

Judgment Sheet
IN THE LAHORE HIGH COURT, LAHORE.
(JUDICIAL DEPARTMENT)

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Civil Revision No.14536 of 2022

(Noora (deceased) through L.Rs. Vs Province of Punjab, etc.)

J U D G M E N T

Date of hearing	30.10.2024
Petitioners by:	Barrister Imtiaz Hussain Chaudahry, Advocate.
Respondents No.1 & 2 by:	Ch. Awais Ahmad Qazi, Addl. Advocate General of Punjab.
Respondents No.3 & 4 by:	Nemo.

AHMAD NADEEM ARSHAD, J. Through this civil revision, the petitioners have assailed the vires of judgment and decree dated 02.02.2022, whereby, the learned appellate Court while setting-aside the judgment and decree of learned trial Court dated 03.06.2021, decreed the suit of respondents No.3 & 4.

2. Facts in brevity are that respondents No.3 & 4/plaintiffs (*hereinafter referred to as **the plaintiffs***) instituted a suit for declaration alongwith permanent injunction on 10.09.2016 against respondents No.1 & 2/defendants No.1 & 2 and predecessor of petitioners/defendant No.3 namely Noora (*hereinafter referred to as **defendant No.3***) titled as "*Fiaz Ahmad etc. versus Province of the Punjab, etc.*" by maintaining that they purchased land measuring 05 *kanals* 06 *marlas* in *Khewat* No.52 from Afzal son of Yara (*herein after referred to as **the vendor***) through registered sale deed No.734/1 dated 29.12.2003 followed by mutation No.655 dated 30.04.2007; that thereafter defendant No.3 in connivance with revenue officials

got deducted land measuring 02 *kanals* 05 *marlas* from the above said mutation No.655 and alienated in his favour through mutation No.799 dated 31.10.2011; that the said mutation is fictitious, result of fraud, ineffective upon their rights, without authority and liable to be cancelled. No one appeared on behalf of defendants No.1 & 2, therefore, *ex-parte* proceedings were initiated against them. Defendant No.3 resisted the suit through filing contested written statement by raising certain preliminary objections such as the plaintiffs have no cause of action to institute the suit; that they are estopped by their words and conduct to institute the suit; that the suit is not maintainable in its present form; that they have concealed institution of their earlier suit, hence, the instant suit is barred. On facts it is contended that he purchased the land measuring 02 *kanals* 13 *marlas* from Muhammad Afzal (vendor) through mutation No.799 dated 31.10.2011 for a consideration of Rs.50,000/- which was inherited to said Muhammad Afzal (vendor) from the legacy of her mother namely Fateh widow of Yara through mutation No.798 dated 31.10.2011; that he is in possession of the land since its purchase and the plaintiffs have no concern with the same, however, admitted the ownership of the plaintiffs on the basis of registered sale deed and prayed for dismissal of the suit with costs. During the pendency of suit, defendant No.3 was died and his legal heirs were brought on record. Said legal heirs are the present petitioners. The learned trial Court, out of divergent pleadings of the parties, framed necessary issues and invited them to produce their respective evidence. After

recording evidence of the parties pro and contra, oral as well as documentary dismissed the suit of the plaintiffs vide judgment and decree dated 03.06.2021. Feeling aggrieved, they preferred an appeal which was allowed by the learned appellate Court vide impugned judgment and decree dated 02.02.2022. Being dis-satisfied, the petitioners filed the instant civil revision.

3. I have heard learned counsel for the parties at full length and perused the record with their able assistance.

4. The contention of the plaintiffs is that they purchased the land measuring 05 *kanals* 06 *marlas* from one Muhammad Afzal (vendor) vide registered sale deed No.734/1 dated 29.12.2003 (Exh.P-1) followed by mutation No.655 dated 30.04.2007 (mark-C). It is further contended that in the year 2011 the *Halqa Patwari* deducted 02 *kanals* 05 *marlas* land purchased through above referred sale deed and the same land was got alienated in the name of defendant No.3 (predecessor of the petitioners) through mutation No.799 dated 31.10.2011 fictitiously/fraudulently. On the other hand, the version of defendant No.3 (predecessor of the petitioners) is that the vendor Muhammad Afzal inherited land measuring 02 *kanals* 13 *marla* from his mother namely Fateh Bibi in the year 2011 and in this regard inheritance mutation No.798 was attested/sanctioned on 31.10.2011 (Exh.D-1) and thereafter he purchased the said inherited share of vendor Muhammad Afzal for a consideration of Rs.50,000/- through mutation No.799 dated 31.10.2011 (Exh.D-2).

