

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present

Justice Jamal Khan Mandokhail
Justice Irfan Saadat Khan

Civil Appeal No. 263 of 2015

(Against the judgment dated 23.05.2014 passed by the
Lahore High Court, Lahore in CRs No. 2422/1996,
2056/2002)

Noor Ahmed and others

Appellants

Versus

Mst. Rashida Bibi alias Jamila Bibi and others

Respondents

For the Appellants:

Syed Ali Zafar, ASC
(assisted by Mr. Zahid Nawaz
Cheema, ASC)

For the Respondents:

Maulvi Anwar-ul-Haq, ASC

Date of Hearing:

31.03.2026

ORDER

Jamal Khan Mandokhail, J. The partition of British India in 1947 resulted in one of the largest mass migrations in human history. As a result, a large number of Hindus and Sikhs migrated to India, while many Muslims shifted to Pakistan. To provide for the rehabilitation and resettlement of such displaced persons, Parliament enacted the Displaced Persons (Land Settlement) Act, 1958 ("**the Act of 1958**"), which was subsequently repealed by the Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975. The preamble to the Act of 1958 sets out its purpose and object as follows:

'Preamble. Whereas it is expedient to provide for the permanent settlement of displaced persons on land in order to compensate them for the losses suffered by them on account of expropriation by the Government of India of their rights in property in India or any area occupied

by India, and for matters incidental thereto or connected therewith.'

The preamble makes it clear that the enactment was intended to provide for the permanent settlement of displaced persons on land, in order to compensate them for the losses suffered on account of expropriation of their property in India. The right to seek allotment under the Act was therefore confined to displaced persons. Whoever wanted to claim any such property, must qualify himself/herself to be a displaced person as a result of migration from India.

2. Among those who migrated to Pakistan was Mst. Nawab Bibi, the widow of Abdul Karim. She applied to the Chief Settlement Commissioner for the grant of land under the Act of 1958, as compensation for the properties left behind in India. Her request was allowed by the competent authority and the properties described in the plaint (**'the disputed properties'**) were granted to her through proper allotment. After the grant of the disputed properties in her name, she gifted them to her daughter, namely Mst. Fazal Bibi through a registered gift deed dated 24.09.1963. The respondents/plaintiffs, feeling aggrieved by the gift deed, filed Civil Suit No. 254 in the year 1963, challenging its validity. Their contention was that Mst. Nawab Bibi, being the widow of Abdul Karim, was occupying his leftover properties in India as a limited owner, whereas the respondents being his collaterals were entitled to inherit 3/8 share therein. The respondents claimed that since the disputed properties had been granted to Mst. Nawab Bibi on account of her claim to the leftover properties of late Abdul Karim, they too were sharers in the disputed properties. As such, the gift deed executed by Mst. Nawab Bibi in favour of Mst. Fazal Bibi had

deprived them of their inheritance rights and was, therefore, void and ineffective.

3. The suit was contested by the appellants/defendants on legal as well as factual grounds through their written statement. It was mainly contended that the disputed properties had been allotted to Mst. Nawab Bibi under the Act of 1958, in her own right, with possession, thereby making her its absolute owner, therefore, the civil court had no jurisdiction to entertain the suit in respect of the disputed properties. The Civil Court, while entertaining the legal objection raised in the written statement, returned the plaint to the respondents/plaintiffs vide order dated 28.05.1965, in the following terms:

“For the reasons stated above, I return the plaint to the plaintiffs under Order 7, rule 10 of CPC, for its presentation to the proper court.”

The above order attained finality after the respondents/plaintiffs exhausted their appellate and revisional remedies.

