

IN THE HIGH COURT OF SINDH AT KARACHI

Revision Application No.101 of 1995
[Budho Khan and others *versus* Mst. Hawa and others]

Revision Application No.102 of 1995
[Budho Khan and others *versus* Mst. Hawa and others]
and
Revision Application No.103 of 1995
[Budho Khan and others *versus* Mst. Hawa and others]

Date of hearing : 04.05.2023, 17.05.2023 and 30.05.2023.

Applicants : Budho Khan through Legal Heirs and others, through Mr. Ayatullah Khawaja, Advocate.

Respondent No. 1 to 10 : Mst. Hawa and 9 others, through Mr. Mumtaz Alam Leghari, Advocate.

Respondents No.12-13 : Assistant Commissioner, Sanghar and 2 others, through Mr. Wali Muhammad Jamari, Assistant Advocate General Sindh.

J U D G M E N T

Muhammad Faisal Kamal Alam, J: Due to commonality, all the titled Revision Applications are decided by this common Judgment.

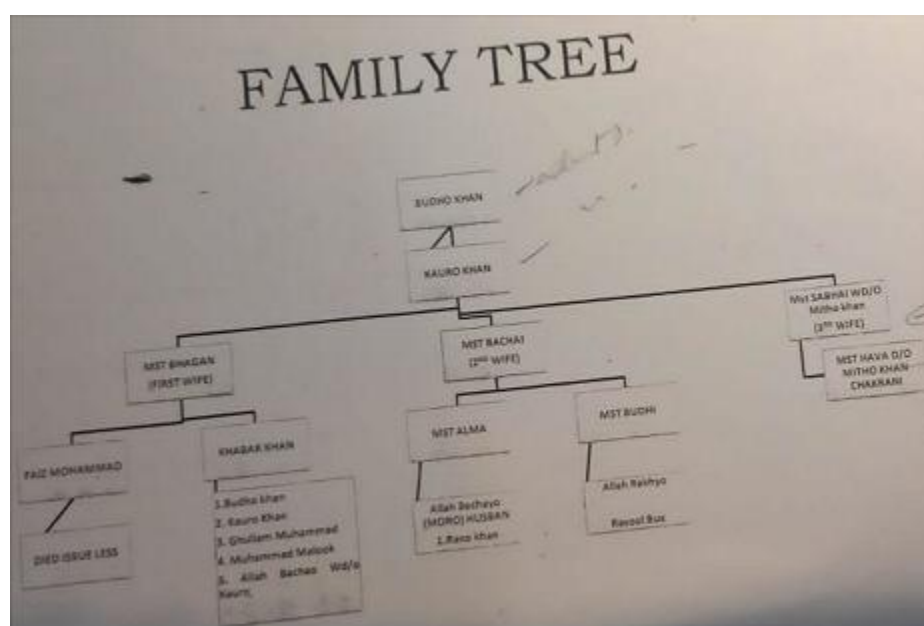
2. These Revisions arise from the impugned Judgment passed in Civil Appeals No.4 of 1994, 05 of 1994 and 03 of 1994, which were preferred against the Judgment and Decree dated 26.07.1990 and 30.07.1990, passed in Civil Suit No.03 of 1988, filed by Budho Khan and others [*Applicants*] *versus* Mst. Hawa and others (Respondents), F. C. Suit No.13 of 1988 filed by Applicants – Budho Khan and others *versus* Rano and others and a Third-Class Suit No. 02 of 1988, filed by Rano (Respondent No.2) against present Applicants.

3. The main controversy is the alleged oral Gift, given by the [undisputed] original Owner of the Land in question, [late] Budho Khan, to

his Grandsons, namely, Faiz Muhammad and Khabbar Khan, for the sake of reference only, be referred as *'the Original Donees'*, whereby, the agricultural land in dispute has been claimed to be vested in the above Applicants and now their respective Legal Heirs; the other dispute is, that Mst. Hawa-the original Respondent in this Proceeding [now represented by her Legal Heirs] was not the real daughter of Kauro Khan and thus not entitled in the inheritance. The other bone of contention is the second alleged Gift of the Suit Land by the above original Donees in favour of Plaintiffs number 1 to 4 of Suit No. 3 of 1988, who are the Applicants of these Civil Revisions, namely, Budho Khan (through his Legal Heirs), Kauro Khan, Ghulam Muhammad and Muhammad Malook, which was challenged by Mst. Hawa before the Revenue Authority [Pages-459 to 467 (main File); Exhibits 218-Y and Z].

