

**LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT**

C.R.No.158016/2018

Muhammad Tariq, etc. Vs. Amjad Ali, etc.

Serial No of order of proceeding	Date of order of proceeding	Order with signature of Judge, and that of Parties or counsel, where necessary
1	2	3

06.02.2018 Ch. Sameed Ahmad Wains, Advocate
for the petitioners.

Verily, Samreen Kausar, sister of present petitioners was owner of property measuring 01 Kanal 09 Marlas, who transferred it to Amjad Ali respondent No.1 through execution of sale deed dated 08.07.2006 (Exh.P5). Though in earlier round of litigation, Muhammad Tariq petitioner No.1 pirated the said sale through suit for pre-emption (Exh.D1) and one day prior to its withdrawal, suit in hand was filed on 14.09.2011 with the stance that property involved in Exh.P5 was in fact owned by their father Muhammad Manzoor, who gifted it out to them through memo of gift executed on a plain paper dated 13.01.2006 (Exh.P1) and on the next day, earlier suit of pre-emption was withdrawn vide order dated 15.09.2011 (Exh.D2). After collecting and thrashing evidence of the parties in pros and cons, learned Trial Court dismissed the suit through judgment and decree dated 22.01.2015. Though appeal was preferred by the petitioners well within time on 03.02.2015 yet without affixation of requisite Court fee and for that sole ground, the appeal was dismissed vide impugned order dated 15.12.2017, hence instant Civil Revision.

2. Heard. Record perused.

3. Through their suit, the petitioners claimed themselves to be the owners of property valuing at least Rs.2000000/- on the basis of alleged gift and under the law, valuation of the suit for the purposes of court fee was to be affixed by them as per its market price, but at the time of its institution, they fixed its value for that purpose only Rs.24000/-, however, subsequently on debriefing of learned Civil Court as per requirement of section 7 (iv) (a) of the Court Fees

Act,1887, the maximum court fee of Rs.15000/- was furnished. It was amazing that after the dismissal of suit by the learned Civil Court, despite the fact that while filing appeal, Rs.200000/- was fixed its value for that purpose, but this time again without affixation of any court fee. The petitioners were very much aware what stamps of court fee they had to furnish and no confusion was in their way in this regard. The submission of Ch. Sameed Ahmed Wains, Advocate for the petitioners that learned lower Appellate Court prior to dismissal of appeal did not direct the petitioners to levy the requisite Court fee is not well founded. It was not the case where situation with regard to the fixation of valuation of the lis was foggy or tangled and the petitioners were required any clarification. As observed supra, not only the valuation requiring affixation of maximum Court fee was determined by them rather they on the asking of Court of first instance without objection affixed it on their plaint. The study of memorandum of appeal again affirmed that they were certain that Court fee of the highest value was to be affixed, but they remained mum for more than two years, hence they were not only negligent, but their conduct was contumacious and there existed no reason to extend any indulgence to them to make good the court fee and that too beyond the period of limitation. The appeal remained pending for more than two years and ten months but despite the fact that learned lower Appellate Court time and again required the court fee, but the deficiency was not made good. The provision of section 149 of the Code of Civil Procedure, 1908 cannot be extended for relaxation of limitation beyond the prescribed period. Reliance is placed on **Mrs. Safia Siddiq Vs. Haji Fazal-ur-Rehman** and 2 others (2009 CLC 262) and **Assistant Commissioner and Land Acquisition Collector, Badin Vs. Haji Abdul Shakoor** and others (1997 SCMR 919). Apart from that, no legitimate explanation was provided as to why the petitioners failed to affix court fee well within limitation of filing of appeal, therefore, learned Addl. District Judge was perfect to non-suit them through the impugned order.

4. On facts, it is also admitted by learned counsel for the petitioners that earlier Muhammad Tariq, petitioner No.1 had instituted a suit for possession through pre-emption (Exh.D1) against

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sale reflected in sale deed dated 08.07.2007 (Exh.P5) made by respondent No.2 in favour of respondent No.1 and thereafter the antipodal stance of the petitioners that in fact the property had already been gifted out to them by their father on 13.09.2006 is not adequate. Had there been a valid gift, then they would have assailed the sale while basing their claim on the gift allegedly made prior to earlier transaction, but while filing a suit for the exercise of right of substitution, petitioner No.1 acknowledged the transaction of sale while disregarding their alleged gift, hence judgment as well as order of Courts below are neither perverse nor infirm, which do not call interference by this Court in the exercise of revisional jurisdiction. Learned counsel for the petitioners has also remained abortive to pinpoint any illegality or irregularity in the impugned judgment and order. Consequently, instant Civil Revision being devoid of any merit is hereby **dismissed in limine**.

(Ch. Muhammad Masood Jahangir)
Judge

Approved for reporting.

Judge

Syed Zameer