

case supra are available to the petitioners case, thus their case cannot be transferred on mere apprehensions and that too, on assumptions. Indisputably, for transfer of case pecuniary interest and bias of a judge has to be demonstrated, which the petitioners have failed to do so, therefore, the case cannot be transferred on the whims and wishes of the petitioners. B

13. I have critically examined the impugned order and allegations levelled by the petitioners, whereof I am of the considered view that that the petitioners have failed to substantiate their stance, thus an apprehension of not getting justice from the hands of the said court could not be a ground for transfer of the case as the one seeking transfer of the case has to prove bias of a judge through trustworthy evidence, which is not available in the instant case.

14. Corollary, the petition being shorn of merits is dismissed with no order as to cost.

SA/42/Bal. Revision dismissed.

2025 Y L R 1217

[Lahore]

Before Masud Abid Naqvi, J

SAFIA BIBI---Petitioner

versus

MUHAMMAD TUFAIL
and others---Respondents

Civil Revision No. 30346 of 2024, heard
on 17th May, 2024.

(a) *Specific Relief Act (I of 1877)*---

----S. 42---Suit of declaration---Gift-deeds, assailing of---Limitation--- Plaintiff/lady instituted the suit against her (four) nephews/defendants and brother/defendants with the averments that she being the daughter of deceased was entitled to inherit 1/6 share from the estate of her late father and gift-deeds/mutations in favour of defendants were illegal--- Claim of the plaintiff /lady was concurrently rejected---Validity--- Undeniably, the deceased /predecessor died four years before filing of suit; neither he or petitioner/plaintiff nor his other daughters challenged transactions-in-question before the death of deceased---Even the petitioner /plaintiff had not impleaded rest of the parties to the suit---Admittedly petitioners'/ plaintiffs' nephews (beneficiaries of gift-deed) were minors at the time of gift-transaction, and the husband of petitioner became part of transaction as Mohtabar donee while impugned mutation was entered /sanctioned and on same day, another mutation was also entered/sanctioned by deceased in favour of petitioner's husband but the same had not been challenged by the petitioner--- Courts below had meticulously examined the entire evidence of the parties and thereafter reached at the conclusion regarding the controversy---No misreading / non-reading of evidence nor any infirmity, legal or factual, had been noticed in the impugned judgments and decrees passed by the both the Courts below---Revision was dismissed in limine, in circumstances. [p. 1219, 1220] A & D

2020 SCMR 214 ref.

(b) Civil Procedure Code (V of 1908)---

---O. VI, R. 4---Specific Relief Act (I of 1877), S. 42---Suit of declaration---Gift-deeds, assailing of---Fraud, allegation of---Details of particulars of the fraud missing---Effect---Plaintiff/lady instituted the suit against her (four) nephews/defendants and brother/defendants with the averments that she being the daughter of deceased was entitled to inherit 1/6 share from the estate of her late father and gift-deeds/mutations in favour of defendants were illegal and fraudulent---Claim of the lady was concurrently rejected---Validity---Although the petitioner / plaintiff pleaded not only old age and bad health of her father but also alleged fraud committed with him with regard to all these transactions but she neither proved her father's physical or mental incapacity/incapability through strong oral as well documentary evidence nor the allegation of fraud---Petitioner / plaintiff who asserted fraud in the commission of transactions had to prove the same---Provision of O.VI R.4, C.P.C. mandates the mention of detailed particulars of the fraud---Mere vague assertion of the petitioner/plaintiff that a fraud had been practiced upon her and she had been deprived of her share in estate of her deceased father, without narrating full particulars of fraud in the pleadings, the circumstances in which the fraud was committed and without a positive attempt on her part to substantiate the same to the satisfaction of the court, was of no consequence rather would be considered as whimsical attribution---In the present case, no defects had been pointed out by the

petitioner (lady/plaintiff) in order to seek interference by the High Court---Courts below had meticulously examined the entire evidence of the parties and thereafter reached at the conclusion regarding the controversy--- No misreading / non-reading of evidence nor any infirmity, legal or factual, had been noticed in the impugned judgments and decrees passed by the both the Courts below---Revision was dismissed in limine, in circumstances. [pp. 1219, 1220] B & D

1988 SCMR 1703; PLD 2002 SC 500; 2009 SCMR 70 and 2013 SCMR 1419 ref.

(c) Specific Relief Act (I of 1877)---

---S. 42---Suit of declaration---Gift-deeds, assailing of---Beneficiaries being minor---Effect---Plaintiff / lady instituted the suit against her (four) nephews/defendants and brother/defendants with the averments that she being the daughter of deceased was entitled to inherit 1/6 share from the estate of her late father and gift-deeds/mutations in favour of defendants were illegal--- Claim of the plaintiff / lady was concurrently rejected---Validity---Petitioner / plaintiff appeared as a witness and conceded the minority of her nephews / defendants and their possession on the disputed land---No reason was deposed for delayed start of litigation and petitioner even acknowledged the disputed transactions---Courts below had meticulously examined the entire evidence of the parties and thereafter reached at the conclusion regarding the controversy---No misreading / non-reading of evidence nor any infirmity, legal or factual, had been

noticed in the impugned judgments and decrees passed by the both the Courts below---Revision was dismissed in limine, in circumstances. [pp. 1220] C & D

Administrator, Thal Development through EACO Bhakkar and others v. Ali Muhammad 2012 SCMR 730 ref.

