

Stereo.HCJDA 38.
Judgment Sheet
IN THE LAHORE HIGH COURT,
MULTAN BENCH,
MULTAN.

JUDICIAL DEPARTMENT

....

Civil Revision No.485-D of 1993.

Jahangir Khan.

Versus

Abdul Ghaffar (deceased) through L.Rs. etc.

J U D G M E N T.

Date of hearing: **01.11.2023.**

Petitioner by: Tariq Muhammad Iqbal Chaudhary,
Advocate.

Respondents by: M/s Rao Qasim Raza Khan &
Masood Arif Butt, Advocates.

AHMAD NADEEM ARSHAD, J. Through this Civil Revision, filed u/s 115 of *Code of Civil Procedure, 1908*, the petitioner assailed the vires and legality of the judgment and decree dated 27.05.1993, whereby, the Court of learned District Judge while accepting the appeal of respondent No.3, set-aside the judgment and decree of learned trial Court dated 18.04.1990 and consequently dismissed petitioner's suit for declaration with permanent injunction.

2. Facts in brevity are that petitioner/plaintiff (herein after referred to as **the petitioner**) instituted a suit for declaration with permanent injunction on 08.10.1986 against the respondents/defendants i.e. Abdul Ghaffar defendant No.1/(**respondent No.1**),

Aslam son of Nabi Bakhsh defendant No.2 (**respondent No.2**), Rehmat Ullah defendant No.3 (**respondent No.3**) with the contention that he purchased land measuring 08 *kanals* through registered sale deed No.1018 dated 18.09.1984 for a consideration of Rs.40,000/- from respondent No.1 and through private settlement got possession of *khasra* No.55/25 measuring 08 *kanals*; that registered sale deed was handed over to the concern Patwari for incorporation in the revenue record and he went to England in the last days of September, 1984; that he came back in July 1986; that respondent No.1 and *Patwari* concern with the connivance of each other did not allow to incorporate the said registered deed in the revenue record and after entry of the mutation got it cancelled on the strength that he was not previous owner in the *Deh*, therefore, it is violation of the Martial Law Regulation, hence, mutation cannot be sanctioned; that he, after the death of his father on 29.06.1984, had become owner in the said *Deh* and he purchased land through said sale deed afterwards on 18.09.1984; that concern *Patwari* malafidely did not incorporate the inheritance mutation of his father; that respondent No.1, after cancelling the mutation from his name, transferred the suit property to respondents No.2 & 3 through mutations No.563 dated 17.05.1985 and mutation No.585 dated 08.03.1986; that said mutations are against facts and law and having no effect upon his rights and sought declaration that in the light of registered sale deed No.1018 dated 18.09.1984 he will be declared owner in possession of the suit property; that the said sale

deed to be incorporated in the revenue record and the mutation No.563 dated 17.05.1985 and mutation No.585 dated 08.03.1986 to be cancelled being against the facts & law and based upon *mala fide*. Respondent No.1 resisted the suit through filing contested written statement by raising preliminary objections such as that the petitioner has no cause of action against him; that the petitioner filed the suit malafidely and he has no *locus standi*; that the petitioner instituted false and frivolous suit, therefore, costs under Section 35-A of the Code of Civil Procedure, 1908 be awarded. While replying on facts, he admitted the execution of the registered sale deed in favour of the petitioner, however, maintained that possession with regard to square No.55 *kill*a No.25 was not given to him. He also maintained that the impugned mutations were rightly sanctioned and took a specific stance that when the mutation on the basis of sale deed was not sanctioned in favour of the petitioner then his brother gathered the respectable of the area where he (respondent No.1) returned the consideration amount to him and finally prayed for dismissal of the suit. Respondents No.2 & 3 also filed contested written statement wherein they took preliminary objections that the petitioner has no cause of action against them; that the petitioner has no *locus standi* to institute the suit; that they (defendants No.2 & 3) have no concern with the suit property, therefore, they are entitled to receive costs under section 35-A of the Code of Civil Procedure, 1908. While replying on facts, they pleaded that they got attested the sale mutations after

