

JUDGMENT SHEET
LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

C. R. No. 174 / 2017

Nazeer Ahmad

VERSUS

Muhammad Sadiq (deceased) through L.Rs. and 2 others

JUDGMENT

Date of Hearing	15.09.2023
Petitioner by:	Ch. Muhammad Yaqoob Sidhu, Advocate
Respondent No. 1 (iii) by:	Rana Rashid Akram Khan, Advocate
Respondent No. 1 (i) by:	Proceeded ex parte
Respondents No. 2 & 3 by:	Mr. Sikandar Nisar Soroya, Assistant Advocate General
Assisted by:	Miss Asmah Syed, Research Officer

ABID HUSSAIN CHATTHA, J. This Civil Revision is directed against the impugned Judgment & Decree dated 22.10.2016 passed by Additional District Judge, Toba Tek Singh, whereby, the Judgment & Decree dated 08.04.2014 passed by Civil Judge, Toba Tek Singh was reversed.

2. Brief facts of this case are that the private Respondents No. 1(i) to 1(iii) (the “**Respondents**”) instituted a suit for declaration against the Petitioner contending therein that their predecessor-in-interest, namely, Shah Muhammad was owner in possession of the suit property fully described in the headnote of the plaint who remained admitted in Allied Hospital, Faisalabad as a patient of ‘Cancer’ from 30.07.2005 till 24.08.2005. He was discharged on 24.08.2005 and died on the midnight between 25.08.2005 and 26.08.2005. At the time of his death, he was extremely weak and feeble and was not in a position to execute mutation No. 739 dated 23.08.2005 (the “**impugned mutation**”) attested in favour of the Petitioner. As such, the impugned mutation was fraudulently attested in connivance with the revenue

officials. It was also specifically alleged that deceased Shah Muhammad did not appear before any Revenue Officer, received any sale consideration or delivered possession of the suit property. It was further asserted that in the impugned mutation, the date of recording of the sale transaction in *Roznamcha Waqiat* was interpolated from 16.08.2005 to 09.08.2005, although deceased Shah Muhammad did not appear, report or record any sale transaction on 09.08.2005 or 16.08.2005. Further, another exchange mutation No. 738 dated 08.08.2005 (the “**exchange mutation**”) between deceased Shah Muhammad and his real brother was also fraudulently attested regarding which the Respondents reserve right to challenge the same. The Respondents first challenged the impugned mutation before the revenue hierarchy and the same was set aside vide Order dated 13.02.2006. An Appeal filed by the Petitioner was dismissed on 12.02.2007. However, the Revision of the Petitioner was accepted vide Order dated 19.05.2010 which constrained the Respondents to institute the suit for declaration.

3. The Petitioner filed contesting written statement with the stance that deceased Shah Muhammad was suffering from Cancer and required immediate finances for his treatment. At the insistence of the Respondents, the Petitioner agreed to purchase the suit property which was transferred through the impugned mutation against consideration of Rs. 400,000/- . It was specifically stated that deceased Shah Muhammad remained admitted in the Allied Hospital from 11.08.2005 to 24.08.2005. He personally appeared before the Revenue Officer on 09.08.2005 when all the particulars of sale including the factum of payment of sale consideration were incorporated in *Roznamcha* in presence of the witnesses by Halqa Patwari which was also verified by the Revenue Officer on that day. The Petitioner was delivered possession of the suit property but was later forcibly dispossessed by the Respondents. Thus, the oral sale mutation was complete in all respects on 09.08.2005 and the same was merely sanctioned on 23.08.2005 during visit of the Revenue Officer. Another exchange mutation between deceased Shah Muhammad and his brother was also attested on 08.08.2005. Hence, the suit is ostensibly frivolous which is liable to be dismissed.