4. Subject matter are lands in Deh 23 and 31, Jamaro, Taluka Sinjoro; Survey Nos. 24/1 to 16, 34/1 to 16, 41/3; and 4, 6, 152, 153, 158/1 to 16, 159/1, 2, 7, 8, 9, 10, 15, 16, 160, 161, 162, 163/1 to 16, 167, 168, 172, 175/1 to 16, 182/1 to 16, respectively- measuring 258-19 acres [hereinafter referred to as the **"Suit Land"**].

5. Following Family Tree is submitted by Applicants' Counsel for a ready reference _



6. It is necessary to point out that the above Family Tree is admitted to the extent, that [Late] Budho Khan was the original owner of the Suit Land [as already stated herein above] who was succeeded by his sole Son and Legal Heir-Kauro Khan, who had three wives mentioned in the Family Tree, namely, Mst. Bhagan, Mst. Bachai and Mst. Sabhai.

7. The above Family Tree is disputed to the extent that Mst. Hawa has been shown as Daughter of Mst. Sabhai, the third wife of above Kauro Khan [as per the stance of the original Applicants], who are now represented by their respective Legal Heirs, whereas the claim of the original Respondents is that the said Mst. Hawa was the sister of Faiz Muhammad- the Applicant No.6 [in title Civil Revision] and daughter of Mst. Bachai. The other disputed fact is that Faiz Muhammad is shown as Son of Ms. Bhagan, along with [Late] Khabar Khan, but the record shows that Faiz Muhammad was son of Mst. Bachai [as per his own deposition], whereas, [Late] Khabar Khan was Son of Mst. Bhagan [admittedly the First wife of Kauro Khan]. The subsequent Legal Heirs are also not disputed.

8. A brief description of the Suit proceedings is also necessary. Suit No.02 of 1988 was filed by Rano Khan – Respondent No.2, hereinafter referred to as the “*Claimant*” mainly against Faiz Muhammad, the Applicant No. 6 and Budho Khan, the Applicant No.1 of the Civil Revision(s). This Suit is mainly for Mesne Profits as it was pleaded that Defendants No.1 and 2 (Faiz Muhammad and Budho Khan) had usurped the share from the crops belonging to Rano Khan. It is averred that fraudulently Faiz Muhammad and Khabar Khan, got the Khatas of suit land mutated in their names in 1970 and made a Gift of the entire suit land in favour of Defendants No.2 to 5, viz. Budho Khan, Kuro Khan, Ghulam Muhammad and Muhammad Malook, all sons of Khabbar Khan [the Applicants of Title Civil Revisions], which was challenged by Defendant

No.7 – Mst. Hawa [Respondent No.1 in Civil Revision], only for the sake of reference be referred as “*Challenger*”. The Revenue Authorities set aside the Mutation Entry and restored the entries in the names of heirs of deceased Kauro Khan, which was further challenged in Revenue hierarchy and ultimately it was directed that Parties should get the title adjudicated through civil proceeding.

9. F.C. Suit No.13 of 1988 is preferred by Budho Khan and others, the present Applicants of the title Civil Revisions. Besides claiming ownership of the Suit Land, it was prayed that no mutation or partition proceeding be done with the intent to interfere in the possession of these Applicants / Plaintiffs, while their earlier Suit No.31 of 1982 was pending [which upon transfer, was re-numbered as Suit No. 3 of 1988, *ibid*]. *Whereas*, in Suit No.03 of 1988, filed by Budho Khan, Kauro Khan, Ghulam Muhammad, Muhammad Malook, Mst. Allah Bachai and Faiz Muhammad, as Legal Heirs / sons and widow of Khabar Khan and Kauro Khan, respectively [original Applicants of these Civil Revisions, now being represented by their Legal Heirs], against Mst. Hawa, Rano Khan, and others-the original Respondents of these Civil Revisions, a Declaration was sought that Mst. Hawa – the above Challenger, was not the daughter of Kauro Khan and, therefore, she cannot inherit anything from the suit land, besides, Defendants No.2 to 10 are also not entitled to any share in the Suit Land.

10. Consolidated Issues were framed. Parties led the evidence, followed by the above referred Judgment, which was challenged in the three Appeals [*supra*].