payments of cash amount and also got the possession of square No.55 *Killa* No.24 situated at Chak No.21/11-L and said property was in their possession since then and they have no concern with square No.55 *Killa* No.25 of the said Chak. They also pleaded that plaintiff's brothers get back consideration amount from respondent No.1 and prayed for dismissal of the suit. The learned trial Court, keeping in view the divergent pleadings of the parties framed necessary issues, invited the parties to produce their respective evidence and after recording evidence of the parties, pro and contra, oral as well as documentary, decreed the suit vide judgment and decree dated 18.04.1990. Feeling aggrieved, only respondent No.3 namely Rehmat Ullah preferred an appeal. The learned appellate Court allowed the said appeal while setting-aside the judgment and decree of the learned Trial Court through impugned judgment and decree dated 27.05.1993 and consequently, dismissed petitioner's suit. Being dissatisfied the petitioner approached this court through instant Civil Revision.

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

4. Admittedly, respondent No.1 Ghaffar Ahmad alias Abdul Ghaffar was owner of land measuring 14 *kanals* 02 *marlas* situated at *Khewat* No.36 *khatoni* No.203, Chak No.21/11-L Tehsil Chichawatni, District Sahiwal out of the total land of the *khatta* measuring 192 *kanals* 03 *marlas*. There is no denial with the fact that said respondent No.1 sold land measuring 08 *kanals* through

registered sale deed No.1018 dated 18.09.1984 for a consideration of Rs.40,000/- to the petitioner. Original sale deed was brought on record as Exh.P-7 whereas attested copy of the said sale deed was placed on record as Exh.P-8. On the basis of said registered sale deed mutation No.534 (Exh.P-4) was entered in the mutation register. The said mutation was cancelled vide order dated 18.05.1985 on the grounds that the petitioner/vendee is not owner in the said Chak/*Deh*, therefore, it is violation of Martial Regulation. From perusal of record it appears that respondent No.1 sold his remaining land measuring 06 *kanals* 02 *marlas* through oral sale mutation No.563 dated 17.05.1985 to respondent No.2 namely Aslam son of Nabi Bakhsh. Said sale was completed before the cancellation of mutation No.534. Therefore, said sale (mutation No.563 dated 17.05.1985) cannot be declared null and void and suit to this extent is not maintainable.

After cancellation of mutation No.534 which was cancelled on 18.05.1985, respondent No.1 allegedly sold the suit property/subject matter of the sale deed to respondent No.3 for a consideration of Rs.30,000/- through oral sale mutation No.585 dated 08.03.1986 (Exh.P-5).

5. It is matter of fact that the registered sale deed dated 18.09.1984 (Exh.P-7/Exh.P-8) through which respondent No.1 sold the suit property to the petitioner was neither challenged by the respondents nor cancelled by any competent authority. The petitioner was aggrieved from the order of revenue officer dated

18.05.1985 whereby mutation No.534, entered on the strength of registered sale deed dated 18.09.1984 was cancelled on the grounds that he is not owner in the *Deh* and the sale made in his favour is in violation of Martial Law Regulation.

6. Now the question arises whether revenue officer was competent to cancel the mutation which was entered on the basis of registered sale deed.

7. The revenue officer was duty bound to incorporate registered deed in the revenue record. The revenue officer had no authority to cancel such mutation without giving notice to the purchaser and providing opportunity of hearing.

8. Provision of Section 25(4) of the West Pakistan Lands Reforms Regulation (Martial Law Regulation No.64 of 1959) forbade the alienation by sale, mortgage, gift or otherwise by a person owing an area equal to or less than a subsistence holding to a person other than owner of the same village, *Deh* or *Mouza*. For reference Section 25(4) of M.L.R. No.64 of 1959 is reproduced as under: -

“No person owing an area equal to or less than a subsistence holding shall be allowed to alienate by sale, mortgage, gift or otherwise any part of his holding:

Provided that such a person may alienate his entire holding, or in the case of a holding which is less than a subsistence holding, sell any part of his holding to other owners of the same village, deh or mauza.

