**Stereo. HCJDA 38**

# Judgment Sheet

# IN THE LAHORE HIGH COURT, LAHORE.

## JUDICIAL DEPARTMENT

**RFA No.1225 of 2016.**

**Khalida Idrees etc.**
**Vs.**
**Anas Farooq Chaudhary etc.**

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# JUDGMENT

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| **Date of Hearing:** | 14.05.2018. |
| **Appellants by:** | Sh.Naveed Sheharyar and Fatima Malik, Advocates. |
| **Respondents No.1 to 6 by:** | Mr.Ahmad Waheed Khan,Advocate |
| **Respondents No.7 and 8 by:** | Mr.Ras Tariq Chaudhary, Advocate. |

**CH. MUHAMMAD IQBAL, J:-** Through this regular first appeal the appellants have challenged the judgment and decree dated 23.11.2016 whereby the suit for partition filed by the appellants was dismissed.

2. Brief facts of the case are that the appellants filed a suit for partition in respect of Bungalow No.26-C Gulberg-II, Ch. Zahoor Elahi Road, Lahore having an area measuring 8 Kanals contending that the suit property was owned by Ch. Ghulam Ullah, father of the appellants and respondent No.1. Said Ch. Ghulam Ullah died on 08.01.1999 leaving behind two daughters Khalida Idrees and Saeeda Mehmood/ the appellants and one son Anas Farooq/respondent No.1 as his legal heirs and the appellants being the daughters of the deceased are entitled

to inherit half share from the suit property. The appellants asked the respondent No.1 for partition of the suit property, but he refused to do so, which refusal necessitated the filing of the partition suit. The respondent/defendant contested the suit through filing written statement contending that the predecessor in interest of the parties to the lis executed a Will Deed dated 06.04.1983 and through the said Will Deed the suit property was given to the respondents. Further contended that the suit property was orally gifted by the father of the parties to respondent No.1 in the year 1991 and since then he is in possession of the same, as such suit of the appellants is liable to be dismissed. The learned trial court framed the issues, recorded the evidence of the parties and vide judgment and decree dated 23.11.2016 dismissed the suit filed by the appellants, hence the present appeal.

3. The learned counsel for the appellants submits that the parties to the list are Ahmadi by faith and no oral gift can be made under the said Fiqah. Further submits that admittedly the property was originally owned by the predecessor in interest of the parties of the lis and the stance of the respondent in his written statement was that on the basis of oral gift allegedly executed in 1991, he

became an absolute owner of the property, however, in the written statement, he did not disclose the date, time and place and names of the witnesses in whose presence the said oral gift was made. Furthermore in the memorandum of gift deed it is not mentioned that offer of gift was made by doner and same was accepted by or on behalf of the donee. Learned counsel also submits that in the evidence the respondents also failed to prove the ingredients of oral gift as prescribed by law; that the learned trial court passed the impugned judgment and decree on the basis of mis-reading and non-reading of evidence, as such the same is not sustainable in the eyes of law.

The learned counsel for the respondents on the other hand submits that the property was given to the respondent/defendant No.1 through a Will Deed dated 06.04.21983, which is admitted document between the parties. Further submits that his deceased father gifted the suit property to the respondent, as such the learned trial court has rightly passed the impugned judgment and decree and no illegality has been committed.

4. Heard. Record perused.

5. As the plaintiff specifically asserted in their pleadings that neither the property was gifted out to the

respondent by their deceased father nor defendant is exclusive owner of the same, which controversy is centered around issued No.3, which is reproduced as under:-

> *"Whether the plaintiffs are entitled to the decree for partition of suit property? If so, what are the legal share of the parties? OPP.*

Onus to prove the said issue was place upon the appellants. In order to displace above onus the appellant No.1 Khalida Idrees appeared in the witness box as PW1 and stated that the suit property was owned and possessed by their father Ch. Ghulam Ullah, who died in January, 1999 leaving behind his two daughters (appellants) and one son (defendant) as his legal heirs; that she and her sister are entitled to 1/2 from the suit property and defendant No.1 being son is entitled to inherit 1/2 share. Further stated that Ghulam Ullah has not gifted the suit property to the respondent during his life time; that all the legal heirs of the deceased are Ahmadi by faith; that they being daughters of the deceased demanded their share in the suit property from the respondent. During cross examination, she stated that her father was a resourceful person, who was owner of Petrol Pump, Service Station near Avari Hotel Shahrah-e-Quaid-e-Azam and other

properties including the suit property measuring 8 Kanals Bungalow as well as many bank accounts. She admitted the filing of suit for partition of the petrol pump and also admitted the filing of application (Ex.D1) before Dar ul Qaza Rabwa. It is correct that the application (Ex.D1) was regarding agreement dated 06.04.1983; it is correct that Ch. Ghulam Ullah signed the document as Ex.D3/1. She further deposed that:-

