

**HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD**

**R.A No.S-99 of 2025.**

*(Muhammad Saeed Vs. Mst. Zulekhan and others)*

- Applicant** : Muhammad Saeed **through** Mr. Ishfaque Ahmed Lanjar, Advocate.
- Respondent No.1.** : Mst. Zulekhan **through** Mr. Farrukh Alam Khan, Advocate.
- Respondent No.2 (I to III).** : NEMO.
- Respondent No.3 to 5.** : Mr. Muhammad Yousuf Rahpoto, Assistant Advocate General, Sindh.
- Date of hearing** : 11.05.2026.
- Date of Decision** : 11.05.2026.

**J U D G M E N T**

**Syed Fiaz ul Hassan Shah, J:** - The applicant has challenged the Judgment and Decree dated 27.05.2025 (**impugned Judgment**) passed in Civil Appeal No.125 of 2024 by the learned 5th Additional District Judge, Hyderabad, (**Lower Appellate Court**) which confirmed the Judgment and Decree dated 29.03.2024 passed by the learned 7th Senior Civil Judge, Hyderabad (**Trial Court**) in F.C. Suit No.459 of 2017. By those judgments, the suit filed by Respondents No.1 & 2 was decreed, holding that the property Plot No.168 Block-C (iii) Phase-I, Qasimabad Hyderabad (**Suit property**) left by deceased mother, Mst. Fehmida Daudpota, devolved upon the applicant and Respondents No.1 & 2 as surviving legal heirs.

2. The learned Counsel for applicant claims that Applicant's deceased mother orally gifted the suit property to him in 2014, prior to her death on 03.03.2014. He asserts exclusive possession of the property and

further contends that he constructed the first floor independently, entitling him to the cost of improvements.

3. Learned counsel for Respondent No.1 supported the concurrent findings of the courts below, arguing that in the absence of proof of oral gift, the property must devolve upon the legal heirs under Muslim personal law.

4. Heard the counsel for parties and perused the record. The case hinges upon the validity of an alleged oral gift (*hiba*) under Mohammadan Law. The settled legal propositions are that essential ingredients of Oral Gift which must be proved i.e. ***Offer by the donor, Acceptance by the donee and Delivery of possession.***

5. The applicant's claim of oral gift is unsupported by credible evidence. The essential ingredients of a valid oral gift under Mohammadan Law — *offer, acceptance, and delivery of possession* — have not been proved. Neither the pleadings nor the evidence disclosed the exact date of the alleged gift, nor do they establish any occasion when such gift was made or effective.

6. The marginal witnesses, namely Pir Muhammad @ Zeeshan Ali and Abdul Majid Pandhyani, merely deposed that the deceased mother expressed her intention at various occasions to gift the property to her son. However, they failed to confirm that any actual gift transaction took place, nor did they testify to the specific date, offer, acceptance, or delivery of possession. Their testimony amounts only to hearsay of intention, which falls short of the requirements under Article 79 of the Qanun-e-Shahadat Order, 1984. Superior Courts have consistently held that mere intention or expression of desire to gift property does not constitute a valid gift unless the above ingredients are satisfied.

7. Under Article 117 of the Qanun-e-Shahadat Order, 1984, the burden lies upon the person asserting the gift to prove it through cogent evidence. The applicant failed to plead or prove the exact date of the

alleged oral gift. Neither in pleadings nor in evidence did he disclose the names of marginal witnesses. The witnesses produced merely deposed that the deceased expressed intentions to gift the property, but they did not confirm any occasion or exact date of oral gift.

8. In light of the above findings, the Court holds that the applicant has failed to prove the oral gift. The concurrent judgments of the courts below, decreeing the suit in favour of Respondents No.1 & 2 as legal heirs, are well-reasoned and based on proper appreciation of evidence. The Revision Application is **dismissed**, with no order as to costs. Pending applications, if any, also stand disposed of.

JUDGE

*Ali.*