inheritance to be distributed according to Shia law to make them sole inheritors as Class one heirs, claiming the deceased to belong to Shia faith as opposed to Sunni Faith.

Issue: Whether the deceased is of Sunni or Shia faith?

Analysis: The distribution had already been made according to sunni faith 35 years ago, the witness of the claimants was the daughter's husband, hence there was a personal gain involved on the part of the witness. The evidence provided was shaky. Place of Namaz-e-Janaza was not a determining factor for the determination of faith. The plaintiff refused to be a witness giving rise to a presumption against her. The suit was barred after crossing the limitation period of 6 years as the case was filed in 2000.

Conclusion: No decree passed in favour of plaintiff due to lack of evidence and the time bar.

SHIA INHERITANCE

2016 SCMR 1195 Supreme Court

Mst. Noor Bibi and another (Appellants) vs. Ghulam Qamar and another (respondents)

Facts: The claimant was a childless Shia Widow, claiming share in her deceased husband's property. Briefly stated, relevant facts of the case are that on 24.07,1995, Respondents Nos. 1 and 2, being son and daughter of late Nasir Hussain, instituted a declaratory suit against their real mother, Mst. Noor Bibi (Appellant No.1.), and their brother, Zulfiqar Ali (Appellant No.2), in respect of agricultural land measuring 45 Kanal, 14 Marla, out of total land measuring 76 Kanal 4 Marla. Their claim was based on the assertions that their father, Nasir Hussain, had died five years ago, whereafter Inheritance Mutation No.181 dated 24.01.1994 was attested in favour of his legal heirs according to which, Mst. Noor Bibi, widow of deceased, got 1/8 share, Ghulam Qamar and Zulfiqar Ali, sons, got 4/5 and Mst. Razia Bibi, daughter, got 1/5 out of 7/8. Late Nasir Hussain belonged to Shia faith, wherein a widow is not entitled to any share in the immovable property (lands) owned by her deceased husband. Further, according to Shia law of inheritance, Ghulam Qamar and Zulfiqar Ali, sons should have been given 4/5 share each and Mst. Razia Bibi, daughter should have been given 1/5 share, whereas the widow of Nasir Hussain (deceased) was not entitled to 1/8 share.

Issue: Can a Shia widow inherit property?

Analysis: Under the Shia law, a widow with a child from her deceased husband, is entitled to a share in her husband's movable and immovable property. The widow with a child would be entitled to inherit a 1/8 share from her deceased husband's legacy. A childless widow was disqualified from claiming share from her deceased husband's estate, but only to the extent of immovable property. she was entitled to her one fourth share in the value of movable property including debts due to him. The childless widow would also encompass those widows who, though had children with the propositus, but the children did not survive the propositus. Even if a widow has given birth to a child in her wedlock with the propositus, but such child died prior to the death of the propositus, the widow would not be entitled to inherit the immovable property of the propositus as she was a 'childless widow' under Shia personal law.

Conclusion: A widow, who at the time of the death of her husband is childless is a childless widow and can only inherit 1/4th movable property.

See also: *PLD 1972 SC 346*

PLD 2016 865 Lahore

Khalida Shamim Akhtar (petitioner) vs. Ghulam Jaffar and another (respondent)

Facts: Issue less shia widow without children claimed to inherit property of her deceased husband

Issue: Can a childless shia widow claim for inheritance?

Analysis: The issue had neither been adjudicated upon by the Judiciary as yet nor codified into a law by the Legislature. However, Ayat No.12 of Sura Al-Nisa (Holy Qur'an), stated that a childless widow was entitled to 1/4th share from the leftover estate of her husband. The High Court observed that it expected that the Federal Ministry of Law, would take legislative measures to promulgate a codified law in such regard in order to protect the rights of Ahl-e-Tashih childless widows, in getting their due shares from the
inheritance of their deceased husbands.

Conclusion: The High Court, on this basis declared that even a childless widow from the Fiqah-e-Jafariya would be entitled to claim a 1/4th share from the leftover estate of her husband.

HINDU INHERITANCE

2019 CLC 1159

Shrimati Aasi Petitioner vs. Bhesham Lal & another

Facts: Parties were Hindu by religion and the wife had filed for a Suit for Judicial separation with the husband.

Issue: Whether the Trail Court where family suit was filed under the Hindu Law could exercise jurisdiction with the given fact.

Analysis: The petitioner/wife contended that the Family Court where husband had filed the suit, had no jurisdiction to entertain the same as spouses never last resided at the address given in the plaint. The respondent/husband had contended that the Family Court had correctly dismissed the application moved by the wife and raised an objection on the territorial jurisdiction, as it was filed simply to buy time. The Family Courts Act, 1964 and Family Courts Rules, 1965 were applicable to all Family Courts including but not limited to those who professed different religions.
Rule 6 of the Family Courts Rules, 1965 determined the jurisdiction to try suit within local limits of which
The cause of action wholly or in part arose
Where the parties resided or last resided together,
Provided that in the suit for dissolution of marriage and dower amount the Court within the local limits of which the wife ordinarily resided, would also have jurisdiction. A suit for judicial separation was filed under Hindu Law by the husband, in which he attempted to exercise the first part of R. 6 of Family Courts Rules, 1965. But the husband did not plead that the parties last resided at the address given in the plaint.

Conclusion: The High Court set aside the impugned order passed by the Family Court and restored the application filed by the wife. Family Court was directed to consider said application in the light of facts and circumstances de novo. Constitutional petition was partly allowed.

P L D 1963 Dacca 896

Ram Dasi Pal vs Surebala Dasya and Others

Facts: "The properties in dispute originally belonged to one Paju Pal. He adopted a son namely Brindaban and gave him in marriage to one Jamini Sundari. The adopted son Brindaban predeceased Paju Pal leaving behind Jamini Sundari and a daughter Surebala who is the plaintiff in the present suit. His death took place on the 20th of May 1912. Thereafter on the 14th of July 1912, corresponding to 30th Ashar, 1319, B. S. Paju executed and registered a Will which has been marked as Exh. 1 in the case. On the same date he executed an Arpannama (Exh. 2) dedicating some of his properties to the deities Lakshmi Narayan and Gupalji, Shortly after Paju Pal died on the 20th of July 1912. On 8th of July 1920 corresponding to 24th Ashar. 1327 B. S. Jamini Sundari the widow of Brindaban adopted Brajaraj on the basis of a power delegated to her by her husband Brindaban, Thereafter in March/April 1925 corresponding to Chaitra, 1331 B. S. Hara Sundari the widow of Paju Pal died. In May 1943 corresponding to Jaistba, 1350 B. S. the adopted son of Brindaban dies childless leaving behind a widow Ramdasi who is the defendant No. 1 in the present case. In 1955 Ram Dasi the widow of Brajaraj instituted Title Suit No. 13 of 1945 for her maintenance against Jamini Sundari, the widow of Brindaban and mother-in-law of Ram Dasi, but the suit was dismissed with an observation amongst others that Ram Dasi was the owner of the properties. In 1950 Ram Dasi the defendant No. 1 instituted Title Suit

No. 14 of 1950 against Jamini and the deities and obtained an ex parte decree. Thereafter Jamini died on 17th of December 1950, corresponding to 12th Pous, 1357 B. S. The plaintiff in the present suit filed an application under Order IX, rule 13 in Title Suit No. 14 of 1950 but the same was dismissed. It appears that Ram Dasi the plaintiff of Title Suit No. 14 of 1950 and defendant No. 1 in this suit took delivery through Court on 19th of January 1951. But it has been found by the Courts below that she could not get possession through the peon's report was to that effect. It appears that she filed an application after the delivery of 19th of January 1951, for second execution and delivery alleging inter alia that the decree-holder, namely the defendant No. 1 was not put in and could not get possession, but her application was dismissed. Thereafter on the 2nd of December 1953, Surebala, the plaintiff of this suit instituted the suit for declaration of Shebaitship and injunction. The suit was contested by the defendant No. 1 Ram Dasi alleging inter alia that the plaintiff was not the Shebait of the properties of the Dieties but Ram Dasi was the Shebait, that the plaintiff's suit in respect to Schedule I property which was gifted to her husband Brajaraj by her father-in-law Paju Pal devolved on her on the death of Brajaraj and as such the said properties were neither Debuttar properties nor the plaintiff had any right in those properties, that he claim that the properties were Debettar were barred by the principle of res judicata in view of the decision in Title Suit No. 14 of 1950, that the plaintiff was not the Shebait of the Deities but it was Ram Dasi and that the suit was barred by limitation and bad for defect of parties."

Issue: Is the suit barred by res judicata? And Is it true that under the will and the Arpannama Brajaraj did not inherit any property nor became the Shebait and consequently Ram Dasi could not acquire any right in the properties either in her personal right or as a Shebait.

Analysis: "The question whether schedule (Ka) properties were Debuttar properties or secular properties of Paju Pal was not directly or substantially in issue in that suit nor does it appear from the ex parte decree Exh. C (2) and there order dated the 5th of October 1950, that Exhs. 1 and 2 were under consideration of that Court. The interpretation of those two documents involves a complicated question of Hindu Law. Furthermore, from the plaint (Exh. 7) it appears that Ram Dasi's claim was based on the decision in Title Suit No. 13 of 1945 and it appears that the Court which decreed the Title Suit No. 14 of 1950 accepted that plea as correct. The suit was decreed ex parte and it was ordered that the plaintiff's case was proved, this far and no farther. So, it appears that whether the schedule (Ka) properties are Debuttar or not were not finally adjudicated between the parties. Furthermore, the plaintiff is not claiming by inheritance from Jamini Sundari but she is claiming her right, title and interest on the basis of Exhs. 1 and 2. She was not a party in Title Suit No. 14 of 1950, and as such it cannot be said that the present suit is barred by res judicata in view of the decision in Title Suit No. 14 of 1950. My observation that Exhs. 1 and 2 were not considered is also supported by the ex parte decree directing rendering accounts in violation of the provision in Exh. 2 that none of the Shebaits named by the testator was accountable to anybody for the income and expenditure…. Deities is a minor and that in view of the allegation in the plaint Exh. 7 by Ram Dasi that Jamini Sundari was not fit to be Shebait, rather she was dishonestly misappropriating the properties of the Deities and removing the Deities from the place, the Deities were not properly represented and as such any decree passed against the Deities to such circumstances was nothing but a void one and not binding on the Deities and no question of `res judicata' arises. … Now the question is whether Brajaraj could have inherited Shebaitship though Brajaraj predeceased the third executrix. According to the Arapannama (Exh. 2) the right of Shebait did not and could not have vested in Brajaraj before the death of Jamini as the legacy did not become payable before the death of Jamini. Consequently, the defendant Ram Dasi could not have inherited anything from her husband Brajaraj

18. Mr. Roy contends that more than one life-interest cannot be treated under the Hindu Ldw and as Brajaraj was alive at the death of Paju Pal by fiction of law and at the death of Hara Sundari Shebaitship vested in Brajaraj though he was adopted on 8th of July 1920. No authority has been cited nor any provision of law has been shown to me in support of first part of the said contention but it has been contended that once Brajaraj was adopted he was deemed to be alive at the death of his adoptive father, namely, Brindadan and consequently at the time of death of Paju Pal and as such the Shebaitship vested in Brajaraj and after him his widow Ram Dasi inherited. I have already stated that according to the provisions of Exh. 2 no right could have vested in Brajaraj before the death of Jamini Sundari on 17th of December 1950, and as he pre-deceased her by about more than 7 years Brajaraj did not obtain the

legacy as contended by Mr. Roy. So the claim of Ram Dasi is not maintainable…. Now the question is whether the plaintiff took Shebaitship. I have already referred to the provisions in the Arpannama (Exh. 2), which provides for appointment of Shebait. The further relevant portion of the Arpannama for determination of the plaintiff's right is as follows: ---

"If the said Jamini Sundari Dasya does not adopt any son or dies before the adoption then Sremati Surebala Dasya daughter of my said adopted son Brindaban Chandra Pal and in her absence her children and grand-children will perform the worship and service of the said Deities with the income of the said properties as Shebait."

23. Referring to the aforesaid provision in the Arpannama 'Exh, 2) it is contended by Mr. Roy that as Jamini Sundari adopted Brajaraj her daughter Surebala could not inherit Shebaitship and as such it reverted back to the heirs of Paju Pal. It appears that in any case, widow of a grandson is not an heir of the grand-father-in-law in the Hindu Law (Dayabhaga) but a son's daughter's son may be an heir. After going through this document, I am inclined to hold that the intention of the was that in case there was no adoption as aforesaid or in case the adopted son died childless then Shebaitship will devolve on his grand-daughter Surebala and her children and grand-children downward. This view of mine finds support from paragraph 6 of Exh. 1, the will where it has been provided that if the testator's daughter-in-law one of the executrix does not adopt or the adopted son died childless the secular properties of Paju Pal will devolve on the deities and the widow of the adopted child will get maintenance out of the income of the said properties. Relying on this provision the defendant No. 1 and Ram Dasi Pal instituted the aforesaid Title Suit No. 13 of 1945 for maintenance but the same was dismissed. Hence I hold that on the death of Jamini Sundari Shebaitship devolved on Surebala who was alive at the death of Paju Pal and was capable of taking on the death.

