

JUDGMENT SHEET
LAHORE HIGH COURT, LAHORE

JUDICIAL DEPARTMENT

C. R. No. 2168 / 2014

Muhammad Siddique (deceased) through L.Rs.

Versus

Muhammad Yaqoob & others

JUDGMENT

| | |
|-----------------------------------|---|
| Date of Hearing: | 17.04.2024 |
| Petitioners By: | Mr. S. M. Zeeshan Mirza, Advocate Mr. Inam ul Haq Buttar, Advocate |
| Respondent No. 1 By: | Mr. Liaqat Ali Malik, Advocate |
| Respondents No. 2 to 8 By: | Proceeded <i>ex parte</i> on 23.11.2023 |

ABID HUSSAIN CHATTHA, J: This Civil Revision is directed against the impugned Judgments & Decrees dated 30.01.2013 and 14.05.2014 passed by Civil Judge, Gujranwala and Additional District Judge, Gujranwala, respectively, whereby, suit of Respondent No. 1 was concurrently decreed.

2. The brief facts of this case are that Respondent No. 1 instituted a suit for specific performance of contract alongwith declaration and permanent injunction as consequential relief. It was alleged in the plaint that Respondent No. 2 as natural guardian of Respondents No. 3 to 8 (the “**Minors**”) entered into an oral agreement to sell with respect to property measuring 10-Kanals and 07-Marlas fully described in paragraph No. 2 of the plaint (the “**suit property**”) against total sale consideration of Rs. 300,000/- out of which Rs. 250,000/- were received by Respondent No. 2 as earnest money. Later, with mutual consent, Respondent No. 1 procured stamp papers for execution of sale deed and draft sale deed was prepared with sale consideration of Rs. 200,000/-. Tax for transfer of the suit property was also deposited on 20.05.2006. Respondent No. 2 on behalf of the Minors executed sale deed by affixing his signatures and thumb

impressions alongwith witnesses on the draft sale deed and was also duly identified. However, draft sale deed dated 23.05.2006 could not be registered as the office of Sub-Registrar raised an objection that Respondent No. 2 should procure a guardianship certificate on behalf of the Minors before attesting the sale deed. Respondent No. 2 promised to procure guardianship certificate and as such, registration of sale deed was postponed. Subsequently, Respondent No. 1 came to know that Respondent No. 2 sold the suit property to the Petitioner (who died during pendency of the titled Petition and is now represented by his legal heirs) through registered sale deed No. 60 dated 19.08.2006 which is fraudulent, unlawful, without consideration and ineffective qua the rights of Respondent No. 1. It was further alleged by Respondent No. 1 that he is always willing and ready to perform his part of contract and has called upon the Petitioner and Respondent No. 2 along with the Minors to get cancel the sale deed executed in favour of the Petitioner and register sale deed in his favour but they refused to do so. Hence, the suit.

3. Two written statements are on record. The first written statement is dated 10.01.2007 allegedly submitted by Respondent No. 2 singly signed by him through his Advocate, namely, Ch. Masood Hanjra. The said written statement which is not verified on oath is a conceding written statement in which Respondent No. 2 admitted all the contents of the plaint and stated that the Petitioner accompanied Respondent No. 2 to Tehsil Office for procuring guardianship certificate but fraudulently got registered sale deed in his favour.

4. The second written statement dated 13.01.2007 verified on oath was filed by Respondent No. 2 for himself and for the Minors in which the contents of the plaint were categorically denied. It was stated therein that Respondent No. 2 as natural guardian of the Minors sold the suit property to the Petitioner for total sale consideration of Rs. 500,000/- and got registered sale deed No. 60 dated 19.08.2006 in his favour after receiving total sale consideration and also delivered possession to the Petitioner who is now owner in possession of the suit property. It was also specifically asserted in paragraph No. 7 of the

written statement that Respondent No. 1 fraudulently filed the first conceding written statement dated 10.01.2007 in the Court with his fake signatures and power of attorney which is liable to be cancelled and FIR may be ordered to be registered against him.

