

FORM No. HCJD/C-121
ORDER SHEET
IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

C.R. No.13867of 2024

Muhammad Umar Farooq Versus Irshaad Bibi

Sr.No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties of counsel, where necessary
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02.9.2024 Mian Tariq Hussain, Advocate for petitioner.

This revision petition is directed against judgment and decree dated 03.10.2023 and 31.1.2024 by which the suit of the respondent was decreed and petitioner's appeal thereagainst was dismissed.

2. Respondent instituted a suit for declaration and cancellation of sale mutation No.672 dated 07.11.2018 with regard to a residential plot in ihata No.74/1 at chak No.334 GB, Pir Mahal District Toba Tek Singh. It was alleged in the plaint that the respondent plaintiff was an octogenarian widow who did not have any male heir and that her maternal grandson, the present petitioner Muhammad Umar Farooq, in collaboration with his father Majid Ali had, by fraud and misrepresentation, got the mutation of sale

entered qua her property in his favour showing alleged consideration of Rs.3,50,000/- which sale was neither ever entered into by the respondent/plaintiff nor was any such payment made or received whatsoever and that in the circumstances the mutation was liable to be cancelled being a product of fraud and misrepresentation. The petitioner filed a contesting written statement in which the contents of the plaint were denied and it was asserted that the respondent had in fact alienated the property to him by way of sale for Rs.3,50,000/- which amount was paid and received as consideration and that the petitioner as a result had become absolute owner and that the suit was brought without cause and with mala fide.

Out of divergent pleadings the following issues were formulated:

- “1. Whether the plaintiff is owner in possession over the suit property and impugned mutation No.672 dated 07.11.2018 is illegal, against law and facts, fraud, contusive and in-effective upon the rights of the plaintiff and are liable to be concealed? OPP
2. If above issue is answered in affirmative, then whether the plaintiff is entitled for decree of declaration, cancellation of mutation and permanent injunction as prayed for? OPP
3. Whether plaintiff has no cause of action and locus standi to file instant suit? OPD

4. Whether the suit is not maintainable in its present form? OPD
5. Whether the plaintiff is estopped by her words and conduct to file this suit? OPD
6. Whether the suit of the plaintiff has not come to the court with clean hand? OPD
7. Whether the suit is false and frivolous, hence the defendant is entitled to special costs u/s 35-A CPC? OPD
8. Relief."

To substantiate her stance the respondent produced four witnesses including herself in the witness-box as PW-1 and one Shahida Parveen adduced evidence as PW-2 while Maqbool Hussain appeared as PW-3 and Muhammad Basheer as PW-4.

The petitioner Muhammad Umar Farooq himself appeared as DW-1 and produced one Israr Hussain as DW-2, Muhammad Shahid as DW-3 and one Khaliq Dar (previous Naib Tehsildar, Pir Mahal) as DW-4. He also produced attested copy of pert-sarkar mutation No.672 as Exh.D-2 and attested copy of mutation No.672 pert-patwar as Exh.D-3. After considering the evidence pro and contra the learned Civil Judge, Pir Mahal vide judgment dated 03.10.2023 decreed the suit of the respondent. Petitioner preferred an appeal thereagainst which too was dismissed by

the learned Addl. District Judge, Pir Mahal vide judgment dated 31.1.2024. Both these decisions of the courts below are now challenged in revisional jurisdiction.

3. Scrutiny of the appended documents and particularly the plaint shows that existence of the sale transaction is denied in absolute terms and it is specifically asserted that she neither entered into any such transaction nor received any consideration for it which were adequate averments to fulfill the legal requirement qua specificity with regard to allegation of fraud in the peculiar circumstances that the widow was illiterate pardanasheen who was above eighty years of age. The setting in which the alleged transaction is placed is germane to consideration the case. The appended documents show that the respondent is over 80 years of age. She did not have any male progeny. Petitioner Muhammad Umar Farooq is the son of her only daughter who used to reside with her. His father divorced his mother who had subsequently apparently remarried and was settled at Layyah. The father of the

petitioner defendant is also co-owner of ihata No.74/1 which comprises total of 11-M and 7-S and also appears to live in the neighborhood of the house of the respondent lady and that she was dependent emotionally and practically on the able-bodied petitioner grandson who was living with her and in such context the transaction alleged to be made in favour of the petitioner by the respondent widow statedly occurred.