11. Since there are conflicting findings, hence, it is necessary to reproduce the Consolidated Issues, below_

1. *Whether Mst. Hawa is not the daughter of Koro Khan son of Budho Khan Chakrani ?*

2. *Whether Budho Khan gifted the suit land to his grandsons Faiz Muhammad and Khabbar Khan ?*
3. *If so, is the gift legal, valid and binding ?
Whether the land mentioned in para No.10 of the plaint of Suit No.2/88 was the exclusively property of Khabbar khan son of Koro Khan ?*
4. *Whether the gift made by Khabbar Khan and Faiz Muhammad in favour of the plaintiffs No.1 to 4 of Suit No.3/88 is legal, valid and binding on the defendants suit ? If so to what extent ?*
5. *Whether the plaintiffs of Suit No.3 of 1988 have remained in adverse possession of the suit land and perfected their title to it as such ?*
6. *Whether the defendants of Suit No.3/88 are not entitled to have any share in the suit land ?*
7. *Whether Rano Khan is entitled to mesne profit from the defendants No.1 and 2 of Suit No.2/88 ? If so, what rate and from what rate ?*
8. *Whether Suit No.3/88 is not maintainable ?*
9. *Whether Suit No.3/88 is barred by Sindh Revenue Jurisdiction Act ?*
10. *Whether Suit No.3/88 is time barred ?*
11. *Whether Suit No.2/88 is not maintainable ?*
12. *Whether Suit No.2/88 is time barred ?*
13. *Whether Suit No.13 of 1988 is not maintainable ?*
14. *Whether this Court has no jurisdiction to try and adjudicate upon Suit No.13/1988 ?*
15. *Whether Suit No.13 of 1988 is barred by Sindh Revenue Jurisdiction Act ?*
16. *What should the decree be ?*

12. Mr. Ayatollah Khawaja (Advocate), argued the case in support of the aforementioned stance of the Applicants and referred to the evidence, *inter alia*, stating that the Appellate Court did not evaluate the evidence properly, and has erred in overruling the Judgment and Decree of the

learned Trial Court, which was in favour of the Applicants. Contended that these Civil Revisions be allowed and the judgment and decree be set aside.

13. Mr. Mumtaz Alam Leghari, learned Advocate for the Respondents, has controverted the above arguments and supported the impugned Judgment in the Appeal. He has cited the following case law to augment his arguments_

1. **P L D 2019 Supreme Court 449**
[*Mst. Laila Qayyum versus Fawad Qayum and others*];
2. **2023 S C M R 6**
[*Munir Hussain and others versus Riffat Shamim and others*]; and
3. **2022 S C M R 346**
[*Tahsinullah versus Mst. Parveen (Deceased) through L.Rs. and others*].

14. Précis of the case law cited by learned counsel for the Respondents is, where a brother has filed a suit, seeking declaration that defendant / respondent sister was the adopted child and thus does not have any right to the legacy of the deceased parents, it is held that scope of Section 42 of the Specific Relief Act cannot be extended for seeking declaration about questioning the legitimacy of the other; further elaborated that petitioner / applicant [of the reported case] has sought declaration that respondent lady was not his sister or the daughter of his deceased parents, but, conversely, the respondent lady had not challenged the legitimacy of petitioner, hence suit was not maintainable; held that suit was also barred under Article 128 of the Qanoone-e-Shahadat Order [relating to birth of a child during subsistence of a valid marriage], which can only be filed by a putative father within the prescribed limit of Article 128. It is observed by the Honourable Supreme Court that petitioner [of the reported decision] has attempted to deprive his sister of her identity and her inheritance. Gift in favour of a petitioner/brother was challenged by respondents/ sisters. Burden to prove the gift lay on the appellant, which he failed to discharge;

possession of property by one of the co-sharers is considered as possession of all other legal heirs. Consequently, appeal of the purported donee/appellant was dismissed.

15. Arguments heard and record perused.

16. The Reply filed by the official Respondents through the learned A.A.G., has stated, *inter alia*, that the Land in question has been mutated in the names of the original Donees and then the subsequent Donees, while accepting the fact that respective shares in the Suit Land also stand in the names of Mst. Hawa and the other Legal Heirs / Respondents.

17. Applicants are seeking exclusion of Respondents including the Female Members of the Family, from the ownership of the Suit Land, on the basis of oral Gift (*purportedly*) and the mutation entry in favour of the Applicants, hence, onus is on the Applicants to prove their case. **Secondly**, the subsequent alleged Gift-for the sake of reference be referred to as the “**Second Gift**” (of the Suit Land), in favour of Applicants by the Original Donees is dependent on the finding of the main Gift by the Original Owner-Budho Khan in favour of his grandsons, namely, Faiz Muhammad and Khabar Khan [the Original Donees].