5. In order to prove their version, the plaintiffs produced Faiz Ahmad (respondent No.3/one of the plaintiffs) as PW-1. He deposed that they purchased land measuring 05 *kanals* 06 *marlas* from Muhammad Afzal son of Yara; that *Patwari Halqa* issued *Ferd Malikiat*, on 25.12.2003 after perusing the record, upon the basis of which registered sale deed No.734/1 dated 29.12.2003 (Exh.P-1) was attested by the sub-Registrar; that on the basis of said registered sale deed, mutation No.655 dated 30.04.2007 (Mark-C) was sanctioned; that in the year 2011 the *Halqa Patwari* deducted 02 *kanals* 05 *marlas* land and entered the same in the name of Noora son of Alawala (defendant No.3); that the possession of the disputed property is with them. During cross examination he denied the suggestion that vide inheritance mutation No.798 dated 31.10.2011 land measuring 02 *kanals* 13 *marlas* was inherited to Muhammad Afzal however, he admitted that Muhammad Afzal sold inherited land to Noora (defendant No.3) through mutation No.799 dated 31.10.2011. Amjad Abbas (respondent No.4/the second plaintiff) appeared as PW-3 and deposed in the same lines. During cross examination he also admitted that Noora (defendant No.3) purchased land measuring 02 *kanals* 13 *marlas* from Muhammad Afzal which was inherited to the vendor from the legacy of his mother Fateh Bibi. The plaintiffs also produced copy of registered sale deed No.734/1 as Exh.P-1, copy of mutation No.799 as Mark-A, copy of mutation No.798 as Mark-B, copy of mutation No.655 as mark-C and copy of *Khasra Girdwari* as Mark-D.

6. In rebuttal, Sajjad Ahmad son of Noora (defendant No.3) one of the petitioners, appeared as DW-1 and deposed that his deceased father Noora purchased land measuring 02 *kanals* 13 *marlas* from Muhammad Afzal for a consideration of Rs.50,000/-; that said Muhammad Afzal got inherited the said land from the legacy of his mother through mutation No.798 dated 31.10.2011; that they are in possession of the same and the plaintiffs have no concern with the same. During cross examination he admitted that Muhammad Afzal sold his land measuring 05 *kanals* 06 *marlas* to the plaintiffs through registered sale deed No.734/1 dated 29.12.2003 and thereafter on the basis of said registered sale deed the mutation No.655 dated 30.04.2007 was sanctioned. He also admitted that said Muhammad Afzal also delivered the possession of said land to the plaintiffs who are in possession and are cultivating the same. He further admitted that the above said land sold to the plaintiffs was also owned by Muhammad Afzal. He further deposed that Patwari has not deducted any land from the land of the plaintiffs and that if there is any wrong entry made in the revenue record, they have no concern with it. He also admitted that the suit of the plaintiffs to the extent of land measuring 05 *kanals* 06 *marlas* is correct and they have no objection if the same is decreed in their favour to the extent of land measuring 05 *kanals* 06 *marlas*. Amir Bakhsh son of Kameer Khan appeared as DW-2 and also deposed in the same lines. He admitted during cross examination that plaintiffs purchased land measuring 05 *kanals* 06 *marlas* from Muhammad Afzal son of Yara

through sale deed No.734/1 dated 29.12.2003 and they are in possession and are cultivating the same. He also admitted that suit of the plaintiffs to the extent of land measuring 05 *kanals* 06 *marlas* is correct and they have no objection if the same is decreed in their favour to the extent of above said land. In documentary evidence, they produced copy of mutation No.798 as Exh.D-1, copy of mutation No.799 as Exh.D-2, copy of *khasra girdwari* as Exh.D-3 and copy of *jamabandi* as Exh.D-4.