24. As regards the contention of Mr. Roy that by this Arpannama a new line of succession in violation of the Hindu Law has been created, I do not find any substance because Shebaitship did not vest in Brajaraj but it vested in the plaintiff as Brajaraj died before he could have obtained right of Shebaitship.

25. The other question on the effect of adoption on inheritance does not arise in this connection in view of the aforesaid decision by me on devolution of Shebaitship. However this question will be dealt with below in another connection.

26. By para. 3 of Exh. 1, will of Paju Pal, it has been provided that in the absence of the testator Paju Pal all his immovable properties will devolve absolutely on the adopted son to be adopted by Jamini Sundari Dasya widow of his adopted on Brindaban in accordance with the permission given to her by his adopted son Brindaban…. Now the question is whether the plaintiff took Shebaitship. I have already referred to the provisions in the Arpannama (Exh. 2), which provides for appointment of Shebait. The further relevant portion of the Arpannama for determination of the plaintiff's right is as follows: ---

"If the said Jamini Sundari Dasya does not adopt any son or dies before the adoption then Sremati Surebala Dasya daughter of my said adopted son Brindaban Chandra Pal and in her absence her children and grand-children will perform the worship and service of the said Deities with the income of the said properties as Shebait."

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Conclusion: Property vested in widow or her mother, divested subject to valid transfer but no effect on properties already vested in deities and the right to shebaitship is inheritable like other secular properties; "after the death of Paju Pal, the properties described in (Ka) schedule vested absolutely in the deities as there was no adoption during the life time of the testator, namely, when the succession opened but the adoption was 8 years thereafter. The deities had the right, properties being vested in them to deal with the properties in any way without interference of any person outside. Then again the adoption was not to the last male holder, namely, Paju Pal but it was to his predecessor son Brindaban. So in any way according to the authorities cited there can be no divesting of the properties already vested in the deities. To accept the theory of birth by fiction on the death of the testator as in the present case and inheritance Will offend the rules against perpetuity, equity and natural justice. Furthermore, by adoption by Jamini in the present case, she was not divesting herself of her property as it did not vest in her. But she was trying to divest the deity, third party, which is against natural justice and furthermore power to adopt was not given by Paju Pal to her but it was given by Brindaban, the husband of Jamini who died on the 20th May 1912, whereas adoption took place in 1920. For the aforesaid reasons, I am of opinion that on the death of Paju Pal the property described in schedule I vested in the deities and on adoption by Brajaraj by Jamini's 81 years after the death of Paju Pal did not divest the deities of the properties already vested in it. Similarly Shebaitship also vested in Surebala Dasya, the plaintiff."

P L D 1967 Dacca 745

Rabindra Nath Dass and Others vs Narayan Chandra Das and Others

Facts: "This was a suit for khas possession of the suit land by the defendants therefrom.

Plaintiffs' case briefly was that the property in suit belonged to Sribash Das who died leaving his widow Khiroda Sundari some 14/15 years back. Khiroda Sundari got a life estate by inheritance and lived in this house. Khiroda died …Sribash had left no other preferential heir besides the plaintiffs who were the four sons of Rasaraj who was son of Rai Sundari Dasi, sister of Sribash. Rasaraj predeceased Rai Sundari. Thus the plaintiffs were the sole heirs to the properties left by Sribash after the death of Khiroda and they were in possession of the premises in suit. Plaintiffs had been living in this house.
Defendants were sons, daughter and wife of Debidas, a deceased brother of Khiroda Sundari. They were not heirs of Sribash under the Hindu Law and they had no interest in the property by inheritance.
Khiroda Sundari had inducted the defendants into this house and on her death they continued to be in possession with plaintiffs' permission…. Sribash Das had conveyed an absolute interest in the entire property to Khiroda by oral gift and Khiroda by her will dated 8-2-57 gave away the entire property to the defendants….

On those facts the learned Munsif decreed the plaintiffs' suit declaring plaintiffs' title to the suit land and directing that the plaintiffs do get khas possession of the same by ejecting the defendants therefrom. The learned Munsif disbelieved the plea of Will and gift as pleaded by the defendant and found that the defendants were mere trespassers because wife's brother's sons were not heirs under the Hindu Law. The basis of the learned Munsif's decision was that as there was no evidence that Sribash Das left any other preferential heirs and that as there was none nearer to Sribash Das in propinquity and bond of natural love and affection, plaintiffs were heirs to Sribash Das under the Hindu Law."

Issue: With respect to preferential heirs, can Dayabhag principles be proximately applied with Mitakshara?

Analysis: "the plaintiffs nor the defendants were the next reversioners of Sribash under Dayabhaga Hindu Law. He was of the view that under the Mitakshara Hindu Law plaintiffs might inherit the property of Sribash as his next reversioners but they could not so inherit under the Dayabhaga Hindu Law.
He was further of the view that the plaintiffs could inherit the disputed property only by following the principles of Mitakshara Hindu Law, if otherwise at all applicable.
The learned Subordinate Judge further held that as the scheme of the Dayabhaga was radically different from and to some extent incompatible with the scheme of the Mitakshara Hindu Law, it was not possible to apply Mitakshara principle in favour of the plaintiffs…. urged that even under the Mitakshara School sister's son was made an heir only by an Amending Act of 1929 and sister's son's son has not been made heir.

He has also urged that law of succession and inheritance is to be strictly construed and that as the capacity to confer spiritual benefit was the strict standard in fixing heir-ship under the Daya?bhaga School, the present appellants who could not confer any spiritual benefit were ruled out of the inheritance.

At this stage the sum and substance of the decisions cited may be set out here.

In the decision reported in I L R 58 Cal. 1392 it was held inter alia that propinquity or proximity of birth is the principle underlying the order of succession, but the capacity for conferring spiritual benefit is also taken into consideration along with it in determining the claims of rival competitors; the right to inheritance is based not on offering pinda but on the capacity to offer it.

The doctrine of spiritual benefit cannot be applied consistently in all cases, e.g. in cases of females succeeding to males, chela succeeding to guru and samanodakas. It is, on the failure of nearest heirs, that the question of spiritual benefit really arises.

Suhrawardy, J. while dealing with the Bengal School of Hindu Law in this case observed:

"It has been authoritatively laid down that the doctrine of spiritual benefit or offering of funeral obligations is not the only test of heirship. Propinquity or proximity of birth is the principle underlying the order of succession, but the capacity for conferring spiritual benefit is also taken into consideration along with it according to the Bengal School. The question of the capacity to offer funeral cakes becomes important when it has to be considered in connection with the claims of rival competitors to heirship and in determining the order of succession; In other words it is a key to the order of succession, but not to inheritance. On this ground, even among those who are entitled to offer pindas, preference is given to such heirs as are entitled to offer a large number of pindas or to a greater number of ancestors than others.

Golap Chandra Sastri's Hindu Law 5th Edition 451. Even according to the Dayabhaga School of Hindu Law under which the right of inheritance is based on the doctrine of spiritual benefit, it cannot be applied consistently in all cases, e.g. in cases of females succeeding to males, chela succeeding to guru and samandokas. It is, on the failure of nearest heirs, that the question of spiritual benefit really arises."

It appears that in this case reliance was placed not only on Golap Sastri's Hindu Law but also on the decision of Akshay Chandra Bhattacharya v. Hari Das Goswami.

Reliance was also placed by Suhrawardy, J. in this case on the decision in Toolsee Dass Seal v. Luckymoney Dassee ((1900) 4 C W N 743).

In the decision in Akshay Chandra Bhattacharya v. Hari Das Goswami it was held by Justice Mitra, inter alia, that that "mere spiritual benefit is not always the guiding principle of inheritance under the Bengal School of Hindu Law.

Propinquity has also been accepted in the Bengal School as a principle of succession.

In cases not contemplated by Jimutavahana or his followers, the law should be interpreted on rational lines consistently with the principles followed in similar cases, and the decisions of our Court should not be based on a blind adherence to the principle of spiritual efficacy, as it may lead to the violation of other recognised principles consistent with natural justice.

In all cases of absence of any express text or predecents under the Dayabhaga law, Courts should have recourse to the theory of propinquity and natural love and affection, as adopted by Vijnaneswara and the commentators of the more ancient and orthodox schools of Hindu Law."

In this case also the learned Judge placed some reliance on the decision in Toolsee Dass Seal v. Luckymoney Dassee. Justice Mitra went to observe that in most propinquity, spiritual efficacy and natural love and affection run in the same lines and no difficulty arises, but whenever they run in different lines Jimutavahana was compelled to ignore spiritual efficacy and have recourse to other principles or express text. The two cases as above the main planks of the appellants, in addition to references made to Mulla and Golap Shastri's Hindu Law which we will discuss hereafter.

Of the two decisions placed on the side of the respondents in Satish Chandra Sarkar v. Haridas Mitra it was held that under the Dayabhaga School sister's son's son, is no heir to Stridhan property of women and has no locus standi to contest an application for Letters of Administration with her will annexed.

Further that it was not the law that even when there is no heir a blood relation is entitled to get the property before the Crown. In the other decision cited by the respondents, namely, that of Nepaldas Mukherjee v. Probash Chandra Mukherjee and others it was held inter alia.

"The power to confer spiritual benefit is the foundation of the theory of inheritance propounded in the Dayabhaga and a guther's son's (sic.) who is unable to confer any spiritual benefit is no heir."

It would be noted that the decision as reported in 38 C W N 98, is a decision of 1932 and was a case of succession as an heir to the stridhan property of a woman and it was held that sister's son's son was no heir.

There is no reference in this decision to the earlier decision as reported in I L R 58 Cal. 1392 which is a decision of 1931 nor is thereby reference to I L R 35 Cal. 721 which is a decision of 1908.

So far as the decision is 30 C W N 357 goes, this is a decision of 1926 and there is no reference therein to the decision of 1908 as reported in I L R 35 Cal. 721.

Suffice to state at this stage that the aforesaid two decisions reported in 38 C W N 98 and 30 C W N 357 do not seem to be well founded and have little reference or reliance upon the Hindu text.

It appears from section 43 at page 46 of Mulla's Principle of Hindu Law, 10th Edition that under the Mitakshara School, sister's son was introduced as heir in 1929 by the Hindu Law of Inheritance (Amendment) Act 2 of 1929 and before that Act he ranked as a Bandhu only.

Mr. Abul Quasem Bhuiya has argued that even sister's son having been included only by statute there was no room for inclusion of sister's son's son in the category of heirs even under the Mitakshara.

But it appears that under section 46 at page 49 Mulla gives a list of Bandhus wherein sister's son's son has been included.

Mr. Sen's argument is that the appellants will come in as Bandhus, there being no conflict between the two schools on the point of heirship. His argument is based on the principle that spiritual benefit is not always the guiding principle of inheritance.

Section 79 of Mulla's Hindu Law is as under:

"Spiritual benefit the governing doctrine-succession according to the Bengal School is governed by the capacity for conferring spiritual benefit (a). Spiritual benefit, however, is not always the guiding principle of inheritance and in cases not contemplated by the Dayabhaga, the doctrine of propinquity as propounded in the Mitakshara may be applied."

This shows that even according to Mulla, spiritual benefit is not the sole text.

Coming to Golap Shastri's Treatise on Hindu Law reference may be made to pages 37 and 38 thereof in which it has been expressed as under:-

"Mitakshara and Dayabhaga. The Mitakshara which is undoubtedly anterior to the Dayabhaga is a running commentary on the Institutes of Vajnavalkaya, by Vijna?nesvara called also Vijnan-Yogin who cites texts of other sages, and reconciles them where they seem to be inconsistent with the institutes of Yajnavalkya. This concise commentary is universally respected throughout the length and breadth of India, except in Bengal where it yields to the Dayabhaga, on those points only in which they differ, but it may be consulted as an authority even in Bengal, regarding matters on which the Dayabhaga is silent. The Dayabhaga, however, is not a commen?tary on any particular Code, but professes, to be a digest of all Codes, while it maintains that the first place ought to be given to the Code of Mann. This commentary, or that portion of it which is now extent, is confined to the subject of partition or inheritance alone, whereas the Mitakshara is a commentary on all branches of law in its widest sense, professing as it does to elucidate the Institutes of Yajnavalkya.

