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**JUDGMENT SHEET**

**LAHORE HIGH COURT**

**MULTAN BENCH MULTAN**

**JUDICIAL DEPARTMENT**

**Civil Revision No.1581-D of 2019**

Mst. Ayesha                      Vs.        Mst. Shama, etc.

**J U D G M E N T**

<b>Date of Hearing:</b>	04.09.2024
<b>Petitioner by:</b>	Malik Babar Saleem, Advocate.
<b>Respondents No.1 and 4 by:</b>	Malik Muhammad Ali Dhol, Advocate.
<b>Respondent No.2(I) to 2(II) and 3:</b>	Proceeded against <i>ex-parte</i> .

**Anwaar Hussain, J.** This Civil Revision is directed against the concurrent findings of the Courts below whereby the suit of the petitioner for declaration and cancellation of mutation bearing No.54 dated 31.03.1991 was dismissed, and it has been held that the said sale mutation in favour of respondent No.1, namely, Mst. Shama as well as the subsequent sale mutation by respondent No. 1 in favour of respondent No.4, namely, Imam Bakhsh was valid and not result of fraud and misrepresentation.

2. By way of factual background, it has been noted that the petitioner is the real mother of respondent No.3, namely, Allah Ditta and deceased respondent No.2, namely, Amina Bibi and was the owner of the disputed property detail whereof is given in the headnote of the plaint. She filed the suit with the averments that she is of old age and an illiterate lady and that she neither executed General Power of Attorney bearing document No.434/4 dated 05.12.1987 (“**the GPA**”), in favour of her son/respondent No.3 nor got the same cancelled through any *abtalnama*, bearing document

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No.191/4 dated 22.04.2003 and therefore, the impugned mutation No.54 dated 31.03.1991 in favour of respondent No.1, by respondent No.3 is based on fraud. It is worth mentioning that respondent No.1 was wife of respondent No.3, however, after sanctioning of the impugned mutation, she was divorced and got married to one Raja Abdul Rasheed. The suit was contested by respondents No.1 and 4 whereas deceased respondent No.2, namely, Amina Bibi and respondent No.3 did not file any written statement and were proceeded against *ex-parte*. Issues were framed and evidence was led and recorded whereafter through judgment and decree dated 26.04.2018, the suit was dismissed and appeal preferred by the petitioner also met with the same fate, *vide* judgment and decree dated 12.10.2019.

3. Learned counsel for the petitioner submits that as many as 11-issues, including relief, were framed; however, all the issues have not been decided and therefore, the Courts below have erred in law. Further contends that even if the GPA is taken to be a genuine document, respondent No.3 was obligated to take prior approval of the petitioner while selling the property to respondent No.1 who was his wife at the relevant time. Places reliance on cases reported as “Mst. Shumal Begum v. Mst. Gulzar Begum and 3 others” (1994 SCMR 818) and “Zahoor Ahmed and 8 others v. Muhammad Mehrban and others” (2017 CLC Note 229).

4. Conversely, learned counsel for respondents No.1 and 4 has supported the impugned findings with the averments that the petitioner side has taken a contradictory stance *qua* the genuineness of the GPA. No one has entered appearance on behalf of respondents No.2(I) to 2(II) and 3, therefore, they are proceeded against *ex-parte*.

5. Arguments heard. Record perused.

6. Before rendering opinion of this Court, it will be appropriate to reproduce the issues framed by the learned Trial Court:

1. Whether the plaintiff is entitled to get the declaratory decree to the effect that she is owner in possession of the suit property fully detailed in the head note of the plaint and the contradictory entries regarding mutation No.54 dated 31-03-1991 are wrong, illegal, ineffective and inoperative qua the rights of the plaintiff? OPP
2. Whether the plaintiff has no cause of action to file the instant suit? OPD
3. Whether the plaintiff has no cause of action to file the instant suit against the defendants and same is liable to be dismissed? OPD
4. Whether the suit is not maintainable in its present form and same is liable to be dismissed? OPD
5. Whether the defendant is *bonafide* purchaser with consideration of the suit property and has also incurred the improvement charges over the suit property? OPD
6. Whether the suit of the plaintiff has not come to the court with clean hands and the suit of the plaintiff is based on *malafide* intention and is liable to be dismissed? OPD
7. Whether the suit of the plaintiff is liable to be dismissed due to non-joinder and misjoinder of necessary parties? OPD
8. Whether the description of the suit property is incorrect, thereby the suit is liable to be dismissed? OPP
9. Whether the suit of the plaintiff is badly time barred, therefore, same is liable to be dismissed? OPD
10. Whether the defendants are entitled to get the special costs U/sec 35-A of CPC? OPD

