

HCJDA-38

JUDGMENT SHEET

IN THE LAHORE HIGH C COURT, LAHORE

JUDICIAL DEPARTMENT

Civil Revision No. 1750 of 2015

Muhammad Khan deceased through L.Rs.

versus

Muhammad Akram

J U D G M E N T

<i>Date of hearing:</i>	<i>09.10.2024</i>
<i>Revision-petitioner by:</i>	<i>Ch. Muhammad Rafique Warraich, learned Advocate</i>
<i>Respondent by:</i>	<i>Ch. Irshad Ullah Chattha, learned Advocate</i>

Sultan Tanvir Ahmad, J:- The predecessor of the revision-petitioner (Muhammad Khan) instituted civil suit No. 187 / 364 dated 25.09.2002 with the averment that in mutation No. 6431 dated 30.08.1993 (the ‘*mutation*’) 09 *marlas* property as detailed in the suit (the ‘*suit property*’) out of the total land measuring 04 *kanal* 13 *marla*, has been incorporated by way of fraud by the respondent in collusion with the revenue officials. The suit was contested and out of divergent pleadings the following issues were framed:-

- 1. Whether the defendant with malafide intention got attested the mutation No. 6431, dated 30.08.1993, by including 09 marlas of plaintiff’s residential house situated in khawat No. 615/881? OPP*

2. *Whether the instant suit is not proceed able in its present form? OPD*
3. *Whether the plaintiff has no locus-standi to file this suit? OPD*
4. *Whether the plaintiff is estopped by his words and conduct? OPD*
5. *Whether the instant suit is frivolous and vexatious? OPD*
6. *Whether the instant suit is liable to be dismissed due to misjoinder and non-joinder of parties? OPD*
7. *Whether the instant suit does not lie? OPD*
8. *Relief?*

2. The parties led their respective evidence. The learned trial Court decreed the suit vide judgment and decree dated 01.03.2010. The respondent preferred civil appeal No. 120 / 227 of 2010/14, which was allowed by the learned Appellate Court vide judgment and decree dated 27.03.2015 and while setting-aside the findings of the learned trial Court the suit has been dismissed. Being dissatisfied from the same, present civil revision has been instituted.

3. Ch. Muhammad Rafique Warraich, learned counsel for the revision-petitioner, has submitted that the judgment of the learned Appellate Court is result of gross misreading of evidence and the well-reasoned judgment of the learned trial Court has been unduly interfered with; that the learned Appellate Court has wrongly shifted the onus of issue No. 2 on the revision-petitioner ignoring that it was for the respondent, being beneficiary, to prove the *mutation* through coherent evidence and by producing the relevant revenue officials.

4. Conversely, Ch. Irshad Ullah Chattha, learned counsel for the respondent, has vehemently opposed this revision-petition and he has stated that the

learned Appellate Court has reached to the correct conclusion; that the execution of the *mutation*, *jalsa aam* or attestation in course of normal official duties have never been denied, thus, not producing the revenue officials lost importance. It is stated that even otherwise the revision-petitioner has even failed to discharge the initial burden so that it can be shifted to the other side.

5. Heard. Record has been perused with the able assistance of the learned counsel for the parties.

6. It is trite that once a document has been proved in accordance with law, the genuineness of its contents can be presumed and the rule that the "document speaks for itself" (*acta probant sese ipsa*) can be deployed. The rationale behind the presumptions attached to written documents stem out of both principle as well as policy. The presumptions are a matter of principle because written documents are, by their very nature, to be accorded a higher degree of credibility as opposed to oral evidence; otherwise, it would bring uncertainty and chaos if written documents (and valuable rights, if any, attached to them) were allowed to be set aside on the basis of oral evidence¹.

7. Reading of the suit reflects that Muhammad Khan, who passed away during the pendency of the suit, has never denied that the *mutation* was passed on his statement and in the presence of those who have signed the *mutation* (Ex.P-1). The *suit property* is categorically mentioned in the *mutation* with reference to its *khata* number and the consideration was paid for the total property, which is subject matter of the *mutation*. After

¹ "Muhammad Mumtaz Shah (deceased) through LRs. and others versus Ghulam Hussain Shah (deceased) through LRs. and others" (2023 SCMR 1155)

the death of Muhammad Khan his son Abdul Razzaq appeared as PW-1 who deposed that they gained the knowledge about eight years after the *mutation*. In the entire examination-in-chief particular manners and mode of fraud are not stated. He simply deposed that fraud was committed in collusion with the revenue officials. He admitted in his cross-examination that at the time of bargain he was in Rawalpindi. To support him one Muhammad Ali appeared as PW-2 who is admittedly paternal uncle of Abdul Razzaq. He also could not give particulars of fraud in his examination-in-chief. He too admitted during his cross-examination that at the time of proceedings of *mutation* he was not present, thus, admitted that most of the parts of his statement are comprised of hearsay. In his cross-examination he attempted to develop the case and the answers given by him contradicted the original stance. In response to one of the questions he stated that respondent committed fraud / forgery in the *mutation* five years prior to filing of suit, when allegedly respondent asked the concerned *patwari* to enter the *suit property* in the *mutation*. This answer perhaps is given without realizing that in the suit it is averred that cause of action accrued a year prior to filing of the suit and the fact deposed as to asking the *patwari* to enter the *suit property* in the *mutation* is not even pleaded.

8. The respondent appeared as DW-1. He also answered few questions adverse to his interest, however, if the evidence is evaluated on the balance of probabilities, the balance tilts in favour of the respondent. So far as the argument regarding failing to produce attesting witness by the respondent-side is

concerned, the execution of the *mutation* is not denied by Muhammad Khan-*deceased* himself, therefore, examination of attesting witness is not fatal². Even otherwise, the best evidence about the contents of a document is the document itself³.

9. Lastly, learned counsel for the revision-petitioner took the plea as to the variance in findings of the learned two Courts below. In my reading, judgment of the learned Appellate Court is cogent and based on sound reasons, therefore, it prevails over the findings given by the learned trial Court⁴.

10. For what has been discussed above, the present civil revision is **dismissed**. No order as to costs.

(Sultan Tanvir Ahmad)
Judge

Approved for reporting

*Iqbal**

Judge

² “Muhammad Afzal (Decd.) through LR. and others versus Muhammad Bashir and anothers” (2020 SCMR 197)

³ “Abdul Aziz versus Abdul Hameed (deceased) through LR.” (2022 SCMR 842)

⁴ “Amjad Ikram versus Mst. Asiya Kausar and 2 others” (2015 SCMR 1)