4. The Trial Court framed the following issues arising out of the divergent pleadings of the parties:-

- (i) Whether the predecessor-in-interest of the plaintiff namely Shah Muhammad due to Cancer disease was incapable of knowing his interest and on the crucial day i.e. 23.8.2005 when impugned mutation No.739 was sanctioned, he was admitted in Allied Hospital Faisalabad so said mutation is liable to be cancelled being illegal and result of misrepresentation? OPP
- (ii) Whether predecessor-in-interest of the plaintiff never received any consideration to sanction the impugned mutation No.739 dated 23.08.2005? OPP
- (iii) Whether the order of Board of Revenue dated 19.05.2010 to uphold the impugned mutation is illegal and against facts, so liable to be cancelled? OPP
- (iv) Whether from 30-7-2005 to 24-8-2005, predecessor-in-interest of the plaintiffs namely Shah Muhammad was not admitted in the hospital but he was admitted on 11.8.2005? OPD
- (v) Whether for the treatment of deceased vendor, the deceased vendor Nazir Ahmed and plaintiff No.1 requested to sale the suit property and defendant after paying this consideration purchased the same, thus mutation was rightly sanctioned? OPD
- (vi) Relief.

5. The Trial Court recorded respective evidence of the parties and proceeded to dismiss the suit of the Respondents. However, Appellate Court reversed the decision of Trial Court and decreed the suit of the Respondents. Hence, this Civil Revision.

6. Learned counsel for the Petitioner contended that deceased Shah Muhammad exchanged his land with his brother, Nazeer Ahmad through exchange mutation which was attested on the basis of *Rapt Roznamcha* No. 578 dated 06.08.2005. After the said exchange, deceased Shah Muhammad sold the suit property to the Petitioner for Rs. 400,000/. The transaction was recorded in *Rapt Roznamcha* No. 583 dated 09.08.2005 (Ex. D-6). The receipt of consideration and delivery of possession were also recorded therein. The impugned mutation (Ex. P-3) was entered on which AC-II recorded statements of the parties in support of the transaction. Attestation of the mutation, however, was postponed for deposit of fee which was attested on 23.08.2005. The Respondents instituted the suit on 07.05.2007 against Nazeer Ahmad, their uncle, to challenge the exchange mutation but later,

widrew the same on the basis of compromise on 17.02.2010 which itself testifies that the Respondents had filed false suit against the Petitioner. The findings of the Board of Revenue are well-reasoned which support the case of the Petitioner. It was conclusively established that deceased Shah Muhammad was admitted in the hospital on 11.08.2005 and as such, the basic version of the Respondents was not proved. This fact also proves that the transaction of the impugned mutation was lawfully incorporated in *Rapt Roznamcha* on 09.08.2005 which is admissible *per se* in the light of law laid down in case titled, “Haq Nawaz v. Malik Gul Hussain through Legal Heirs and another” (1994 MLD 585) and as such, the attestation of mutation was immaterial in view of admission of the transaction recorded therein. Reliance was further placed on cases titled, “Haji Ilahi Bakhsh v. Noor Muhammad and others” (PLD 1985 Supreme Court 41); and “Muhammad Zaman Khan v. The Additional Chief Land Commissioner and another” (1986 SCMR 1121). He further contended that statement of the deceased vendor was recorded in presence of witnesses, Abdul Ghafoor, Pattidar who was son-in-law of deceased Shah Muhammad and Nazeer Ahmad, his real brother. It was admitted that vendor had received consideration and delivered the possession. Thus, the transaction was complete in all respects on 09.08.2005 and its subsequent attestation on 23.08.2005 becomes immaterial. The deceased had received part of the suit property from his brother, Nazeer Ahmad through the exchange mutation and thereafter, the suit property was transferred to the Petitioner. The witnesses of the impugned mutation could not be produced on account of their death but notwithstanding the same, the Petitioner had proved the transaction of sale through documentary evidence, particularly, Ex.D-6 and Ex.P-3 corroborated by the statements of his witnesses including the Patwari who testified the transaction, presence of the deceased vendor, receipt of consideration and delivery of possession.

