

Stereo. HCJDA 38
Judgment Sheet
IN THE LAHORE HIGH COURT, LAHORE.
JUDICIAL DEPARTMENT

Civil Revision No.525 of 2013

Mushtaq Ahmad etc.
Versus
Allah Ditta etc.

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JUDGMENT

Date of Hearing:	19.11.2024.
Petitioners by:-	Mr. Arshad Mehmood Chaudhry, Advocate.
Respondents No.1 to 5 by:-	Rai Nasir Iqbal, Advocate.
Applicant in C.M.No.4-C/2018 by:-	Mr. Muhammad Waqas, Advocate.

CH. MUHAMMAD IQBAL, J:- Through this civil revision, the petitioners have challenged the validity of judgment & decree dated 28.07.2011, passed by the learned Civil Judge, Samundri, who accepted the application under Section 12(2) CPC filed by respondents No.1 to 6 and also assailed the judgment & decree dated 28.11.2012 passed by the learned Addl. District Judge, Samundri, District Faisalabad who dismissed the appeal of the petitioners.

2. Brief facts of the case are that Capt. Nasir Ali Shah, Razia Khatoon and Anwar Ali Shah were allottee owners of total land measuring 303 Kanals 4 Marlas situated in Chak No.47GB Tehsil Samundari District Faisalabad fully described in the headnote as well as in

para 1 of the application under Section 12(2) CPC. The above said allottees/ owners allegedly executed a General Power of Attorney in favour of Maqbool Ahmad son of Sultan Bakhsh Gujjar. The said General Attorney entered into an agreement of sale of the above said land with his real brother Mushtaq Ahmad son of Sultan Bakhsh. Thereafter the said general attorney also executed an arbitration agreement on 18.07.1988 for settlement of controversy and appointed Ch. Maqbool Hussain, Advocate as an Arbitrator who passed an award dated 12.11.1988. After securing the award, petitioner No.1/ Mushtaq Ahmad filed an application under Sections 14 & 17 of the Arbitration Act, 1940, for making the award as rule of court. In the said proceedings, the arbitrator Ch. Maqbool Hussain, Advocate made a statement on 30.04.1989 and trial court while accepting the application made the award dated 12.11.1988 as rule of court vide order dated 30.04.1989. The above said decree was got implemented in the Revenue Record through mutation No.620, 621 and 622 dated 26.06.1990.

On 07.06.2007 respondents No.1 to 6 filed an application under Section 12 (2) CPC for setting aside the order dated 30.04.1989 on the ground that the impugned General Power of Attorney in favour of Maqbool Ahmad, agreement of sale of the land, agreement for arbitration,

passing of award by the arbitrator as well as making of award as rule of the court are result of fraud misrepresentation, fabrication as the original owner of the land had died much before the passing of ward as well as making of award rule of the court as such same are liable to be set aside. Petitioner contested the said application by filing written reply on legal and factual parlances. The trial court after framing the issues and recording the evidence of both the parties accepted the said application under Section 12(2) CPC vide judgment & decree dated 28.07.2011. Being dejected petitioner filed an appeal which was dismissed by the appellate court vide judgment & decree dated 28.11.2012. Hence, this civil revision.

3. Arguments heard. Record perused.

4. The core controversy revolves around issue No.4 which is as under:-

Whether the order and decree dated 30.04.1989 passed by Mushtaq Ahmad learned Civil judge, Samundri is null and void, based on fraud, ineffective and inoperative upon the rights of the applicants and liable to be cancelled? OPA

The suit property was owned by Captain Nasir Ali Shah and Anwar Ali Shah as well as Razia Khatoon. As per death certificate (Ex.A6) Razia Khatoon died on 30.08.1987 and Syed Nasir Ali Shah died on

16.01.1979 as evinces from his death certificate (Exh.A7), whereas Anwar Ali Shah died on 13.12.1985 as reflected from his death certificate (Exh.A8). As per statement of Waris Ali (AW-1) and Liaqat Ali (AW-2) oral as well as documentary evidence proves the arbitration agreement dated 18.07.1988 (Exh.A4) and the alleged arbitration award dated 12.11.1988 (Exh.A5) were fraudulently got prepared by Mushtaq Ahmad being collusive with his brother Ch. Maqbool Ahmad (Attorney) after the death of owners on the basis of general attorney allegedly issued by the said owners (Syed Nasir Ali Shah, Anwar Ali Shah and Syeda Razia Khatoon) but after the death of the aforementioned principals, the general power of attorney by operation of law became redundant and thereafter any transaction made by the said general power of attorney on the basis of said defunct instrument (General Power of Attorney) that would be considered as void, illegal and fraudulent in nature. Even otherwise, all the proceedings including the arbitration agreement and arbitration decision were initiated against the dead persons. It is settled law that a suit or proceeding initiated against a dead person are nullity in the eyes of law and such flaw in itself is not curable defect. Reliance is placed on the cases titled as

Hafiz Brothers (Pvt.) Ltd. & Others Vs Messrs Pakistan Industrial Credit and Investment Corporation Ltd. (2001 SCMR 1), Muhammad Yar (deceased) through LRs & Others Vs. Muhammad Amin (deceased) through LRs & Others (2013 SCMR 464), Farzand Ali & Another Vs Khuda Bakhsh & Others (PLD 2015 SC 187). Further reliance is placed on a case cited as Ch. Muhammad Tufail Khan alias Tufaul Muhammad through Legal Representatives Vs Zari Taraqiati Bank Limited through Branch Manager (PLD 2007 Lahore 180) (D.B), wherein learned Division Bench of this Court held as under:-

“In answer to the first part of the question, it may be held that according to the settled law, any suit or the legal proceedings, instituted against a dead person are nullity in law and in this behalf, we are fortified by the judgment of the Honourable Supreme Court, reported as Hafiz Brothers (Pvt.) Ltd. and others v. Messrs Pakistan Industrial Credit and Investment Corporation Ltd. 2001 SCMR 1, which declares as follows:-

“There is no cavil with the proposition that the institution of legal proceedings against dead person is of no avail to the concerned litigant. The learned High Court rightly came to the conclusion that the suit of PICIC against deceased-Mst. Inayat Begum was incompetent and, therefore, nullity in law.”