## 11. Relief.

Issues No.1, 5 and 9 were the core points of determination. Out of these issues, the findings on issue No.1 hold the key to the issue No.5. Issue No.1 relates to the dispute as to whether the GPA is a duly executed and validly registered document or not. In this regard, the petitioner took a specific stance in the pleadings that the same was result of fraud as it was never executed by her. In para-3 of her plaint, it has been averred as under:

”3۔ یہ کہ من مدعیہ نے مدعا علیہ نمبر 3 کو کوئی مختیار عام نمبری 4/434 نہ دیا تھا اور نہ ہی من مدعیہ نے مختیار عام متددعو یہ کو بروئے ابطال نامہ نمبری 4/191 مورخہ 22.4.2003 ابطال کرایا ہے۔ مدعا علیہ نمبر 3 نے باسازش دیگر مدعا علیہم از خود بلا علم و بلا آگاہی من مدعیہ مختیار عام نمبری 4/434 مذکورہ تحریر کرایا اور اپنے سابقہ فعل کو قانونی حیثیت دینے کی خاطر از خود بلا علم و بلا آگاہی من مدعیہ مختیار عام نمبری 4/434 کو مورخہ 22.4.2003 کو ابطال کرا دیا۔“

*(Emphasis supplied)*

However, when she appeared as PW-I, she took a somersault and stated as under:

”یہ درست ہے کہ مختار نامہ میں نے خود کینسل کروایا تھا۔ اس وقت جب میں منسوخی مختار کیلئے آئی تھی تو میرا بھائی اللہ ڈیوایا میرے ہمراہ آیا تھا۔ یہ درست ہے کہ رجسٹرار کے روبرو بیان بابت منسوخی مختار میں نے خود دیا تھا۔ میں نے اڑھائی سال قبل مختیار منسوخ کروایا تھا۔“

*(Emphasis supplied)*

It is settled law that the pleadings on their own are mere statement of the case by the person and are not a substitute to the evidence. Rather, the pleadings determine the contours and circumference within which, and in consonance whereof, the parties are to lead their respective evidence. Step out of the contours of the pleadings is an inhibition and falls foul of the rules and procedure. In case there is contradiction and inconsistency, *inter se*, the pleadings and the evidence, the same is mutually destructive to the case. In the present case, the petitioner pleaded a specific stance regarding status of the

GPA in her plaint, which was required to be proved. When the contents of para-3 of the plaint are put in juxta position with the statement of the petitioner reproduced hereinabove, the contradiction and inconsistency is self-evident and the case of the petitioner squarely falls within the purview of principle envisaged in terms of maxim **“Allegans Contraria Non Est Audiendus”** (A person who alleges things contradictory to each other is not to be heard). This fact has rightly persuaded the Courts below to dismiss the suit of the petitioner.

7. In view of findings on the pivotal issue i.e., issue No.1, the second core issue No.5 was not required to be dealt with, separately, by giving additional reasoning inasmuch as when the transfer of suit property to respondent No. 1 by respondent No. 3 (her ex-husband) is held to be valid, her further transfer to respondent No. 4, *ipso facto*, becomes clothed with the validity.

8. Additionally, this Court, in exercise of its revisional and corrective jurisdiction, has examined the entire record including pleadings of the parties, the statements of witnesses, and the documents brought on record. Scanning of the record reveals that the GPA, which the petitioner admitted during the course of recording of evidence, is a registered document executed, in the year 1987, by the petitioner and deceased respondent No.2, who happens to be the real daughter and sister of the petitioner and respondent No.3, respectively, whereafter the impugned mutation was sanctioned in the year 1991 and admittedly, the GPA was cancelled in the year 2003, by the petitioner only, on the ground that the petitioner has lost confidence and trust in her real son-respondent No.3. This is where the twist lies. If the stance of the petitioner that she did not execute the GPA nor did she got it cancelled and it was result of fraud, the knowledge of the same should have rung alarm bells in the petitioner to know whether the GPA has been misused or not as the

same was registered in the year 1987 and cancelled in 2003. It runs counter to human nature and logic to presume that a person is defrauded in executing the GPA just to get registered and not to be used. Suffice to observe that whosoever would commit such fraud would do so to use it further. Thus, a person fraudulently procuring an authority (the GPA in present case) would not wait for a long period of 4 years (to sell the property) rather, he would immediately move on to reap the fruits of his fraud i.e., the GPA. Case reported as “*Muhammad Bashir v. Mst. Sattar Bibi and another*” (PLD 1995 LAH 321) is referred in this regard.