7. Conversely, learned counsel for the Respondents submitted that once execution of the impugned mutation and receipt of consideration was denied by the Respondents, the onus shifted upon the Petitioner to prove the transaction but he did not produce witnesses of the transaction to independently prove the same. Recording of the transaction in *Roznamcha*

was fraudulently procured which is evident from interpolation in the impugned mutation. As such, *Roznamcha* carried no evidentiary value. Reliance was placed on cases titled, “Noor Muhammad v. Abdul Ghani” (**2002 CLC 88**); “Tooti Gul and 2 others v. Irfanuddin” (**1996 SCMR 1386**); “Muhammad Nawaz through L.Rs. v. Haji Muhammad Baran Khan through L.Rs. and others” (**2013 SCMR 1300**); “Saddaruddin (since deceased) through LRs. v. Sultan Khan (since deceased) through LRs and others” (**2021 SCMR 642**); and “Sheikh Akhtar Aziz v. Mst. Shabnam Begum and others” (**2019 SCMR 524**). Hence, the Judgment of Appellate Court is well-reasoned and the same does not warrant any interference by this Court.

8. Arguments heard. Record perused.

9. The entire case of the Petitioner is based upon the recorded sale transaction in *Roznamcha*. Therefore, before scrutinizing evidence, it would be beneficial to dilate upon the significance, contours and sanctity of a transaction recorded in *Roznamcha* including its mode of proof and evidentiary value. The provisions of Section 42 of the Punjab Land Revenue Act, 1967 (the “Act”) (as it existed on the date of the impugned mutation) deal with the process of making that part of periodic records which relates to land owners. Sub-Section (1) thereof provides that any person acquiring any right in an estate as a landowner, or a tenant by inheritance, purchase, mortgage, gift or otherwise for a fixed term exceeding one year, shall, within three months from the date of such acquisition, report his acquisition of right to the Patwari of the estate. The Patwari is required to record such report in *Roznamcha* in the prescribed manner, provide copies thereof to the person making the report and send a copy of the report to the office of the concerned Union Administration. Reports in *Roznamcha* are recorded in accordance with procedure stipulated in the Punjab Land Revenue Rules, 1968. The Patwari in terms of Section 42(3) of the Act is obligated to enter reports recorded in *Roznamcha* in the register of mutations. However, if no such report has been made to the Patwari, he is required to himself make an entry in *Roznamcha* and register of mutations respecting the acquisition of any such right which he has reason to believe to have taken place. It is also necessary for the Patwari to display the report recorded by him in the

prescribed manner as ordained by Section 42(4) of the Act. If the Patwari fails to perform his duty, the Revenue Officer upon the report of the concerned person is required to cause such report to be recorded in the register of mutations in terms of Section 42(5) of the Act. The Revenue Officer is obliged from time to time to inquire into veracity of all entries incorporated in the register of mutations including such reports which ought to have been recorded by the Patwari and in turn, is competent in each case to make such order as he thinks fit with respect to any entry in the periodical record of the rights acquired as per the command of Section 42(6) of the Act. Importantly, Section 42(7) postulates that except in cases of inheritance or where the acquisition of the right is by a registered deed or under an order or decree of a Court, the Revenue Officer shall make the order under Section 42(6) in the presence of the person whose right has been acquired, after such person has been identified by two respectable persons, preferably from Lombardars or members of the Union Committee, Town Committee or Union Council concerned whose signatures or thumb impressions shall be obtained by the Revenue Officer on the register of mutations. Further, such inquiry is required to be made in the common assembly in the estate to which the subject matter mutation relates as required by Section 42(8) of the Act. After compliance of the aforesaid procedure, an entry with respect to an order of the Revenue Officer made under Section 42(6) of the Act is incorporated in the periodical record as ordained by Section 42(9) of the Act through which right of the acquirer is recognized by the omission from such record of any entry in any record previously prepared, which by reason of the acquisition, has ceased to be correct. The Revenue Officer is required within three months to make an order under Section 42(6) of the Act after incorporation of an entry in *Roznamcha* or register of mutations, failing which he is obligated to report the reason of delay to the Collector in the prescribed manner as per the mandate of Section 42(10) of the Act. The Revenue Officer is also required to transmit the gist of an order made by him under Section 42(6) of the Act to the person whose right has been acquired and to the concerned Union Administration in the prescribed manner in terms of Section 42(11) of the Act.

