

Form No: HCJD /A38
JUDGMENT SHEET

IN THE LAHORE HIGH COURT, LAHORE

JUDICIAL DEPARTMENT

JUDGMENT

Civil Revision No. 2823 of 2019

Mst. Najma Naz and another
Versus
Mst. Farzana Kanwal and three others

Date of Hearing: **22.10.2024**

Petitioners by: Mr. Kazim Ali Malik, Advocate.

Respondents by: Mr. A. D. Dahar, Advocate.

MASUD ABID NAQVI, J. Brief facts necessary for the adjudication of this *lis* are that the plaintiffs/petitioners are daughters of late Mohammad Nawaz who divorced the mother of plaintiffs/petitioners and contracted second marriage with defendant No.1/respondent No.1 namely Farzana Kanwal and the defendants No.2 to 4/respondents No. 2 to 4 are son & daughters of late Mohammad Nawaz and Farzana Kanwal. Being daughters of late Mohammad Nawaz, the plaintiffs/petitioners filed suit for declaration with the averments that suit land was originally owned by late Mohammad Nawaz but defendant No.1/respondent No.1/step mother of plaintiffs fraudulently transferred the suit land with the help of revenue authorities to herself & to her son namely Hassan Nawaz/defendant No.2/respondent No.2 through Gift Mutations Nos. 12399 & 12410 dated 31.05.2010, which was entered/sanctioned during serious illness of late Mohammad Nawaz who ultimately died on 19.12.2010, thus deprived not

only the plaintiffs/petitioners but also her real daughters/Defendants Nos.3 & 4/respondents Nos.3 & 4 from valuable legal rights, guaranteed under the sharia law. After the death, the plaintiffs/petitioners inquired about their shares from their father's estate and this fraudulent act of defendant No.1/respondent No.1 was revealed, hence the instant suit. On her behalf and on behalf of defendants No.2 to 4/minors, the defendant No.1 filed contested written statement and raised legal as well as factual objections. Out of divergent pleadings of the parties, issues were framed and learned trial court decreed the suit vide judgment and decree dated 30.01.2016. Feeling aggrieved, the defendants filed an appeal and learned Additional District Judge vide judgment & decree dated 30.10.2018 accepted the appeal. Being dissatisfied, the petitioners/plaintiffs have filed the instant civil revision and challenged the validity of the impugned judgment and decree passed by the learned appellate court.

2. Learned Counsel for the petitioners argued against the findings of learned appellate court by discussing in detail the pleadings, oral as well as documentary evidence produced by the contesting parties and by relying on plethora of judgments reported by the Honourable superior courts while learned counsel for the respondents fully supported the findings of learned appellate court with lengthy arguments and relied on the law settled by Honourable superior courts through reported judgments on last date of hearing. During the arguments, attention of both

the learned counsels for the parties was drawn by this court about proclamation for sale of late Mohammad Nawaz's owned land/suit land by public auction, issued by learned executing court in execution of decree, passed in plaintiffs/petitioners' suit for maintenance & all other relevant documents attached with petition and its legal effects on the disputed mutations. Today, both the learned counsels for the parties have assisted this Court with help of documents/orders/proceedings of learned executing court. I have heard the arguments of learned counsel for the parties and minutely gone through the record as well as the judgments & decrees of learned courts below.

3. The plaintiffs/petitioners filed a suit for maintenance against their father namely late Mohammad Nawaz which was decreed by the learned Family Court with the direction to late Mohammad Nawaz to pay maintenance amount till the marriages of plaintiffs/petitioners which was challenged by late Mohammad Nawaz through appeal and same was dismissed by the learned appellate court. The challenged decree of learned Family Court was also maintained/upheld by the Honourable superior courts. In order to enforce/implement the decree, the plaintiffs/petitioners filed an execution petition on **12.11.2004** but late Mohammad Nawaz/judgment debtor/a police officer opted not to appear before learned executing court despite issuance of notices on different dates of hearings and ultimately, the learned executing court not only issued bailable warrants but also attached the land owned by judgment debtor vide order dated **20.01.2007**. During

