

**1996 C L C 857**

**[Peshawar]**

**Before Mehboob Ali Khan, J**

**Mst. BIVI JAN and others---Petitioners**

**versus**

**FAQIR MUHAMMAD and others---Respondents**

Civil Revision No. 120 of 1991, decided on 24th July, 1994.

**Muhammadian Law---**

---Gift---Validity---Gift in question was made by father in favour of his three sons excluding the fourth one---Son who had been excluded from gift assailing gift on basis of fraud and undue influence---Suit was dismissed and gift was deemed to be valid---Plaintiff's appeal was also dismissed---Validity---Donor being full owner, under Muhammadian Law could make valid gift in favour of some of his heirs to the exclusion of others---Evidence on record indicated that possession was delivered to donees after gift and they were in possession of subject-matter of gift since the delivery of possession---Plaintiff had never been in possession of property in question nor he had claimed to be in possession of any part thereof---Gift in question, was rightly deemed, to be valid by Courts below, which was affirmed in circumstances.

Haji Ghulam Basit for Petitioners.

Khalid Rahman, for Respondents.

Date of hearing: 24th July, 1994.

**JUDGMENT**

Abdullah son of Imam Din wanted, to alienate certain landed property in favour of his three sons, namely, Faqir Muhammad, Ali Muhammad and Muhammad Yousaf. He thereby on 1-7-1982 got entered two gift mutations bearing Nos.688 and 689 with the Patwari but the mutation could not be later on attested by the Revenue Officer in view of an objection raised by his another son named Muhammad Ashraf. Abdullah filed an appeal before the Collector through his general attorney, namely, Abdul Jabbar against the rejection of the gift mutations. The Collector accepted the appeal and remanded the case back to the Revenue Officer for sanctioning the mutations which were ultimately attested on 21-12-1983. Abdullah had died by that time. Muhammad Ashraf then challenged in a revision petition order of the Collector before the Additional Commissioner but in vain. Thereafter Muhammad Ashraf filed a civil suit and assailed the validity of the general power of attorney executed by his father Abdullah in the

name of Abdul Jabbar son of Sardar. Abdullah then alive himself filed a written statement in the case. He later on appeared before the Court in person and made a statement on oath on 8-11-1982. and confirmed the execution of the general power of attorney in favour of Abdul Jabbar in his statement recorded in the presence of Muhammad Ashraf his son. Muhammad Ashraf afterwards in the year 1984 filed another civil suit and impugned the validity of the gift mutations on the basis of fraud and undue influence. The suit after contest by the respondents was dismissed by the trial Court on 9-12-1989. Muhammad Ashraf died in the meanwhile and an appeal lodged by his successors-in interest before the Additional District Judge, Haripur was also dismissed on 20-5-1991. Hence this petition under section 115, C.P.C.

2. I have heard Haji Ghulam Basit, Advocate on behalf of the petitioners and Mr. Khalid Rehman Qureshi, Advocate for the contesting respondents. The learned counsel on behalf of the petitioners contended that the impugned mutations had been obtained by the respondents under undue influence. That Abdullah in those days was an old man at advanced stage of age and residing with respondents Nos. 1 to 3 when they persuaded him for the alienation of the property in their names in view of the fact, that his another son namely Muhammad Ashraf had no male issue. That Abdullah in this way was obliged to make transfer of the land in their names under heavy pressure. I am afraid I may not accept this argument. The reason would be that when Muhammad Ashraf challenged the validity of the general power of attorney executed by his father in favour of Abdul Jabbar by way of a suit, Abdullah himself appeared before the Court and he not only filed a written statement but also made a statement on oath supporting thereby the validity of the general power of attorney and correspondence of all actions done on his behalf by the said Abdul Jabbar on the strength of that document. This can be, therefore, said that Abdullah was in full ---- authority when he trade transfer of the property in the names of his three sons and validated than after that by making a statement in Court in presence of Muhammad Ashraf his another son. The learned counsel next argued that possession of the land was not delivered to the donee at the time of gift. Abdullah, as the evidence indicates, was in possession of the property and he had transferred possession in favour of his sons at the time of gift with whom the donor was jointly living in those days in one house. The contesting respondents are coming into possession of the land as owners since thereafter. There is no evidence that Muhammad Ashraf had remained in possession of this property at any time during that period. Muhammad Ashraf himself had not also claimed this.

3. In this view of the matter I do not find any substance in the revision petition or that the lower forums have erred in the disposal of the case in the said manner. I would affirm the impugned judgment and decrees and dismiss the revision petition with costs.

A. A./1802/P

Revision petition dismissed.