10. It follows from the above analysis that Section 42 of the Act has prescribed a complete code for transfer of rights of land owners in order to ensure transparency and avoid chances of fraud and manipulation. The recording of report in *Roznamcha* regarding change in rights of a land owner is a first step to trigger the process of transfer of right. However, mutation is sanctioned by an order of the Revenue Officer made in presence of the person whose right is acquired once he has been identified by two respectable persons and an inquiry in this behalf is conducted in common assembly of the concerned estate. Thus, an entry recorded in *Roznamcha* is merely a ministerial act performed by the Patwari which is incorporated in the register of mutations culminating into an order of passing of mutation under Section 42(6) of the Act by the Revenue Officer.

11. Therefore, an act of recording of a transaction regarding change of rights by the Patwari at the behest of an acquirer in *Roznamcha* does not constitute an admission of the transaction on the part of seller as argued by learned counsel of the Petitioner. In Haq Nawaz case (supra), it was held that a recorded entry in *Roznamcha* is a public document and is admissible *per se*. However, in the said case, the vendor had confessed of selling the same property to both the contesting parties and while discovering the truth, the Court held that in terms of Rule 3.79 and 3.80 of the Land Record Manual, *Roznamcha* was maintained by Patwari in the discharge of his official duties and as such, by virtue of Article 85 of the Qanun-e-Shahadat Order, 1984 (the “QSO”), it was a public document which was *per se* admissible. However, importantly, the recorded report in *Roznamcha* therein was not alleged to have been fraudulently entered. If the transaction incorporated in *Roznamcha* is under challenge, the presumption attached thereto stands rebutted and it is required to be proved as any other private document. Similarly, in Haji Ilahi Bakhsh case (supra), the entry of transaction recorded in *Roznamcha* was not disputed and as such, its effect was considered, accordingly. Further, in Muhammad Zaman Khan case (supra), entries in *Roznamcha* with respect to gift in favour of minor son were relied upon by the Supreme Court as there were no allegations that the said entries were forged or manipulated.

12. It is now well settled that in case of a challenge to the transaction and the mutation, both the transaction and the mutation would be required to be independently proved. As the mutation itself is not an instrument of title, therefore, a mutation in the light of specific denial by the owner does not have probative value as the presumption stands rebutted. Similarly, entries recorded in *Roznamcha* if not proved to have been made at the instance of the vendor or to have been signed by him carry no evidentiary value. In Tooti Gul case (supra), the transaction was reported to the Patwari who entered the same in *Roznamcha* but the impugned mutation could not be sanctioned on account of death of the vendor. In this context, it was held that entry of transaction in *Roznamcha* by itself does not confer title under the law and the transactions embodied therein have to be established independently of the mutations.

13. Various contours of *Roznamcha* were explicitly explored by the Supreme Court in case titled, “Zulfiqar and others v. Shahdat Khan” (**PLD 2007 Supreme Court 582**), wherein, it was conclusively settled that although *Roznamcha* maintained by Patwari during the course of performance of his official duty is admissible yet if report contains particulars of a private transaction, it is required to be independently proved and reference to recorded transaction of *Roznamcha* on the mutation sheet did not constitute any evidence of the same. Even the report of *Roznamcha* is required to be proved by producing *Roznamcha* itself and examination of the maker of the report. After analyzing a number of precedents, the Court with reference to Haq Nawaz case (supra) observed that no presumption of truth was attached to a note contained in *Roznamcha* unless the maker was examined and that to hold that an entry in *Roznamcha* amounts to a sale will be laying down a hazardous proposition of law inasmuch as that fate of land holdings will be at the mercy of a Patwari. For further reference, also see cases titled, “Khalil Ahmad v. Abdul Jabbar Khan and others” (**2005 SCMR 911**); “Mst. Khanai and 4 others v. Ghulam Rasool and 9 others” (**2022 CLC 433**); and “Mst. Kaneeza Bibi and 4 others v. Sabir Hussain and 3 others” (**PLD 2023 Lahore 380**). Hence, it is explicitly clear that only

attestation of mutation by a Revenue Officer completes the process of transaction of transfer of right initiated by recording an entry in *Roznamcha*.