Nothing in this paragraph shall apply to land whether cultivable or otherwise, which is bona fide required for the purpose for building thereon, and any tenant in possession of such land who refuses to quit after notice may be evicted under the order of the Deputy Commissioner.”

M.L.R. No.64 of 1959 was repealed by M.L.R. 115 on 11.03.1972. With regard to Section 25(4) of M.L.R. No.64 of 1959

paragraph No.24(4) of Land Reforms Regulation, 1972 (Martial Law Regulation No.115 of 1972) was introduced which also does not allow a person other than owner of the same *Deh*, village or *Mouza* to purchase the land from a person owner of holding less than a subsistence holding and alienating part of his holding. For reference paragraph No.24(4) of M.L.R.No.115 of 1972 is reproduced as under: -

*“No person owing an area equal to or less than a subsistence holding shall be allowed to alienate by sale, mortgage, gift or otherwise any part of his holding:
Provided that he may alienate the entire holding or in the case of holding which is less than a subsistence holding, he may alienate any of his presumptive heirs or exchange with, or mortgage or otherwise alienate to other powers or landless tenants of the same village, deh or mouza.”*

From bare reading of said provision it appears that there is a restriction upon the owner of a holding for alienation through sale, gift or otherwise of any portion of his holding which might reduce the size of his holding to an area below the limit of an economic holding and also forbade a person owing an economic holding to reduce the same through alienation which might reduce the size of his holding to subsistence holding. However, there is no restriction to alienate his entire holding. The same restriction also imposed upon a person owing subsistence holding. However, he may alienate his entire holding.

In case of owning land, which is equal to or less than a subsistence holding also forbade a person for alienation of any part of his holding. However, he may alienate the entire holding or any

part of his holding to only those who are owners or land less tenant of the same village, *Deh* or *Mouza*.

9. The provision of M.L.R. 115 of 1972 was not meant to be utilized for the benefit of unscrupulous person and to give him undue benefits. Para 24 of M.L.R. 115 of 1972 could not be used for cancellation of sale, whereby, the alienation of the property through registered sale deed by the vendor in favour of vendee was completed. Vendor could not be permitted to take back the property without paying the price he had already received from the vendee and could not be allowed to turn turtle by taking a chance of legal interpretation and getting the sale transaction declared void. No law and rules of ethics and tenets of Islam allowed such a course to be adopted.

This Court in a case “FAIZULLAH versus MUHAMMAD SARWAR and another” (2013 CLC 1054) wherein mutation attested on the basis of registered sale deed subsequently cancelled by Consolidation Officer to be violative of para No.24 of Land Reforms Regulation, 1972 held as under: -

“When the transfer of property is made through registered document, there are some presumptions attached to a registered document under Articles 85(5) of Qanun-e-Shahadat Order, 1984 and the mutation on the basis of said document under the law will remain intact till the time said registered document is in existence. The mutation attested on the basis of a registered document cannot be subsequently cancelled. I have observed that in the sale-deed in favour of plaintiff-appellant, the vendor of land has clearly stated that he is selling out the whole of his land in the Mouza and if inadvertently any land remains out of the sale-deed, the Revenue Officer will be at liberty to sanction the mutation of sale of that land also and he will not raise objection in this regard. In this eventuality, the Revenue Officer was bound under the law to attest the mutation of whole of land owned

by the plaintiff-appellant in that Mouza and even if the mutation was not attested for whole of the land of seller in the name of vendee i.e. plaintiff-appellant, then the Consolidation Officer who has reviewed the mutation has absolutely no authority to review the mutation sanctioned by the Revenue Officer on the basis of a registered document. The authority to check the violation of Martial Law Regulation was with the Land Reforms Authorities. Even land reforms authorities were having a limited authority and cannot set aside the registered document. The provision promulgated through para 24 of the Land Reforms Regulation 1972 (M.R.R.115) has been declared against the injunction of Islam by the Federal Shariat Court in a judgment reported as “PLD 1989 Federal Shariat Court 80 (Sajwara and others v. Federal Government of Pakistan)”.

