

Stereo. H C J D A 38.

JUDGMENT SHEET

LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

Civil Revision No.2534 of 2014

Nargis Bibi (deceased) through her legal heirs, etc.

Versus

Muhammad Amin, etc.

JUDGMENT

Date of Hearing:	09.05.2023
Petitioners by:	Sh. Naveed Shahryar, Advocate. Ms. Safina Safdar Bhatti, Advocate.
Respondent No.1 by:	Ustad Muhammad Iqbal, Advocate.
Respondent No.2 by:	Mr. Tasawar Hussain Virk, Advocate.
Respondent No.3:	Proceeded <i>ex-parte</i> on 05.04.2022.

Anwaar Hussain, J. Briefly stated facts of the case are that, on 29.09.2004, respondent No.1 instituted a suit for declaration along with recovery of possession etc., with regard to the suit property, detail whereof, is given in the headnote of the plaint appended with the present petition and *vide* judgment and decree dated 05.01.2013, the learned Trial Court decreed the suit, after framing of issues and recording of evidence of the parties. The appeal preferred by the predecessor-in-interest of the petitioners against the judgment and decree dated 05.01.2013 was dismissed by the learned Additional District Judge, Hafizabad, *vide* judgment and decree dated 17.06.2014. Hence, the present Civil Revision.

2. Learned counsel for the petitioners submits that the suit property is a shop and respondent No.1 instituted the suit on the basis of PTD No.2512 dated 08.08.1968 as well as the mutation

bearing No.15252 that was sanctioned on the strength of the PTD, however, the said document is not available on record and therefore, respondent No.1 failed to prove his title to the suit property and as a consequence thereof, the concurrent findings of the learned Courts below are not sustainable. Places reliance upon “*Manzoor Ahmad and 9 others v. Ghulam Nabi and 5 others*” (**2010 CLC 350**) to contend that in case the title document of the suit property is not produced, possession thereof cannot be recovered. Further contends that the impugned judgment dated 17.06.2014 finds the petitioners to be the owner of their respective property along with respondent No.1 in the same *Khasra*, and therefore, there was no justification to disregard the sale deed of the petitioners on the strength of which the petitioners are in possession. Further states that the learned Trial Court was obligated to obtain a demarcation report so as to ascertain the location of the suit property in possession of the petitioners as well as the property described in purported PTD as per version of respondent No.1, within the same *Khasra* and without determining the same, the learned Trial Court could not have rendered a just decision. Further adds that the petitioners are in possession of the suit property on the strength of a registered document that cannot be brushed aside and has been erroneously cancelled by the learned Trial Court. Places reliance upon cases reported as “*Anwar Club and another v. Muhammad Sarwar*” (**PLD 1992 Lahore 63**); “*Mst. Hajran Begum v. Kh. Muhammad Yousaf and Legal Heirs*” (**2005 MLD 592**); and “*Syed Mahboob Shah v. Tehsil Nazim, Pishin and another*” (**2012 SCMR 196**) in support of his contentions. Concludes that a Local Commission was appointed to ascertain the location of shop of respondent No.1 and the said report has been relied and believed upon by the learned Courts below although its author never appeared before the learned Trial Court.

3. Conversely, learned counsel for respondent No.1 submits that concurrent findings of fact are immune from any interference in

revisional jurisdiction unless there is any misreading and non-reading of evidence that could not be pointed out by the petitioners' side. Adds that the suit property is part of an urbanized area and therefore, it becomes irrelevant that the petitioners and respondent No.1 are owners in the same *Khasra*. Further contends that the PTD through which respondent No.1 purchased the suit property, in an auction, has lost its significance inasmuch as on the strength of the same, mutation was sanctioned and the said PTD was incorporated in the revenue record, therefore, even if the original PTD is not available, the same is not fatal to the case of respondent No.1.

4. Learned counsel for respondent No.2 has supported the stance of the petitioners whereas *proforma* respondent has already been proceeded *ex-parte*, *vide* order dated 05.04.2022.

5. Arguments heard. Record perused.

6. At the outset, it is imperative to observe that this Court in exercise of its revisional jurisdiction is reluctant to interfere in the concurrent findings of the Courts below, however, it is not a rule of thumb and this Court cannot close its eyes where the learned Courts below misinterpreted the material available on record or erred in appreciating the same, in its proper perspective, or overlooked to comprehend the same. Therefore, the argument of learned counsel for respondent No.1 in this regard is misconceived that concurrent findings cannot be set-aside in revision and hence, discarded.

7. The nub of the matter is to examine whether respondent No.1 was able to discharge the burden of proof while seeking declaration of his title to the suit property and possession thereof as also seeking cancellation of the registered sale deed of the petitioners. Admittedly, the suit was instituted on the strength of the mutation bearing No.15252, which was admittedly sanctioned on the basis of the PTD bearing No.2512 dated 08.08.1968. The PTD was the main title document that was admittedly not produced in evidence. The learned Courts below erred by not appreciating this aspect of the

C.R. No.2534/2014

matter. In-fact, the learned Appellate Court below have erroneously comprehended letter bearing No.ADC(G)/Sett/U 570 H.Z (5) U, dated 21.02.1991 to be the PTD, by holding as under:

“9. The perusal of written statement shows that the petitioner/appellant did not take the plea in her written statement that the respondent No.1/plaintiff purchased the property in street No.2 or that the alleged PTD pertained to the property situated in street No.2, therefore, she cannot be allowed to plead contrary to her pleadings. Further, the document Ex.P7 is the certified copy of the PTD, therefore, it is wrongly stated in the application for summoning of the record that attested copy of the PTD was not produced by the respondent/plaintiff.”