4. The witnesses produced by the respondent plaintiff duly elaborated the circumstances qua such residence of the petitioner with the respondent widow as well as the dependence of the old illiterate lady on her grandson, the petitioner beneficiary of the alleged transaction. The nearness of the relationship of the petitioner with the respondent elderly widow as her grandson, the factum of him residing in the same house with her to the exclusion of anybody else coupled with absence of any independent advice being established on record placed heavy responsibility upon the shoulders of the

petitioner to establish the existence of the sale transaction by independent unimpeachable, creditworthy and coherent evidence.

5. The witnesses produced by the petitioner failed to provide any probative tenability qua assertion of the alleged oral sale nor could any evidence be brought on record to prove that any payment as alleged was ever made to her. So much so that at the time of the transaction which was alleged to have been made in 2018, the petitioner was 20 years of age and was not employed anywhere nor did he have any source of income to come up with such amount of payment for purchasing the property as asserted. As such he miserably failed on this score to prove that any consideration was ever paid. Furthermore the cloud of undue influence and colorability of the transaction could also not be effectively rebutted by establishing any plausible factual context of the alleged transaction such as proof of any negotiations with regard to sale, how the price was agreed and how the payment

was to be made or was made to the respondent widow and in whose presence.

In Ghulam Farid and another v. Sher Rehman through LRs (2016 SCMR 862)

it was observed to the effect that the inflexible, hard and fast rule is that when any transaction is made by any one where vital interest of a pardanasheen lady is involved then the following conditions are to be invariably and essentially fulfilled:

"14...

(i). to establish through evidence that the transaction was free from any influence, misrepresentation or fraud;

(ii). that, the amount of consideration equal to the value of the property was indeed paid to the ladies;

(iii). in the case of "**Parda Nasheen**" rustic village ladies, at the time of transaction such ladies were fully made to understand the nature of the transaction and the consequences, emanating therefrom and;

(iv). that at the time of transaction, the ladies were having access to independent advice of their nearer and dearer, who have no hostile interest to them."

In the case of Pervaiz Akhtar v. Mst. Farida Bibi and others (PLD 2023 SC 628) it was observed as under:

"8. In the case of a transaction with *Pardanashin* woman, a principle of caution is attached to the transaction to protect her rights. It is necessary that a *Pardanashin* woman is fully cognizant and aware of the transaction and that she has independent advice from a reliable source to understand the nature of the transaction; there must be witnesses to the transaction and to the fact that a *Pardanashin* woman has received the sale consideration. Most importantly, a *Pardanashin* woman must know to whom she is selling her property and the

transaction must be explained to her in the language she fully understands as is held in the cases reported as Ghulam Farid and another v. Sher Rehman through LRs (2016 SCMR 862) and Ghulam Muhammad v. Zohran Bibi and others (2021 SCMR 19). In a case where a *Pardanashin* woman has trusted a relative and executed a general power of attorney for her to sell the property, it is still incumbent upon the power of attorney holder to fulfil the aforementioned conditions of making the *Pardanashin* woman aware of the sale that is about to be executed under the power of attorney. This is because the underlying principle here is to ensure that at all times where a woman executes a transaction with reference to her property, it is done freely and deliberately ... In Muhammad Naeem Khan and another v. Muqadas Khan (deceased) through L.Rs. and another (PLD 2022 SC 99) that the objective of this court has been to protect *Pardanashin* women from the risk of an unfair deal and to ensure that any transaction related to the sale of their property is effected by free will and with consent. We have also held that wherever there is a transaction with *Pardanashin* women, it must be established that they were given independent, impartial and objective advice understanding all implications and ramifications of the transaction to ensure that they give their consent to the transaction, because valuable rights are involved and the *Pardanashin* women should be able to make an informed decision with reference to their property with the help of proper advice and consultation. This Court has also held in the case reported as Mian Allah Ditta through L.Rs v. Mst. Sakina Bibi and others (2013 SCMR 868) that the burden of proof lies on the person exercising the power of attorney to prove that the transaction was carried out in good faith and with full knowledge and consent and grantor. Hence, the mere fact that *Pardanashin* women execute a general power of attorney will not absolve the attorney nor the buyer of the obligation to ensure that the *Pardanashin* women have full knowledge of the sale and have given their consent to the sale...