9. Moreover, if stance of the petitioner taken in witness box is accepted that she got the GPA cancelled herself, then it is astonishing that why she did not inquire as to the status of the suit property, which had been transferred by her son to his wife. This raises a fundamental question as to what efforts were made by the petitioner to inquire into the status of suit property from the year 2003 when she revoked the GPA till the year 2014 when the suit was instituted. There is nothing on record in this regard, which leads to an ineluctable inference that not only the GPA was genuinely executed in favour of respondent No.3 but also said respondent sold the suit property to his wife/respondent No.1 with the explicit or implicit approval of the petitioner as there was no dispute regarding the same till such time respondent No.1 remained in wedlock of respondent No.3, which is the reason that the petitioner remained mum and instituted the suit only when respondent No.3 divorced respondent No.1. This aspect of the matter gets corroboration from the fact that admittedly the petitioner never initiated any criminal proceedings against respondent No.3 (her son) for committing fraud. Her statement that she had been receiving the share in produce for 2 ½ years prior to the filing of the suit also belies logic inasmuch as if she had revoked the GPA in favour of her son in the year 2003, she

has not stated as to who was managing the affairs of the suit property and from whom she was receiving the share of produce.

10. There is no cavil to the proposition that an agent who transfers the property to his kith and kin (wife in the present case at the relevant time) had to seek permission from the principal (the petitioner in the present case) and the judgments relied upon by the petitioner side are unequivocal pronouncements of the Superior Courts in this regard, however, the present case has distinguishable facts as highlighted hereinabove inasmuch as in the cases relied upon by the petitioner side, either it was the gift, which was effected by the attorney or there was allegation of interpolation or fraud *qua* the execution of the GPA as opposed to the present case where a contradictory stance has been taken by the petitioner side *qua* the genuineness of the GPA and the petitioner also remained in hibernation for a prolonged period since its execution in the year 1987 and transfer of the suit property in the year 1991 despite the fact that she admittedly got cancelled the GPA in the year 2003, without carrying out any due diligence and rolled into action only in the year 2014 by filing the present suit. The principle embodied in the judgments relied upon by the petitioner side lay down a general principle which requires prior and/or subsequent approval and consent of the principal by an attorney if he intends to transfer the property to his kith and kin on the basis of a GPA. The petitioner, by not challenging the transaction/transfer in the year 2003, when the GPA was got cancelled has exhibited her implicit if not explicit approval of the transaction and this case falls under the exception to the preceding general principle of law.

11. At this juncture, important issue of limitation also arises, which aspect has not been examined by the Courts below although in this regard issue No.9 was specifically framed. Question of limitation also goes against the petitioner. This Court while

exercising revisional jurisdiction can appraise and determine any evidence and/or question not looked into or adjudicated by the Courts below. Case reported as “Manager, Jammu & Kashmir, State Property in Pakistan v. Khuda Yar and another” (PLD 1975 SC 678) is referred in this regard. In her plaint, the petitioner has prayed for cancellation of the impugned mutation, and a period of three years has been prescribed as limitation for a suit for cancellation in terms of Articles 91 and 92 of the Part VI of First Schedule to the Limitation Act, 1908 (“**the Act**”). The petitioner having got the GPA cancelled in the year 2003, kept quiet for a period of more than a decade, and filed the suit in the year of 2014. She has not disclosed when she got knowledge of the impugned sale mutation, which leaves this Court to infer that she had knowledge of the same when she got the GPA cancelled. This makes the suit time barred as it has been filed beyond a period of 3 years stipulated in Articles 91 and 92 of the Act.

12. Moreover, there are concurrent findings of law and facts against the petitioner, which are immune from interference by this Court in its revisional jurisdiction unless there is some gross illegality, irregularity, jurisdictional defect, misreading or non-reading of evidence therein. Learned counsel for the petitioner has failed to point out any such defect in the impugned judgments and decrees.

13. In view of what has been discussed above, the instant civil revision is **dismissed** being devoid of merits. No order as to costs.

(ANWAAR HUSSAIN)  
JUDGE

Approved for reporting.

*Judge*