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JUDGMENT SHEET
LAHORE HIGH COURT
MULTAN BENCH MULTAN
JUDICIAL DEPARTMENT

Civil Revision No.346/2018

Muhammad Ramzan etc., **Versus** Haleema Bibi etc.

JUDGMENT

Dates of Hearings:	30.01.2024; 06.02.2024; 22.02.2024; and 26.02.2024
Petitioners by:	Rao Muhammad Adnan Jamshaid Khan, Advocate. Rao Jamshaid Ali, Advocate. Maher Adan Ahmad Malik, Advocate.
Respondents No.1 to 11 by:	M/s Muhammad Arif Mehboob Sheikh and Sheikh Muhammad Zulfiqar, Advocates.
Proforma respondents No.12 (i) to 13(xiii) by:	Nemo.

Anwaar Hussain, J. The petitioners were the plaintiffs before the Trial Court. Suit for declaration was filed in respect of the disputed property, detail whereof is given in the headnote of the plaint, against the respondents, on the basis of registered sale deed dated 28.12.1968 with the averments that one Ghulam Muhammad *alias* Gamoon purchased the suit property. Ghulam Muhammad *alias* Gamoon had two wives, namely, Mst. Zainab Bibi and Mst. Rehmat Bibi. Mst. Zainab Bibi was mother of the petitioners, whereas Mst. Rehmat Mai was mother of one Muhammad Nawaz who was predecessor-in-interest of the respondents No.1 to 11 (“**the respondents**”) as also predecessor of *proforma* respondents. *Per* plaint of the suit, Ghulam Muhammad *alias* Gamoon died on 23.09.1991

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and the step brother of the petitioners, namely, Muhammad Nawaz (deceased), predecessor-in-interest of the respondents No.1 to 11, who was already in control of the suit property, kept on lingering the matter of inheritance, on one pretext or the other, and finally died whereafter the respondents in collusion with the Revenue Staff got registered sale deed bearing Document No.307 (erroneously referred as 1471 in the plaint) dated 29.03.2003, hence, the suit was instituted seeking declaration that the suit property belonged to late Ghulam Muhammad *alias* Gamoon and that the respondents as well as the petitioners are entitled to the same as legal heirs of the said deceased. Prayer was also made for cancellation of the sale deed dated 29.03.2003.

2. Contesting written statement was filed by the respondents with the averments that it was deceased Muhammad Nawaz who purchased the suit property from one Muhammad Jamal son of Sohanra, through a written agreement to sell dated 02.11.1967, which fact has been duly incorporated in the record of Excise and Taxation department and after the death of Muhammad Nawaz, respondent No.1 (widow) along with respondents No. 2 to 5 (daughters) have alienated their share in the suit property to respondents No.6 to 11 (sons), therefore, the claim of the petitioners that the suit property belonged to Ghulam Muhammad *alias* Gamoon is false. Issues were framed and after recording evidence of the parties *pro and contra*, the suit of the petitioners was dismissed by the Trial Court, *vide* judgment and decree dated 28.05.2016, which was upheld by the Additional District Judge, Layyah, *vide* judgment and decree dated 29.01.2018.

3. Learned counsel for the petitioners submit that the findings of the Courts below are based on misapplication of law as also result of misreading and non-reading of the record and are liable to be set-aside. Adds that the sale deed in favour of Ghulam Muhammad *alias* Gamoon dated 28.12.1968 is a registered document and the same has been ignored by the Courts below and an unregistered document dated 02.11.1967

relating to the sale of the suit property, in favour of the deceased Muhammad Nawaz, who was step elder brother of the petitioners has been preferred, which is not sustainable in the eyes of law. Adds that in the presence of a registered document, an unregistered document, even if earlier has no value and the same does not create any title and therefore, the Courts below were not justified to dismiss the suit filed by the petitioners.

4. Conversely, learned counsel for the respondents support the impugned findings with the averments that the value of the property was below Rs.100/- and hence, in terms of Section 54 of the Transfer of Property Act, 1882 (“**the Act 1882**”) read with Section 17 of the Registration Act, 1908 (“**the Act 1908**”), the same was not required to be compulsorily registered and therefore, the prior instrument is to be preferred over the subsequent document. Add that the petitioners averred incorrect facts in their plaint inasmuch as if Muhammad Nawaz died prior to Ghulam Muhammad *alias* Gamoon, its illogical on part of the petitioners to assert that they were claiming their share of inheritance in the property from former after the demise of Ghulam Muhammad *alias* Gamoon. Further avers that the entire case of the petitioners was based on hearsay and therefore, the Courts below correctly dismissed the suit of the petitioners.

5. Arguments heard. Record perused.

6. The following questions of law require opinion of this Court:

- i. Whether the Courts below were justified in giving preference to prior unregistered document over a subsequent registered document pertaining to the same immovable property?
- ii. Whether the incorrect assertion of facts in the plaint and disconnect of the pleadings and evidence of the plaintiff can be made basis of the findings even if the documentary evidence available on record depicts otherwise?