Usman Nasir Awan for
Petitioner.

Date of hearing: 17th May, 2024.

JUDGMENT

MASUD ABID NAQVI, J.---

Brief facts necessary for the adjudication of this *lis* are that the petitioner/plaintiff instituted the instant suit of declaration on 01.08.2009 against her nephews/defendants Nos.1 to 4 and brother/defendant No.5 with the averments that she being the daughter of Ghulam Qadir deceased is entitled to inherit 1/6 share from the estate of her late father and gift deed No.493 dated 12.01.1977 in favour of defendants Nos.1 to 4, exchange mutation No.1559 dated 31.07.1997 and gift deed No.106 dated 19.09.2000 in favour of defendant No.5 are transactions which are not only illegal, unlawful but fraudulent having no legal effect because due to old age and being a chronic patient, her father was not in proper mental and physical conditions. The defendants raised legal as well as factual objections by filing contested written statement. Out of divergent pleadings of the parties, issues were framed and learned trial court dismissed the suit vide judgment and decree dated 03.03.2022. Feeling aggrieved, the plaintiff/petitioner filed an appeal and learned Additional District Judge vide judgment and decree dated 05.03.2024 dismissed the appeal.

Being dissatisfied, the petitioner/plaintiff has filed the instant civil revision and challenged the validity of the impugned judgments and decrees passed by both the learned Courts below.

2. I have heard the arguments of learned counsel for the petitioner and minutely gone through the record as well as the impugned judgments and decrees.

3. There is no denial of the facts that Ghulam Qadir deceased died on 05.11.2005 but neither he or petitioner nor other daughters of Ghulam Qadir deceased challenged these transactions before the death of Ghulam Qadir deceased. Even the petitioner has not impleaded her rest of sisters as parties to the suit. The petitioner/plaintiff's nephews/beneficiaries of gift deed No.493 dated 12.01.1977/Ex.P-1/Ex.D-1, were minors at the time of gift transaction, even conceded by petitioner/PW-1 in cross-examination (2020 SCMR 214) and the husband of petitioner namely Mohammad Hussain became part of transaction as Mohtabar Donee while mutation No.1559/Ex.P-2/Ex.D-5 was entered/sanctioned on 31.07.1997 and on same day, mutation No.1561 was also entered/sanctioned by Ghulam Qadir deceased in favour of petitioner's husband but the same has not been challenged by the petitioner. Although the petitioner pleaded not only old age and bad health of her father but also alleged fraud committed with him with regard to all these transactions but neither proved her father's physical or mental incapacity/incapability through strong oral as well documentary evidence nor the allegation of fraud. The petitioner who asserted fraud in the commission of transactions has/had to prove the same.

Provision of Order VI Rule 4 C.P.C. mandates the mention of detail particulars of the fraud. Mere vague assertion of the petitioner/plaintiff that a fraud had been practiced upon her and she had/have been deprived of her share in estate of her deceased father without narrating full particulars of fraud in the pleadings, the circumstances in which the fraud was committed and without a positive attempt on her part to substantiate the same to the satisfaction of the court, was/is no consequence rather would be considered as whimsical attribution. Reliance is placed on judgments reported as 1988 SCMR 1703, PLD 2002 SC 500, 2009 SCMR 70 and 2023 SCMR 419. The petitioner appeared as PW-1 and conceded the minority of her nephews/ defendants Nos. 1 to 4, their possession on the disputed land, no reason was/is deposed for such a delayed start of litigation and even acknowledged the transactions which is reproduced hereunder;

یہ درست ہے کہ مدعا علیہم بوقت تصدیق انتقال وہیہ نامہ جات سے لے کر جائیداد مندرجہ پر قابض ہیں اور کاشت کاری کر رہے ہیں۔

4. With respect to interference in concurrent findings, the Hon'ble Apex Court in a case reported as Administrator, Thal Development through EACO Bhakkar and others v. Ali Muhammad (2012 SCMR 730) held that:-

"Concurrent findings of the trial court and appellate court in favour of appellants were based on proper appreciation of evidence therefore, the same were not open to interference by the revisional court in exercise of its jurisdiction under section 115, C.P.C. which is primarily meant for correction of jurisdictional

defect/error and material illegalities/ irregularities, resulting in miscarriage of justice to a party."

In the present case, no such defects have been pointed out by the learned counsel for the petitioner in order to seek interference by this Court. Learned Courts below have meticulously examined the entire evidence of the parties and thereafter reached at the conclusion regarding the controversy. Neither any misreading or non-reading of evidence on record nor any infirmity, legal or factual, has been pointed out in the impugned judgments and decrees passed by the learned Courts below, therefore, this civil revision is, hereby, dismissed in limine.

MQ/S-14/L

Revision dismissed.

2025 Y L R 1220

[Peshawar]

Before Farah Jamshed, J

Mst. ASIMA and another---Petitioners

versus

The STATE---Respondent

Cr. Misc. (BA) No. 475-P of 2025, decided on 21st February, 2025.

(a) Criminal Procedure Code (V of 1898)---

---S. 497---Khyber Pakhtunkhwa Control of Narcotic Substances Act (XXXI of 2019), S.9(D)---Possession of narcotic substances---Bail, grant of---Further inquiry---Prosecution case was that 7200 grams opium and 7200 grams