Hence the Dayabhaga is deemed as an enactment amending the Mitakshara Law in Bengal. This view follows from what is stated in the case of Collector of Madura v. Mootoo and also in Bhugwandeen Boobey's case. And in the well-known case of Kerry Kolitan, Justice Dwarkanath Mitter after referring to a passage of the Mitakshara in a Bengal case, explains the same view, in these words,-"It is true that there is no special discussion on this point in the Dayabhaga, but the reason of this omission is obvious. The authority of the Mitakshara, it should be remembered was at one time supreme even in Bengal, and as the author of the Dayabhaga did not intend to dispute the correctness of all the propositions laid down in that treaties, we need not be at all surprised at his silence in regard to some of them. It is for this reason that the Mitakshara is still regarded as a very high authority on all questions in respect of which there is no express conflict between it and the works prevalent in that school, as may be seen from the remarks made by the Privy Council in the case already referred to…. Reference may also be made to page 473 thereof: -

Heirs under Mitakshara and Dayabhaga.-There is no difference between the two schools as to the persons that are heirs. To the question who are heirs? The answer A is the same in both the schools, namely, relations, agnate and cognate are heirs. But there is some difference as to the order of succession.

The term gotraja in Yajnavalkaya's text. (i) according to the Mitakshara, equivalent to sagotra or a member of the same gotra with the propositus. But the Dayabhaga explains the word to include cognates desended from a member of the gotra, such as the daughter's son, the sister's son, the father's sister's son, and so forth. And the word Bandhu which, according to the Mitakshara, signifies all cognates, is restricted by the Dayabhaga to cognate relations connected through the mother, the father's mother, and

so forth. Thus Jimutavahana controverts the interpretation put on the texts of Yajnavalkya (j) by the Mitakshara which postpones all cognates save and except the daughter's son to agnates comprised by the terms sapinda and samanodaka.

The author of the Dayabhaga follows the analogy of the succession of the descendants of the propositus himself in working out of the order of succession among the three paternal ancestor's descendants, and introduces their great grandson in the male line and their daughter's son, just after their son's son respectively. Thus, in addition to the daughter's son of the propositus three other cognates are introduced, namely, the son of the daughter of the father, of the grandfather and of the great grandfather. And then reciprocally to these four cognate descendants of the family, four maternal relations are intended to be introduced by the author of the Dayabhaga, namely, maternal grandfather reciprocally to daughter's son, maternal uncle reciprocally to sister's son, maternal uncle's son reciprocally to father's sister's son, and said uncle's son's son reciprocally to grandfather's sister's son.

It should be observed that the maternal uncle and his son, and his son's son are the maternal relations who confer the greatest amount of spiritual benefit on the three maternal ancestors of the deceased, to whom he is said to be bound to offer pindas. But nevertheless the maternal grandfather must be placed before them; for, it is through him that they are related to the deceased, and they cannot confer any spiritual benefit so long as he is alive. The mother's sister's son may also be placed here by reason of his conferring special spiritual benefit on the maternal grandfather.

Subject to this modification, the author of the Dayabhaga intended to leave the order of succession such as it is according to the Mitakshara which also is respected by the Bengal School as of high authority.

From a perusal of the sixth section of the XI, Chapter of the Dayabhaga it would appear that it was not the intention of the author to deal so much with the distant succession as with the changes introduced by him. He simply touches upon the distant succession in a few paragraphs 2 and 27 parenthetically, and then returns to the changes which he introduced and which appears to engross his mind. This accounts for the incompleteness of the distant succession, his deficiency being supplied by his follower Ranghunandana who is, next to him, the highest authority in Bengal.

Dayabhaga order of succession misunderstood. …, whether a brother's daughter's son or the father's brother's daughter's son is an heir at all according to the Bengal School"

Conclusion: "The Dayabhaga may also be referred to in a Mitakshara case. on points in which the latter treatise is silent; and; in fact, all the commentaries of the different schools may be consulted on points in which the treatises regarded by any school as of special authority are silent, in the absence of conflict with any doctrine maintained by that school."

PLD 2016 Sindh 197

Mrs. Ratna Devi W/O Justice (Retd.) Rana Bhagwandas

Facts: Succession Act, 1925. Section 372. Granting of succession certificate. Hindu law. The deceased had full ownership of all the property that was owned by him, and said that the property should devolve upon his legal heirs according to the rules of succession. Under the Hindu law of succession, daughters weren't allowed to inherit their fathers' property during the life time of their mothers, and would only get the right to inherit their fathers' estate during the death of their mothers. They could inherit their fathers' estate if their mother passed away during the lifetime of their father. Even in this case, the daughter of the deceased wasn't able to inherit his moveable and immovable property, but it was inherited by his widow and sons. The widow would take a limited interest, also called 'the widow's estate'

in her husband's estate, and after her demise, the estate would be inherited by the next heirs of her husband, i.e. 'the reversioners'.

Conclusion: The widow had filed an affidavit giving her estate to the sons and other legal heirs of the deceased. Movable and Immovable property that was left by the deceased was divided between two of his sons. Application for the grant of succession certificate and letters of administration was allowed in certain circumstances.

CHRISTIAN INHERITANCE

1992 PLD 385 Supreme Court

Innayat Bibi vs Issac Nazir Ullah

Facts: Christian women brought an inheritance claim in the constitutional jurisdiction of the Honourable Court, seeking the fundamental right to inheritance.

Issue: Could Christian women inherit property in presence of male heirs?

Analysis: It was further held that the Christian female was allowed to inherit in presence of the male heirs. Stated that the Succession Act, 1925, by statutory dispensation had determined the mode of succession when a Christian male died neither the custom nor any other law would be applicable. The Customary succession, so far as Christians were concerned, was altered by Succession Act, 1925 which also abolished customary law in Punjab for the Christians.

Conclusion: Contrary to the customary belief, Christian women could inherit property in the presence of male heirs.

2016 Y L R 2721 Board of Revenue Punjab

Bashir Alam and Others vs Marthan and Others

Facts: Matter regarding land measuring 100-kanals situated in Chak No.135/16-L was allotted to Nawab Masih, the predecessor of the parties. Petitioners, who were sons of deceased, got sanctioned inheritance mutation in their favour, depriving, the daughters of the deceased allottee.

Issue: Exclusion of female heirs in favour of male heirs: Contention of the petitioners was that case had wrongly been treated as case of succession and contended that case of succession be dealt under Christian custom of succession, whereby only male offspring was entitled for succession of the deceased.

Analysis: "Learned counsel for the petitioner argued that mutation No.599 was rightly sanctioned by the revenue officer according to section 20 of the CGLA, 1912, whereby the female descendants were not entitled to inherit land. The ruling PLD 1992 SC 385 of the august Supreme Court applies if the land is owned by private persons. But, in case the land is owned by Provincial Government, then this case law does not apply. Similarly, the Succession Act also does not apply in the instant case as the land involved is owned by the Provincial Government. The above mentioned law has totally been ignored by the learned lower courts while passing the impugned orders which cannot be termed as valid and legal in the eyes of law. Learned lower court has assumed the non-existing powers and passed the impugned order without appreciating the pleadings, contentions and documentary evidence of the petitioner. Finally, it was prayed that the revision petition may be accepted.
4. Learned counsel for respondent No.4 contended that father of the parties was owner of 100-kanals of land. After his death, the respondents were also been given land of their due share. But, they were deprived of their legal and lawful right while passing the impugned mutation No.599. It was very clear law laid down by the august Supreme Court on the subject that in case of death of father (Christian Community), his daughters and sons are equally entitled to inherit legacy as per their entitlement/share. But in the instant case, the respondents were deprived of their lawful right. Therefore, the respondents were deprived of their right through the impugned mutation No.599, which was rightly and justifiably been set aside by learned Deputy District Officer (Revenue), while accepting their appeal and the Tehsildar concerned was directed to pass the mutation afresh strictly in accordance with law. The instant revision petition has been filed against the concurrent orders, wherein no irregularity or illegality has been committed. Just the respondents were allowed to inherit their lawful right. As it is a well settled principle of law that no one should be deprived of his legal and lawful right. While concluding the arguments, it was prayed that the revision petition may be dismissed."

"As per Section 20 of Colonization of Government Lands Act, 1912 such lessees are inheritable. So, it is established that such piece of land was inheritable and was to be distributed among the successors of the deceased according to law. The petitioner's contention is that the case has wrongly been treated as a case of succession, whereas it is not. He referred to Section 20 of Colonization of Government Lands Act, 1912, which reads as under:--

"20. Succession of tenants acquiring otherwise than by succession. Subject to the proviso to section 14; when, after the commencement of this Act, any original tenant dies the succession to the tenancy shall devolve in the following order succession to the tenancy shall devolve in the following order upon:-

The male lineal descendants of the tenant in the male line of descent. (The term 'lineal descendants' shall include an adopted son whose adoption has been ratified by a registered deed).

The widow of the tenant until she dies, or remarries, or loses her rights under the provisions of this Act;

The unmarried daughters of the tenant until they die or marry or lose their rights under the provisions of this Act;

The successor or successors nominated by the tenant by registered deed from amount the following persons, that is to say, his mother, [his pre-deceased sons's widow] his married daughter, his daughter's son, his sister, his sister's son, and the male agnate members of his family and

The successor or successors nominated by the Collector from among the persons enumerated in clause (d) of this section.

10. From the above, it is quite clear that even the title of the section is about "Succession". Actually, the petitioners want that such case of succession be dealt under Christian Customary Law of succession, whereby only male offspring is entitled for succession of the deceased. But such law has been struck down by august Supreme Court of Pakistan. Reliance is placed upon PLD 1992 Supreme Court 385, which reads as under:--

(a) "S.29---Customary succession, so far as Christians were concerned, was altered by Succession Act, 1925 which also abolished customary law in Punjab for the Christians.

Kamawati v. Digbijai Singh AIR 1992 PC 14; Sohan Lal v. A.Z. Makuin and another AIR 1929 Lah. 230; Sita Ram and others v. Raja Ram 12 Singh v. Jogindra Chandra Bhattacharji AIR 1940 All. 134; Muhammadan Law by Tyabji, 3rd Edn. P.28 and Haji Nizam Khan v. Additional District Judge, Lyallpur and others PLD 1976 Lah. 930.

(b) S.29---Christian female was allowed to inherit in presence of the male heirs---Succession Act, 1925, by statutory dispensation having determined the mode of succession when a Christian male died neither the custom nor any other law would be applicable.

Conclusion: "Both male and female offspring is entitled for succession of the deceased. The impugned order has been passed on the basis of same principal of law laid down by the august Supreme Court of Pakistan, which is quite lawful and needs no interference"

See also: *Kamawati v. Digbijai Singh AIR 1992 PC 14; Sohan Lal v. A.Z. Makuin and another AIR 1929 Lah. 230; Sita Ram and others v. Raja Ram 12 Singh v. Jogindra Chandra Bhattacharji AIR 1940 All. 134; Muhammadan Law by Tyabji, 3rd Edn. P.28 and Haji Nizam Khan v. Additional District Judge, Lyallpur and others PLD 1976 Lah. 930*

2006 C L C 1099 Karachi

Zubair Hussain Siddqui vs Mst. Shakeela Khanum and Others

Facts: Mst. Shakeela Khanum is widow of late Zubair Hussain Siddiqui. After the death of Zubair Hussain Siddiqui, one of his daughters namely, Naghma Siddiqui tiled a petition bearing S.M,A. No.104 of 1995, praying for issuance of Letter of Administration in respect of the properties left by the deceased. The Letter of Administration was granted. Thereafter the listed applications have been submitted by Mst. Shakeela Khanum widow of deceased Zubair Hussain Siddiqui contending that petitioner Mst. Naghma Siddiqui is married to a Christian namely, Curt Lawrance Hillfram. It is alleged that another 'daughter of deceased Zubair Hussain Siddiqui, namely, Mst. Nighat Siddiqui is also married to another Christian gentleman. It is further contended that petitioner Mst. Nighma Siddiqui though daughter of late Zubair Hussain Siddiqui is married to a Christian and therefore, she has ceased to be a Muslim as per Islamic Law. Same plea has been taken in respect of Mst. Nighat Siddiqui. It is urged that as per

Islamic Law, the person who ceases to be Muslim cannot inherit the property of a Muslim as his/her legal heir. It is submitted that according to Succession Act, only legal heir of a deceased can file a petition for grant of Succession Certificate or Letter of Administration and the petitioner Mst. Naghma Siddiqui ceased to be Muslim thereby losing her status of legal heir of deceased Zubair Hussain Siddiqui, therefore, she had no right to file the application for the grant of Letter of Administration. It is further stated that applicant Mst. Shakeela Khanum has obtained a Fatwa from Jamiatul Uloom Islamia Allama Banori Town, Karachi, to the effect that if a Muslim girl marries a non-Muslim and continues to be wife of non-Muslim, she ceases to be a Muslim and is not entitled to inherit the property of her father. It is also averred that the petitioner has obtained the Letter of Administration by giving wrong statement without disclosing that she had married to a non-Muslim and therefore, the Letter of Administration already issued may be revoked.

Issue: Can a muslim woman who has married a non-muslim man be denied her inheritance from her deceased father?