یہ درست ہے یہ جائیداد مندرجہ اقرار نامہ Ex.D3 کی بابت اگر مجھے میرا حصہ مل جائے تو میں اس کی پابند رہوں گی۔۔۔۔۔

دو کنال 150/D بلاک B گلبرگ III لاہور فروخت ہو چکا ہے۔ پلاٹ چھ کنال پلاٹ واقع ماڈل ٹاؤن لاہور میں دو کنال مکرر ایک کنال کوٹھی اور ایک کنال پلاٹ بنا کر مدعا علیہ نمبر 1 قاضی منصور کو فروخت کر دیا ہے۔ بقیہ چار کنال رجسٹرڈ نہ ہے اور فاروق کے نام پر ہے۔ دو کنال مدعا علیہ نمبر 1 نے بیچی ہے۔۔۔۔۔

یہ درست ہے کہ K بلاک والی میری پراپرٹی والدہ کے نام پر تھی جو کہ انہوں نے فاروق کے نام اپنی زندگی میں منتقل کی تھی۔۔۔۔۔

یہ درست ہے کہ دونوں جائیداد مذکورہ کی فروخت کو آج تک کسی مجاز عدالت میں چیلنج نہ کیا ہے۔

The said witness again appeared in rebuttal evidence and deposed that her father Ch. Ghulam Ullah remained owner of Kothi No.26-C Gulberg II throughout his life; but he has not gifted the suit property during his life time; that neither agreement (Ex.D3) dated 06.04.1983 was implemented nor any amount was given to appellants as per their share. She also stated that application (Ex.D1)

was not signed by her father; that Ex.D1/1 and Ex.D1/2 are forged and fictitious documents. She also deposed that her father was Ahmadi by faith and according to Firqa Ahmadia oral gift could not be made. She further deposed that:-

ہم لوگ اب اقرار نامہ Ex.D3 پر عمل درآمد کرنے کو تیار نہ ہیں۔ ماڈل ٹاؤن والے پلاٹ میں سے بھی پورا حصہ نہ دیا گیا ہے۔

During cross examination she admitted it correct that property measuring 6 Kanals in K Block Model Town was owned by her mother, who transferred the same in her life time in favour of defendant No.1. She (PW1) admitted her signature on Ex.D3 as Ex.D3/2; she also admitted it correct that except Kothi No.26-C, no suit for partition of the other properties was instituted rather agreement (Ex.D3) was not implemented. Dr.Sabahat Rizvi appeared as PW2 and stated that Kothi No.26-C Gulberg II was owned by her maternal grandfather Ch. Ghulam Ullah, who had not gifted the same to anyone during his life time. She also stated that original gift deed dated 05.06.1991 is before her but the signature of his grandfather (Ex.D1/1 and Ex.D1/2) are forged; that her grandfather was Ahmadi by faith, whose legal heirs are also Ahmadi and have been declared Non-Muslims. Ahmadis cannot make oral gift,

rather they can only made gift deed though a registered deed. Ch. Ghulam Ullah remained owner in possession of the suit property during his life time till his death on 08.01.1999. In the year 1998 the deceased many a times informed her that he had never gifted the property and after his death the same should be distributed amongst his son and daughters; that agreement dated 06.04.1983 (Ex.D3) was not implemented because as per the said agreement their share in property was not given to them. She further deposed that:-

اقرار نامہ کی حیثیت وصیت کی تھی فقہ احمدیہ کے مطابق وارث کے حق میں وصیت نہیں ہوسکتی اس اقرار نامہ پر کبھی عمل نہ ہوا بلکہ انس فاروق نے اسکو ناقابل عمل کر دیا کیونکہ پلاٹ نمبر 150P بلاک گلبرگ 3 بھی اس نے فروخت کر دیا رقم مدعیان کو نہ دی اور پلاٹ نمبر K-8 رقبہ 6 کنال میں سے نصف مدعیان کو دیا باقی حصہ اس نے انکو نہ دیا۔

