

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**

(Appellate Jurisdiction)

**PRESENT**

Ch. Muhammad Ibrahim Zia, C.J.  
Ghulam Mustafa Mughal, J.

Civil Appeal No. 177 of 2016  
(PLA filed on 18.05.2016)

1. Muhammad Latif,
2. Muhammad Shafi,
3. Muhammad Bashir,
4. Muhammad Rashid, sons of Peeran Ditta, Caste Jat, r/o bhoto Sial (Kund), Tehsil & District Bhimber, through General Attorney Petitioner No.1.

.... APPELLANTS

VERSUS

1. Board of Revenue, Muzaffarabad through its Member.
2. Member Board of Revenue, Custodian Building, Old Secretariat Off: GOP Muzaffarabad.
3. Additional Member Board of Revenue, Custodian Building, Old Secretariat, Off: GPO Muzaffarabad.
4. Tehsildar / Assistant Collector Class-I, Bhimber.
5. Abdul Razzaq alias Saddar, Patwari Halqa Bhoto Sial, Tehsil and District Bhimber.
6. Muhammad Khaliq,
7. Muhammad Fazil,
8. Muhammad Sadiq, sons of Muhammad Ellahi, r/o Bhoto Sial, Tehsil and District Bhimber.
9. Abdul Aziz s/o Bagh Ali r/o Qasimabad, Tehsil and District Bhimber.

..... RESPONDENTS

10. Mst. Rabia Bibi, widow,
11. Muhammad Iqbal,
12. Muhammad Mushtaq,
13. Abdul Razaq,
14. Sain,
15. Muhammad Ishtiaq, sons,
16. Mst. Mukhtar Bibi,
17. Mst. Irshad Bibi, daughters of Muhammad Alam  
s/o Muhammad Ellahi, Caste Jat, r/o Bhoto Sial,  
Tehsil and District Bhimber.

.... PROFORMA RESPONDENTS

(On appeal from the judgment of the High Court  
dated 25.03.2016 in Writ Petition No.10 of 2008)

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FOR THE APPELLANTS:            Muhammad Azad Khan  
Tareen, Advocate.

FOR THE RESPONDENTS:        Mr. Abdul Rashid Abbasi,  
Advocate.

Date of hearing: 13.04.2017

**JUDGMENT:**

**Ch. Muhammad Ibrahim Zia, C.J.—** The above titled appeal by leave of the Court arises out of the judgment of the High Court dated 25.03.2016, whereby writ petition filed by the appellants, herein, has been dismissed.

2.            The appellants, herein, filed a writ petition in the High Court alleging therein that the land

measuring 37 *kanal*, 9 *marla*, situate in village Bhoto Sial (Kund), Tehsil and District Bhimber, was in possession of their father, Peeran Ditta s/o Jumma. After promulgation of the Azad Jammu & Kashmir Land Reforms Act, 1960, Peeran Ditta paid the compensation to the owners of the land under sections 25(2) and 28(2) of the said Act and became the owner of the land. After death of the father of the appellants in January, 1960, the property devolved upon them and they are in possession of the land as the owners. They have constructed 15/16 houses on the land and developed the same by spending million of rupees. The mutation of the inheritance bearing No.199, dated 19.08.1967, was also attested in their favour. They also claimed that they are the owners of the land but without their knowledge, they were entered in the new settlement record as *Ghair Mourous* and mutations No.176, 178 and 180 were attested on 29.06.1996 and 03.11.1996 without possession, on the basis of some fake and fictitious gift-deeds. They have challenged the gift deeds by way of a civil suit. After necessary proceedings, a

learned single Judge in the High Court dismissed the writ petition on 25.03.2016 on the ground that the petitioners (therein) have filed the civil suit which was dismissed and without setting aside the gift deeds the mutations cannot be set aside, hence, this appeal by leave of the Court.

3. Mr. Abdul Rashid Abbasi, Advocate, the learned counsel for the respondents raised preliminary objection that this appeal is not maintainable in view of the final judgment of this Court dated 26.10.1999 delivered in the previous round of litigation through which it has been finally concluded that the appellants, herein, are tenant-at-will and not owners of the land. Leaving aside the other aspects of the case, on this sole ground this appeal is not maintainable.

4. Mr. Muhammad Azad Khan Tareen, Advocate, the learned counsel for the appellants argued the case at some length. He discussed the facts of the case and repeatedly argued that the land was in ownership of the appellants. Subsequently, the private respondents with the connivance of the official

respondents have succeeded in manoeuvring wrong entries in the revenue record, thus, the appellants have rightly approached the High Court for redressal of grievance but the learned High Court failed to properly appreciate the legal and factual propositions and decide the matter according to law. Therefore, while accepting this appeal and setting-aside the impugned judgment the prayed relief may kindly be granted.

5. We have considered the arguments of counsel for the parties and examined the record made available. The case has long history of litigation. The controversy basically relates to execution of the gift deeds dated 08.11.1995 and 15.11.1995. The matter came under consideration before the civil Court and finally decided against the appellants by the High Court vide judgment dated 21.05.1999. Against the judgment of the High Court the appellants approached this Court by filing petition for leave to appeal which stood dismissed vide order dated 26.10.1999 with the clear findings in the words:

“.... It may be observed that the High Court has relied upon the cases of this Court wherein it has been held that if the possession is with a tenant, its delivery is not necessary to the donee at the time of execution of a gift-deed.”

Thus, it has been conclusively resolved that the appellants are the tenant-at-will. In view of hereinabove referred final conclusion drawn by this Court that the appellants are tenant at will, their subsequent claim that they are the owners of the land and on the basis of this ownership they have initiated the present round of litigation, is not tenable. Leaving aside all other details and material proposition, on this sole ground they are not entitled to claim the relief in view of the peculiar facts and the circumstances of this case. The learned High Court has not committed any illegality while passing the impugned judgment. The appellants have failed to make out any valid ground for interference.

Therefore, finding no force this appeal stands dismissed with costs.

Muzaffarabad,  
25.04.2017

CHIEF JUSTICE

JUDGE  
(J-II)

M. Latif & others VS Board of Revenue & others

**ORDER:**

The judgment has been signed. It shall be announced by the Registrar, after notifying the learned counsel for the parties.

Muzaffarabad,  
--.04.2017

CHIEF JUSTICE

JUDGE  
(J-II)

Date of announcement: 18.04.2017