14. Reverting to the facts of the titled case in the light of evidence on record, it transpires that burden to prove the first three issues was placed on the shoulders of the Respondents. PW-1 and PW-2 entered into the witness box and reiterated contents of the plaint. It was candidly deposed that deceased Shah Muhammad was suffering from Cancer and was admitted in Allied Hospital on the date of attestation of the impugned mutation. He never appeared before any Revenue Officer for attestation of the impugned mutation. He did not receive any consideration against the alleged sale or delivered possession of the suit property. The witnesses also testified that he did not appear and record the sale transaction in *Roznamcha*. Alleging interpolation with respect to the alleged date of recording of transaction in *Roznamcha*, the transaction was dubbed as forged and fabricated. After denial of the transaction and impugned mutation in line with the contents of the plaint, the initial burden of proof was discharged which shifted to the Petitioner. Although the testimony of PW-3, the Record Keeper of Allied Hospital read with Ex. D-1, establishes that deceased Shah Muhammad was hospitalized due to Cancer from 11.08.2005 to 24.08.2005 as claimed by the Petitioner yet he was legally bound to prove the transaction and due attestation of the impugned mutation. Nazeer Ahmad, brother of deceased Shah Muhammad and one Abdul Ghafoor are the stated witnesses of the impugned mutation but the Petitioner did not produce any of them. There is nothing on record to suggest that they had died and in that case, the Petitioner did not comply with the procedure encapsulated in the QSO. A new case was set up by DW-3 & DW-4 during evidence by claiming that the sale transaction was agreed on 02.08.2005 when part consideration of Rs. 100,000/- was paid followed by remaining payment of Rs. 300,000/- on 09.08.2005. It is settled law that a party cannot tender evidence beyond its pleadings. Even otherwise, both the witnesses admitted that payment of consideration was without receipt. Admittedly, the impugned mutation was attested on 23.08.2005 when deceased Shah Muhammad was in Hospital. It was also conceded that at the time of attestation of impugned mutation on

23.08.2005, deceased Shah Muhammad and the Vendee did not personally appear before the Revenue Officer. DW-1, Abdul Haq Abid, Patwari admitted that *Roznamcha* and the impugned mutation were not entered by him. DW-2, Muhammad Riaz, Patwari testified the veracity of the fact of recording of transaction in *Roznamcha* on 09.08.2005 but in his cross-examination, he candidly admitted that he did not obtain signatures and thumb impressions of the seller and the witnesses and sale consideration did not pass before him although the same was acknowledged by the seller. He also acknowledged that he substituted 16.08.2005 to 09.08.2005 by cutting in the impugned mutation in order to bring it in conformity with the date of *Roznamcha* and he did not affix his signatures thereon. Importantly, he stated that recorded particulars of the transaction in *Roznamcha* were incorporated in the impugned mutation which was presented before the Revenue Officer and the same was attested on 23.08.2005. The Petitioner also did not produce any Revenue Officer. Hence, it was unequivocally established that the impugned mutation was unlawfully attested on 23.08.2005 when deceased Shah Muhammad was admitted in Hospital. Therefore, even if the Petitioner's contention that transaction of sale was validly recorded in *Roznamcha* on 09.08.2005 is taken on its face value yet it is of no help to the Petitioner to advance his cause. Moreover, the mere fact that an exchange mutation was attested on 08.08.2005 between deceased Shah Muhammad and his brother does not absolve the Petitioner to independently prove his case. This is especially so when the suit instituted by the Respondents against their uncle was withdrawn on the basis of compromise, the terms of which are not known. Therefore, it is vividly obvious that the Petitioner failed to discharge the burden of proof regarding the alleged transaction in terms of personal appearance of deceased Shah Muhammad and witnesses before the Revenue Officer; payment of sale consideration; delivery of possession; subsequent dispossession; recording of transaction in *Roznamcha*; and lawful attestation of the impugned mutation.

15. It, therefore, follows that Appellate Court rendered a well-reasoned and sound judgment after due appraisal of evidence which is unexceptional and requires no interference by this Court in exercise of

revisional jurisdiction of this Court. Accordingly, this Civil Revision being devoid of any merit is **dismissed**. No order as to costs.

(Abid Hussain Chattha)
Judge

Approved for reporting.

Judge

Abu Bakker