Analysis: Mst. Naghma Siddiqui and her sister Nighat Siddiqui claim that their husbands, who were Christians originally converted to Islam and thereafter their marriage was performed. There is an affidavit sworn by husband of petitioner Naghma Siddiqui, to the effect that he embraced Islam on 11-5-1983 and thereafter married petitioner Mst. Naghma Siddiqui on 12-5-1983
I am of the considered opinion that the faith is a matter between a person and Allah. If a person says that he is a Muslim and it is not shown that he still believes in some thing against the basic articles of faith, then nobody has any right to dispute the claim. … therefore, it may be inferred that he is still a non-muslim. I do not find any substance in the contention for the reason that the change of name is not necessary for conversion to Islam. After conversion of companions of the Holy Prophet, to Islam, names of very few persons were changed and names of majority were left unchanged. A recent case can be cited with benefit in respect of well-known Cricketer of Pakistan namely Muhammad Yousuf. He was a Christian and his Christian name was Yousuf Youhana. Recently he has declared that he has converted to Islam and has further declared that he had embraced Islam sometime ago but had not changed his name as he was advised not to change the name immediately. He has stated that even without change of name he used to perform the Islamic Injunctions and rites.

Conclusion: In the above circumstances it is held that in the first instance the applicant Mst. Shakeela Khanum has no right to dispute the claim of the husband of petitioner Naghma Siddiqui that he had converted to Islam on 11-5-1983. The Nikahnama is also a proof in this behalf. However, if even no document is available the mere assertion of a person that he embraced Islam on a particular date, his statement is to be accepted and he shall not be called upon to produce any other evidence to establish the conversion to Islam. Secondly, a Muslim female marrying a Christian shall not become non-Muslim merely by fact of such marriage though it would be a sinful act, and shall not be deprived of his right of inheritance from her Muslim parents.

CHAPTER 3 – EXCLUSION OF HEIRS FROM INHERITANCE CASES

WOMEN

1976 PLD 119 Lahore

Hidayat Shah vs Murad Khatun

Facts: The husband wished to divorce his wife, before he passed away.

Issue: Would she be entitled to inheritance if the husband died during her Iddat?

Analysis: Marazul Maut is a question of Facts.

Conclusion: Such a woman was not to be deprived of inheritance if a person dies within the period of iddat.

1990 PLD 1 Supreme Court

Ghulam Ali vs Ghulam Sarwar Naqvi

Facts: The brother tried to claim adverse possession against the sister whilst claiming that they had spent money on her two weddings and in a murder case for five years and hence she had relinquished her right

Issue: Can a woman relinquish her right to inheritance?

Analysis. Assuming a woman relinquished her right to property is against public policy in Islam. This case is an oft cited and a very pivotal case in terms of a woman's right to inheritance of a property. It is a Landmark case which speaks of brother's right to claim adverse possession against his sister, On the treatment of women in Islam, On the duty of a brother to maintain a divorced or widowed sister in Islam, pertaining time barred suits and moral basis of brother ousting sister from property.

See also: *2020 SCMR 276, 2019 YLR 932, 2018 SCMR 30, 2020 YLR NOTE 26, 2020 MLD 1655*

1992 PLD 811 Supreme Court

Fazal Jan vs Roshan Din

Facts: The claimant in the inheritance case was a woman who did not possess the mental capacity to possess and manage property.

Issue: Can property be inherited by someone with mental incapacity?

Analysis: As there was a possibility that others might have taken undue advantage of her incapacity. The Supreme Court granted leave to appeal to the petitioner and ordered that petitioner be provided with legal assistance through engagement of a competent counsel at State expenses.

Conclusion: Yes, with the required legal aid and other assistance.

1999 MLD 2934 Karachi

Halima vs Muhammad Kassam

Facts: The claimants are 5 daughters of the deceased, bringing a claim against the widow, the sons and the son's children for property that was bought by the deceased in the name of the defendants, with the claim that it was a Benami Transaction and hence, these properties should be included in the estate to be inherited.

Issue: Can the Benami Property be inherited by the heirs?

Analysis: In Benami transactions, the real owner must prove that it were his funds that were used to purchase the property and that there should be intention on his part to maintain the property as a benami property. Further held that the burden to prove that a property is benami is on the real owner because, prima facie, the person in whose favour the document or instrument of title has been registered would be regarded as the owner. Nevertheless, Justice Shaiq Usamani particularly spoke of a male dominated society taking advantage of Islamic inheritance laws.

Conclusion: Yes, if it can be proven that the property is Benami.

2010 PLD 569 Supreme Court

Ghulam Murtaza vs Asia Bibi

Facts: The parties were husband and wife after separating contended ownership of the property. The property was bought in the name of the wife and the husband wished to retrieve it.

Issues: What qualifies as a benami transaction?

Analysis: The motive in Benami transactions was the most important one and could not be dubbed benami simply because a person made it on behalf of another. Trial Court and Lower Appelate court decreed suits in favour of the husband declaring him real owner.

Conclusion: The High Court declared the case in favour of the wife and held that the transaction will only be held Benami if the motive of buyer who made the transaction was to retrieve the property. However, in this case, it was not true and the husband only demanded the property once the relations between the spouses fell apart. The Supreme Court upheld the decision of the High Court and dismissed the appeal filed.

2003 SCMR 1535 Supreme Court

Muhammad Yousuf vs Mst. Karam Khatoon

Facts: The property belonging to Ali is in dispute. Ali had died in the year 1923-24 leaving behind Mst. Noor Bhari widow and Mst. Karam Khatoon, the daughter who happened to be the plaintiff in the case while the defendants Muhammad Yousaf, Noor Muhammad and Allah Yar happened to be collaterals. It has come on record that Mst. Noor Bhari, the widow died in the year 1946. Karam Khatoon, it appears died soon after the institution of the present suit. Her legal heirs are the respondents herein.

Issue: Would Karam Khatoon not be entitled to inherit from her father because customary law prevailed at the relevant time?

Analysis:
It was stated that the Male heir who had acquired agricultural land under custom from a Muslim prior to 15th March 1948 would be deemed to have inherited the same under Muslim Law and his heirs would be discovered in accordance with the Muslim Law and such heirs could be male or female. If a female derived limited interest from any such male heir. having become absolute owner under S.2A, West Pakistan Muslim Personal Law (Shariat) Application Act, 1962, she would not be able to keep land in excess of her Sharai share under Muslim Law and she will act as a conduit to pass the remaining land to the other such heirs of such a male heir. A Combined reading of SO, 4 & 5 of West Pakistan Muslim Personal Law (Shariat) Application Act, 1962 read with S.2-A of the said Act clearly showed that omission in S.2-A of the Act of a "female" was not of much significance.

Conclusion: The net result of the above discussion is that Mst. Noor Bhari widow of Ali, even if deemed to be a limited owner, has inherited her Sharai share from her husband Ali, the residue going to her daughter and the collaterals. The above interpretations taken in the strict sense would entitled Mst. Karam Khatoon even to inherit directly from her father Ali and subsequently from her mother Mst. Noor Bhari. Her share from father comes to 1/2 and that from mother comes to half of the 1/8th, total amounting to 9/16 share in the legacy of Ali. This has rightly been decreed in favour of Mst. Karam Khatoon, the successor of present respondents.

See Also: *PLD 1971 SC 334; PLD 1995 SC 686; 1988 SCMR 293; PLD 1985 SC 407*

2003 SCMR 362 Supreme Court

Mst. Ghulam Janat vs Ghulam Janat

Facts: In 1930, the sons were to be given the inheritance share, excluding the daughter who filed a suit for her share that her brothers had stopped paying her in 1991. The receipt of share of produce by plaintiff from her second brother was admitted by her first brother in his written statement. The other heirs also conceded the plaintiff's claim. Furthermore, the plea of the second brother of the plaintiff was that she was not entitled to any share in the estate of her father.

Issue: How did the West Pakistan Personal Law (Shariat) Application Act 1962 change pre-partition customary law? Would the sister be excluded accordingly?

Analysis: Section 2-A of West Pakistan Personal Law (Shariat) Application Act 1962 relied upon, was retrospective in its operation; and intention of its enactment was that inheritance would be deemed to have devolved on date of death of last male owner on all his heirs under Islamic Law, who would be deemed to have become joint owners.

Conclusion: The act applying Shariat shares of inheritance applies retrospectively and the daughter will be a joint owner of the inheritance property.

2014 SCMR 801 Supreme Court

Mst. Gohar Khanum vs Mst. Jamila Jan

Facts: the property was mutated to only have the brother's name and exclusion of sister. The brother alleged that his sister was fully aware of such mutation and did not challenge it for fifty years, and that he had also constructed a house on the disputed property.

Issue: Can someone relinquish their inheritance right?

Analysis: It was held that in order to relinquish or transfer interest in property, there had to be a positive and affirmative act. No document or deed of relinquishment, sale, transfer or gift was brought on record to establish that sister had either relinquished her interest in the disputed property or had actually conveyed or transferred the same in favour of her brother.The Onus in such fell squarely on the brother to establish that interest of sister had been transferred in his favour or that sister had relinquished her rights in the disputed property. The brother failed to discharge such an onus. It was also a case of the sister filing suit challenging said mutation after a lapse of fifty years. Through inheritance brother became owner of 2/3rd of the property, while sister became owner of the remaining 1/3rd property. The sister came to own 1/3rd of the property by operation of law and not by any mutation. The mutation was meant to record legal entitlement of brother and sister. If the mutation was erroneously made in favour of the brother (only), such mutation would not create title in favour of the brother in accordance with Sharia law of inheritance.

Conclusion: In the absence of a positive affirmation to relinquish the inheritance right, the right was not transferred. Suit filed by the sister was not time barred in circumstances.

2017 MLD 1567 Lahore

Muhammad Siddique vs Mst. Kaniz Fatima

Facts: The plaintiff filed suit for her share out of the legacy left by her father. To such, the contention of defendants (brothers) was that no custom existed to give anything from the inheritance to the daughters at the time of death of their father.

Issue: What is the status of a daughter's inheritance share in Shariat versus in customary law?

Analysis: The Plaintiff had been deprived from her right of inheritance secured and guaranteed by Islam. It was held that the heir of any deceased would become owner to the extent of his/her share by operation of law the moment the predecessor died and that no limitation would run against claim of inheritance, therefore the Suit filed by the plaintiff was within time. The courts shed a light upon how Women who were a weaker segment of the society, should not be deprived from their right of inheritance in the name of custom. Stated that if anyone had deprived the sisters from the right of inheritance, he would have to prove through unimpeachable evidence the reason/ground on the basis of which sisters had been deprived from inheritance.

Conclusion: The courts held that Sale transactions/alienations or mutations made by the defendants of suit land in favour of subsequent purchasers were sham and were declared illegal, unlawful having no legal effect. The daughter's right was protected by Shariat. The heir of any deceased would become owner to the extent of his/her share by operation of law the moment the predecessor died and that no limitation would run against claim of inheritance.

2018 PLD 819 Lahore

Khalida Idrees vs Anas Farooq Chaudhry

Facts: After the death of the father who was Ahmadi by faith, the two sisters were excluded by their only brother to inherit the property left over by their father claiming that a gift deed was made for the property in his favour.

Issue: What are women's inheritance rights according to the Ahmedi faith?

Analysis: It was held by the courts that the deprivation of women folk from their due share in property through newly conceived or invented grotesque devices such as Will deed, gift/Tamleek deed or under

the garb of custom, family honour, regional culture as well as under coercion were common and in such transaction(s) courts, were saddled with unalienable obligation to show extraordinary circumspection, care and caution while dealing and deciding the matter of alienation of share or right of the women folk.

Conclusion: The appellants were entitled to receive half the property.

2020 SCMR 1618 Supreme Court

Mst. Brikhna vs Faiz Ullah Khan

Facts: The sister in this case who was also the petitioner, was one of the legal heirs of the deceased-father and thus became entitled to inherit the legacy of her father from the day her father died and as such became co-sharer/co-owner in the property. The brother contended that the daughter was not a real daughter and the property was left in a written statement to the brothers.

Issue: What is the right owed to a daughter, even when her right is written off by the deceased?

Analysis: The Respondent had failed to establish the stance taken by him in his written statement. Furthemore, the Petitioner being one of the legal heir of her deceased father was entitled to get her due Sharai share which in the circumstances came to 1/7 share. Petition for leave to appeal was converted into appeal and allowed with the observation that people belonging from the region where the present case originated from normally avoid giving their daughters/sisters i.e. women folk, their due shares in the inheritance of their predecessors.

Conclusion: The practice of excluding female heirs is against Sharia and the law of inheritance prevailing in the country and has no validity in law.