the pendency of execution petition, learned executing court repeatedly issued orders of judgment debtor's arrest through bailable warrants & attachment of his salary. Thereafter proclamation of sale of judgment debtor's owned land/suit land was drawn up by the learned executing court for auctioning the land on 26.05.2010 with specified place of public auction and specified time and the judgment debtor intentionally established all possible obstacles/hurdles to disrupt the proceedings of auctioneer appointed by the learned executing court by hurling life threats through different persons to court's appointed auctioneer & potential buyers and by managing to start hooliganism at the specified place of public auction as per the report submitted in court by the court auctioneer and was successful in putting up obstructions in smooth auction proceedings. Although both the learned counsels for the parties fully agree that suit land was attached by the learned executing court when the disputed mutations were entered/sanctioned but the learned counsel for the respondents vehemently argues that the judgment debtor occasionally paid the partial maintenance amount(s) to the plaintiffs/petitioners and had no intention to prevent the execution of decree, as is evident from the orders of learned executing court and non-compliance of the requirements of Section 64 of CPC vitiates the order of attachment of judgment debtor's land as well as all the proceedings thereafter of learned executing court but has not specifically pointed out the irregularities/illegality in court's proceedings.

Attachment qua the disputed land was made on 20.01.2007 by the learned executing court and according to defendants Nos.1 & 2/respondents Nos.1& 2's own stance/plea taken in written statement, the disputed land was transferred to them through Gift Mutations Nos. 12399 & 12410 on 31.05.2010 and attachment order was never withdrawn by the learned executing court till the execution petition was finally decided on 14.09.2012. Hence, disputed gift transactions subsequent to passing of order of attachment is ipso facto void and is an attempt by the judgment debtor to deprive his minor daughters not only from decreed maintenance amount(s) by frustrating the process of law but also from their right to inherit.

There is settled law that in view of Section 17 of the West Pakistan Family Court Act, 1964, the provisions of Qanun-e-Shahadat Order, 1984 and Code of Civil Procedure, 1908 shall not apply to the proceedings before a Family Court except Sections 10 & 11 CPC and Section 13(3) of the West Pakistan Family Court Act, 1964 empowers the Family Court to execute its own decree but for argument sake, even Section 64 of Code of Civil Procedure prohibits a private transfer or delivery of the attached property by the judgment-debtor after attachment has been made and all such transactions are void. In an almost identical matter, the Hon'ble Supreme Court of Pakistan in a case reported as **Amjad Iqbal Vs Mst. Nida Sohail and others** (2015 SC 128) declared similar transaction as sham transaction to defeat purpose of decree and also held as under:-

“.....Both Hiba as well as the purported sale in favour of the petitioner were nothing but sham transactions and its purpose was to ensure that the decree is not satisfied. The decree was nothing but for the maintenance of respondent No.2’s own minor daughter. Unfortunately, the respondent No.2 in sheer disregard of his parental obligation has indulged in making all these unlawful transactions. What intent the respondent No. 2 had in his mind but to starve his own minor daughter of her basic needs for survival. The Court while exercising parental jurisdiction cannot just sit and be a spectator in this unholy and unlawful conduct of the respondent No.2.....”

4. Even otherwise, there is no cavil to the proposition that disputed gifts will deprive all the daughters from inheritance and the courts are not divested of the powers to scrutinize the reasons and justification of such like gifts so that no injustice could be done. However, the learned appellate court while accepting the appeal failed to properly appreciate this legal proposition as well as the pleadings and oral/documentary evidence of contesting parties and fell in error while dismissing the suit, hence, the impugned judgment and decree of the learned appellate court dated 30.10.2018 is not sustainable in the eyes of law and the same is hereby set-aside by upholding the judgment and decree of the learned trial court dated 30.01.2016 and the suit of plaintiffs/petitioners is decreed. Resultantly, this civil revision is accepted.

(MASUD ABID NAQVI)
JUDGE

Approved for reporting.

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