

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Justice Muhammad Ali Mazhar
Justice Irfan Saadat Khan
Justice Aqeel Ahmed Abbasi

Civil Appeal No.193-L of 2010

Against the judgment dated 10.07.2009 passed by the Lahore High Court, Multan Bench, Multan in W.P. No. 1807 of 2007)

Mst. Sarwar Mai, etc

...Appellant(s)

Versus

Judge, Family Court, Muzaffargarh, etc

...Respondent(s)

For the Appellant(s) : Mr. Sikandar Javed, ASC

For Respondent No.3A, : Mr. Aftab Ahmed Bajwa, ASC
3C, 3D, 3E and 3F

For PFSA: Mr. Sanullah Zahid, Addl. A.G. Punjab
a/w Dr. Sajjad Ahmed.

Date of Hearing : 23.06.2026

JUDGMENT

Irfan Saadat Khan, J.- This appeal by way of a petition for leave to appeal is directed against the judgment passed by the Lahore High Court, Multan Bench, Multan, in W.P. No. 1807 of 2007 dated 10 July 2009, whereby the writ petition filed by the present appellants was dismissed, and the concurrent judgments and decrees of the Trial Court/Family Court dated 27 May 2000 and the Appellate Court dated 13 January 2001 were upheld. Leave to appeal in the instant case was granted vide order dated 14.06.2010, which is reproduced below:

"To consider the questions raised in the leave petition; some of which were recorded in the order dated 04.09.2009, leave is granted."

2. Briefly stated, the facts of the case are that a civil suit for jactitation of marriage, cancellation of a forged *Nikahnama*, and declaration was instituted on 10.05.1999 on behalf of one Allah Ditta (Respondent No. 3 herein, now deceased hereinafter referred to as '**A.D**') through his next friend, Qaisar Iqbal. The central claim in the suit was that A.D was a 65-year-old individual who was a lunatic by birth and mentally incapacitated to perceive the consequences of a matrimonial bond or contract of a marriage. It was asserted that Appellant No. 1 (Mst. Sarwar Mai), a woman

of 25 years, fraudulently fabricated a false *Nikahnama* to project herself as his legally wedded wife, and falsely claimed that Appellant No. 2 (Bilawal) was born out of the said wedlock, solely to illegally grab the landed property of the incapacitated individual. The appellants filed their written statement on 17.04.2000, stoutly denying the allegations and asserting the validity of the marriage and legitimacy of the child. The learned Family Court, Muzaffargarh, after framing necessary issues and recording extensive evidence, decreed the suit in favor of the plaintiff vide judgment dated 27.05.2000, holding the *Nikahnama* to be a forged document and Appellant No. 2 not to be the son of A.D. Aggrieved therewith, the appellants preferred an appeal under Section 14 of the West Pakistan Family Courts Act, 1964, before the learned Additional District Judge, Muzaffargarh, which was dismissed on 13.01.2001. The constitutional writ petition subsequently moved before the Lahore High Court also met the same fate and was dismissed via the impugned judgment dated 10.07.2009, leading to the instant proceedings before this Court.

3. Mr. Sikandar Javed, learned ASC, appeared on behalf of the appellants and vehemently argued that all three courts below have failed to appreciate the evidence on record in its true perspective. He contended that Qaisar Iqbal lacked the *locus standi* to act as a "next friend" to file the suit for jactitation, as he was an unconcerned person and not a legal heir. He next stated that the High Court erred in law by rejecting the appellants' miscellaneous application (C.M. No. 801 of 2009) wherein they requested the exhumation and sending of the remains of the deceased (A.D) for a DNA test to clear the cloud over the parentage of Appellant No. 2. He further argued that under Islamic Law, the courts must lean strongly toward the legitimization of a child rather than stigmatization, and that a child's lineage (*Hadijah*) cannot be casually denied except through the strict process of *Li'an*. He concluded that the findings regarding the absolute lunacy of A.D and the forgery of the *Nikahnama* are based on a gross misreading of evidence, which makes the concurrent judgments unsustainable in the eyes of the law.

4. Mr. Aftab Ahmed Bajwa, learned ASC, appearing for the respondents, stoutly defended the impugned judgments and submitted that concurrent findings of fact across three distinct judicial tiers stand recorded against the appellants. He argued that medical evidence, including a certification issued by a senior physician of the DHQ Hospital, Muzaffargarh, conclusively established that A.D was mentally

incapacitated and entirely incompetent to enter into any valid civil or marital contract. He contended that the *Nikahnama* was a patently fraudulent and manufactured document designed by the present petitioner to usurp the ancestral lands of a mentally infirm elderly man. He maintained that fraud vitiates the most solemn proceedings, and requested that the appeal be dismissed with exemplary cost.

5. We have heard the learned counsel for the parties at length and have scanned the available record with their able assistance.

6. The record underscores that the Family Court and the Appellate Court have meticulously threshed out the medical and oral evidence before concluding that A.D lacked the cognitive capacity to give valid consent for marriage. The Trial Court while allowing the appeal vide its order dated 27.5.2000 has categorically observed as under:

"It appears that they have prepared forged documents to get the land of the plaintiff and have only applied for taking the Management of the property of the plaintiff. From the above discussion I have come to the conclusion that Nikah of the plaintiff was never solemnised with the defendant No.1 and that the defendant No.1 alongwith her relatives has prepared a forged Nikah Nama and birth certificate of the defendant No.2. In this view of the matter this issue is decided in favour of the plaintiff."

The Appellate Court has endorsed the view vide order dated 13.01.2001 by elaborations under:

"I have gone through the record and heard the contention of learned counsel for the parties.