2020 SCMR 72 Supreme Court

Basheer Ahmed vs Mst. Fatima Bibi (Deceased)

Facts: Upon death of the original tenant his two sons succeeded to the tenancy rights to the exclusion of three daughters in terms of S. 20 of the Colonization of Government Lands (Punjab) Act, 1912 ('the Act'). When both sons died in 1940, then under the provisions of S. 21(b) of the Act, the succession was determined as though the original tenant had died, the succession being treated as having opened up at that time. Furthermore, at that time the relevant rules of the Islamic law of inheritance were applied so in those terms, all of original tenant's heirs (including in particular the three daughters) then became entitled to a share. One of the daughters (i.e. the plaintiff) had brought her suit for share in tenancy rights after both of her brothers had died.

Issue: Whether S 21 or S 20 of the Act applies to devolve the property from the father (after the death of the legatee co-owners

Analysis: There was a question of plaintiff's claim to a share in the tenancy rights that devolved from her father, was to be governed by S. 21 and not S. 20 of the Act, and in terms of the general law of inheritance relating to Muslims.

Conclusion: The Plaintiff was entitled, as a daughter, to an appropriate share in the tenancy (devolving from her father, whatsoever form the tenancy might have taken).

TRANSGENDER PERSONS

2018 Lahore P L D 54

Mian Asia vs Federation of Pakistan through Secretary Finance and 2 others

Facts: A transgender person wished to renew their CNIC which did not contain the father's name and only referred to their mentor/teacher.

Issue: Can identification documents be made for transgender persons with unknown parentage?

Analysis: Gender identity was one of the most essential aspects of life which referred to person's intrinsic sense of being male, female or transgender, and that everyone was entitled to enjoy all human rights without discrimination on the basis of gender identity and recognition everywhere as a person before law. Furthermore, being citizens of Pakistan, transgender/eunuchs were worthy or respect and safeguarding of their fundamental rights that Pakistan's constitution guaranteed to every individual. Such as the right to education, property, right to a quality life & livelihood and couldn't be deprived of their rights to obtain a CNIC card even if they didn't know their birth parents. Public functionaries and policy makers were instructed to be more sensitive towards restoring dignity of transgender community instead of increasing their plight. Thus, the High Court directed that copy of present judgment along with copy of policy be forwarded to all concerned including the Federal as well as Provincial Secretary Law, to circular the judgment widely within Pakistan so as to ensure that maximum members of transgender community be benefited; Chairman PEMRA shall also ensure that clause 2 of the policy for launching awareness campaign be implemented through all modes of communication

Conclusion: The High Court stated that there needed to be a shift in the mindset of the society & that people with diverse gender identity should enjoy legal capacity in every aspect of life.

2013 SCMR 187

Dr. Muhammad Aslam Khaki and another vs. Senior Superintendent of Police (Operation) Rawalpindi and Others.

Facts: Petition filed to protect Eunuchs from unfair treatment in Pakistan and grant them all rights provided for them under the constitution.

Issue: Are the fundamental rights of transgender persons protected?

Analysis: As eunuchs were citizens of Pakistan, they were fully deserving of all the rights that the Constitution granted to Pakistan's citizens, as well as to the right to life, dignity, respect and protection, without any discrimination whatsoever.

Conclusion: The Federal and Provincial governments were in charge of ensuring that all rights of eunuchs were granted and that their rights were fully safeguarded.

CHAPTER 4 – GIFTS RESULTING IN EXCLUSION OF LEGAL AFFAIRS

2018 P L D 803 Lahore

Tahira Bibi Petitioner vs. Muhammad Khan & Others

See also In Chapter 2: *Inheritance*

Facts: This application in revision is of the plaintiff and arises from a dispute relating to land measuring 27-Kanals 4-Marlas, which was owned by Ghulam Qadir, who was her real father and stepbrother of defendant No.1, Muhammad Khan. Vide gift mutation No.3847 dated 16.06.1999 (Exh.P-3) and gift mutation No.3760 dated 17.02.1998 (Exh.P-4), land measuring 15-Kanals, 4-Marlas and 12-Kanals respectively stood transferred in the name of Mst. Fatima Bibi, who was mother of Ghulam Qadir. Subsequently vide mutation No.3846 dated 16.06.1999 (Exh.P-1) and mutation No.3850 dated 26.08.1999 (Exh.P-2), the land mentioned in mutations Nos.3760 and 3847 were transferred in the name of defendant No.1, Muhammad Khan, by way of oral gifts. On 12.04.2008 the plaintiff challenged the above transactions of gift through a declaratory suit on the ground of fraud and misrepresentation with the assertion that her deceased father, Ghulam Qadir being follower of Shia faith had never made any gift in favour of his mother Mst. Fatima Bibi. Subsequently, the defendant No.1 on 15.10.2008 instituted a suit under Section 9 of the Specific Relief Act, 1877, against the plaintiff and 4 others seeking a decree for possession. It was alleged in the plaint that the plaintiff along with four others had illegally dispossessed him (defendant No.1) from the suit land. During trial of the suits Muhammad Munir and Nazir filed application under Order 1 Rule 10, C.P.C. for their impleadment as defendants. Since they were cousins (Chachazad) of Ghulam Qadir, their application was allowed and they were impleaded as defendants Nos.2 and 3 in plaintiff's suit. The defendants Nos.2 and 3 also contested the allegations made in the plaint. They in their written statement maintained that Ghulam Qadir belonged to Sunni school of thought; and, that the plaintiff was entitled to inherit only ½ share of the property of her deceased father, Ghulam Qadir.

Issue: The prime fact in issue was as to what was the belief of the deceased, Ghulam Qadir, that is to say, whether in the matter of religious faith, he adhered to Shia faith or Sunni discipline? Secondly, the other fact in issue is whether the validity and burden of proof of veracity of the gift made to to the exclusion of legal heir would lie with the gift done?

Analysis: Issue 1: Having carefully examined the case-law on the question in issue, I am of the view that although the psychological fact, that is, faith of a person is incapable of direct proof and no principle of universal application is available to determine it yet diagnosis whereof may be made through: (i) direct disclosures by word of mouth by the deceased; (ii) circumstantial evidence of the conduct of the deceased; and (iii) opinion of witnesses. The plaintiff was required to produce the person(s) before whom Ghulam Qadir denounced Sunni faith. This was not done. None of the witnesses particularly deposed as to the mode or manner of performance by Ghulam Qadir of his alleged Shia faith, prayers, rites, its practices, ceremonies and mandates. The witnesses also failed to disclose their source, basis and reason that the deceased Ghulam Qadir was a Shia. The documentary evidence, that is, certificates (Mark-A to Mark-C) issued by different private Shia institutions were of no avail for two reasons: firstly, the scribes of these two certificates were not produced; and secondly, these private documents were tendered in the statement of the counsel, which itself is not permissible as per principle settled in the case of "Federation of Pakistan through Secretary Ministry of Defence and another v. Jaffar Khan and others" (PLD 2010 SC 604).
Issue 2: The burden of proof to prove the validity of the gift lies on the donee, as opposed to the claimant as the legal heirs have the first right on inheritance. It is also equally and undoubtedly true that the burden of proof may not be of much consequence after both the parties lay evidence, but while appreciating the question of burden of proof, misplacing of burden of proof on a particular party and recording findings in a particular way definitely vitiates the judgment as it has happened in the instant matter where the

Courts below illegally and erroneously failed not to cast the burden on defendant No.1 by clearly misconstruing the whole case and thus resulted into recording of findings which are wholly perverse. It is settled principle of law that neither presumption of correctness nor that of truth to the contents of mutation is attached under the law. Once the existence of a transaction itself has been questioned by a party in suit, it was legal obligation of the person claiming benefit thereunder to prove the same.

Conclusion: All these facts show nothing but fraud on the part of defendant No.1, so as to deprive the plaintiff of her right of inheritance. Since the defendant No.1 had failed to justify the disinheritance of the plaintiff, the disputed gift mutations as per principle settled in the case of "Fareed and others v. Muhammad Tufail and another" (2018 SCMR 139) cannot be held valid. The impugned mutations were declared illegal and the plaintiff was entitled to her legal share as per the Sunni school from the inheritance of the deceased father. Revision was allowed in circumstances.

2017 CLC 1601 Lahore

Mst. Kausar Bibi vs Mst. Ayesha Bibi

Facts: The subject matter of the instant file as well as the other property falling in districts Faisalabad and Chiniot was owned by one Mukhtar Ahmed, who died in the year, 1990 leaving behind six daughters and a son and then, the disputed property as well as other property was devolved upon the above mentioned legal heirs by attestation of inheritance mutations. After the death of Mukhtar Ahmed and attestation of inheritance mutations, his son namely Iftikhar Ahmed/respondent No.5 instituted a suit for declaration with the assertion that the land owned by the deceased falling in both the districts had orally been gifted out to him by his deceased father in his life time and inheritance mutations having been attested after his death, being illegal were liable to be set aside.

Issue: Would the gifts in favour of male heir whilst excluding female heirs be considered valid? Were the gifts and consequent mutations fraudulent?

Analysis: It is extremely regrettable that our society is commanded by its male members and the female members are treated like sheep and goats. Unfortunately, no male is willing to give the shari and legal share to his mother, daughter or even his sister notwithstanding the fact that the law of inheritance has been promulgated by our Creature given in the Qur'an in Surah Al-Nisaa (the fourth chapter) verses 11 and 12 and then in verse 176. The translation of the related portions of these verses (as I understand them) is given below:

4:11:"Allah enjoins you about [the share of inheritance of] your children: A male's share shall equal that of two females …. In case there are only daughters, more than two shall have two-thirds of what has been left behind. And if there be only one daughter, her share shall be half --and if the deceased has children, the parents shall inherit a sixth each, and if he has no children and the parents are his heirs then his mother shall receive a third, and if he has brothers and sisters then the mother's share is the same one-sixth. [These shares shall be distributed] after carrying out any will made by the deceased or payment of any debt owed by him (the deceased). You know not who among your children and your parents are nearest to you in benefit. This is the law of Allah. Indeed Allah is wise, all knowing."
Moreover, it reiterated: "fraud vitiates all solemn act and any instrument, deed, or judgment, or decree obtained through fraud is a nullity in the eye of law and can be questioned at any time so much so that they can be ignored altogether by any Court of law before whom they are produced in any proceedings."

Conclusion: No, female heirs may not be excluded. The brother, along with his wife, were attempting to get away with fraud. Moreover, the Court held: " Before parting with this order the agony and pain, I personally feel that the Judicial Officer whoever he may be passed the said judgment and decree involved himself in the sin committed by one brother through his wife along with his real daughters. Such Judicial Officers should not be tolerated any more in our judicial system. … The Registrar of this Court is directed to trace the Judicial Officer, who passed the judgment and decree dated 06.12.2010 and if he is

still in service then the matter must be reported to the honorable Administrative Judge concerned for further proceedings and copy of this judgment should also be circulated among every member of the District Judiciary working under the jurisdiction of this Court for care and guidance."

See also: *2020 SCMR 276, 2019 YLR 932, 2018 SCMR 30, 2020 YLR NOTE 26, 2020 MLD 1655, 1993 SCMR 618*

2005 SCMR 1859 Supreme Court

Arshad Khan vs Mst. Resham Jan and others

Facts: Plaintiffs being sisters of defendant disputed mutation of gift attested in favour of defendant on the ground of fraud, forgery and misrepresentation. The Trial Court decreed the suit and judgment and decree passed by Trial Court were maintained by Appellate Court and High Court and the same was appealed before the Supreme Court.

Issue: Can a woman relinquish her right of inheritance through a gift deed?

Analysis: It was held that express or oral relinquishment of right of a female heir in inherited property in favour of male heir, through gift or any other legal device, takes effect only if such transaction was not denied and/or disputed by the female heir, a presumption would be raised that the transaction was not genuine and to prove that it was entered in good faith and was a genuine transaction, onus would be on the person who was claiming its genuineness. If such onus was not discharged satisfactorily, the document of relinquishment of rights of female heir in the property in favour of a male heir, would not, ipso facto, confer title adverse to the interest of female heir. It was held that the defendant was not only under the legal obligation to protect the right of his sisters in the suit property rather it was also his moral duty to accept their claim and deliver the possession of the land of their share to them voluntarily.

Conclusion: The Supreme Court did not find any legal defect or infirmity of misreading or non-reading of evidence by High Court in affirming the concurrent findings of fact of two Courts below and therefore, the leave to appeal was refused.

2005 SCMR 135 Supreme Court

Mst. Kulsoom Bibi and another vs Muhammad Arif

Facts: Mst. Kulsoom Bibi widow of Muhammad Fazil and her son Muhammad Rauf filed a suit for declaration to the effect that they were entitled to four properties owned by Muhammed Fazil (deceased). They also challenged a registered gift-deed No.6450, dated 27-12-1992 through which House No.74-A aforesaid purported to have been transferred by Muhammad Fazil in favour of Muhammad Arif and Muhammad Hanif, his brothers, by way of gift. It was alleged in the plaint that Muhammad Fazil, the so-called donor, being diabetic, heart patient and having seriously suffered from these diseases during the last days of his life, was on the deathbed. That deriving undue advantage of the physical and mental condition of Muhammad Fazil, the two brothers hatched a conspiracy in order to deprive the plaintiffs from inheritance and got a fake and forged gift-deed registered in their favour.