10. The august Supreme Court of Pakistan in a case titled “MST. AISHA BIBI V. NAZIR AHMAD AND OTHERS (1994 SCMR 1935) held that Revenue officer while exercising his power under the Land Revenue Act, 1967 could not simultaneously act under Land Reforms Regulation and if he was of the view that any provision of said Regulation had been violated, his duty was to refer the matter to the Land Commissioner or Deputy Land Commissioner who was supposed to be the principal officer of the District concerning land disputes.

Facts of the said case are that a sale effected by means of registered sale deed was incorporated in the revenue record by attesting the mutation. The Assistant Collector reviewed the mutation on the ground that it is violative of Martial Law Regulation. An appeal and then revision were dismissed by the Collector and the Additional Commissioner. The said orders were challenged by the vendees in the Civil Court, the suit was partially decreed by the learned trial Court. Both the parties filed appeals which were dismissed. The vendees then filed R.S.A., in this court

while cross objections were filed by the vendors. The R.S.A. was allowed and the said orders were declared to be void and the suit was decreed on the ground that only the Land Commissioner or the Deputy Land Commissioner appointed thereunder can take cognizance of the matter. The vendors approached the Hon'ble Supreme Court of Pakistan and their C.P.L.A., was dismissed and the said judgment of this Court was upheld and declared as under: -

“The suit land was sold by the Chuhar, the original owner, in favour of Nazir Ahmad, Bashir Ahmad and Aziz Ahmed respondents 1 to 3 through a registered sale-deed which was followed by a mutation as the revenue officers were bound to give effect to all transactions completed through registered deeds in the Revenue Record. There being no mistake apparent on the face of record, the Revenue Officer in the exercise of their review could not set aside the earlier order of attestation of mutation thereby annulling the solemn transaction of sale entered into between the vendor and the vendees in respect of the valuable landed property, moreso, on the grounds regarding which the jurisdiction expressly vested in the Land Commission or their subordinate officers and not in any other forum including the Civil Court. Since the hierarchy of Revenue Officers act in different capacities under different laws, it appears that the Revenue Officer also being vested with the powers of Land Commissioner reviewed the mutation on grounds available under Martial Law Regulations, and the whole exercise was conducted under this mistaken belief. There is no denying the fact, that when an officer acts under different statute he has to strictly follow the procedure embodied therein and cannot exercise his powers availing the provision of other statute. Apparently, the Revenue Officer while exercising his powers of review under the Land Revenue Act could not simultaneously act under Martial Law Regulation concerned and if he was of the view that any provisions of the Martial Law Regulation had been violated, his duty was to refer the matter to the Land commission or the Deputy Land Commissioner who was supposed to be the principal officer of the district concerning land disputes.”

In another case titled as “Syed FAKHAR IMAM SHAH and others versus ABDUL HAQ (deceased) through L.Rs and others”

(2006 SCMR 550) it was observed that vendor would have no legal

or moral justification to challenge validity of a sale effected in violation of provision of Para 24 of M.L.R.115 of 1972. Such transactions as between vendor and vendee would not be altogether void even if there was violation of some provision of M.L.R. 115 of 1972. Para 24 placed restriction more on a vendor than a vendee. Vendor could not take any advantage of his own wrong being in *pari delicto* and held as under:-

“We find that the petitioners/vendors having alienated their land, by way of sale had no legal or moral justification to challenge its validity. Even otherwise, such a transaction as between the vendors and the vendees would not be altogether void even if there was violation of some provisions of M.L.R.115. Reference may usefully be made to the cases of Mst. Zuhra Khatoon and 8 others v. The Member Land Commission, Rawalpindi 1985 SCMR 312 and Mst. Raj Bibi and 4 others v. Additional Chief Land Commissioner, Punjab and 2 others PLD 1975 Lah. 408.”