(Emphasis supplied)

At this juncture, it is imperative to reproduce the contents of the letter dated 21.02.1991(Ex.P7), which read as under:

“From

The Additional Deputy Commissioner (General),
Deputy Administrator (Residual Property),
Gujranwala.

To The Tehsildar.
Hafizabad
(District Gujranwala)
NO.ADC(G)/Sett/U 570 H.Z (5) U
Dated: 21.02.91

Subject: Confirmation of P.T.D/TQ/TD NO.2512

Dated 8-8-68

Issued in the name of Muhammad Amin
Son of Fateh Mohammad

Regarding Property NO. BV-9S Plot gali No.7
near Karkhana Mehar
Din Purana Bijli Ghar,
Hafizabad (Area 143
sqft)

Reference: Application of Mr./Ms محمد امین
Son of فتح محمد
Resident of Hafizabad
P.T.D/TQ/TD NO. 2512 Dated 8-8-68 (attached)
Issued in the name of Muhammad Amin s/o
Fateh Mohd.

Regarding Property No. BV-9S Plot in gali No.7
near Karkhana Mehar
Din Purana Bijli Ghar,

Hafizabad (Area 143
sqft)

Checked and verified from the record kept in this office and found in order. But it cannot be verified whether it still holds good. The verification is valid for the purpose of attestation of the particular mutation. Attested/photoestate copy may not be issued.

-sd-

Additional Deputy Commissioner (G)
Deputy Administrator (RP)
G U J R A N W A L A

Dated: _____ "

(Emphasis provided)"

A bare perusal of the above quoted letter reveals that the same is not the PTD and hence, the conclusion drawn by the learned Courts below in general and the learned Appellate Court below in particular is erroneous and gross misreading of evidence. Therefore, on this material misreading of evidence alone, the concurrent findings of the Courts below are liable to be set aside as it is trite law that the Courts are expected to deliver justice, which is not only to be done but also seen to be done, and cannot shut their eyes or turn a deaf ear to perverse conclusion based on patent errors on account of misreading and non-reading of evidence.

8. Argument of learned counsel for respondent No.1 that after implementation of the PTD in the revenue record, the original title document i.e., the PTD in the instant case, even if not available, loses its significance and makes no difference is a bizarre argument, to say the least, on two counts. Firstly, mutation of a property in the revenue record neither creates nor extinguishes the title to the property or has any presumptive value *qua* title as such entries are relevant only for the purpose of collecting land revenue. Secondly, if the mutation on the basis of which right in the property is claimed, is disputed on account of absence of the original PTD/registered deed, etc., the onus of proving the correctness of the mutation and genuineness of the transaction contained therein would be on the party claiming the right. Therefore, without bringing on record the original PTD on the strength of which the

mutation was sanctioned, respondent No.1 failed to prove that he is entitled to be declared as owner of the suit property let alone seeking cancellation of registered sale deed of the petitioners in respect thereof. In this regard, learned counsel for the petitioners has correctly placed reliance on case of Manzoor Ahmad supra in which this Court held that while seeking possession of the property, a plaintiff is under a bounden duty to establish his ownership without any shadow of doubt, by producing title document and while doing so the burden of proof on a party is to be discharged unclinchingly and not with shaky evidence. Moreover, the application of the predecessor-in-interest of the petitioners filed with the learned Appellate Court below for summoning the original record pertaining to the issuance of the PTD was wrongly dismissed that defeated the ends of justice and the letter dated 21.02.1991 has been erroneously considered as the PTD.

9. Moreover, admittedly, a Local Commission was appointed to ascertain the location of shop of respondent No.1 and report rendered by the said Commission has been relied and believed upon by the learned Courts below to the extent that registered sale deed of the petitioners has been cancelled although author of the report never appeared before the learned Trial Court. Admittedly, no permission was obtained from the learned Trial Court in accordance with law by respondent No.1, to lead secondary evidence in this regard. Even otherwise, perusal of the report reveals that the same is not comprehensive, rather unilateral and does not depict any observation in relation to the suit property in possession of the petitioners *qua* the registered sale deed in favour of the predecessor-in-interest of the petitioners and hence, do not constitute a reliable and conclusive piece of evidence that can form basis of passing of declaratory decree etc., in favour of respondent No.1.

10. There is yet another angle of the matter from which the present *lis* can be examined. In his suit for declaration alongwith

C.R. No.2534/2014

recovery of possession, respondent No.1 mentioned about his absence from Hafizabad where the suit property is situated on account of his travel to Rawalpindi and asserted that in his absence, allegedly occupation of the suit property was unlawfully taken by the predecessor-in-interest of the petitioners and illegal construction was raised thereon and upon confrontation, the rent was settled between the parties for the occupation thereof, but none of these assertions were proved when the evidence was led and recorded, that fact also raises a serious doubt about the veracity of the claim of respondent No.1 that suit property belongs to him and was fraudulent occupied by the petitioners in addition to the fact that original title document (PTD) was not brought on record.

11. In view of the above discussion, this Civil Revision is allowed, the impugned judgments of the learned Courts below are set-aside and the suit of respondent No.1 is dismissed. No order as to cost.

(ANWAAR HUSSAIN)
JUDGE

Approved for reporting

Judge

Maqsood