7. The core issue involves the preference to be attached between the prior unregistered and a later registered document regarding the same property. Admittedly, the suit property was earlier owned by Jamal Sohanra who statedly executed the prior agreement to sell in favour of Muhammad Nawaz. Learned counsel for the respondents argued that as the value of suit property was less than Rs. 100/, therefore, the unregistered agreement to sell was not required to be registered. The argument is based on the jaundiced and lopsided view and consideration of the law in this regard, which overlooks Section 50 of the Act 1908. Sub-section (1) of Section 50 of the Act 1908 lays down general principle that a registered document, even if falling under Section 18, regarding the immovable property shall take effect as regards the property therein against every unregistered document relating to the same property irrespective of the nature of the unregistered document. Section 50 of the Act 1908 reads as under:

“50. Certain registered documents relating to land to take effect against unregistered documents.—(1)
 Every document of the kinds mentioned in clauses (a), (b), (c) and (d) of Section 17, sub-section (1), [and every document registrable under Section 18, in so far as such document effects immovable property or acknowledges the receipt or payment of any consideration in respect of any transaction relating to immovable property], shall, if duly registered, take effect as regards the property comprised therein against every unregistered document relating to the same property, and not being a decree or order, whether such unregistered document be of the same nature as the registered document or not:

Provided that the person in possession of the property under an unregistered document prior in date, would be entitled to the rights under Section 53-A of the Transfer of Property Act, 1882 if the conditions of that Section are fulfilled:

....”

(*Emphasis supplied*)

First proviso to Section 50(1) creates an exception by providing that where the person is in possession of the property under an unregistered document, prior in time, he would be entitled to the protection under Section 53-A of the Act 1882 provided further if the conditions of Section 53-A are fulfilled, which for ease of reference is reproduced hereunder:

“53-A. Part performance. – Where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,

and the transferee, has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,

and the transferee has, performed or is willing to perform his part of the contract,

then, notwithstanding that the contract, though required to be registered, has not been registered, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.”

(*Emphasis supplied*)

Perusal of Section 53-A of the Act 1882, particularly the proviso thereof, provides that nothing in the said Section shall affect rights of the *bona fide* purchaser for consideration who has no notice of the prior written contract or the part performance thereof.

8. Having above legal position in respect of the registered document and unregistered document in sight, it has been noted that admittedly, Ghulam Muhammad *alias* Gamoon in whose favour the registered sale deed was executed was the real father of Muhammad Nawaz (as also predecessor-in-interest of the petitioners) in whose favour the unregistered sale deed was executed. As a natural human conduct, no father would enter into any contract and/or execute a registered document in the nature of the sale deed for immovable property if he had any notice of a prior contract or part performance of the contract for the same property executed by the same vendor in favour of his own son (deceased Muhammad Nawaz in the present case), who was admittedly residing with the deceased father and had control of the suit property as well. Suffice to observe that it has never been the case of the respondents that deceased Muhammad Nawaz and Ghulam Muhammad *alias* Gamoon-the said father and son were having such acrimonious relation to the extent of both purchasing the same property from the same vendor, to their mutual detriment and without notice of the father that the suit property had already been purchased by his son through unregistered document and the possession thereof had been transferred. Thus, either the unregistered sale deed did not exist at the time when the Ghulam Muhammad *alias* Gamoon-father of deceased Muhammad Nawaz and the petitioners purchased the property or Ghulam Muhammad *alias* Gamoon had no notice of the agreement to sell between the Muhammad Nawaz and the vendor or part performance thereof. The earlier situation casts no aspersion on the validity and genuineness of the registered sale deed in favour of deceased Ghulam Muhammad *alias* Gamoon; in case of later, the respondents cannot claim the protection of Section 53-A and by extension that of proviso to Section 50 of the Act 1908. Thus, the contention of learned counsel for the respondents is devoid of any persuasion that the prior written agreement to sell is to be preferred over the subsequent registered document. Even otherwise, the burden of proof

as to the knowledge of unregistered document by the father of the petitioners was on the respondents' side which they failed to discharge. Therefore, in peculiar facts and circumstances of the case, this Court is of the view that an unregistered document even if prior in time cannot be given preference to registered document more particularly when the latter document is holding the field and no challenge has been laid to the same by the respondents.

