

Stereo.HCJDA-38
JUDGMENT SHEET
IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

W.P. No.49163 of 2023

Begum Tasneem Akhtar (deceased) through L.Rs
v.
The learned Addl. District Judge, Lahore and others

J U D G M E N T

Date of Hearing	15.02.2024
Petitioners by	Mr. Tauqeer Ahmed Munir, Advocate.
Respondent Nos.3 to 5 and 10 by	<i>Nemo.</i>
Respondent No.6 by	Muhammad Sadiq Sindhu, Advocate.
Respondent Nos.7 to 9	Mr. Waheed Alam, Asst. Advocate General.

RASAAL HASAN SYED, J. Petitioners through this constitutional petition assail orders dated 03.1.2023 and 23.6.2023 of the courts below by which an application under section 151 C.P.C. objecting to admissibility of documents in the statement of D.W.1, was rejected and the revision petition filed thereagainst was also dismissed.

2. Begum Tasneem Akhtar, since deceased and predecessor-in-interest of the present petitioners, brought a suit for declaration with consequential relief, claiming ownership of property and challenging the

execution and registration of certain documents on grounds of fraud, misrepresentation, etc. The suit was resisted by respondent No.6 by filing written statement. Issues were framed and after availing certain opportunities the petitioners concluded the evidence. On 23.9.2022 examination-in-chief of D.W.1 was recorded wherein certain documents were produced which were exhibited or marked as Exh.D-1 to Exh.D-4 and Mark-DA to Mark-DD. Petitioners filed an application under section 151, C.P.C. objecting to the admissibility of documents. The foundation of this objection was that they could not be proved in the statement of the witness because he was neither the author nor the scribe and unless necessary steps for proof of documents under Article 79 of the Qanun-e-Shahadat Order, 1984 were adopted, the documents could not be exhibited or marked and that some of the documents having not been relied or sued upon could not be allowed to be produced without the permission of the court. The application was dismissed by learned Civil Judge vide order dated 03.1.2023. Revision petition of the petitioner against the said order was also dismissed by learned Addl. District Judge, Lahore vide order dated 23.6.2023.

3. Heard.

4. Perusal of the documents available with the file reveals that suit for declaration was instituted to claim ownership of the property and to challenge the execution and registration of the documents viz. power of attorney dated 22.4.2004, special power of attorney dated 24.5.2004 and sale deed in favour of defendant No.4 (bearing document No.3827, book No.1, volume 704) registered with Sub-Registrar, Data Ganj Bakhsh Town, Lahore on 05.3.2005. Challenge to these documents was cast on grounds of fraud and cheating; their cancellation was prayed for.

5. The suit was resisted by respondent No.6. Issues were framed and evidence of petitioners was concluded after certain opportunities. On 23.9.2022 examination-in-chief of D.W.1 was recorded wherein certain documents were produced which were exhibited as Exh.D-1 to Exh.D-4 and Mark A to Mark C. The case was adjourned on plaintiff's request for cross-examination. After taking two adjournments the application under section 151, C.P.C. dated 25.10.22 was moved wherein it was objected that the documents could not have been received in evidence as D.W.1 was neither their maker or scribe nor were the documents

were sued or relied upon and that these documents be de-exhibited and de-marked as they were not properly proved in accordance with law.

6. This application was dismissed by the learned Civil Judge with the observation that the statement of D.W.1 was recorded on 23.9.2022 whereafter upon the request of plaintiff's learned counsel the case was adjourned for 06.10.2022 and that on the adjourned date a request for adjournment was yet again tendered by said learned counsel when it was adjourned to 25.10.2022 for cross-examination and that on this date an application was filed raising the objection to the admissibility of documents. It was observed that when the documents were produced no objection was taken or raised and that the petitioner had yet to cross-examine the witness about documents.

7. In revision petition the learned Addl. District Judge after taking into consideration the entire record of the case observed that the suit was filed on 03.9.2005, issues were framed on 09.1.2010 and that after due framing of issues the petitioner took certain opportunities for evidence and produced oral and documentary evidence comprising P.W.1 to

P.W.12 and Exh.P-1 to Exh.P-82. At his own turn defendant No.4 in the suit appeared as D.W.1, recorded his examination-in-chief on 23.9.2022 and tendered Exh.D-1 to Exh.D-4 and Mark-DA to Mark-DD in documentary evidence. It was observed that the record reflected that at the time of recording examination-in-chief of D.W.1 the production of documents was not objected to and in case the petitioners had any objection to production of the documents it could have been raised at the time of recording of the examination-in-chief itself. It was also observed that mere production of documents would not entail that they had authenticity which was yet to be proved by the party that produced them and that evidentiary value of documents, if proved as per rule, will be seen by the trial court at the time of rendering final judgment.