In order to controvert the stance as well evidence of the appellant and to prove issue No.1 respondent also produced his evidence. Ch. Javed Mehmood Bajwa appeared as DW1 and stated that Ch. Ghulam Ullah was his maternal uncle, who has one son Ans Farooq Bajwa and two daughters namely Saeeda Mehmooda and Khalida Idrees. Saeeda Mehmooda wife of Dr.General Mehmoodul Hassan has died and the other daughter Khalida Idrees wife of Kunwar Idrees (Chief Secretary) is residing in

Karachi. That Ch. Ghulam Ullah gifted the suit property to Anas Farooq in his life time. During cross examination he deposed that:-

> یہ درست ہے کہ چوہدری غلام اللہ احمدی تھے۔ احمدیوں کا مرکز پہلے قادیان تھا۔ اور اب مرکز ربوہ ہے۔ یہ درست ہے کہ چوہدری غلام اللہ کی اولاد بھی احمدی ہے۔ یہ میرے علم میں نہ ہے کہ چوہدری غلام اللہ نے اپنی جائیداد اپنی اولاد میں خانگی تقسیم کر دی تھی یا نہیں۔ چوہدری غلام اللہ سے جو میری ملاقات 1994 میں ہوئی تھی ان کے دفتر میں یہ بات ہوئی تھی (تقسیم سے متعلق) میں نے چوہدری غلام اللہ سے یہ نہ پوچھا تھا کہ انس فاروق کو کوٹھی کس طرح دی گئی ہے۔ میں نے یہ بھی نہ پوچھا تھا کہ آیا کوٹھی دینے کی تحریر ہوئی ہے یا نہیں۔ میں نے ان سے کچھ نہ پوچھا تھا۔ میں نے یہ بھی نہ پوچھا تھا کہ کس سن میں کوٹھی انس فاروق کو دی گئی ہے۔

Abdul Hameed appeared as DW2 and stated that he knew Ch. Ghulam Ullah for about 20 years as he was an employee to him since last 20/25 years and after his death he is employee of his son Anas Farooq; that suit property was owned by Ch. Ghulam Ullah who died in 1999 and he produced document Ex.D1. During cross examination he stated that his qualification is under matric and has not signed document Ex.D1. Anas Farooq Chaudhary, defendant himself appeared as DW3 and stated that his father Ch. Ghulam Ullah in his life time wrote a Will Deed which has been produced on record as Ex.D3 and according to said Will Deed Kothi situated at 26-C

Gulberg II Lahore was given to him whereas two kanals plot situated at 150-P Gulberg III Lahore and 6 Kanals Plot situated at 8-K Model Town were given to his both sisters. He also stated that Bungalow No.26-C was transferred by his father in his favour. He produced memorandum of oral gift as Ex.D1 which has never been challenged by his sister despite having the knowledge of the existence of said Will Deed and memorandum of oral gift. During cross examination he stated that his father was Ahmadi by faith who (Ahmadis) were declared as non-Muslims in 1974. He showed his ignorance as to whether according to Fiqa Ahmadia a Will Deed could be executed in favour of a legal heir or otherwise. He further responded to following questions as under:-

سوال۔ کیا یہ درست ہے کہ فقہ احمدیہ کے مطابق وارث کے حق میں
وصیت نہیں ہو سکتی۔
جواب۔ مجھے علم نہ ہے۔
سوال۔ یہ درست ہے کہ فقہ احمدی کے مطابق بیٹے کا حصہ ڈبل جبکہ بیٹی کا
حصہ اس سے آدھا ہوتا ہے۔
جواب۔ درست ہے۔

It is incorrect that agreement dated 06.04.1982 (Ex.D3) was not implemented. He admitted that property No.8K measuring 6 Kanals situated in Model Town was got registered in the name of Qazi Manzoor against

consideration of Rs.40,00,000/- and the amount received from Qazi Manzoor was not given to appellants. Further deposed that:-

> جو اول فیصلہ ہوا تھا اس پر تمام حصہ دار قائم ہو جائیں اول فیصلہ سے مراد 6.4.1983 کا اقرار نامہ ہے۔اس خط میں ہبہ نامہ 1991 کا کوئی ذکر نہ ہے۔
>
> جواب۔یہ بات درست ہے۔

He also admitted that plot No.150-P was sold by his father. Further stated that:-