5. It was importantly noted in the second written statement that one of the Minors, namely, Shahzad Ali has died and as such, written statement is being filed by Respondent No. 2 for himself and on behalf of the Minors excluding the deceased minor. Consequently, amended plaint dated 27.11.2012 was filed by Respondent No. 1 followed by amended written statement dated 21.12.2012 submitted jointly by Respondent No. 2 alongwith the Minors and the Petitioner in line with the second contesting written statement. The wife of Respondent No. 2, present Respondent No. 2A got added as a party in her capacity as legal heir of deceased minor.

6. Out of divergent pleadings of the parties, the Trial Court framed the following issues:-

- i. *Whether the plaintiff being owner of the suit property is entitled to get the relief asked for? OPP*
- ii. *Whether the agreement dated 23.05.2006 exists between the parties? OPP*
- iii. *Whether the defendant No.1 to 7 has received Rs.2,00000/- from the plaintiff? OPP*
- iv. *Whether the plaintiff has not come to the court with clean hands and suit of the plaintiff has no cause of action to file the instant suit? OPD*
- v. *Whether the suit is false and frivolous and the defendant is entitled to recover special costs u/s 35-A CPC? OPD*
- vi. *Whether the suit is liable to be dismissed in view of the preliminary objections raised by the defendant? OPD*
- vii. *Relief.*

7. Evidence of the parties was recorded by the Trial Court. After scanning the evidence on record, the Trial Court decreed the suit of Respondent No. 1 in the following terms:-

"In the light of my findings on issues No. 1, 2, & 3 the result is that plaintiff has partly established his case, I therefore grant him decree for specific performance of agreement to sell i.e. 20.05.2006 defendant No.7 (wrongly recorded instead of defendant No. 1) is directed to receive balance amount of Rs.50,000/- and defendant No.1 is

further directed to get register sale deed in favour of the plaintiff subject to taking guardianship certificate of minors defendants No. 2 to 7. The impugned sale deed No.60 dated 19.07.2006 (wrongly recorded instead of 19.08.2006) is also declared against the law and fact. Decree for permanent injunction is also granted to the effect that defendant be restrained from alienating suit property further. The parties are left to bear their own costs. Decree sheet be drawn accordingly. File be consigned to the record room after its due completion.”

8. The Petitioner filed an Appeal against the decision of the Trial Court which was dismissed and the Judgment of the Trial Court was upheld. Hence, this Civil Revision.

9. Learned counsel for the Petitioner submitted that the impugned Judgments are not sustainable for the reasons that no date, time, place or particulars of the oral sale transaction were mentioned by Respondent No. 1 in his plaint in violation of law laid down in case titled, “Saddaruddin (since deceased) through LRs. v. Sultan Khan (since deceased) through LRs and others” (**2021 SCMR 642**); oral evidence of the PWs was contradictory and discrepant with respect to particulars of oral agreement and payment of earnest money; the alleged draft of sale deed (Exh.P1) is dated 20.05.2006, whereas, the date of stamp papers is recorded as 22.04.2006 and that of registry muharar is listed as 23.05.2006 which if read together prove that draft sale deed is fictitious; no stamp vendor or revenue official was produced; the particulars of oral transaction were not independently proved through production of witnesses in terms of Articles 17 and 79 of Qanun-e-Shahadat Order, 1984; and the Petitioner is entitled to protection as a *bona fide* purchaser of suit property for valuable consideration without notice. Reliance is placed on case titled, “Muhammad Yousaf v. Allah Ditta and others” (**2021 SCMR 1241**).

10. Conversely, learned counsel for Respondent No. 1 supported the impugned Judgments and submitted that Respondent No. 1 proved the oral transaction through the executed draft sale deed by producing its two marginal witnesses who testified the oral transaction as well as the execution of the draft sale deed, the registration of which was merely postponed for want of guardianship certificate coupled

with the admissions of Respondent No. 2 on record. As such, the concurrent Judgments rendered by the Courts below did not require any interference by this Court in exercise of revisional jurisdiction.