Further held:

“Needless to observe that paragraph 24 of the Regulation places restrictions more on a vendor than a vendee.”

The apex Court of the country while following the dicta laid down in Mst. Aisha Bibi’s case, observed in a case *“Muhammad Ishaq v. Muhammad Shafique and 09 others” (2007 SCMR 1773)*

held as under: -

“From the arguments of the learned counsel on either side, we have observed that the present scenario has three facts, firstly, whether the question of a transaction being violative of M.L.R. 115 can be determined by revenue authorities. We believe, it cannot. Even if, some Revenue Officer detected any irregularity, it was incumbent upon him to have referred the matter to Land Commission or the Deputy Land Commissioner, being the Principal Officer of the District in the given hierarchy. In the instant case, the order of Revenue Officer declaring the transaction void, was itself void. This Court has already taken this view in Mst. Aisha Bibi’s case 1994 SCMR 1935.”

11. No doubt, mutation is not a deed of title and even if the mutation sanctioned on the strength of the sale deed is stood cancelled, the real and genuine deed of title in shape of registered sale deed still existed in favour of vendee and on the strength of which he remained owner of land and vendor had no right to sell the same to others. Any number of subsequent entries illegally made in revenue record could not have effect of extinguishing right of rightful owner. Purchaser through registered sale deed would not cease to be owner due to cancellation of mutation in his favour. It was held in Muhammad Ishaq's case (supra) that: -

“Lastly, one may say, at the cost of repetition in every third civil case, that mutation is not a deed of title. In the instant case, even if mutation No.925 stood cancelled, the real and genuine deed of title existed in favour of Muhammad Ishaq in the shape of registered deed No.673 of 22.02.1978. On the strength of such registered deed, Muhammad Ishaq remained owner of 29 kanals and Ali Muhammad had no right to sell 05 kanals therefrom in favour of Muhammad Shafique.”

12. The petitioner specifically pleaded in his plaint that his father namely Bashir Ahmad son of Muhammad Khan was owner of land in the said *Deh* (mouza 21/11-L) who died in a road accident on 29.06.1984, therefore, he became owner in the *Deh* being his successor. In order to prove his stance, he produced Muhammad Usman Secretary Union Council as PW-1 who deposed that he has brought with him record of death register wherein at serial No.9 factum of the death of Raja Bashir Ahmad son of Muhammad Khan (father of the petitioner) on 29.06.1984 in a bus accident was incorporated on 13.07.1984 and produced copy of the death register as Exh.P-1. Said document verified his

contention. The petitioner also produced copy of inheritance mutation No.604 dated 12.07.1986 as Exh.P-6. Perusal of said document it appears that inheritance of Bashir Ahmad was sanctioned in favour of his legal heirs including the petitioner. Said property was situated in Mauza 21/11-L wherein, the suit property was located. Although an objection was raised to the effect that said mutation was sanctioned on 12.07.1986 whereas registered sale deed was executed prior in time on 18.09.1984, therefore, petitioner was not owner at the time of execution and registration of the sale deed. There is no force in the said arguments as the petitioner had become owner in the *Deh* as soon as his father died. The evidence available on the record in shape of statement of Secretary Union Council (PW-1) and copy of death register (Exh.P-1) clearly suggests that the petitioner's father namely Bashir Ahmad was died on 29.06.1984, therefore, at the time of execution of the sale deed, he was owner in *Deh* on the basis of inheritance.

13. The respondents specifically respondent No.1 did not denied the sale of suit property to the petitioner through registered sale deed dated 18.09.1984. The stance of the respondents is that when the mutation No.534, incorporated on the basis of registered sale deed, was cancelled then brother of the petitioner contacted respondent No.1 who returned the consideration amount to the petitioner through his brother. Said fact was also maintained by the other two respondents i.e. respondents No.2 & 3 in their written

statement. The learned trial Court with regard to the said proposition framed issue No.7 in the following terms: -

Whether defendant No.1 has repaid the amount of consideration, if so, its effect? OPD