4. After a lapse of more than six and a half years, the respondents filed the present suit (the subject matter of this appeal) for cancellation of the gift deed dated 24.09.1963. They pleaded that as per the customary law prevailing at that time, Mst. Nawab Bibi being widow of Abdul Karim became limited owner of his leftover properties in India, on the basis whereof, the disputed properties were allotted to her, as such, her status remained as limited owner of the disputed properties, instead of an exclusive owner; that the allotment of disputed properties to Mst. Nawab Bibi was on account of the leftover properties of Abdul Karim, therefore, the respondents/plaintiffs as his collaterals, were also entitled to a share in the disputed properties in accordance with the law of

inheritance; and that the gift deed executed by Mst. Nawab Bibi in favour of Mst. Fazal Bibi, had deprived the respondents/plaintiffs of their rights in the disputed properties. The appellants/defendants contested the suit on legal and factual grounds, raising the same defences as in the earlier round, particularly regarding the *locus standi* of the respondents. Moreover, it was specifically urged that the customary law relied upon by the respondents/plaintiffs for the purpose of limited ownership did not apply to the disputed properties, hence the civil court has no jurisdiction in the matter. The suit filed by the respondents/plaintiffs was decreed in the year 1980. The Appellate Court and the Lahore High Court affirmed the judgment and decree of the Trial Court on 30.07.1996 and 23.05.2014, respectively. Hence, the present appeal, after leave was granted on 02.04.2015.

5. Arguments heard and record perused. This dispute has a chequered history. The gift deed was earlier challenged by the respondents/plaintiffs in Civil Suit No. 254 of 1963. The Trial Court vide order dated 28.05.1965 had held that the subject matter of gift deed was an evacuee property, therefore, the Civil Court had no jurisdiction to entertain the suit, consequently, returned the plaint to the respondents/plaintiffs for its presentation before the proper forum, and that order attained finality. The record of those previous proceedings, particularly, the order dated 28.05.1965 passed by a competent court of law establishes that the disputed property was an evacuee property, which was allotted in the name of Mst. Nawab Bibi, as a displaced person, by the Rehabilitation Authorities in exercise of the power vested in them by the Act of 1958. Section 25 of the Act of 1958 expressly bars the jurisdiction of Civil Court in the following circumstances:

"25. Bar of jurisdiction. Save as otherwise provided in this Act, no Civil or Revenue Court shall have jurisdiction in respect of any matter which the Central Government [or a Provincial Government] or an officer appointed under this Act is empowered by or under this Act to determine, and no injunction or process or order shall be granted by any Court or other authority in respect of any action taken or to be taken in exercise of any power conferred by or under this Act."

Once the Civil Court returned the plaint in 1965, it was open to the respondents/plaintiffs to challenge the allotment order through statutory remedies provided under the Act for redressal of their grievances. In this regard, section 14 of the Act of 1958 empowers an officer to compensate displaced persons for the purpose of their settlement by granting them land after verification of their claims, subject to specific terms and conditions concerning transfer and usage. Section 14 [1-A] of the Act of 1958 also empowers the allotting officer concerned to recall or cancel his own orders if he receives information that the claim of the allottee was bogus and fraudulent. Similarly, sections 18 and 19 of the Act of 1958 provide remedies of appeal and revision, respectively, to any person aggrieved by an order made under the Act of 1958. In view of remedies provided to an aggrieved person by the Act, section 25 of the Act of 1958 bars the jurisdiction of Civil Courts in respect of any action taken or to be taken in the exercise of any power conferred by or under the Act.

6. Through the instant suit, the respondents/plaintiffs have once again challenged the same gift deed in respect of the disputed property, before the Civil Court. In the earlier round, the civil court refused to entertain the challenge to the said gift deed precisely because the allotment order stood in the way. The position today is no different as the respondents/plaintiffs have again challenged the

gift deed without assailing the title document, i.e., the allotment order in favour of Mst. Nawab Bibi. In view of the order dated 28.05.1965 passed by the Civil Court, read with section 25 of the Act of 1958, the second suit (subject matter of the present appeal) challenging the same gift deed was not maintainable before the Civil Court. Moreover, Article 91 of the Limitation Act, 1908 prescribes a period of three years for a suit for cancellation of an instrument, running from the date the plaintiff acquires knowledge of the facts entitling him to seek cancellation. The respondents/plaintiffs are seeking cancellation of the gift deed and had the knowledge of its execution from 24.09.1963, as evidenced by their filing of the suit in the year 1963, within weeks of the gift deed's execution; yet the present suit was not instituted until 08.05.1970 which is well beyond the prescribed period. The suit was, therefore, *ex facie* barred by the law of limitation as well.

