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Judgment Sheet

IN THE LAHORE HIGH COURT,
MULTAN BENCH MULTAN
(JUDICIAL DEPARTMENT)

Civil Revision No.954-D/2012.

Muhammad Iqbal, etc.

Versus

Imam Bakhsh, etc.

JUDGMENT

Date of hearing: 18.11.2024

Petitioners by: Malik Javed Akhtar Wains and Syeda Azra Shah, Advocates.

Respondents by: Malik Zafar Mehboob Langrial,
Advocate for respondents No.3, 4a
to 4d and 5 to 7.

ASIM HAFEEZ, J. Decisions, subject matter are at variance.

Trial court decreed petitioner's suit for declaration, directed against the gift mutation No. 423 dated 29.04.1974 ('impugned mutation'). Appellate Court, substantially, reversed finding of the trial court on issue No.1 relating to the limitation, allowed respondent's appeal and dismissed petitioner's suit. At the outset, it is pertinent to mention that petitioners alleged fraud against impugned mutation, which allegation was covered under issue No.7, which reads as,

“Whether the Tamleek mutation No. 423 dated 29.04.1974 is based upon fraud and forgery and is against the law and facts, void and ineffective upon the rights of the plaintiff? OPP

2. Trial Court recorded affirmative finding on issue No.7, which decreed the suit and declared impugned mutation void and

ineffective – limitation was also decided in favour of the suitor. Interestingly, the Appellate court affirmed the finding of the trial court on issue No.7, which finding is neither questioned separately thorough any petition nor request for filing of cross-objection(s) against particular finding on issue No.7 was made. Paragraph 8 of the decision of the Appellate Court are reproduced hereunder,

“8. Learned trial court has decided Issue No.7 in favour of the respondents/plaintiffs. Findings of learned trial court on Issue No.7 deciding the same in favour of the respondents/plaintiffs and against the appellants/plaintiffs are correct. Learned trial court has rightly held that presence of Hassan Bukhsh at the time of attestation of mutation was mandatory. The order of attestation of mutation No.423 dated 24.04.1974 does not find mention the presence of Hassan Bukhsh and any other witness as per requirement of section 42 of Land Revenue Act. Learned trial court has also rightly held that it was incumbent upon the appellants/defendants to prove the factum of gift by producing oral as well as documentary evidence. The appellants/defendants have neither produced all the witnesses of gift nor the Patwari who recorded Rozenamcha Waqiat dated 23.04.1974 Ex.P-19 regarding the Tamleek by Hassan Bukhsh in favour of his legal heirs. Findings on this issue, therefore, need not to interfere.”

3. Contesting respondent - beneficiary of the decision of the Appellate Court – submitted application for permission to allow production of additional evidence, which comprised of the revenue record to show that predecessor of the petitioners had been paying revenue dues / levies. Arguments heard qua the merits of the application for additional evidence, and I am not persuaded to allow the application for two reasons; firstly, so peculiar circumstances are pleaded or explained that why said document / record was not produced during the trial of the case or even before the appellate court. And secondly, brining of document on record, if first hurdle is crossed, would not extend any help to the contesting respondents

especially when fraud qua impugned mutation was established – beneficiary thereof had failed to prove gift transaction, ingredients thereof and recording of the transaction – concurrently recorded findings on issue No.7 need no review, when it was not questioned. In these circumstances, no illegality or prejudice would be caused upon dismissing the application.

4. In view of the facts of the case, question that requires determination is, whether defence of limitation of suit holds ground when factum of fraud qua impugned mutation was unequivocally established / proved, and which findings were not controverted or even questioned.

5. Learned counsel for the petitioner attacked decision of the appellate court on the issue of limitation, whose contention is that once fraud is established, question of limitation stood settled collaterally. Adds that when fraud is proved no defence of limitation was available. Following decisions are cited, reported as, "Khan Muhammad through L.Rs and others vs. Mst. Khatoon Bibi and others". (2017 SCMR 1476), Mehmood Khan and others vs. Sara Akhtar (2024 SCMR 178), "Peer Baksh through LRs and others vs. Mst. Khanzadi and others" (2016 SCMR 1417), "Khalida Idrees and others vs. Anas Farooq Chaudhary and others" (PLD 2018 Lahore 819), "Mst. Tahira Samina and others vs. Javed Saeed Tariq and others" (2024 SCMR 24), "Faqir Ali and others vs. Sakina Bibi and others" (PLD 2022 Supreme Court 85), "Shabla and others vs. Mst. Jahan Afroz Khilat and others" (2020 SCMR 352), "Mahmood Shah vs. Syed Khalid Hussain Shah and others" (2015 SCMR 869) and "Abdul Rahim and another vs. Mrs. Jannatay Bibi and 13 others" (2000 SCMR 346).