14. The learned trial Court placed onus *probandi* of this issue upon the respondents. Respondent No.1 namely Ghaffar Ahmad alias Abdul Ghaffar did not appear in the witness box to prove his contention that he returned the consideration amount to the petitioner. Respondent No.3 namely Rehmat Ullah appeared as DW-1. He deposed that Abdul Ghaffar told him that he returned the consideration amount to the petitioner. In this way his evidence is merely hearsay evidence. Ghulam Rasool son of Nabi Bakhsh appeared as DW-2. He also deposed that they heard that petitioner got the suit property, but mutation was cancelled and consideration amount was returned to him. During cross examination, he maintained that consideration amount was not returned to the plaintiff (the petitioner) in his presence. His deposition is also based upon hearsay. The petitioner produced his real brother and general attorney namely Sabir Ahmad as PW-3. He produced copy of registered general power of attorney as mark-A. He deposed that defendant No.1 (respondent No.1) did not return the consideration amount to him. During cross examination in reply of a suggestion maintained that it is incorrect that they received consideration amount before the *Punchyat* and voluntarily said that no *Punchyat* was convened in this regard. Respondents miserably failed to

prove that consideration amount was returned by respondent No.1 to the petitioner after cancellation of the mutation.

15. Respondent No.1 sold the suit property through registered sale deed dated 18.09.1984 (Exh.P-7 & P-8) to the petitioner for a consideration of Rs.40,000/- but he sold the same suit property to respondent No.3 through oral sale mutation No.585 dated 08.03.1986 (Exh.P-5) for a consideration of Rs.30,000/- Sale of the suit property after about one and half year for a lesser amount than that was made through the sale deed also creates doubts about the genuineness of the sale executed through oral sale mutation in favour of respondent No.3.

16. The learned Appellate Court while accepting the appeal of respondent No.3 much emphasized that protection under Section 41 of the Transfer of Property Act, 1882 is available to the respondent No.3.

It is matter of record that the petitioner specifically pleaded in his plaint that he purchased land measuring 08 *Kanals* through registered sale deed No.1018 dated 18.09.1984 and got possession over specific *Khasra* No.55/25 (square No.55, *Killa* No.25). The respondents No.2 & 3 in their written statement narrated that they purchased the property through oral sale mutations after payment of consideration amount and got the possession over square No.55, *Killa* No.24 and specifically maintained that they have no concern with square No.55, *Killa* No.25. For reference, reply of para No.4 is reproduced hereunder in verbatim:

"مدعایہ نمبر 3 نے نقد رقم ادا کر کے انتقال بیع کروایا جو کہ مربع نمبر 55 کیلہ نمبر 24 واقع چک نمبر L-21/11 مدعایہ نمبر 3 نے مدعایہ نمبر 1 سے خرید کیا تھا اور اسی پر قابض ہیں۔ مدعایہ نمبر 2، 3 کا اراضی متدعو یہ مربع نمبر 55، کیلہ نمبر 25 واقع چک نمبر L-21/11 سے کوئی تعلق واسطہ نہ ہے۔ جو انتقال بحق مدعایہ نمبر 1 ہوئے وہ بالکل جائز، مطابق قانون با دایگی زمر شمن ہوئے ہیں۔ مدعایہ نمبر 1 اور مدعی نے اب ساز باز کر کے دعویٰ ہذا مدعایہ نمبر 2، 3 کو خراب کرنے کی غرض سے کیا ہے۔ حالانکہ روبرو معززین مدعی کا بھائی مدعایہ نمبر 1 سے ادا شدہ زمر شمن واپس لے چکا تھا۔ مدعایہ نمبر 3 خرید کردہ اپنی اراضی پر قابض ہے۔"

While recording his statement as D.W.1, respondent No.3 Rehmat Ullah deposed that he purchased the suit property from Abdul Ghaffar who delivered possession over *Khasra* No.55/24. He also maintained that Ghaffar told them that mutation sanctioned with regard to *Khasra* No.25 had been set-aside. He further stated that Abdul Ghaffar told that he returned the consideration amount. His exact deposition is as under:-