> پیرا نمبر 11 اقرار نامہ 6.4.1983 میں تحریر ہے کہ چوہدری غلام اللہ اپنی زندگی میں جو جائیداد چاہیں فروخت کر سکتے ہیں اور باقی ماندہ جائیداد انس فاروق کی نصف اور سعیدہ محمود اور خالدہ ادریس کی نصف ہو گی۔ گلبرگ والا پلاٹ 150P گلبرگ III چوہدری غلام اللہ نے اپنی زندگی میں فروخت کر دیا تھا۔یہ بات درست ہے۔کیا یہ درست ہے کہ اس کا نتیجہ یہ نکلا کہ اقرار نامہ مورخہ 6.4.1983 منسوخ ہو گیا۔اور باقی ماندہ جائیداد شریعت کے مطابق تقسیم ہو گی۔جواب۔والد صاحب نے وصیت کے مطابق اس کو بیچا اور ۱۹ لاکھ روپے کی رقم بہنوں کو دے دی تھی۔۔۔۔۔۔
>
> کیا یہ درست ہے کہ جواب دعویٰ میں میں نے کوٹھی نمبر 26-C گلبرگ II لاہور کی ملکیت کا انحصار ہبہ نامہ مورخہ 5.6.1991 پر کیا ہے اور اقرار نامہ 6.4.1983 پر انحصار نہ کیا ہے۔
>
> جواب۔یہ غلط ہے کہ میں نے اقرار نامہ 6.4.1983 پر انحصار نہ کیا ہے۔

Abdul Rehman Anwar appeared as DW4 and supported the stance of the respondent.

6. From the perusal of plaint the appellants alleged that the signature of their father Ghulam Ullah on the memorandum of oral gift deed (Ex.D1) are forged whereas

signatures of the deceased on Ex.D3 are admitted one. But the respondent/defendant being beneficiary of gift deed (Ex.D1) did not file any application to rebut the said version of the appellants in respect of comparison of signatures of the deceased on the aforesaid two documents. Further neither the name of any witness of the oral gift was mentioned in pleadings (written statement) nor the same was produced in evidence. As regards the Will Deed dated 06.04.1983, suffice it to say that as per clause 11 of Deed the property left by Ghulam Ullah was to be distributed among his legal heirs i.e. Anas Farooq (son ) 1/2share and Saeeda and Khalida (daughters) 1/2 share in the estate. Admittedly according to the document of Will Deed the appellants would be eligible to get their shares in the inheritance of their father as settled between the parties and the respondent is not the sole owner of the suit property, rather the said property fell in the joint ownership of the appellants as well as the respondent.

Respondent asserted in his written statement that he is owner of the impugned property through an oral gift allegedly executed by his father Ch. Ghulam Ullah in the year 1991 which was accepted by the respondent/defendant, but in this regard the respondent has

neither mentioned date, time, place and names of the witnesses in the contents of the written statement nor produced any marginal witness in the evidence to substantiate his stance, which are sine qua non and the act of deliberate avoidance of imparting above information vitiate the veracity of the stance. Admittedly, parties of the lis are Qadiani and as per Article 260(3) of the Constitution of Islamic Republic of Pakistan, 1973, they were declared non-Muslim, as such, Muhammadan Law is not applicable upon the parties of the lis, however, principle of natural justice as well as principle laid down in respect of oral gift by the Hon'ble Supreme Court of Pakistan is applicable for just decision. The Hon'ble Supreme Court of Pakistan in a recent judgment reported as *Mrs. Khalida Azhar Vs Viqar Rustam Bakhshi & Others* **(2018 SCMR 30)** has observed that it is pre-requisite of the oral gift to specifically be described in plaint regarding the date, time and place of making offer of the gift by doner, acceptance of the same by donee. However, the respondent in this appeal has neither divulged such details in written statement nor produced any person who witnessed the transaction of oral gift, which legal flaw dismantle the foundation of respondent's claim . Another