Issue: Issue 1: Whether the High Court while exercising revisional jurisdiction had the authority to justifiably set aside the concurrent findings of two Courts below related purely to a question of fact? Issue 2: The next important question is with regard to the proof of the gift-deed in question? Were the three ingredients of gift fulfilled? Issue 3: What is the validity of the gift deed which had the effect of disinheriting legal heirs? Issue 4: Question of whether a valid gift may be made whilst considering the doctrine of 'Maraz-ul-Maut' i.e. he was on his deathbed?

Analysis: The Court held that, "While exercising revisional jurisdiction, the High Court should satisfy itself upon three matters: firstly, whether the subordinate Court had the jurisdiction vested in it; secondly, whether the case is one in which the Court ought to exercise the jurisdiction and thirdly, that whether the lower Court acted illegally or with material irregularity resulting into miscarriage of justice. These principles have often been repeated by the superior Courts".
It was held that the beneficiary under the document was bound not only to prove the execution of document but also to prove the actual factum of gift by falling back on three ingredients of proposal, acceptance and delivery of possession. Three ingredients had to be proved independent of the document. Both witnesses never uttered a single word to the effect that Muhammad Fazil had signed the document within their view. The physical delivery of possession under the gift is, therefore, altogether negated by the so-called donees. Last is question of 'Maraz-ul-Maut'. It is admitted that Muhammad Fazil, the alleged donor was serious patient of cardiac disease along with diabetes. During the days when the alleged deed was executed, Muhammad Fazil as repeatedly admitted in the hospital and quite soon after the execution of deed on 27-12-1992, he died on 5-2-1993 within an interval of 35 days. We would not go into the details of the implications involved under this topic because even a gift made during 'Marz-ul-Maut' is subject to all the conditions necessary for the validity of a 'Hibba' or gift, including delivery of possession by the donor to the donees. When once we have categorically held that the gift in the instant case was fraudulent and the very transaction of gift in original has not been proved by the so-called donees, the very gift becomes non-existent and nullified, regardless of whether it is made during ' Marz-ul-Maut' or otherwise

Conclusion: The judgement and decree passed by High Court was set aside and that of the Appellate Court was restored, and the appeal was allowed.
***See also**: 2003 SCMR 1829; PLD 1977 SC 28; PLD 1994 SC 160; AIR 1941 Lahore 58*

2008 PLD 73 Supreme Court

Allah Diwaya vs Ghulam Fatima

Facts: A gift deed was challenged to be unenforceable as it was not registered and possession had not been handed over. It was averted that in view of provisions of section 129 of the Transfer of Property Act, 1882, it was permissible under Muslim Law to make an oral gift or even through an unregistered document where essential ingredients of gift were otherwise satisfied and that section 123 of the Act had no application in such cases.

Issue: Whether a gift deed could be considered valid without possession and without registration?

Analysis: The execution of gift deed and agreement to sell were to be proved by Allah Diwaya being beneficiary and to substantiate his claim which is based on the alleged gift and sale. The appellant has failed miserably to prove the factum of gift and execution of agreement to sell.

Conclusion: The Court noted that the subject land was in continuous possession of "Ghulam Rasool and thereafter, [and then] with his legal heirs. I find that in case gift would have been executed the name should have been incorporated in revenue record. It is also very clear to me that in case Ghulam Rasool would have intended to alienate the property, he must have executed a registered document….The determination of learned appellate court was upheld by the learned High Court vide judgment impugned which cannot be reversed without any cogent reasoning and lawful justification which are lacking in this case. It would be a futile exercise to examine as to whether the gift was got registered or not for the simple reason that its execution could not be proved. There is, however, no cavil to the proposition that the gift deed was compulsorily registerable under section 17 of the Registration Act and without getting it registered the title of the property in question could not have been conferred upon."

***See also:** 1987 SCMR 1403*

2010 SCMR 342 Supreme Court

Muhammad Ejaz vs Mst. Khalida Awan

Facts: Respondent No.1 Mst. Khalida Awan instituted a suit in the Court of Civil Judge, Shorkot for a declaration to the effect that she was owner in possession of the suit property on the basis of gift deed dated 15-8-2002 executed by her father Ahmed Bakhsh in her favour. She also sought a direction that the petitioners/defendants be restrained from interfering with her possession.

Issue: Plaintiff claiming to be owner of suit house on basis of unregistered gift deed executed by her deceased father to exclusion of her brother and three sisters

Analysis: Gifts made under the Muslim Law were expressly excluded from operation of the Transfer of Property Act, 1882 by virtue of section 129, which provided that nothing in the Chapter in which section 123 fell, would affect any rule of Muslim Law. It was held that there was a failure of plaintiff to depose as witness that she had accepted gift or possession of suit house was given to her and thus, onus was on plaintiff to prove gift deed in all three elements of a gift i.e. declaration of gift by donor, acceptance of gift by donee and delivery of possession of corpus of gift. Stated that no valid gift of property could be made in absence of any such three essential ingredients. The gift deed, in the present case, was executed by donor three months before his death where after plaintiff had not got property mutated in her favour. Marginal witnesses and scribe of gift deed had stated that plaintiff was not present at the time of making of gift deed and Plaintiff in her deposition had acknowledged that one room in suit house was under lock and key of her brother even during life time of his father. There was nothing on record to show as to how plaintiff's brother came into portion of suit house after its gift in her favour.

Conclusion: A valid gift can be affected orally, if the pre-requisites are complied with. Written instrument is not the requirement under the Muslim Law nor is the same compulsorily registrable under the Registration Act, 1908.

See Also: *1977 SCMR 154; 1987 SCMR 1403*

2016 CLC 630 Gilgit Baltistan Chief Court

Mst. Gulzar Begum (petitioner) vs. Mst. Bibi Zaitoon and two others (respondents)

Facts: Through this Civil Suit the, petitioner/plaintiff sought a decree for 1/4th (one fourth) in the properties of her father, namely Hajat Aman (late). Mr. Hajat Aman (late) had only four daughters as his legal heirs. Respondents/defendants, who are real sisters of the petitioner/plaintiff, contested suit on grounds of gift deeds dated 15-04-2002, Exh.D/1, and gift deed dated 11-09-1993, Exh.D/2. In addition to the said gift deeds, respondents/defendants jointly averred that respondent No.1/defendant No.1, Mst. Zaitoon Bibi, was Dukhtar Khana Nasheen of their father. Learned trial court completed all trial proceedings and passed decree in the following words:-

"Keeping in view my findings on issue Nos.1, 2, 3, 4, 7, 9, 10, 11, 12 and 13, the suit is decreed to the effect that plaintiff is entitled to 1/4 share from the suit properties except property described as Chono Chako which shall remain property of defendant No.1, with costs. File."

Issues: Could the property be legitimately transferred as gift deed, to the exclusion of the fourth daughter, without the delivery of possession in the lifetime of the donor?

Analysis: The donor hadn't transferred the possession of suit land in favor of the donees and while the gift deeds were being prepared, none of the donees were present. No marginal witnesses of the gift deeds

were being produced by the defendants and the donees had moreover failed to prove the gifts as valid and correct via any evidence.

Conclusion: The impugned judgment was the result of misreading the evidence that was set aside, and the Trail Court's evidence was restored. The revision was allowed in circumstances.

2016 CLC 1224 Gilgit Baltistan Chief Court

Hasan and another vs. Musa

Facts:. The plaintiffs declared that they owned total land that measured 21 kanals and 2 marlas through two gift deeds that were given to them and that the defendant/respondent took possession of 4 kanals and 10 marlas out of the total land and claimed that the plaintiffs were instead entitled to 4 kanals and 10 marlas of land. The defendant contested the suit and pleaded that disputed land measuring 4 kanals and 10 marlas had devolved on him from his mother.

Issue: What was the proof required to establish that the gift deed was valid?

Analysis: The Trial Court decreed the suit and, Appellate Court set aside the decree passed by the Trial Court and dismissed the suit filed by the plaintiffs. The title of the defendant to the suit land measuring 4 kanals and 10 marlas was not disputed as he was real son of the donor, instead the burden of proof was now on the plaintiffs to prove that they had obtained the suit land via the said two gift deeds that were allegedly executed in their favor. The marginal witness of the said two gift deeds had died, but even though the scribe of the same was alive, he had appeared as the defendant's witness and gave a statement in proof of gift-deed executed in respect of defendant regarding disputed 4 kanals and 10 marlas. The gift deed in favour of the plaintiffs was not accepted as a correct and genuine document. The Trail Court's findings on the issue were partly in favour of the plaintiffs, and partly against them, but they did not challenge the said finding in the appellate court which had attained finality, in circumstances.

Conclusion: The Trial Court had passed a vague decree and did not pass any decree for recovery of possession of the suit land. The Appellate Court had rightly set aside the judgment and decree of the Trial Court and the impugned judgment of the Appellate Court was upheld, in circumstances.

2016 MLD 586 Gilgit Baltistan Chief Court

Yousuf (petitioner) vs. Ghulam Abbas (Respondent)

Facts: A suit was decreed by the Trial Court against which an appeal was filed whereby an application was moved for the production of documentary evidence by the defendant that was dismissed. When the defendant lost the document required to be produced wasn't on record.
Issue: what is the evidentiary requirement of the deed document?

Analysis: The issues were framed by the Trial Court and the defendant was afforded a chance to prove the gift deed. The application for the production of the document was based upon the mala fide of the defendant and

Conclusion: The Appellate Court did not point out any irregularity in the impugned order that it passed. The revision was dismissed in circumstances.

2016 YLR 2557 Gilgit Baltistan Chief Court

Muhammad and four others (appellants) vs. Rehman and 19 others (respondents)

Facts: The suit land had been given to the parties through their forefathers and it was the share of the plaintiff's mother.

Issue: How can inherited land be transferred in a gift deed?

Analysis: Even though the defendant in his written statement averred that the plaintiff or their mother weren't his co-sharers, the attorney stated that they were his co-sharers and co-heirs, and this was enough to hold that the mother of the plaintiff was entitled to the suit land as one of the co-heirs of the defendant. Since the defendant specifically pleaded that the plaintiff's mother gifted him the property via a gift deed, was put under burden to prove that the property was given to him through a gift deed. According to the defendant's witness, the defendant was in possession of the suit land when the gift deed was being prepared, however the defendant had averred that the gift deed was prepared before separating the share of the plaintiff's mother. The Court discarded the statement of the said defendant's witness and held that any gift of any Sharai share of any person in any property was illegal, until and unless such a share was separated and the physical possession of the same was practically handed over to the person, who was entitled to the same. The Appellate Court already passed a decree in the favor of the sister of the plaintiff's mother in another suit filed by her for the Sharai share, in which the defendant pleaded the gift of the suit property of the said suit in his favor, and the judgment was final.

Conclusion: The Chief Court, setting aside the impugned decree of the appellate court maintained that of the Trail Court, whereby the plaintiffs had been declared as entitled to the suit land through their mother. The second appeal was allowed in circumstances.

2016 MLD 594 High Court of Azaad Jammu and Kashmir

Muhammad Bashir (appellant) vs. Muhammad Sarwar and two others (respondents)

Facts: The suit property was mortgaged in favor of the plaintiff by the defendant. The defendant had agreed to return the property by a given date and if he failed to do so, he'd be liable to register a sale deed of suit land. The defendant however, did not return the amount and gifted the suit property to his sons. A suit for specific performance was filed by the Plaintiff that was dismissed concurrently.

Issue: Was the property transferred to the sons?

Analysis: The requirement of proof of document through marginal witnesses had been exhausted in the present case, and the mortgage property could not be sold unless the mortgage had been redeemed. The defendant who couldn't fulfill the condition of paying off the borrowed money within the prescribed period, was bound to execute the sale deed in favor of the plaintiff as agreed upon. The gift deed was executed by the defendant during the pendency of the suit which wasn't a valid execution. The ingredient of the gift with respect to delivery of possession hadn't been fulfilled in the present case. The delivery of possession hadn't been made to the donees and the gift was defective which had no legal effect. The plaintiff was entitled to the decree for specific performance of the contract of suit land. The suit was decreed in circumstances and the impugned judgments and decrees passed by the courts were set aside.

Conclusion: The defendant was directed to execute a sale deed of suit land within a specified period, and if he failed to do so, the Nazir of the Court of Sub Registrar would execute the sale deed. The appeal was allowed in circumstances.

2016 YLR 760 High Court of Azaad Jammu and Kashmir

Mst. Hassan Jan and 8 others (appellants) vs. Akhtar Jan and 19 others (respondents)

Facts: Both the plaintiffs and defendants instituted suits against each other. The plaintiffs contended that they were the owners of the suit property and the gift deed in favor of the defendants was fictitious. The plaintiff's suit was dismissed whereby that of the defendant was decreed.