Reliance is placed on the case titled as Capt. Shahid Saleem Lone and others vs Ata-ur-Rahman and others (1985 CLC 2555).

5. Moreover, the petitioners filed an application under Sections 14 & 17 of the Arbitration Act, 1940

against a dead person and on behalf of said dead person, his real brother while showing himself as his attorney made conceding statement, which shows collusivity of both the brothers who committed fraud in grabbing the suit land by preparing a fake arbitration agreement and obtaining award from the arbitrator which culminated into making of award as rule of the Court. As the very general power of attorney has been declared as defunct and abated, thus any superstructure built on the basis of the said instrument shall stand automatically dismantled. Moreover, after the acceptance of the application under Section 12(2) C.P.C, the revival of application under Sections 14 & 17 of the Arbitration Act *ibid* hold no legal worth and value therefore the same is liable to be buried at its inception to save the precious time of Courts and public. Reliance is place on cases titled as *S.M.Shafi Ahmad Zaidi through Legal Heirs Vs. Malik Hassan Ali Khan (Moin) through Legal Heirs* (2002 SCMR 338) & *Pakistan Agricultural Storage and Services Corporation Ltd. Vs Mian Abdul Latif & Others* (PLD 2008 SC 371).

6. Learned counsel for the petitioners stated that application under Section 12(2) CPC of respondents No.1 to 6 was hopelessly time barred, suffice it to say the respondents No.1 to 6 have mentioned in their application under Section 12(2) C.P.C. that they

instituted the application promptly after having knowledge of the same. The petitioners failed to bring on record any evidence to prove that the respondents knew the pendency of the application under Section 14 & 17 of the Act *ibid*, passing of the Award as well as order dated 30.04.1989 for making Award as rule of the Court. As such the argument of learned counsel for the petitioners carries no weight and same is hereby repelled.

7. Furthermore, that all the proceedings including the arbitration agreement and arbitration decision were initiated against dead person but also on the basis of defunct general power of attorney which are result of blatant misrepresentation and fraud, whereas fraud vitiates the most solemn proceedings and any edifice so raised on the basis of such fraudulent transaction, that stand automatically dismantled and any ill-gotten gain achieved by fraudster are not liable to be validated under any norms of laws. Reliance in this regard is placed on cases cited as Nawab Syed Raunaq Ali etc. Vs. Chief Settlement Commissioner & Others (PLD 1973 SC 236), Lahore Development Authority Vs. Firdous Steel Mills (Pvt.) Limited (2010 SCMR 1097), Sindh Irrigation and Drainage Authority Vs. Government of Sindh and others (2022 SCMR 595) & Mst. Nazeeran & Others Vs Ali

Bux & Others (2024 SCMR 1271). As the Arbitration agreement, passing of Award by the Arbitrator as well as order of the trial Court for making the said Award as rule of Court have been declared as result of fraud and illegal, thus revival of application under Sections 14 & 17 of the Arbitration Act, 1940 would be useless as such the said application also stands dismissed. Thus, the lower judicial fora after taking into consideration the respective pleadings, oral and documentary evidence of the parties have rightly passed the impugned judgments & decrees which do not suffers from any legal or factual infirmity.

8. Learned counsel for the petitioners has neither pointed out any illegality or material irregularity, in the impugned judgments & decrees passed by the Courts below nor identified any jurisdictional defect. The concurrent findings of fact are against the petitioners which do not call for any interference by this Court in exercise of its revisional jurisdiction. Reliance is placed on the case titled as Mst. Zaitoon Begum Vs. Nazar Hussain & Another (2014 SCMR 1469).

9. In view of above, this civil revision is dismissed being devoid of any merits with cost throughout.

10. As the petitioners have filed frivolous litigation without any just reason and such practice shall be

discouraged and deprecated even by imposition of substantial cost upon the fraudulent litigants, as such while relying on recent pronouncements of the Hon'ble Supreme Court of Pakistan titled as Capital Development Authority, CDA through Chairman, CDA, Islamabad Vs. Ahmed Murtaza and another (2023 SCMR 61), Province of Punjab through the Deputy Commissioner, Collector District Gujranwala and others Vs. Zulfiqar Ali and another (2024 SCMR 22) and Javed Hameed and others Vs. Aman Ullah and others (2024 SCMR 89) the petitioners are burdened with special cost of rupees Rs.10,00,000/- to be recovered as arrears of land revenue from the petitioners and deposited with Akhuwat Foundation and receipt thereof be placed on record. Let a copy of this judgment be sent to the Akhuwat Foundation for information.

(CH. MUHAMMAD IQBAL)
JUDGE

Approved for reporting.

JUDGE