8. It is manifest from the observations in the order of revisional court that the apprehension of the petitioner regarding the alleged proof of documents, has been adequately attended to inasmuch as it is clarified that the document by mere tender could not be assumed or deemed to be authentic and that the party producing the same was obligated to prove the same. The view taken by

the revisional court appears to be sound, just and fair.

9. There is a distinction between the admissibility and proof of documents. Where a document is tendered in evidence it cannot serve any purpose unless it is proved in accordance with law. The provisions of Articles 78 and 79 of Qanun-e-Shahadat Order, 1984 obligate the production of executant, marginal witnesses, scribe and other admissible evidence to prove any document, which cannot be dispensed with. In Dawa Khan through L.Rs and others v. Muhammad Tayyab (2013 SCMR 1113) it was observed to the effect that admissibility of the document by itself will not absolve the party from proving its contents in terms of Article 79 of the Qanun-e-Shahadat Order, 1984. In Mst. Rabiya Bibi v. Matiur Rehman and others (2022 CLC 686) it was observed to the effect that the exhibiting of a document is one thing and its proof as prescribed by law is another and that exhibition of a document does not mean that it stands proved and that the parties relying upon such document are supposed to prove the same in accordance with law and procedure prescribed in Qanun-e-Shahadat Order, 1984 and that mere factum of exhibiting of a document shall not

tantamount to its proof irrespective of the fact that the document was exhibited and that too without objection. Reference can be made to the case of Khan Muhammad Yusuf Khan Khattak v. S.M. Ayub and 2 others (PLD 1973 SC 160) where it was observed to the effect that even documents that were brought on record and exhibited without objection could remain on record as exhibits and faithful copies of the contents of the original but they cannot be treated as evidence of the original having been signed and written by the person who purportedly wrote or signed them unless the writing or the signature of that person is proved under the rules of evidence. In Messers Bengal Friends and Co. Dacca v. Messers Gour Benode Saha & Co., Calcutta and the Deputy Registrar of Trade Marks, Chittagong (PLD 1969 SC 477) it was observed to the effect that if a document is alleged to have been written by any person, the signatures or the handwriting alleged to be of such person must be proved to be in his handwriting and that mere production of document kept in regular course of business did not constitute evidence of the entries contained therein unless the same is proved in accordance with law. In Province of the Punjab through Collector Sheikhupura and others v.

Syed Ghazanfar Ali Shah and others (2017 SCMR 172) it was observed to the effect that the provisions of Articles 72 to 101 of the Qanun-e-Shahadat Order, 1984 governing the mode of proof could not be compounded or dispensed with nor could the court which had to pronounce judgment as to proof or otherwise of the documents was precluded to see whether the documents had been proved in accordance with law and could, as such, form basis of its judgment.

10. In the instant case the documents were simply tendered in the statement of D.W.1 and as per order-sheet no objection was raised at the time of production of documents. The case was adjourned for 06.10.2022 when again a second adjournment was sought for cross-examination and, finally, it on 25.10.2022 that the petitioner's learned counsel filed an application under section 151, C.P.C. Although inaction and conduct of petitioners in not raising objection at the relevant time was material fact for declining exercise of discretionary jurisdiction under section 151, C.P.C. yet the petitioners cannot claim to have suffered adversely as mere production of document in the statement of a witness who is not claimed to be author thereof nor the

document having been relied upon, could not adversely affect the petitioners as the court has yet to see, after cross-examination of witnesses and other evidence on record, as to whether the documents were proved in accordance with law and the rule laid by the superior courts. Mere fact that the documents have been exhibited does not mean that the court is denuded of its obligation to consider the entire evidence so as to conclude whether or not the documents were proved in accordance with the provisions of Qanun-e-Shahadat Order, 1984 and their production alone will not, of course, mean that the documents are proved or are an evidence of the facts in controversy which were required to be proved by fulfilling the mandatory conditions of Article 79 of Qanun-e-Shahadat Order, 1984.

11. In view of the settled rule the application filed by the petitioner, therefore, was rightly dismissed by the revisional court with observations and clarifications that the documents would only be used as piece of evidence if the litigants placing reliance thereon would be able to satisfy that they had produced the witnesses and followed the procedure as per Article 79 of Qanun-e-Shahadat Order, 1984. Being so the petitioners are fully protected and

there was hardly any justification to seek indulgence in the extraordinary jurisdiction of this Court.

12. As upshot of the above instant petition being without substance is **dismissed**.

(RASAAL HASAN SYED)
JUDGE

Announced in open Court on **28.2.2024**.

JUDGE

Approved for reporting

JUDGE

Rabbani