6. Learned counsel for contesting respondents could not disagree that adverse finding on issue No.7 recorded against

respondents by Appellate Court were not assailed. Learned counsel focused on the evidence of PW-1 and emphasized that said witness admitted factum of possession 24-Kanal of land, who acknowledged that petitioner's predecessor Naseer Ahmad – [son of the donor] - had cultivated land measuring 24-Kanal and never demanded his share in excess of 24-Kanal, which transfer was an effect of impugned mutation. Respondents questioned maintainability of the suit on the ground of limitation, who defended gift on the premise that predecessor of the petitioners, Naseer Ahmad, did not question legality of impugned mutation during his life. Following decisions are cited in support of submissions, reported as "Saadat Khan and others vs. Shahid-ur-Rehman and others" (PLD 2023 Supreme Court 362), "Nasir Ali vs. Muhammad Asghar" (2022 SCMR 1054), "Mst. Faheeman Begum (deceased) through L.Rs and others vs. Islam-ud-Din (deceased) through L.Rs and others" (2023 SCMR 1402) and KABIR MUHAMMAD (DECEASED) through L.Rs v. ALLAH BAKSH (DECEASED) through L.Rs and others' (2020 CLC Note 12).

7. Heard.

8. Petitioners had questioned legitimacy of alleged gift, recorded vide impugned mutation, alleging fraud. Contesting respondents, being the beneficiaries, are obligated to prove the factum of oral gift and recording thereof, by way of execution of mutation. Proving fraud in this case is like showing light to the sun, when findings on issue No.7 affirmed it and same attained finality. Hence, principal fact stood established. Other relevant issues are that despite claim of gift the land remained unpartitioned and no effort was made by the beneficiaries of gift to effect partition – petitioners filed suit upon demise of Naseer Ahmad - 22 days after the demise.

Evidence of PW-1 is misconstrued, who stated that Naseer Ahmad cultivated land measuring 24-Kanal, which cannot be construed as an implied admission of having knowledge of alleged gift mutation. Testimony of DW-1 had established state of disillusioned Naseer Ahmad, who acknowledged that Naseer Ahmad was not involved with cultivation of the land, who came later on to cultivate. This statement collaterally established that alleged gift was not witnessed by Naseer Ahmad, and no direct evidence was produced that Naseer Ahmad was part of the process of alleged gift by donor to his sons – otherwise an unequal distribution of land in terms of holdings, which fortifies doubts qua legality of alleged oral gift. It was established that family lived jointly, even after death of Naseer Ahmad. All these evidentiary facts confirmed doubts qua the legality of gift transaction.

9. Objection of limitation hold no ground upon failure of the beneficiaries to prove alleged transaction of gift and execution of the mutation – both had to be proved independently. See the case of “Peer Baksh through LRs and others Vs. Mst. Khanzadi and others” **(2016 SCMR 1417).**

10. Fraud vitiates even the most solemn transaction, attracting voidness in respect thereof. Even otherwise once impugned mutation is proved to be a consequence of defrauding the donor and depriving heirs of the donor of their due share, issue of limitation becomes insignificant and all heirs of the donor, upon his death, will become co-owners and upon death of Naseer Ahmad, his heirs are entitled to claim share of the deceased. *See the case of FAQIR ALI and others v.*

SAKINA BIBI and others (PLD 2022 Supreme Court 85). Relevant portion thereof is reproduced hereunder:-

We note that the gift mutations were attested in the year 1985 onwards and the suit for their cancellation was filed in 2004. It is on this basis that it has been argued that the suit was barred by time. In view of the fact that Respondents No. 1 and 2 had challenged the gift mutations on the ground of fraud and collusion, we do not find any force in the contention of learned Advocate Supreme Court for the Appellants that the suit was barred by time. It is settled law that where fraud and collusion are alleged and established, the question of limitation does not and cannot help the beneficiary of such fraud and collusion."

Judgments cited respectively are examined and found to be distinguishing, in the context of facts involved therein and those, which are discussed here. Appellate court erred in law in dismissing the suit on the ground of limitation, especially when it had acknowledged and affirmed the finding on issue No.7, reiterating failure of the beneficiaries of the gift to prove it.

11. In view of aforesaid, this Civil Revision is allowed and findings of appellate court on issue No.1 is reversed, all the findings of the trial court are hereby affirmed, which judgment of the trial court of 12.06.2010 is upheld and decision of the appellate court of allowing appeal and dismissing of suit is set-aside. Consequently, suit is decreed accordingly. No order as to the costs.

**(ASIM HAFEEZ)
JUDGE**

*M. Nadeem/**

Approved for reporting

JUDGE