Issue: Did the gift deed transfer title without the delivery of possession?

Analysis: The plaintiffs were in possession of the suit property and the gift deed in favor of the defendants was without the delivery of the possession. The subsequent transaction could never be preferred over the existing one. The suit of the defendants was moreover, time barred. While the suit of the plaintiffs was being dismissed, both the courts had committed to mis-reading and non-reading of evidence.

Conclusion: The impugned gift deed was liable to be cancelled to the extent of property owned by the plaintiffs. The suit filed by the plaintiffs was decreed whereas that of the defendant was dismissed and mutation in the favor of the plaintiffs was restored. The appeal was allowed.

2016 CLC 15 Islamabad

Shazia Qamar and others (petitioners) vs. Bashiran Bibi and others (respondents)

Facts: A suit for recovery was filed by the plaintiff against the defendant (her daughter in law), in which the plaintiff claimed that she had loaned a suit amount to the defendant under an oral agreement to help her get a study visa, but the defendant refused to return this after she was divorced by her son. The suit was decreed by both the Trail Court and the Appellate Court.

Issues: Whether the amount transferred was a gift or a loan that was to be returned after separation.

Analysis: The defendant agreed that there was a deposit of suit amount in her account by the plaintiff, but in her written statement stated that the amount was transferred in her account as a gift based on love and affection, and the defendant's witness agreed to this. The plaintiff did not controvert the defendant & witness's statements. The burden to prove the issue regarding existence of oral agreement was on the plaintiff which she failed to discharge. The court failed to consider pleadings and evidence and was a case of misreading and non-reading of the evidence.

Conclusion: The suit was dismissed by the High Court after it set aside judgments and decrees of courts below. The revision petition was accepted in circumstances.

662 SCMR 2016 Supreme Court

Mst. Saadia (appellant) vs. Mst. Gul Bibi (Respondent)

Facts: The prerequisites for a valid gift i.e. "offer", "acceptance" and "delivery of possession" was not proved. There was a non-examination of the attesting witnesses of the gift deeds.

Issue: Was the gift deed authentic?

Analysis: Interested witnesses were called in to prove the execution of the purported gift deeds. There was a non-production of original gift deeds along with the plaint. The evidence of a handwriting Expert, moreover, was not helpful in those circumstances whereby photostate copies of the purported gift deeds

were used to compare signatures. The possibility of manipulation, substitution and subsequent addition of attesting witnesses couldn't be ruled out.

Conclusion: In such circumstances, gift deeds couldn't be termed as valid.

689 MLD 2017 Lahore

Mst. Sardaran Bibi vs Mst. Allah Rakhi

Facts: Plaintiffs filed suit on the ground that suit property was owned by the father (deceased) of the parties to the case and on chehlum of deceased, defendants-real sisters of plaintiff orally gifted the suit property in favour of plaintiff. When plaintiff intended to transfer property to his son, defendants refused to honour their commitment.

Issue: What standing does an Oral gift have?

Analysis: The Suit of plaintiff was dismissed by the Trial Court as well as lower appellate court. Plaintiff had failed to fulfill the mandatory requirements of an "oral gift" as no specific date, time and place was mentioned in the plaint. The witnesses could not substantiate claim of plaintiff even plaintiff himself failed to prove his case. The defendants flatly and categorically denied the factum of making oral gift in favor of plaintiff.

Conclusion: It was stated by the Courts that women who were weaker segment of society were not to be deprived of their right of inheritance in the name of custom or by emotionally exploiting them, and in those grounds the revision was dismissed.

2017 YLR 925 Supreme Court Azad Jammu & Kashmir

Mst. Zohra Bibi and 3 others (appellants) vs. Ashiq Hussain and 2 others (respondents)

Specific Relief Act (I of 1877). Sections 42, 12 and 39 of the Civil Procedure Code (V of 1908). This case law is related to the suit for declaration, specific performance and cancellation of document.

Facts: The plaintiff contended that he was the owner of the suit land and that the gift deed was liable to be cancelled.

Issue: Can an agreement to sell a property hinder the transfer of that property through a gift deed?

Analysis: The suit was dismissed to the extent of declaration but decreed to the extent of cancellation of gift deed and specific performance of the agreement to sell. The present suit for cancellation of gift deed and for specific performance of contract was competent without asking for further relief of possession. The plaintiff proved his case by leading oral and documentary evidence. The defendant was bound to prove that the agreement to sell was forged and a fraudulent document, and had failed to prove that the transfer of suit property in his mother's favor was in good faith bona fide intention.

Conclusion: The agreement to sell didn't create any title and the Trail Court rightly dismissed the suit to the extent of declaration of ownership of the plaintiff. The appeal was dismissed in circumstances.

2017 MLD 2051 Supreme Court Azad Jammu & Kashmir

Mst. Chanaan Bi and 2 others (appellants) vs. Muhammad Shahpal and 2 others (respondents)

Facts: The plaintiffs contended that the gift deed had been fraudulently obtained and they were deprived of the right of inheritance. The courts dismissed the suit.

Issue: The gift deed was executed on a particular date but was entered on the revenue record after the death of the donor.

Analysis: The gift obtained was held by a practicing fraud. The defendant failed to appear in the witness box to support her claim of being a donee, and was bound to appear and explain that the gift deed in question was voluntarily executed in her favor by excluding the other legal heirs (the daughters) who had been excluded from the gift deed without showing any reason. The impugned gift deed couldn't be approved

Conclusion: The decree was granted in favor of the plaintiff in the terms that the impugned gift deed would be inoperative against the rights of the plaintiffs. The appeal was allowed in circumstances.

2017 CLC 704 Supreme Court Azad Jammu & Kashmir

Zahoor Ahmed (appellant) vs. Mohammad Siddiqui (respondent)

Facts: A suit was filed in which a gift deed was challenged. The Trial Court decreed the suit and the respondent filed an appeal.

Issue: Could a fraudulently achieved compromise on a restoration of gift deed be challenged?

Analysis: The appeal was dismissed as compromise was effected between the parties and the gift deed was restored. Another suit was filed by the plaintiff in which it was argued that the compromise was obtained fraudulently, the suit was dismissed by the courts and confirmed by the High Court, as the plaintiff had failed to prove the fraud and deception in his evidence.

Conclusion: The plaintiff was bound to prove that the defendant had subjected him to fraudulent means, but said nothing about the facts/events of the fraud. The appeal was dismissed in circumstances.

2017 YLR Note 198 Supreme Court Azad Jammu & Kashmir

Muhammad Maqbool and 3 others (appellants) vs. Muhammad Younas and another (respondents)

Facts: The plaintiffs contended that the donor/mother of the defendant was the only predeceased son's daughter to whom no property was supposed to be devolved through inheritance of predecessor in interest, and that the donor/mother of the defendants got incorporated suit property in her favor via fraudulent means. Whereas the defendants contended that the donor/mother had inherited the suit property which was subsequently gifted to them.

Issue: Can whole property be gifted to heirs?

Analysis: According to Islamic law, not more than 1/3rd of the property can be gifted by deed during the life of the donee.

Conclusion: The Trial Court correctly reached the conclusion that the donor wasn't competent to execute the gift deed of the whole property in favor of her sons. The gift by the donor was in excess of her share, and the Trail Court rightly concluded that she was only entitled to half the suit property. The decree of the Trail Court was maintained and the appeal was accepted accordingly.

2017 YLR Note 129 Supreme Court Azad Jammu & Kashmir

Muhammad Razzaq and 3 others (appellants) vs. Tassadaq Hussain Shah and another (respondent)

Facts: The suit was filed by the pre-emptor three years before the disputed gift deed in favor of the defendants was registered. The suit property was transferred in favor of the defendants during the pendency of the suit. The improvements were made after the transaction of the gift deed. The defendants in light of their own pleadings were barred to claim the costs of improvements.

Issue: Can a disputed gift deed be register and valid?

Analysis: The Trail Court decreed the suit along with the cost of improvements but the Appellate Court disallowed such cost.

Conclusion: The impugned judgment that the High Court passed did not suffer from any illegality or infirmity. The appeal was dismissed in circumstances.

2018 SCMR 139 Supreme Court

Fareed and others (appellants) vs. Muhammad Tufail and another (respondents)

Facts: This case law is related to the exclusion of a legal heir.

Issue: Can a gift deed disherit an heir?

Analysis: The donee claiming under a gift that excluded a heir, was required by the law to establish an original transaction of gift irrespective of whether such a transaction was evidenced by a registered deed.

Conclusion: A gift deed must justify the disinheritance of an heir from the gift.

2018 SCMR 30 Supreme Court

Mrs. Khalida Azhar (appellant) vs. Viqar Rustam Bakhshi (respondent)

Facts: The appellant (sister) contended that their deceased father left behind a house, which her brother (respondent) managed to get transferred in his name via a forged gift deed and power of attorney, therefore, denying her of her father's inheritance.

Issue: Was the gift deed challengeable after 26 years of its execution?

Analysis: Among the executants of the gift deed and the general power of attorney, only the appellant had denied the execution of the document after 26 years. Multiple witnesses stated that the brother did not forcefully get the house gifted to him, thus the appellants challenge to the authenticity of the gift deed wasn't sustainable.

Conclusion: the suit filed by the appellant was dismissed to such an extent and the appeal was disposed of accordingly.

698 PLD 2018 Supreme Court

Bilal Hussain Shah and another (appellants) vs. Dilawar Shah (respondent)

Facts: This case law is related to a gift deed whereby a proof of execution of document required by law is to be attested.

Issue: Could the requirements of two witnesses be waived?
Analysis: The said provision relaxed the provision of calling the two attesting witnesses to prove the execution of the document, if it was duly registered according to the provisions of Registration Act, 1908 and its execution wasn't specifically denied.

Conclusion: It can be waived as long as its in accordance with the provisions of Registration Act 1908 and its execution is not specifically denied**.** The denial of the execution of the document wasn't limited to the executant alone but was open to any party to the suit that was affected by the said document.

2018 PLD 819 Lahore

Khalida Idrees and others (appellants) vs. Anas Farooq Chaudhry and others (respondents)

Facts: Plaintiff was an heir who challenged the respondent's right to suit property based on an oral gift.

Issue: Can an oral gift disinherit an heir of their legal right?

Analysis: For an oral gift to be considered valid, the pre-requisites were specific description of date, time, and place of making the offer of the gift by the donor and the acceptance of the gift by the donee.

Conclusion: The donee claiming the right under a gift excluding another heir of a property was by law required to establish another transaction of gift irrespective of whether such a transaction was evidenced by a registered deed and such a gift deed must justify the cause of disinheritance of other heirs.

2018 MLD 1090 Lahore

Muhammad Mushtaq Bhutta through legal heirs (petitioner) vs. Ch. Muhammad Jameel and 6 others (respondents)

Facts: Plaintiff brougg a case against the donee for a gift received through misrepresentation and fraud, claiming that the mental condition of the deceased was unstable at the time the deed was formed.
Issue: Can the deed be held void based on the claim?

Analysis: The plaintiff contended that the gift deed in favor of the defendant was illegal, inoperative and void upon his rights.

Conclusion: The suit was dismissed concurrently. The plaintiff failed to prove via any cogent evidence that the deceased was under any mental disability at the time of execution of the gift deed. The plaintiff moreover failed to produce any doctor who treated the deceased nor any medical record was produced. The revision was dismissed in circumstances.

2019 MLD 576 Supreme Court Azad Jammu & Kashmir

Syed Iqbal Shah and another (appellants) vs. Syeda Tahira Bibi and 2 others (respondents)

Section 42 of the Specific Relief Act (I of 1877) and Azad Jammu and Kashmir Family Courts Act (XI of 1993), section 5.

Facts: this case law is related to the Suit for declaration regarding land given as dower to the plaintiff (wife) and also challenged the gift deed relating to the said land executed in favor of a third party.

Issue: Can land gifted in Dower be transferred to a third party?

Analysis: The suit was decreed concurrently. The land that was given as dower hadn't been abandoned by the wife, and the Civil Court was an appropriate channel to determine the matter of controversy regarding payment of dower in respect of any property between the spouse and the third party. No mis-reading or non-reading of the evidence was pointed out by the impugned judgments passed by the courts

Conclusion: the appeal was dismissed in circumstances.

2019 CLC 1710 Peshawar

Shafi Ur Rehman (petitioner) vs. Aziz ur Rehman and Others (respondents)

Facts: The plaintiff contended that the gift deed was based on fraud and misrepresentation, and the suit was decreed concurrently. The gift deed wasn't affected in the presence of the defendant and it didn't have his signature or thumb impression. It wasn't even recorded that the donor made a declaration of gift land to the donee, that the donee had accepted the gift and that the possession of suit land was given to the donee as a gift.

Issue: Have the evidentiary requirements of gift deed been met?