7. Besides, the allotment of the disputed properties in favour of Mst. Nawab Bibi operated as a permanent transfer in her favour, conferring on her absolute title and exclusive proprietary rights to sell, mortgage, gift or otherwise alienate the disputed properties, as provided by section 16 of the Act of 1958, which is as under:

“16. Title of displaced person on land. Notwithstanding anything contained in any other law for the time being in force, the land on which a displaced person is permanently settled under this Act shall vest absolutely in such person.”

The allotment order has since remained unchallenged; hence, it attained finality and cannot be called in question in view of section 22 of the Act of 1958, which reads as under:

“22. Finality of orders. Subject to the foregoing provisions of this Chapter, any order made under this Act, shall be

*final, and [****] shall not be called in question in any Civil or Revenue Court.”*

8. On the basis of the unchallenged allotment order issued by the competent authority, Mst. Nawab Bibi acquired absolute title to the disputed properties, being a displaced person. She subsequently gifted them to her daughter, Mst. Fazal Bibi, through the gift deed in question. It is a settled proposition of law that a document creating title in favour of a person carries with it a presumption of truth, unless rebutted. The allotment of the disputed properties, being an official document creating title in favour of Mst. Nawab Bibi, carried that presumption. The registering authority, before registering the gift deed, satisfied itself as to the genuineness of the allotment order, and title of the donor, her offer of the gift, and its acceptance by the donee, followed by the delivery of possession of the disputed properties. Under such circumstances, the gift deed executed by Mst. Nawab Bibi, being an exclusive owner of the disputed properties was just and proper and could not be called into question.

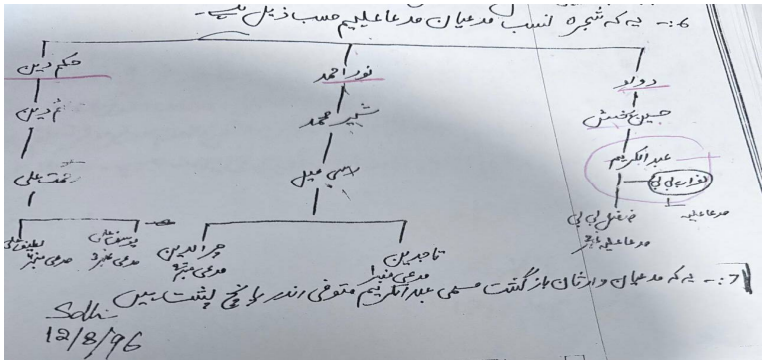
9. In any event, even if the respondents' contention that the disputed property allotted to Mst. Nawab Bibi was in exchange of total properties leftover by Abdul Karim, they being his collaterals, are entitled to the disputed properties to the extent of their share as per law of inheritance. Their contention would fail on three distinct grounds. Firstly, upon her migration from India, she applied to the Rehabilitation Authorities as a displaced person. The disputed properties were allotted to her in lieu of her such status, and not as an exchange of the leftover properties of late Abdul Karim in India. The respondents/plaintiffs neither in their first suit, nor in the present one, claimed themselves to have migrated from India and

thereby, claiming themselves as displaced persons. Since, on the pleadings and the material available on the record, they do not qualify to claim for allotment of land for the purpose of their permanent settlement in Pakistan, thus they are not entitled to claim their share in the disputed properties allotted to Mst. Nawab Bibi.