reliance is also placed on *Allah Ditta and others Vs. Manak alias Muhammad Siddique and others* **(2017 SCMR 402).**Further in a case reported as *Fareed and others Vs. Muhammad Tufail and another* **(2018 SCMR 139)** in which the Hon'ble Apex Court has held that a donee claiming right under a gift excluding other heir, was required by law to establish the original transaction of gift irrespective of whether such transaction was evidenced by a registered deed and that the gift deed must justify the cause of disinheritance of another heirs. In the instant case the respondent claimed the ownership of the suit property on the basis of an oral gift but has failed to prove the same through production of pertinent and specific evidence in this regard. Further as per Article 260(3) of the Constitution of Islamic Republic of Pakistan, 1973 the followers of Ahamadia Faith have been declared as non-Muslims and they could not be governed by the Muslim Personal Law, rather they have to follow their own personal law of inheritance and are debarred to take benefit of Muslim Personal Laws whereas admittedly no such Personal Law relating to the gift, Tamleek and Will Deed are available in Fiqa Ahmadia and in absence of any such personal law relating to gift, Will Deed and Tamleek

under the Ahmadi Faith, the codified law of Transfer of Property Act would be applicable to cater such issue until their fiqah or jurisprudence formulate any consensus opinion on the subject.

As provisions of Transfer of Property Act, 1882 are made applicable to the issue of gift/Tamleek as well as the Will Deed on the followers of Fiqah Ahmadia and the dispute between the adverse parties is also relating to Will Deed as well as the oral gift same would be adjudicated and decided according to the said enactment. In Section 122 of the Transfer of Property Act the definition of gift is given as under:-

> *"122. "Gift" defined. "Gift" is the transfer of certain existing moveable or immovable property made voluntarily and without consideration, by one person called the donor, to another called the donee, and accepted by or on behalf of the donee.*
>
> *Acceptance when to be made. Such acceptance must be made during the lifetime of the donor and while he is still capable of giving.*
>
> *If the donor dies before acceptance, the gift is void."*

From the bare reading of Section 122 of the Transfer of Property Act, 1882, the gift will be completed when the donor makes offer of the gift and donee accepts the same, but in the instant case from the perusal of the alleged memorandum of oral gift (Ex.D1), only the signature of

the alleged donor are available, but express acceptance of the gift by or on behalf of the donee is missing and the alleged gift deed is a kind of unilateral document which even does not bear the signature of any marginal witness, as such, gift deed (Ex.D1) does not convey any title to the respondent as the impugned transaction does not fulfill the criteria as provided in supra Section of the Transfer of Property Act. Further, according to the above provision of law two important prerequisites of a valid gift are that an offer be made by the doner without any consideration, coercion, duress and said offer is accepted by the donee himself or by his authorized attorney, during the life time of the donor, which are mandatory in nature and any non-compliance would invite the legal consequences, whereas in this case the above said ingredients have neither been asserted in written statement nor proved as per law. Further Section 123 of the Act, 1882 describes the modus operandi of transfer of possession in the following manner:-

> *"123. Transfer how effected. For the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.*

> *For the purpose of making a gift of moveable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.*
>
> *Such delivery may be made in the same way as goods sold may be delivered.*

The conjunctive readings of Section 122 and 123 of the Transfer Of Property Act, it evinces that making of an offer of gift by the doner, acceptance of the gift by the donee and delivery of possession are main constituent of a valid gift under the Act and it is made obligatory that such gift transaction shall bear signature of at least two attesting witnesses. Admittedly respondent No.1 claimed his title over the suit property on the basis of a gift made by his father Ghulam Ullah but the said gift did not fulfill the criteria as prescribed under Section 122 and 123 of the Transfer of Property Act, 1882, as the making of offer of gift and acceptance of the same on behalf of the donee are not proved on record and also the document of gift was not attested by two witnesses as required by law. Furthermore the alleged gift deed under Section 123 of the Transfer of Property Act as well as under Section 17(a) of the Registration Act, 1908 is compulsorily required to be registered, failing which provisions of Section 49 of the

Registration Act would come into play with the consequence that the document would be considered as devoid of creating any legal right, title or interest, either vested or contingent in the property. Reliance in this regard can be placed on *Muhammad Ejaz and 2 others Vs. Mst.Khalida Awan and another* **(2010 SCMR 342)** and *Allah Diwaya Vs. Ghulam Fatima* **(PLD 2008 SC 73).**

Even otherwise under Article 79 of Qanun-e-Shahadat Order, 1984 a disputed document is required to be proved by producing at least two attesting witnesses whereas neither any marginal witnesses are mentioned in the alleged gift deed nor produced in evidence to substantiate the transaction, as such, alleged gift deed (Exh.D-1) does not fulfill the requirement of Article 79 of Qanun-e-Shahadat Order, 1984. The object of establishing of the marginal witnesses of a document is to identify the genuineness of executant as well as his signature or thumb impression and also to give legal sanctity to such transaction and they (the marginal witnesses) are produced in evidence to prove that the executant had put the signature within their view. Further the respondent being beneficiary of the document was under unalienable obligation to prove the execution of document of gift as well as to prove the actual factum of gift by falling back

on three ingredients of offer, acceptance and delivery possession. Reliance in this regard can be placed on *Mst. Kulsoom Bibi and another Vs. Muhammad Arif and others* **(2005 SCMR 135).**