18. The learned Trial Court has come to the conclusion, while deciding the Issue No.1, that Mst. Hawa was not the real sister of one of the original Donees – Faiz Mohammad, and in this regard the evidence of said Faiz Muhammad [the Applicants’ Witness so also one of the Plaintiffs in Suit No. 3 of 1988] has been accepted while discarding the other testimonies, *inter alia*, that Mst. Hawa did not come forward to depose. Similarly, the finding on the Issue No.2 is, that the original oral Gift by the Original Owner [*ibid*] in favour of the original Donees (*supra*) was valid, as the witnesses of the Applicants have given direct evidence, *inter alia*, by

deposing that the Original Owner-Budho Khan [Late] told the said witnesses about gifting the Suit Land in favour of the above original Donees; *whereas*, the Witnesses of Respondents were not believable, as they had given hearsay evidence.

19. After perusal of record of ownership, submitted by the Revenue Officials, the conclusion is that the Suit Land has been mutated in the names of Legal Heirs of [Late] Kauro Khan, including the Original Donees and Mst. Hawa. It means that the version of the Applicants about the alleged Gift in favour of the Original Donees and the subsequent Donees [on 23.7.1970]-the abovenamed Applicants of the Civil Revision(s), has not been proved, because, if these Applicants were the co-owners to the exclusion of other Family Members / Respondents, then the Suit Land could not have been mutated in the names of the other Respondents, by way of Foti Khata Badal.

20. The main witness of Applicants, Kauro Khan [son of Khabar Khan] in his examination-in-chief has reiterated the stance about the alleged gift of the Suit Land in favour of the above-named original Donees, coupled with the fact that Mst. Hawa was not the daughter of deceased Kauro Khan, but of Mitho Chakrani, the previous husband of Mst. Sabhai. Amongst others documents, has produced the Record of Rights of the Suit Land, including the one after the death of the Original Owner [Budho Khan] as **Exhibit 209-C (dated 29.5.1924)**. In Column 12, it is mentioned that **Kauro Khan** passed away in January 1924, and is succeeded by sons, daughters and wives. If the Suit Land was gifted in favour of the original Donees, that is, Sons of above [Late] Kauro Khan, then the above Entry in the names of all the Parties, including Applicants and Respondents would not have been made by the Revenue Authority, and that too a ***Century back***; although the said Witness also produced other Documents / Land record, in particular,

Exhibit 209–D and E, showing the name of the original Donees as the Owners, and then the subsequent Donees / the Applicants [of Civil Revisions], as the Owners, but, these Documents are contradicted by the evidence of the Official Witnesses and the official Record. The validity of the above Exhibit 209-C and its Entry No.53, dated 19.02.1924 could not be dislodged by the Applicants. In this regard, evidence of Ghulam Shabbir (Tapedar) is also very relevant. He has produced the official record in respect of the Suit Land since 1924; stated that the Suit Land stood, *inter alia*, in the name of Khabar Khan son of Kauro Khan, Faiz Muhammad son of Kauro Khan (the original Donees), Mst. Hawa daughter of Kauro Khan. **Secondly**, in their Orders dated 04.04.1973 and 14.01.1976 [*ibid*], the Revenue Authority while setting aside the Order of the Mukhtiarkar about rewriting of the record, whereby, the Respondents were excluded, had recognized the above Entry No.53; *whereas*, the Second Order maintained the First Order, by directing that the entries should remain intact, unless, decided by the competent Civil Court.

21. In this regard, the finding of the Appellate Court is correct, in particular, under Issue No.2, about the applicability of Article 100 of the Qanoon-e-Shahadat Order, 1984, that for a thirty year old document, presumption of its genuineness exists [unless dislodged by the opponent, which has not been done in the present *Lis*], *inter alia*, because the Applicants as Plaintiffs have attempted to challenge the above Mutation Entry No.53 for the first time in Suit No.06 of 1976 [subsequently re-numbered as 03 of 1988]; that is, after fifty-two years.

22. Adverting to the status of Mst. Hawa [*the Challenger*]. Testimony of Kauro Khan, disputing the status of the above Lady (now deceased) has been carefully considered. In his cross-examination, he has **admitted** that Mst. Hawa was (is) the daughter of Late Kauro Khan from his second Wife

(Late) Bachai; siblings of Mst. Hawa were / are Faiz Muhammad (one of the Original Donees) and Mst. Alman (Almai). He has further admitted that Mst. Hawa had landed property in her name in the revenue record.