10. Secondly, if the contention of the respondents is believed that the disputed property was allotted to Mst. Nawab Bibi in lieu of the leftover properties of Abdul Karim, the question would arise as to what extent she inherited her right in the said properties. Upon the death of Abdul Karim much before the creation of Pakistan, his total estate in India devolved upon his legal heirs in accordance with the applicable law of inheritance. Actually, Mst. Nawab Bibi, as his widow, being one of the legal heirs became the absolute owner of her prescribed share therein, and the residue devolved upon his other legal heirs. After migration, she applied to the Rehabilitation Authority claiming property in Pakistan as a displaced person, being an owner of the properties she had left behind in India. Under such circumstances, the disputed properties allotted to her in Pakistan were in lieu of her personal share in the leftover properties of Abdul Karim, and not in any representative capacity or as a limited owner of his entire leftover properties. The respondents/plaintiffs have failed to object to the claim of Mst. Nawab Bibi before the Rehabilitation Authorities, nor have they placed on record any material to establish that the allotment of the disputed properties was against Abdul Karim's total leftover properties, rather than her own. Had the respondents/plaintiffs believed that they had any independent right as collaterals in Abdul Karim's leftover estate, it was open to them to apply for allotment of alternate land on the

strength of their own entitlement, if they were displaced persons. They never submitted an independent claim to the Rehabilitation Authorities for such an allotment, probably because they were not displaced persons, hence, were not entitled. The respondents have failed to prove their contention that the disputed properties formed part of Abdul Karim's entire estate. Under such circumstances, they have no right, title or interest in disputed properties, therefore, have no *locus standi* to challenge the gift deed.

11. Thirdly, the respondents/plaintiffs claim to be the collaterals of Abdul Karim and assert that they are entitled to inherit his leftover properties. Collateral heirs refer to relatives who are not direct descendants or direct ascendants of the deceased. As per the law of inheritance, the claim of collaterals is generally feeble because inheritance rights typically flow downwards to children and upwards to parents, before devolving upon the collateral relatives. In cases involving a remote relationship, a claim of collateral succession requires strong and reliable oral and documentary evidence, such as birth records and marriage records, etc. Their alleged status as the collaterals rests on the pedigree table set out in paragraph No. 6 of the plaint, which is reproduced below:



A perusal of the above pedigree table shows that Abdul Karim was the son of Hussain Bakhsh, whereas, the relationship of respondents/plaintiffs, specifically, Taj Din (plaintiff No.1), Chiragh

Din (plaintiff No. 2), Yousuf Ali (plaintiff No. 3) and Latif Ali (plaintiff No. 4), with Abdul Karim is admittedly more remote than that of other possible collaterals. The respondents/plaintiffs were required to prove that Abdul Karim was not survived by his male collaterals or distinct kindred, having preferential rights of inheritance, enabling them to claim his leftover properties as his collaterals. They did not disclose the complete line of succession and failed to establish how they alone were entitled to inherit Abdul Karim's estate, to the exclusion of other collaterals who may have been nearer in degree of relationship. Such proof was necessary to establish both their entitlement and their *locus standi* to claim the disputed properties as collaterals of Abdul Karim. Under the principle of *Radd*, where no male agnatic residuary ('*asabah*') exists, the residue remaining after distribution of the prescribed shares ordinarily reverts to the Qur'anic sharers themselves, rather than devolving upon distant collaterals, particularly in presence of a widow and a daughter of the deceased. The respondents/plaintiffs were unable to establish that, at the time of Abdul Karim's death, there existed no nearer heirs possessing a preferential right of inheritance entitling them to succeed as collateral relatives. Their conduct of not claiming the leftover properties of late Abdul Karim as collateral, after his death, either in India or in Pakistan as displaced persons, proves the fact that they were not certain about their entitlement. Even on the facts pleaded by the respondents/plaintiffs, that the disputed properties ought to be treated as leftover properties of Abdul Karim, the application of the principle of *Radd* would leave nothing to devolve upon them as collaterals. In these circumstances, they have no *locus standi* to claim the disputed properties as collateral heirs of late Abdul Karim,

and are, therefore, not entitled to challenge the gift deed. The suit, therefore, fails on this ground as well.