Analysis: The defendant didn't plead that the gifted property was given to him out of love and affection, and therefore failed to prove the factum of the gift in his favor, and hadn't even mentioned where the property was gifted to him, i.e. the place, the date and the timings, and was told to produce the following facts. The ingredients of a valid gift weren't fulfilled in the present case.

Conclusion: The High Court observed that the impugned gift deed was fraudulent and was never executed. The revision was dismissed in circumstances as no mis-reading or non-reading of evidence or any illegality or irregularity was pointed out by the impugned judgments and decrees passed by the Courts.

Peshawar (Abbottabad Bench**)**

Note 23 YLR 2019 Peshawar (Abbottabad Bench)

Muhammad Afzal & 3 others (petitioners) vs. Haq Nawaz & 6 others (respondents)

Facts: This case law is related to a dispute of a gift deed, as the evidence of the witness wasn't recorded on the oath.

Issue: Is the gift deed valid?

Analysis: The Trial Court decreed the suit but the Appellate Court reversed the said judgment on the ground that the attorney of the plaintiff didn't record his statement on oath. The impugned judgment and decree were set aside, and the case was remanded to the Trial Court with the direction to administer oath to the attorney of plaintiff and record his statement and decide the matter on its own merits.

Conclusion: The revision was allowed in accordingly.

2019 CLC 1417 Lahore

Mubashir Hussain through Special Power of Attorney (petitioner) vs. Syed Hussain Abbas and 3 others (respondents)

This case law is related to a gift deed, a transaction with a Pardanasheen lady, and a gift on behalf of a mother in favor of one of her sons excluding the other legal heirs.

Facts: The plaintiff contended that the gift mutation was based on fraud, and the suit was decreed concurrently. The defendant didn't bring any witnesses nor did he mention the date and time when the gift was given to him in the written statement. The testimony of a person who had allegedly acted as an identifier couldn't be considered to be that of an attesting witness. The donor, moreover, was an illiterate pardahnasheen lady who had executed the alleged gift without any independent advice & in the absence of her loved ones.

Issue: Was the gift deed valid in absence of any real witnesses or evidence other than the deed document?

Analysis: The defendant was required to prove the gift through independent and credible evidence and the execution of the document, which he failed to prove. The suit property should have been inherited by the mother-donor to all the legal heirs, i.e. siblings and there was nothing on record as to why the other legal heirs were deprived of the suit property during the gift deed in favor of the defendant.

Conclusion: The revision was dismissed in circumstances.

2019 MLD 732 Lahore (Multan Bench)

Mehboob Ud Din and others (petitioners) vs. Mst. Zubaida and others (respondents)

Facts: The plaintiffs claimed to be the owners of the suit property and stated that the registered gift deed relied upon by the defendants was a fake and forged document. The Trial Court dismissed the suit but the Lower Appellate Court reversed the said findings and decreed the suit in favor of the plaintiffs.

Issue: Who has to prove the validity of the gift deed?

Analysis: The burden to prove that the suit property was gifted to them was placed on the defendants who since the first day failed to prove, where, when and before whom the suit property was declared as a gift to them by the donors and they accepted it from them. The stamp paper for the gift deed wasn't purchased by any of the purported donors, instead it was issued to the father of the donees, who admittedly had no authority on their behalf. It's important to note that the purchase of the stamp papers by an unauthorized person, despite the availability of ladies on whose behalf it was written, made it dubious from the day of it's inception.

Conclusion: The defendants didn't succeed in establishing the authenticity and veracity of the document in question because none among the stamp vendor, petition writer, registry Muharir, sub-registrar and attesting witness was examined. The High Court didn't interfere in the judgment and the decree passed by the Lower Appellate Court as no wrong was committed. The revision was dismissed in circumstances.

2019 CLC 309 Lahore (Multan Bench)

Sajjad Hussain and 4 others (appellants) vs. Muhammad Yousaf and another (respondent)

This case law is related to a gift and the revocation of a gift. The father of a plaintiff had gifted a suit property but the gift deed was revoked thereafter. A suit was filed by the plaintiff wherein the revocation deed was assailed, and the suit was decreed concurrently. Before the delivery of the possession, the donor could revoke the gift deed any time, and if the possession was delivered then the donor could only revoke the gift through the assistance of the Court. The alleged revocation deed was inconsequential and without any substance. There was no mis-reading or non-reading of the evidence that had been pointed out in the impugned judgments and the decrees passed by the Courts below. The second appeal was dismissed in circumstances.

2020 C L C 326 Peshawar

Ali Murad and another (Petitioners) vs Aga Khan Health Service Pakistan through Chief Executive and 7 others (Respondents)

Civil Procedure Code (V of 1908). This case law is related to the suit for mandatory injunction seeking direction to the defendants to keep a functional health centre built on gifted property, and the rejection of the plaint.

Facts: The Plaintiff filed a suit for mandatory injunction seeking direction to the defendants to keep a functional health center built on gifted property, and the rejection of plaint. The defendants moved an application for rejection of plaint which was accepted. None of the donors or any of their representatives in interest had ever raised any challenge to the use or re-use of gifted property.

Issue: How can a gifted property be used after it has been transferred to the donee?

Analysis: The donee could deal with the suit property as full owner without any hindrance, liability or limitation. Moreover, the donee had stepped into the shoes of the donors on the strength of the gift deed and he couldn't be prevented from using the property in dispute. The defendants had legal capacity to restructure the health centre existing on the suit land to make it more facilitating and effective. The Plaintiffs had no locus standi and legal character or right to impugn the actions of defendants.

Conclusion: The Plaint had rightly been rejected, in circumstances. No illegality or irregularity had been pointed out in the impugned orders passed by the Courts below and the revision was dismissed, in circumstances.

2020 C L C 1048 Peshawar (Mingora Bench)

Sabz Ali Khan and 7 others (Petitioners) vs Mst. Bibi Naik Zada and another (Respondents)

This case law is related to Suit for declaration and permanent injunction and proof of gift deed. The document was more than thirty years old.

Facts: The plaintiff contended that she was entitled for her share in the inheritance whereas defendants contended that gift deeds of suit property had been executed in their favour. The Suit was decreed concurrently.

Issue: What was the validity of the gift deed without evidence?

Analysis: The witnesses of the impugned transaction had expired but no secondary evidence had been produced by the defendants. Neither gift deeds nor transactions incorporated in the same had been proved by the defendants, who were not in exclusive possession on the suit property. The Benefit of Art. 100 of Qanun-e-Shahadat, 1984 could only be claimed when a deed had been admitted or proved in evidence.

Conclusion: The revision was dismissed, in circumstances.

2020 C L C 1561 Quetta

Kalat and another (Petitioners) vs Bibi Ruqia (Widow of Late Shahzada Mehmood Khan) and 5 others (Respondents)

Facts: The Contention of plaintiff was that suit property had been gifted in his favour. The Suit was dismissed by the Trial Court but the Appellate Court decreed the same.

Issue: Is there enough evidence for a gift deed to be valid?

Analysis: The ingredients of gift i.e. offer, acceptance and delivery of possession were not available to the plaintiff. The physical possession of suit property had not been transferred in his favour on the basis of gift either.

Conclusion: Impugned gift was defective in nature and was not enforceable under the law, and if any of the conditions of a gift was missing then it could not be termed as valid gift. The donor had died a year before the gift deed was made. Moreover, the Plaintiff had also not disclosed the correct description of suit property, which had been recorded in the name of the Provincial Government. Impugned judgment and decree passed by the Appellate Court were set aside and those of the Trial Court were restored.
Revision was allowed, accordingly.

2020 C L C 2001 Lahore (Multan Bench)

Manzoor Hussain and others (Petitioners) vs Mst. Fazloon Bibi and others (Respondents)

Civil Procedure Code (V of 1908). This case law is related to the suit for declaration of a gift deed, evasive denial and the petition for amendment of written statement

Facts: A Suit was decreed against which appeal was filed wherein defendants moved application for amendment of written statement which was dismissed. Defendants in their written statement had not controverted the allegations levelled by the plaintiffs with substance rather evasively denied.

Issue: Can a written statement be edited to deny allegations?

Analysis: If any allegation had not been denied specifically then it would be considered to be admitted. Plaintiffs had led affirmative evidence to shift the onus to the beneficiary of impugned gift deed. The defendants had produced only one witness to prove alleged gift deed in their favour and the intention of defendants behind proposed amendment was to cover the lacunas left by them during trial, which could not be permitted.

Conclusion: The defendants had produced meager, weak and poor evidence and vested right in favour of plaintiff had accrued. Revision was dismissed.

2020 S C M R 276 Supreme Court

Muhammad Sarwar (Petitioner) vs. Mumtaz Bibi and others (Respondents)

Facts: This case law is related to oral gift and essential ingredients of proof. The brother (petitioner) attempted to disinherit his sisters (respondents) through an alleged oral gift deed made by their father.

Issue: What is the validity of oral gift deeds?

Analysis: The petitioner failed to mention the date, time and place of the alleged gift. Furthermore, he omitted to mention the names of witnesses in whose presence his father allegedly gifted the property in his favor and disinherited his sisters. Similarly, there was no mention of acceptance of the gift in presence of witnesses in the written statement as required by the law.

Conclusion: The gift mutation as well as the alleged oral gift were fictitious and the result of fraud. Petition for leave to appeal was dismissed and leave was refused.

2020 SCMR 2101 Supreme Court of Pakistan

Nasrullah Khan and another (Appellants) vs Mst. Khairunnisa and others (Respondents)

Civil Procedure Code (V of 1908).

Facts: This case law is related to gift deed, plea of fraud and a necessary party/defendant.
A person who acted as attorney and sold the disputed property to a third party was not arrayed as defendant in the suit. Attorney was a necessary party as it was he who on the strength of the disputed power of attorney sold the suit property to a third party. Moreover, the attorney also appeared to be the real uncle of one of the donees and brother of the donor.

Analysis: The fact that the donees had not made the attorney a party showed that such an omission was fatal to the suit even if it had been filed within the period of limitation. Such omission looked deliberate as the person who could only commit fraud had not been sued and thus the donees appeared to have not come to the court with clean hands.

Conclusion: The Suit filed by donees had rightly been rejected by courts and the appeal was dismissed.

2020 YLR 110 Peshawar (D.I. Khan Bench)

Mian Din Muhammad and others (Appellants) vs. Mst. Zaitoon and others (Respondents)

Specific Relief Act (I of 1877). S. 42. Transfer of Property Act (IV of 1882), S. 41. This case law is related to suit for declaration, inheritance, and will/gift. The plaintiff was allegedly deprived of her share by her brothers.

Facts: The plaintiff contended that she was entitled to her share from the legacy of her father and impugned Will deed and Gift were against law and based on fraud. The Trial Court decreed the Suit. The Right to Will could not be allowed to be exercised to the detriment of rights of other legal heirs.

Issue: Can a gift deed be valid based on Right to Will at a detriment of a legal heir?

Analysis: Only one marginal witness of Will had been produced who was unaware with regard to the contents/details of said instrument. The defendants had failed to prove the alleged will, in circumstances. The impugned gift deed was executed at the time when plaintiff was minor and said the document had lost its efficacy. The Plaintiff had become owner of suit property to the extent of her share immediately after the death of her father. The defendant being co-owner was not entitled to alienate more than his entitlement from the suit property.

Conclusion: The protection extended to the transaction made in favour of alleged bona fide purchasers by the Trial Court was against the law and vested rights of legal heirs who never consented to such transaction. Any transaction made by the brothers of the plaintiff beyond their entitlement was void and ineffective upon the rights of other legal heirs and the same could not be protected. Appeal was accordingly disposed of.

2020 Y L R 529 Peshawar (Mingora Bench)

Sami Ullah and 9 others (Petitioners) vs Aqal Mand and others (Respondents) Specific Relief Act (I of 1877)

S. 42. Qanun-e-Shahadat (10 of 1984), Arts. 67 & 77. This case law is related to suit for declaration, limitation, inheritance and the production of secondary evidence, and requirements of proof of gift.

Facts: The plaintiff contended that the gift mutation was based on fraud and misrepresentation whereas the defendants contended that plaintiff had gifted suit property in their favour. The Suit was decreed concurrently. The defendants had alleged that they had lost original deeds and had produced photocopy thereof without obtaining permission to produce secondary evidence, but even attested copies of official record were never produced by the official concerned from the official custody.

Issue: What is the validity of the gift deed that has no evidence and witnesses?

Analysis: Evidence produced by the defendants couldn't be given preference over the evidence of the plaintiff in circumstances. The defendants were bound to prove transaction of impugned mutation by producing at least the marginal witnesses of the same but they hadn't produced the said witnesses. The defendants had failed to establish alleged gift through impugned mutation.

Conclusion: The right of inheritance could not be defeated on technicalities. The Plaintiffs were direct legal heirs of their predecessor and they had claimed their share in the suit property during their lifetime. The Suit was within time and the revision was dismissed, in circumstances.

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