7. From scanning the whole record it appears that the plaintiffs purchased land measuring 05 *kanals* 06 *marlas* from vendor Muhammad Afzal through registered sale deed No.734/1 dated 29.12.2003 (Exh.P-1). Without annexing copy of *Ferd Milkiat* with the sale deed, no sale deed could be attested/sanctioned. It means that at the time of attestation/sanction of registered sale deed No.734/1 on 29.12.2003 copy of *Ferd Malikiat* with regard to land measuring 05 *kanals* 06 *marlas* was provided. Perusal of sale deed No.734/1 it evinces that the vendor Afzal maintained that according to *Ferd Milkiat Register Haqdaran Zameen* for the years 1997-98 he is owner in possession of land measuring 05 *kanals* 06 *marlas* situated at *Khewat* No.52, *Khatoni* No.317, Mauza Kaloka, Tehsil Chiniot, which is free from any encumbrance and he delivered the possession of said land to the vendees. Said portion of the sale deed is reproduced in verbatim as under: -

"منمقر مطابق فرد ملکیت رجسٹر حقداران زمین سال 1997-98 موضع کلوکہ تحصیل چنیوٹ کھیوٹ

نمبر 52 کھتونی نمبر 317 رقبہ کھیوٹ 83 کنال 16 مرلہ کا 106/432 حصہ رقبہ منتقلہ 05 کنال 06 مرلہ کا

مالک و قابض ہوں۔ جو ہر قسم کے بار سے مبرا و پاک ہے۔ پہلے کہیں زیر بیع نہ ہے۔ منقران نے
بضرورت جائز رقبہ مذکورہ بالا بمہ جمع حقوق ملکیت، ذرائع آمد و رفت وٹ، بنہ، کھال، کاشت برداشت،
داخلی خارجی حقوق متعلقہ آتش وغیرہ قطعی طور پر بیع و فروخت بدست فیاض احمد، امجد عباس پسران نور محمد
قوم کلو کہ ساکن موضع کلو کہ چنیوٹ بالعوض مبلغ -/60000 روپے میں کر کے سالم زر ثمن پیشگی نقد
وصول پالیا ہے۔ روبرو سب رجسٹر ارجحہ نہ لینا ہے۔ قبضہ موقع پر مشتریان کا کرادیا ہے۔ اپنا قبضہ ہر
طرح سے اٹھالیا ہے۔"

Thereafter, on the basis of said registered sale deed mutation No.655 dated 30.04.2007 (Mark-C) was sanctioned and attested. Perusal of mutation No.655 (mark-C) it reveals that the concerned Revenue Officer sanctioned the same on the basis of registered sale deed No.734/1 dated 29.12.2003 (Exh.P-1) and alienated land measuring 05 kanals 06 marlas from the ownership of the vendor in faovur of the vendees (the plaintiffs). In the said mutation (mark-C) a note of the *Patwari* was also available in which he has mentioned that the vendor was only owner of 03 *kanals* 01 *marla* land which was incorporated, whereas, land measuring 02 *kanals* 05 *marlas* is in excessive. The note of the concerned *Patwari* is reproduced as under:-

"بائع صرف 03 کنال 01 مرلہ کا مالک ہے جس کا عمل کیا گیا ہے۔ زائد از حصہ 02 کنال 05 مرلے۔"

In this view of the matter it is very much clear that the plaintiffs purchased land measuring 05 *kanals* 06 *marlas* through registered sale deed No.734/1 dated 29.12.2003 (Exh.P-1) but at the time of sanctioning of mutation No.655 which was going to be sanctioned after three years and four months of registered sale deed the vendor Muhammad Afzal was remained owner of only 03 *kanals* 01 *marla*.

Said mutation was sanctioned after three years four months of the sale deed. It is also matter of record that the vendor Muhammad Afzal got land measuring 02 *kanals* 13 *marlas* from the inheritance of his mother through mutation No.798 dated 31.10.2011 (Exh.D-1) and he alienated the said land to defendant No.3 through oral sale mutation No.799 dated 31.10.2011 (Exh.D-2). Now the question arises whether the plaintiffs can get compensation from the land subsequently acquired to the vendor or not?

8. The vendor was under obligation to satisfy the claim of the plaintiffs to the extent of land measuring 05 *kanals* 06 *marlas*.

Section 43 of the Transfer of Property Act, 1882 provides as under: -

“43.Transfer by unauthorized person who subsequently acquires interest in property transferred. Where a person fraudulently or erroneously represents that he is authorized to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists. Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option”.

Provision of this Section comes into play when a person “fraudulently” or “erroneously” represents that he is authorized to transfer certain immovable property for consideration although not so authorized. Such transfer at the option of transferee, operates on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists. The erroneous representation may be innocent and would also cover a situation where the transferor is not even aware of lack of his authority to transfer the immoveable property.