12. Ordinarily, this Court does not interfere with concurrent findings of fact recorded by the courts below. However, if such concurrent findings are based on a misreading or nonreading of the evidence, a misapplication or non-application of the relevant law, they cannot sustain. The Supreme Court being a final adjudicator must not be influenced merely by the concurrent findings of the courts below. Rather, it must examine the record thoroughly and with great caution to ensure an aggrieved person is not deprived of his or her lawful rights, irrespective of the fact that the findings of the courts below are concurrent. In the case at hand, the *fora* below, including the High Court, overlooked the fact that after return of the plaint in the earlier suit for cancellation of the gift deed, the second suit for cancellation of the same gift deed was not maintainable; that the jurisdiction of the Civil Court to entertain a challenge involving evacuee property is expressly barred under section 25 of the Act of 1958; and that the suit, having been filed after a delay of over six years, was barred by limitation. More importantly, Mst. Nawab Bibi was lawfully allotted the disputed properties in her own capacity as a displaced person, and that allotment order continues to hold the field. Without any challenge to the underlying allotment order which attained finality under section 22 of the Act of 1958, the suit for cancellation of the gift deed based upon such allotment could not lie. Lastly, the respondents/plaintiffs failed to establish their entitlement being displaced persons, they have not proved their right to the disputed properties as collateral heirs of Abdul Karim, therefore, have no *locus standi* to the relief sought. In view of the stated facts and relevant laws, the findings of the *fora* below, though

concurrent, are based on the non-application of relevant law and facts; rather, they are the result of misreading and non-reading of evidence, and as such, cannot be sustained.

Thus, in view of the above, the judgments dated 04.11.1980, 30.07.1996 and 23.05.2014 passed by the Trial Court, the Appellate Court and the High Court, respectively are set aside. The suit filed by the respondents/plaintiffs is dismissed. These are the reasons of our short order of even date, which is reproduced as under:

“For the reasons to be recorded later, both these appeals are allowed and the judgments of the three Courts below are set aside.”

Judge

Judge

Islamabad, the
31st March, 2026
Approved for Reporting
Rizwan / Saniya Diyar, LC

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present

Justice Jamal Khan Mandokhail
Justice Irfan Saadat Khan

Civil Appeal No.264 of 2015

(Against the judgment dated 23.05.2014 passed by the
Lahore High Court, Lahore in CRs No. 2422/1996,
2056/2002)

Noor Ahmed and others

Appellants

Versus

Mst. Rashida Bibi alias Jamila Bibi and others

Respondents

For the Appellants:

Syed Ali Zafar, ASC
(assisted by Mr. Zahid Nawaz
Cheema, ASC)

For the Respondents:

Maulvi Anwar-ul-Haq, ASC

Date of Hearing:

31.03.2026

ORDER

Jamal Khan Mandokhail, J. Facts in brief are that after the creation of Pakistan, Mst. Nawab Bibi, the widow of late Abdul Karim. She, as a displaced person, applied to the Chief Settlement Authorities for the grant of land as compensation for the property she had left behind in India. Her request was accepted and she was initially allotted land in the year 1963. She gifted that property to Mst. Fazal Bibi, her daughter and the predecessor of the present appellants. In respect of the said property, the respondents filed a suit challenging the gift deed. The litigation between the parties has culminated in connected Civil Appeal No. 263 of 2015. Since both the appeals have been clubbed together, the judgment in the connected appeal shall be treated as part and parcel of this judgment.

2. Subsequently, Mst. Nawab Bibi, applied for allotment of additional land other than the land described in Para No.1 *supra*. The authorities concerned accepted the request of Mst. Nawab Bibi by means of allotment order No. RL-II dated 28.09.1971, granting her the land described in the plaint (**'disputed land'**), which was transferred in her name *vide* mutation No. 90, dated 21.05.1974. The respondents/defendants succeeded in mutating 3/8th share out of the disputed land in their names *vide* mutation No. 10 ("**the disputed mutation**"). Their claim was that Mst. Nawab Bibi was only a limited owner of the leftover properties of late Abdul Karim, to whom, the disputed land was allotted, as such, being his collaterals, they were entitled to inherit those properties.