11. Arguments heard. Record perused.

12. Issues No. 2 and 3 were pivotal for Respondent No. 1 as Plaintiff to establish the veracity of his assertions raised in the plaint. The statement of Respondent No. 1 appearing as PW-1 clearly depicts that oral transaction was agreed on a date prior to the preparation of the alleged draft sale deed (Exh.P1) as balance sale consideration was to be paid at the time of execution of sale deed. During his cross-examination, he acknowledged that the sale transaction with Respondent No. 2 was oral and no sale deed was registered in his favour. He also admitted that he does not have any claim with respect to his transaction against the Petitioner. He further stated that he paid Rs. 250,000/- to Respondent No. 2 on 20.05.2006 at Dera of Muhammad Ali between 10.00 to 11.00 A.M. but did not obtain any receipt against the said payment. He also deposed that on the day of payment of earnest money, he went with Respondent No. 2 for registration of sale deed with Muhammad Ali (PW-2) and Muhammad Iqbal (PW-3). PW-2 in his examination-in-chief supported the version of Respondent No. 1 taken in the plaint but contradicted him in his cross-examination by deposing that he does not remember the date and time of payment of earnest money since the transaction was oral. He further contradicted Respondent No. 1 by stating that they went for registration of sale deed three to four days after oral transaction. Similarly, PW-3 contradicted PW-1 and PW-2 in his cross-examination by deposing that he does not remember the date of oral transaction but the same was executed five to ten days before going to the office of Sub-Registrar. None of the witnesses deposed anything to the effect that the Petitioner is not a *bona fide* purchaser for value without notice or the sale deed registered by Respondent No. 2 and the Minors in his favour is fraudulent or without consideration. Rather, they acknowledged that the Petitioner is in possession of suit property after the registration of sale deed in his favour.

13. Exh.P1 is a draft of sale deed which ostensibly carries thumb impressions and signatures of PW-1 and PW-2 as witnesses alongwith Respondents No. 1 & 2 as vendee and vendor, respectively but its contents reveal that entire sale consideration of Rs. 200,000/- has been received at home in contrast to alleged oral transaction. The document is dated 20.05.2006, the date of stamp papers is listed as 22.04.2006 and that of the stamp of registry muharar is recorded as 23.05.2006 which if taken as a whole contradict the oral version of Respondent No. 1 in the plaint especially when the plaint did not reveal any particulars of sale transaction such as date, time, place and names of the witnesses. The stamp papers are statedly got issued by Respondent No. 2 negating the narration in the plaint to this effect. Respondent No. 1 also produced Exh.P3, the registered sale deed between the Petitioner and Respondent No. 2 acting on behalf of the Minors as natural guardian.

14. Respondent No. 2 appeared in the witness box as DW-1 and deposed in line with his version taken in the second written statement and in his cross-examination specifically deposed that neither he filed the first conceding written statement nor signed it or appointed Advocate, namely, Ch. Masood Hanjra as his counsel. In his cross-examination, he stated that land sold to Respondent No. 1 is a separate property than the suit property regarding which he effected registry in his favour and that Respondent No. 1 got his thumb impressions on the draft sale deed through fraud as he is an uneducated person. The Petitioner as DW-2 endorsed the veracity of sale deed registered in his favour against complete sale consideration. While denying a suggestion, he deposed that he is a *bona fide* purchaser of suit property for valuable consideration without notice.

15. Before drawing conclusions, it is important to mention some pertinent facts which are liable to be considered. When Respondent No. 1 moved an application for comparison of thumb impressions and signatures of Respondent No. 2 on Exh.P1, the latter on 29.11.2012, recorded his statement before the Trial Court admitting his signatures and thumb impressions yet resiled from the said

statement when he was put to cross-examination by learned counsel for the Petitioner. It is also noted that during the pendency of Appeal, Respondent No. 2 himself and on behalf of the Minors got recorded his statement on 08.06.2013 to the effect that he has no objection if the Appeal of the Petitioner is allowed. On 29.03.2014, counsel for Respondents No. 2 to 8 alongwith Shahbaz Begum w/o Respondent No. 2 (present Respondent No. 2A) also recorded statement that she has no objection in case the Appeal of the Petitioner is allowed. Nevertheless, the Courts below were persuaded by the statement dated 29.11.2012 of Respondent No. 2 coupled with conceding written statement on record to hold that the same amounted to admission on the part of Respondent No. 2 with respect to the alleged oral transaction of Respondent No. 1 and as such, noted that contradictory stance of Respondent No. 2 is not worth consideration.