"ارضی متدعو یہ میں نے عبدالغفار سے بیع لی تھی۔ خسرہ نمبر 55/24 کا قبضہ مجھے اس نے دیا تھا۔ جب سے بیع لی ہے اسی خسرہ نمبر پر میرا قبضہ ہے۔"

"غفار اس اراضی کا مالک تھا جس سے میں نے خریدی۔ غفار نے ہمیں بتایا تھا کہ مدعی کے حق میں کروایا جانے والا انتقال بیع بابت خسرہ نمبر 25 خارج ہو گیا تھا۔ رقم کا عبدالغفار بتاتا تھا کہ اس نے واپس کر دی ہے۔"

During cross-examination, he maintained as under:

"علم نہ ہے کہ 84-9-18 کو مدعی کے حق میں ایک ایکڑ بذریعہ رجسٹری مدعایہ نمبر 1 نے بیع کی۔ درست ہے کہ اراضی متدعو یہ مشترکہ کھاتہ میں ہے۔ ہم نے بذریعہ انتقال اراضی بیع لی۔ انتقال کی تاریخ یاد نہ ہے۔ جہانگیر کے انتقال کے اخراج کے بعد ہم نے زمین لی۔ غلط ہے کہ مدعایہ نمبر 1 اس کھاتہ میں صرف 2-14 کا مالک تھا۔ جب ہم نے اراضی خریدی تو مدعایہ نمبر 1 صرف ایک ایکڑ کا مالک تھا۔"

From the above stated facts, it is abundantly clear that respondent No.3 never took a specific plea that he is bona fide purchaser of the suit property for value without notice of the sale executed in favour of the petitioner. Rather he took a stance that he

purchased the property of *Killa* No.24 after cancellation of the mutation and has no concern with the property of *Killa* No.25. Meaning thereby, he is well aware that petitioner claimed ownership of the property situated at *Killa* No.25 and it was also in his knowledge that mutation entered in the name of petitioner was cancelled.

Person claiming protection under Section 41 of the Transfer of Property Act, 1882 is bound to establish that the person from whom the suit property has been transferred to him was an ostensible owner, while transfer so made was with the consent of the real owner, either express or implied. Said transfer must have been made for some consideration and the person being transferee or purchaser must have acted in good faith and taken all reasonable care and steps before entering into said transaction for transfer. If anyone of the stated ingredients is wanted, then the transferor will not be eligible to seek protection of equitable doctrine envisaged under Section 41 of the Act *ibid*.

Sanctity is attached to a registered document and it is considered a notice to the public at large. In order to dislodge said presumption mere inquiry of the revenue record was not sufficient. The entries of Revenue record are not foundation of title as said entries were made for fiscal purposes.

In the present case, neither respondent No.3 specifically sought protection under Section 41 of the Act *ibid* nor established said fact through any evidence.

17. In view of above discussion, it is clear that sale deed executed in favour of the petitioner still remained intact and no one had challenged the validity and legality of said sale deed. Although, mutation No.534 had been cancelled, even then petitioner was owner of the suit property on the strength of sale deed and respondent No.1 had no right to sell the suit property in favour of respondents No.3. The revenue officer was not competent to cancel the mutation, entered on the strength of registered sale deed, on the ground that provision of Martial Law Regulation had been violated. Therefore, the order dated 18.05.1985 with regard to cancellation of mutation No.534 is void *ab-initio* and having no effect upon the rights of the petitioner.

18. Epitome of above discussion is that the instant Civil Revision is **allowed** Impugned judgment and decree dated 27.05.1993 passed by learned appellate Court is **set-aside**, whereas, the judgment and decree of learned trial Court dated 18.04.1990 is maintained and upheld, resultantly suit of the petitioner is **decreed** as prayed for with costs throughout.

(AHMAD NADEEM ARSHAD)
JUDGE.

Approved for reporting:

JUDGE.

Announced in open Court on: _____

JUDGE.

A.Razzaq*