3. The appellants feeling aggrieved of the disputed mutation, effected in the name of the respondents, filed the instant suit before Civil Judge, Shakargarh (**Trial Court**), which was contested by the respondents. The Trial Court dismissed the suit *vide* judgment and decree dated 28.08.2000, which were upheld by the Appellate Court, and the High Court *vide* judgments and decrees dated 03.08.2002 and 23.05.2014, respectively, hence, this appeal by leave of the court.

4. Arguments heard and record perused. The admitted facts of the case are that Abdul Karim died in India before the creation of Pakistan, who left behind certain properties, and his widow, Mst. Nawab Bibi, migrated from India to Pakistan. After her migration, she submitted her claim before the Rehabilitation Authorities for allotment of land in Pakistan in her own capacity, for her permanent

settlement. The Authorities, after verifying her claim, allotted the disputed land to her on that basis. The disputed land was therefore never part of Abdul Karim's estate; it was an allotment made to Mst. Nawab Bibi in her own capacity as a displaced owner. As far as the respondents/defendants are concerned, they neither in their first suit, nor in their written statement in the present suit, claimed themselves to have migrated from India and assert the status as displaced persons. Since, on the pleadings and the material available on the record, they do not qualify to claim for allotment of land for the purpose of their permanent settlement in Pakistan, thus they are not entitled to claim their share in the disputed properties allotted to Mst. Nawab Bibi.

5. The disputed mutation in question effected in the name of respondents/defendants was on account of their claim that they are collaterals of late Abdul Karim, hence are entitled to inherit his leftover properties. Be that as it may, their claim, if any, pertained to the remaining estate left by Abdul Karim in India. On the strength of such claimed ownership, it was open to the respondents to apply to the Rehabilitation Authorities for allotment of alternate land in Pakistan in their own capacity. Moreover, the allotment of the disputed land in the name of Mst. Nawab Bibi was never challenged by the respondents, despite having remedies under provisions of sections 14[1-A], 18 and 19 of the Displaced Persons (Land Settlement) Act, 1958 ("**the Act of 1958**"). Having remained unchallenged, the allotment order conferred upon her absolute title to the disputed properties as provided by Section 16 of the Act of 1958. Consequently, her allotment attained finality under section

22 of the Act of 1958. Under such circumstances, the disputed properties cannot be deemed to form part of the entire leftover estate of late Abdul Karim, therefore, the respondents/defendants were not entitled to have the disputed land mutated in their favour on the pretext of being his collaterals.

6. The revenue authorities, while mutating the disputed land in the name of the respondents/defendants, have failed to consider this aspect of the case and have reached a wrong conclusion. The allotment order in the name of Mst. Nawab Bibi was in field and being an official document, it created right in her favour. It is a settled proposition of law that a presumption of truth is always attached to such title documents, unless rebutted. This was a crucial point for consideration, which has escaped the attention of the *fora* below while deciding the suit filed by the appellants.

7. In view of what has been discussed herein above, the judgment and decree dated 28.08.2000 passed by the Trial Court and upheld by the Appellate Court and the High Court *vide* judgments and decrees dated 03.08.2002 and 23.05.2014 are set aside. The suit filed by the appellants is hereby decreed. Consequently, the disputed mutation to the extent of 3/8 share in the name of the respondents/defendants is cancelled and the revenue authorities are directed to effect said mutation in the name of the appellants.

These are the reasons of our short order of even date, which is reproduced as under:

“For the reasons to be recorded later, both these appeals are allowed and the judgments of the three Courts below are set aside.”

Judge

Judge

Islamabad, the
31st March, 2026
Approved for Reporting
Rizwan / Saniya Diyar, LC