16. Record vividly reflects that Respondent No. 1 as Plaintiff did not list the particulars of oral transaction in the plaint and as such did not independently prove the oral transaction. The evidence qua oral sale transaction of Respondent No. 1 was not only beyond pleadings but was also discrepant and contradictory particularly with respect to details of oral transaction and receipt of earnest money by Respondent No. 2 on behalf of the Minors. No stamp vendor was produced to prove the procurement of stamp papers for the alleged draft sale deed (Ex.P1). No revenue official was produced with respect to alleged objection of concerned Sub-Registrar denying registration of sale deed in favour of Respondent No. 1 without guardianship certificate in favour of Respondent No. 2 regarding the Minors. Admittedly, sale deed in favour of the Petitioner by Respondent No. 2 was executed and registered as natural guardian of the Minors and there is no explanation to the effect that if the same could be registered why draft sale deed in favour of Respondent No. 1 was declined. There is no evidence that alleged witnesses of the draft sale deed were also witnesses of oral transaction. No target date was alleged with respect to the oral sale transaction. No effort was made to deposit balance sale consideration in Court which admittedly had not been paid till the decision of the suit

to demonstrate the readiness and willingness on the part of Respondent No. 1 to perform his part of the oral contract and his financial ability to discharge his obligation. As such, Respondent No. 1 could not prove oral sale transaction as alleged in the plaint.

17. The first conceding written statement is dated 10.01.2007 while the second contesting written statement is dated 13.01.2007 with a difference of only three days. The second written statement pointed out the death of a minor which fact would naturally be known to Respondent No. 2. Further, the first written statement is not verified on oath unlike the second written statement. Respondent No. 2 while submitting second contesting written statement had specifically stated that the first conceding written statement is neither filed or signed by him nor he appointed the alleged Advocate or executed any power of attorney in this behalf. He specifically prayed that the same be struck off. As such, the Court impliedly accepted the plea of Respondent No. 2 as it proceeded to frame issues and recorded evidence of the parties. Hence, subsequent reliance by the Courts below on the first conceding written statement and interpreting the same as constituting admission of Respondent No. 2 against the claim of Respondent No. 1 was unwarranted. The referred conceding statement of Respondent No. 2 dated 29.11.2012 acknowledging his signatures and thumb impressions on draft sale deed was resiled by him and as such, the same could not have been made basis for accepting the claim of Respondent No. 1 when the latter had failed to establish his claim on the basis of his own evidence especially when conceding statements dated 08.06.2013 and 29.03.2014 made before the Appellate Court by Respondent No. 2 for himself and on behalf of the Minors and by wife of Respondent No. 2 (Respondent No. 2-A in the titled Civil Revision) in favour of the Petitioner are also on record.

18. The PWs had categorically admitted the claim of the Petitioner that sale deed was executed by Respondent No. 2 in favour of the Petitioner and that the latter was in possession of the suit property. Respondent No. 1 did not specifically claim in the plaint nor produced any evidence to prove that the Petitioner was not a *bona fide*

purchaser for value or had prior knowledge of oral sale transaction between Respondents No. 1 and 2. In contrast, the Petitioner had emphatically denied the suggestion that he had any prior knowledge of the said alleged oral sale transaction. Overwhelming evidence is on record, whereby, Respondent No. 2 admitted to have executed a registered sale deed in favour of the Petitioner after receiving entire sale consideration. As such, there is no occasion not to give preference to a valid and lawfully registered subsequent sale deed over an unproved oral sale transaction. Hence, the Petitioner as *bona fide* purchaser for valuable consideration without notice was entitled to the protection accorded to him by Section 41 of the Transfer of Property Act, 1882 and Section 27(b) of the Specific Relief Act, 1877. Thus, the impugned Judgments being result of misreading and non-reading of evidence on record as well as misapplication of law cannot be sustained.

19. In view of the above, this Civil Revision is allowed; the impugned Judgments & Decrees dated 30.01.2013 and 14.05.2014 passed by the Courts below are set aside and in consequence thereof, the suit of Respondent No. 1 is dismissed. No order as to costs.

(Abid Hussain Chattha)
Judge

Approved for reporting.

Judge

*Ahsan