9. The concept of protecting the rights of *Pardanashin* women finds its root in the cultural practice of women staying within the protection of their home, having limited access to affairs outside their home. Consequently, such women have limited interaction with society and do not participate in matters outside their home. This suggests that their knowledge and information about matters outside their home is limited and insufficient to take informed decisions. Accordingly, the courts have protected the rights of such women in order to protect them from betrayal, exploitation and fraud especially where valuable property rights are concerned. The concept of an illiterate woman is similar to that of

a *Pardanashin* woman as both lack education and basic knowledge of worldly affairs and both interact essentially at a limited level with society. This limited participation hampers her ability to take informed decisions. Such women are perceived as being unskilled, uneducated and incompetent so far as the business matters are concerned. They lack experience and are easily susceptible to deceit even by their relatives. The courts endeavour to protect *Pardanashin* or illiterate women due to their social standing and vulnerability not only from society at large but also from relatives. Women are often the targets of fraud and deceit when it comes to property matters, which is why the courts have invoked the principle of caution in protecting the rights of such women so that they are not wrongfully deprived of their property. The limitations of *Pardanashin* or illiterate women have been duly considered by the courts against which the courts have held that such women must be given independent advice from a reliable and trustworthy source so as to ensure that they fully understand the transaction and the consequences of that transaction. In Muhammad Naeem Khan's case (supra) we have categorically stated that whenever the authenticity or genuineness of a transaction entered into by a *Pardanashin* woman is disputed or claimed to have been secured on the basis of fraud or misrepresentation, the burden will lie on the beneficiary of that transaction to prove good faith and more importantly, the Court will consider whether the transaction was entered into with free will or under duress. It goes without saying that the effort to protect rights of *Pardanashin* and illiterate women is necessary so as to give such women the ability to make independent decisions with reference to their property or belongings so as to ensure that they are not deprived of the ability to take a good decision based on their social standing in society. This is a step towards ensuring that there is an element of financial and economical independence given to women, who have been deprived of education and have limited interaction within the home and the family. While this may be the customary or traditional role of women as seen by society in general, the endeavour of the Court has always been to protect the vulnerability and susceptibility of women".

6. Learned counsel for the petitioner on being confronted with this has relied on the objection that where connivance of revenue officials in attestation of any mutation is

asserted, their impleadment as party is necessary, and not having done so shall be fatal to the case of the respondent. In this regard reliance is placed on Sikandar Hayat and another v. Sughran Bibi and 6 others (2020 SCMR 214) and Sakhi Jan and others v. Shah Nawaz and another (2020 SCMR 832). It is noteworthy that the sale transaction alleged to have been made in the instant case in favour of the petitioner is by a pardanasheen lady who was not only illiterate and dependent upon him emotionally and practically as her maternal grandson living with her but was also an octogenarian which made it pivotal for the transaction to be independently established by the petitioner in which he miserably failed after shifting of onus as its beneficiary. In Ghulam Muhammad v. Zohran Bibi and others (2021 SCMR 19) it was held to the effect that impleading revenue officials in every case was not a rule of the thumb and that this depends upon the peculiar facts and circumstances of each case and that in the event that the concerned court comes to the conclusion that revenue functionaries needed

to be impleaded to enable it to arrive at a just conclusion an appropriate order may be passed and that where sufficient evidence was available to establish fraud and dislodge mutation which had clearly been maneuvered on the basis of fraud, impersonation and misrepresentation involving an illiterate an elderly and illiterate pardanasheen lady who had no independent advice the onus had to be discharged by the beneficiaries for the legal survival of such transaction. In the instant case it is evident that the oral sale transaction which is basis of the mutation was non-existent as no evidence to establish the same beyond the shadow of doubt could be adduced by the petitioner. The precedents cited by the learned counsel for the petitioner in the circumstances of the case, evidence on record and peculiarity of circumstances are distinguishable. Both courts below duly scrutinized the evidence carefully and concluded that the petitioner had failed in establishing the sale transaction to put up a valid defence against the respondent to her plea of having been victim of fraud and misrepresentation. No instance of misreading

or non-reading of evidence or any illegality in the process of arriving at their judgments by the courts below could be shown to exist and on careful consideration the conclusions drawn are found to be fair, reasonable and legally tenable and no case for interference in concurrently recorded findings of the courts below could be made out in revisional jurisdiction. Resultantly, the revision petition is meritless which is, accordingly, **dismissed**.

**(RASAAL HASAN SYED)
JUDGE**

APPROVED FOR REPORTING

JUDGE

Imran*