23. The deposition of Faiz Mohammad (one of the original Donees) is considered. He reiterated his assertion of the plaint in his examination-in-chief and denied all the adverse suggestions. However, in cross-examination, he has **admitted** that Rano is son of above Mst. Almai (Alman), who was sister of the said Witness, that is, Faiz Muhammad. The latter has also stated that Mst. Hawa passed away without marrying any person, which assertion is contrary to record and is even belied by the evidence of his side, that is, the above Kauro Khan, so also other Witnesses who deposed on behalf of the Respondents, including, Mst. Hawa's son-Hamzo Khan. Thus, it is correctly observed by the learned Appellate Court that Faiz Muhammad is not a trustworthy witness.

24. Testimony of Rano son of Allah Bachayo, nephew (admittedly) of above-named Faiz Muhammad, one of the Original Donees, is also considered. He has unequivocally stated that the Suit Land was inherited by the Applicants and Respondents, including Mst. Hawa. Deposed that Mst. Hawa was daughter of Mst. Bachai wife of Kauro Khan. In his cross-examination, he has denied that Mst. Hawa was daughter of Mitho Chakrani, the erstwhile husband of Mst. Sabhai. In his cross-examination, the said Witness could not be contradicted on any material assertion. Hamzo Khan son of Mohammed Ali and above named Mst. Hawa also entered the Witness Box. He has testified as an attorney of Mst. Hawa. He has reiterated the stance of present Respondents; corroborated the fact that the third Wife-Mst. Sabhai of Late Kauro Khan was issueless despite her three marriages. He further asserted that, after the death of Kauro Khan the Suit Land was mutated in the name of Legal Heirs without raising any

dispute; that the above Mst. Sabhai, subsequently married Muhammad Ali, the father of the said witness. In his cross-examination, no material contradiction has surfaced, nor the same could be pointed out by the learned Advocate for the Applicants.

25. Looking at the overall testimonies and official documents, the conclusion is that the learned Appellate Court has correctly evaluated the evidence while reaching the Conclusion. Interestingly, the finding of the learned Trial Court about the alleged Original Gift by [Late] Budho Khan in favour of the Original Donees is justified on the basis of some instances relating to other families, which has no nexus with the facts of present case; such a finding is erroneous and beyond pleadings, which cannot be sustained. The learned Trial Court has also held that the original oral Gift of the Suit Land in favour of the original Donees is a "natural thing" for a grandfather, showing love and affection towards grandsons. However, the learned Trial Court has completely overlooked, or, turned a blind eye to the fact that admittedly Kauro Khan also had other daughters, apart from Mst. Hawa, and thus, with the above observation, other Female Members, viz. Mst. Almai and Mst. Budhi were excluded from their inherited share in the Suit Land.

26. Similarly, the observation / finding of the learned Trial Court that Mst. Hawa was alive, but did not come forward to give the evidence, is a misconceived one, in the present circumstances, because her Son, the above named Hamzo deposed on her behalf; coupled with the fact that in the rural areas, especially when the above *Lis* was pending, mostly women do not come forward to give evidence, as they observe Pardah. Another adverse observation of the learned Trial Court that Faiz Muhammad has given evidence against the status of Mst. Hawa, and his testimony carries weight, is also **untenable**, *inter alia*, because Faiz Mohammed is one of the

beneficiaries of the Suit Land, being original Donee (*purportedly*), though now it has been disproved. By giving evidence against Mst. Hawa, he attempted to exclude her from the inheritance, in order to usurp her share. This obvious motive escaped notice of the learned Trial Court.

27. There is also an inescapable aspect of this case. If the stance of the Applicants is accepted, it means, the female members of the Family were to be excluded from their share in the Suit Land. This aspect has been dealt with in number of judgments, in particular, in the case of *Ghulam Ali and 2 others versus Mst. Ghulam Sarwar Naqvi* – P L D 1990 Supreme Court, page-1; ruling that the inheritance rights of women are not “*protected and enforced, as Islam requires.*” In this Judgment the Hon’ble Supreme Court has set-aside the ‘relinquishment’ by the respondent [sister] of part of her share in the inheritance, in favour of her brothers / petitioners, *inter alia*, that it is against the Islamic Law and the ‘public policy.’

28. The case law cited by the learned Advocate for Respondents, is relevant to the facts of present case, in particular, relating to questioning the parentage of a person.

29. The upshot of the above discussion is, that no interference is required in the impugned judgment of the learned Appellate Court and the same is maintained. Resultantly, all these Revisions are dismissed.

Judge

Hyderabad.

Dated:29.01.2024.

Riaz / P.S.