9. The same moot point was discussed and decided by the Hon'ble Supreme Court of Pakistan in case titled "RAB NAWAZ and others vs. MUHAMMAD ALI through Legal Representative" (2007 SCMR 1120). Facts are that the plaintiffs instituted a suit for declaration and sought declaration that they are owners in possession of the land measuring 58 *kanals* 07 *marlas* by maintaining that they had, by a registered sale deed dated 15.12.1976, purchased from the defendant land measuring 169 *kanals*, 16 *marlas* for a consideration of Rs.25,000/-; that later it was found from the revenue record that the defendant owned only 87 *kanals*, 12 *marlas* and the mutation of the sale remained un-attested and in the year 1981 when the defendant's brother, Khurshid, died issueless, from whom the defendant inherited the land measuring 58 *kanals* 07, *marlas*; that after the transfer of this additional land to the defendant, they approached the revenue officials seeking transfer in their names, the 87 *kanals*, 12 *marlas* as well as the additional land of 58 *kanals*, 07 *marlas*; that only 87 *kanals*, 12 *marlas*, originally owned by the defendant at the time of the sale was attested in their favour and the additional land inherited by the defendant from his brother was not transferred to them on the ground that the defendant had become owner of the property subsequent to the sale deed; that the learned trial Court decreed the suit and the learned first Appellate Court upheld the decree in appeal however, this Court in exercise of revisional jurisdiction, set-aside the judgments and decrees of the two Courts and dismissed their suit on the ground that the two

Courts had misapplied the provision of Section 43 of the Transfer of Property Act, 1882, as the defendant did not misrepresent the quantum of his ownership as his misconception was based upon document. The august Supreme Court of Pakistan after discussing the facts and circumstances as well as the case-law cited at bar held as under: -

“The defendant was thus, selling 169 kanals out of 218 kanals, out of which he was entitled to sell only 87 kanals 12 marlas whereas he had no authority to sell the remaining 82 kanals 4 marlas. The part of the property unauthorizedly sold by the defendant included the share of the defendant’s brother Khurshid. Thus, the defendant acquired interest in the property within the meaning of section 43 of the Transfer of Property Act which he had initially no authority to sell. The contention of the learned counsel for the respondents that the property inherited by the defendant from his brother could not be subjected to the provision of section 43 of the Transfer of Property Act is, therefore, without substance. Additionally, equity also favours the appellants, who undisputedly had paid the price for 169 kanals, 16 Marlas of land when he was transferred on 87 Kanals, 12 Marlas, though even the transfer of the suit-land of 58 kanals, 7 marlas would also not be sufficient to make up the deficiency.”

10. In this way the vendor was under obligation to first satisfy the claim of the plaintiffs and thereafter if some land is left, the same be alienated to someone else. But in the instant case, the vendor when got the land from the inheritance of his mother, he sold it on the same day to defendant No.3 through mutation No.799 dated 31.10.2011 (Exh.D-2).

11. It is also matter of record that the vendor Muhammad Afzal did not challenge the registered sale deed (Exh.P-1) before any forum nor there is any record available on the file that he

compensated the plaintiffs for the deficiency of the land measuring 02 *kanals* 05 *marlas*. Equity would favour the plaintiffs who have paid price for 05 *kanals* 06 *marlas* of land while they were transferred only 03 *kanals* 01 *marlas* land.

12. In view of the above, it is established that the plaintiffs are owners in possession of the land measuring 05 *kanals* & 06 *marlas* in the joint *khata* No.59/52 on the strength of registered sale deed No.734/1 dated 29.12.2003 and they are entitled to be compensated from the property of Muhammad Afzal (vendor) out of the subsequent alienations, and, for this purpose the alienations made by him after registered sale deed would be liable to make good the deficiency. The suit of the plaintiffs is decreed accordingly.

13. Learned counsel for the petitioners has failed to point out any illegality, irregularity, mis-reading, non-reading or jurisdictional defect in the impugned judgment of learned appellate Court warranting interference by this Court while exercising its revisional jurisdiction under Section 115 C.P.C.

14. Consequently, this civil revision is **dismissed** in the above terms with no order as to costs.

(AHMAD NADEEM ARSHAD)
JUDGE

Approved for Reporting.

JUDGE