7. Moreover there is another significant aspect of the matter that the respondent has taken two stances in his pleading, firstly he claimed to be owner of the suit land under the Will Deed allegedly executed in 1983 and secondly laid foundation of his case on the basis of oral gift allegedly made in his favour in the year 1991 which are self destructive in nature. Respondent invented a novel stance of oral gift which altogether repudiates his earlier stance of Will Deed as described in his written statement as well as in the deposition made under oath before the trial court which are hit by principle of approbate and reprobate. The learned trial court mainly swayed by the document of Will Deed dated 06.04.1983 which shows that the appellant, had received their shares whereas the said Will Deed stands repudiated by the subsequent acts of testator, who himself alienated the property fallen in the shares of the appellants and even the respondent himself also sold certain chunks of the properties and received consideration of the same without paying a penny to the

appellant which extinguished the sanctity of Will Deed whereas the very making of alleged gift deed in itself frustrate the earlier family settlement type Will Deed. The learned trial court has committed mis-reading and non-reading of the evidence and has mis-construed the law on the subject holding the gift deed is made in continuation of the family settlement whereas the rule of prove and legal parlance of both the transactions are entirely distinguished to each other as such the above findings of the learned trial court on issues No.1 and 3 are perverse which deserve reversal.

Next the learned trial judge mainly non-suited the appellant on the point of limitation holding that Will Deed was executed in the year 1983 and the impugned gift was made in the year 1991 and even by reckoning the limitation from both the terminus date, the suit is time barred which findings are absolutely incorrect and devoid of any valid reasons as on the death of prepositus of the parties the entire estate of the deceased automatically devolved upon the legal heirs who became co-sharer in the estate. Moreover the object of execution of the alleged Will Deed as well as the gift as evinced from the pleading as well as the available evidence, seems to be tainted with

fashioned malafide design of respondent to deprive the women folk from their due share in the property through newly conceived or invented grotesque devices such as Will Deed, gift/Tamleek deed or under the garb of custom, family honour, regional culture as well as under coercion just to grab the legal shares of women and in such transaction the court are saddled with unalienable obligation to show extraordinary circumspection, care and caution while dealing and deciding the matter of alienation of shares or right of the women folk. Reliance is placed on *Ghulam Ali and 2 others vs. Mst. Ghulam Sarwar Naqvi* **(PLD 1990 SC 1).**

Further the appellants are admittedly owner of ½ share in the suit property after the death of their father Ghulam Ullah and they hold a valid cause of action to file the instant suit whereas the learned trial judge has illegally held that the suit of the appellants lacks the cause of action. Moreover learned trial Judge has mainly non suited the appellant declaring the suit being out of limitation, suffice it to say that admittedly, the appellants are daughters of Ch. Ghulam Ullah and after his death they became co-shares in the property and it is settled law that limitation does not operate against the co-sharer in

inheritance matter. Reliance is placed on the cases of *Mahmood Shah Vs. Syed Khalid Hussain Shah* **(2015 SCMR 869)**, *Mst. Gohar Khanum & Others Vs. Mst. Jamila Jan & Others* **(2014 SCMR 801)**, *Rehmatullah & Others Vs. Saleh Khan & Others* **(2007 SCMR 729)**, *Arshad Khan Vs. Mst. Resham Jan & Others* **(2005 SCMR 1859)**, as such, finding of the learned trial court on issue No.2 are also not sustainable as same suffers from the voice of mis-reading, non-reading of evidence as well as misapplication of law which is liable to be reversed.

7. In view of the above, this appeal is allowed, the judgment and decree dated 23.11.2016 passed by the leaned trial court is set aside, appellants are declared entitled to receive their 1/2 share in the suit property. Hence the suit for partition filed by the appellants is decreed as prayed for.

**(Shahid Karim)**
**Judge**

**(Ch. Muhammad Iqbal)**
**Judge**

*A.Rehman.*

Announced in open Court on 07.06.2018.

JUDGE JUDGE

**Approved for Reporting**