The plaintiff/respondent has produced sufficient evidence on the file, which shows that even at the time of Nikah Allah Ditta was not of sound mind. The alleged Nikah Nama is found to have been executed on 04.12.1991 whereas Ex.P.1 is a document dated 14.5.1991, which shows that Allah Ditta is person of in-sane mind and his custody was given to Muhammad Iqbal his nephew. This cumulative effect of the evidence on the record makes it crystal clear that Allah Ditta is not of a sound mind. As Mst. Sarwar Mai claims that the alleged Nikah Nama Ex.D.1 is a valid document, so it was incumbent duty upon her to prove that the alleged Nikah Nama is a valid and legal document. DW3 is a person who is not a Nikah Registrar of Mauza "Mallad Koria" and he has not given any reason that why he has gone into the jurisdiction of area which does not fall within his licence. Further in presence of specific denial of the respondent/plaintiff, the appellant has not produced any cogent and original evidence in-order to prove her Nikah Nama. The original record from the concerned Union Council regarding the Nikah was not produced and in absence of this essential record, the copies produced by the appellant could not be safely relied upon.

The other most important fact that Nikah Nama is a Civil contract which could only be made between the competent persons. As it is very much evident from the record that Allah Ditta is a person of un-sound mind and is legally not competent to enter into any contractual

obligations, therefore, legally Allah Ditta cannot enter into contract of marriage himself on his own with Mst. Sarwar Mai, therefore, I am constrained to hold that the alleged Nikah Nama between Mst. Sarwar Mai and Allah Ditta is not a valid and legal document, which could give right to any relation-ship between them. As such Mst. Sarwar Mai is not a wife of Allah Ditta respondent and appellant No.2 is not out come of their wedlock."

The High Court while validating the view of the fora below vide impugned judgment dated 10.07.2009 has dilated as under:

"I have considered both the judgments of courts below as well as the material available on record. Learned counsel for the petitioner has failed to point out any mis-reading or non-reading of evidence or any illegality or infirmity in the impugned judgments. The plea raised by the petitioners in this writ petition does not justify any interference by this Court in its constitutional jurisdiction. It is settled principle of law that all the factual and legal controversies between the parties have been comprehensively concluded by concurrent findings recorded in the judgments of both Courts below delivered after duly appraising the entire evidence adduced by the parties. Neither any instance of mis-reading or non-reading has been found in the impugned judgments nor the same suffer from any jurisdictional defect."

7. It is noted that the courts below have concurrently found that the next friend acted strictly in the welfare of the incapacitated person to ward off an apparent fraud. It is a settled legal maxim that fraud vitiates the most solemn proceedings. If the foundational document, the Nikahnama, was a product of fraud and misrepresentation executed upon an incompetent person, the entire superstructure built upon it, including claims of lineage or inheritance rights, must fall flat. On this point, reference may be made to the ruling in *The Chief Settlement Commissioner*,¹ wherein this Court categorically established that, *"any authority or tribunal retains the inherent power to undo and recall transactions or orders obtained through fraud, as it is a principle of equity that a party cannot be allowed to enjoy or retain ill-gotten gains through deceptive means."*

8. Apropos the issue of DNA, it suffices to observe that this Court, in order to meet the ends of justice, vide order dated 15.09.2016, with the consent of the parties, directed the District & Sessions Judge, Muzaffargarh, to depute a Magistrate for the disinterment of the body of the deceased (A.D.) to enable the officials of the Punjab Forensic Science Agency (PFSA) to take samples of the requisite body parts for the purpose of a DNA test. This Court also directed both parties to appear before the said Judge on 22.09.2016. Thereafter, the learned District Judge, vide

¹ The Chief Settlement Commissioner, Lahore v. Raja Mohammad Fazil Khan and Others (PLD 1975 Supreme Court 331)

order dated 22.09.2016, deputed Malik Hanif Noorani, Judicial Magistrate, for the exhumation and disinterment of the grave of A.D., after fulfilling all the legal and codal formalities. The said learned Judicial Magistrate then visited the graveyard on 04.10.2016; however, since no one could point out or identify the grave, the exhumation/disinterment could not be conducted. Hence, the issue raised by the petitioners that Bilawal was the son of A.D. remained unproved.

9. The concurrent findings of fact recorded by the Trial Court, the first appellate court and reaffirmed by the High Court, leave no room for doubt. It is a well-entrenched principle of law that this Court will not routinely interfere with concurrent findings of fact unless they are shown to suffer from a gross misreading or non-reading of material evidence, perversity, or jurisdictional error.² The learned counsel for the appellants has completely failed to demonstrate any such legal infirmity or perversity in the impugned orders. Reference in this regard can be made to *Muhammad Shamim Ali*,³ where this Court has reiterated that the constitutional writ jurisdiction under Article 199 is not an automated forum of appeal, and High Courts must decline to disrupt the factual findings of the Courts unless a manifest illegality or grave miscarriage of justice is established, which in our opinion is lacking in the instant case.

10. In view of the facts narrated above, we have come to the irresistible conclusion that the appellants failed to point out any defect in the findings recorded by the High Court; therefore, we see no justification for interfering with the impugned judgement. Thus, the instant Civil Appeal is found to be bereft of any merit, and therefore stands dismissed. No order as to costs.

Islamabad

23.06.2026

~~NOT~~ APPROVED FOR REPORTING'

Arshed/Zainab Qazi, Judicial LC

² Sardar Ali Khan V. State Bank of Pakistan (2022 SCMR 1454)

³ Muhammad Shamim Ali v. Mst. Asma Begum and Others (2024 SCMR1642)