9. Adverting to the second question formulated hereinabove, the respondent side made full-throttle arguments that pleading of the petitioners and the evidence is replete with self-defeating contradictions as the petitioners/plaintiffs took contradictory stance in the pleadings as also in oral evidence and the Courts below have rightly relied upon the incorrect facts in pleadings as also the statement of petitioner No.1 to draw the conclusion that if Muhammad Nawaz (predecessor-in-interest of the respondents) died prior to the death of Ghulam Muhammad *alias* Gamoon, how the petitioners were asking Muhammad Nawaz to effect the inheritance in their favour in accordance with the registered document. It is also relevant to note that in para 3 of the plaint, the petitioners asserted as under:

”3۔ جائیداد و کانات پر قابض تھا اور مورث اعلیٰ کا کرتا دھرتا تھا۔ مورث اعلیٰ کے فوت ہونے کے بعد مام عیان نے محمد نواز مذکور کو کئی مرتبہ کہا اور طلب و تقاضا کیا کہ وہ انتقال و راثت قائم کرادے لیکن وہ لیست و لعل سے کام لیتا رہا بالآخر وہ بھی فوت ہو گیا۔“

While appearing as PW.1, petitioner No.1 deposed as under:

”میرے والد کے بعد دکان کی دیکھ بھال محمد نواز کرتا تھا میرے والد 1991 میں فوت ہوئے تھے میرا بھائی نواز میرے والد سے دو ماہ قبل فوت ہوا تھا، تم اپنے والد کی وفات کے بعد محمد نواز سے وراثت کا مطالبہ کرتے رہے۔“

Moreover, when cross-examined, petitioner No.1 (PW.1) stated as under:

”مجھے بزرگوں کے ذریعے علم ہوا کہ دکان متدعاً یہ میرے والد نے محمد جمال ولد سوہزار سے خرید کی تھی۔“

Operative part of the impugned judgment of the Trial Court reads as under:

“10....To support their version they produced Muhammad Ramzan S/o Ghulam Muhammad as PW-1, by supporting his own version he stated that his father purchased shop situated at Chobara Road consisting of 3-M 2-S. He further stated that his brother Muhammad Nawaz died before two months of his father death. He stated that he demanded his share of inheritance from Muhammad Nawaz after their father death who advised him to be patient. However, this statement was self contradictory...”

Evidentiary resume as also the plaint of the suit of the petitioners clearly depict that even though registered document was in favour of predecessor-in-interest of the petitioners as also deceased Muhammad Nawaz, the petitioners' side rendered their case porous and pervious by making incorrect averments in the plaint. Though there is no satisfactory answer available with the petitioners in respect of the above contradictory stance, learned counsel for the petitioners assert that the same is result of slackness and the same cannot be made basis for allowing impugned findings to hold the field, which are perverse and against the law.

10. This Court is of the view that the Courts below missed the forest for the trees. The contradictions in the pleadings and the evidence reproduced above in the ordinary course might have been highly detrimental to the case of the petitioners, however, it is settled proposition of law that civil cases are to be decided on preponderance of evidence by reading the evidence as a whole rather cherry-picking certain aspects of the pleadings and/or evidence. This helps in achieving a predictable standard pattern in reaching a just decision. The vital issue in the matter was the preference to be attached to the registered or unregistered document, which certainly does not involve as to the prior death of Muhammad Nawaz even though Muhammad Nawaz pre-deceased his

father-Ghulam Muhammad *alias* Gamoon and the petitioners wrongly averred in the pleadings that after the death of Ghulam Muhammad *alias* Gamoon, they asked Muhammad Nawaz to transfer the suit property to them to the extent of their share but he did not do so on one pretext or the other whereas Muhammad Nawaz had pre-deceased his father. It is worth mentioning that though Muhammad Nawaz pre-deceased his father Ghulam Muhammad *alia* Gamoon and there is a contradiction in the pleadings of the petitioners which has been made basis of dismissal of the suit of the petitioner, the said aspect also brings forth the malice and fraud committed by the respondents that has been completely ignored by the Courts below. It is well settled that the inheritance of a person opens upon his death. Therefore, even if it is acknowledged that deceased Muhammad Nawaz was the owner of the suit property, the death of Muhammad Nawaz opened up his inheritance and Ghulam Muhammad *alias* Gamoon, the father of Muhammd Nawaz (as also the predecessor of the petitioners), who was alive at the relevant time, was undoubtedly also legal heir of Muhammad Nawaz. A question arises as to how and why the respondents gobbled up the inheritance share of Ghulam Muhammad *alias* Gamoon. There is no explanation available on record in this regard and Courts below have also ignored this aspect. In fact, this goes on to reflect the desperation, which induced the respondents to deprive the petitioners with their inheritance share in the suit property.

11. It is also to be kept in sight that, admittedly, the suit property has been recorded in the name of deceased Muhammad Nawaz by the Excise and Taxation Office concerned on the strength of an unregistered document and after death of Muhammad Nawaz, respondents No.1 to 5 (widow and daughters) have alienated their purported share in the suit property to respondents No.6 to 11 (sons) through impugned registered sale deed dated 29.03.2003 on the strength of the said entry in Excise and

Taxation Office concerned. The contents of the impugned registered sale deed are interesting, which read as under:

”میاںکہ مسماۃ حلیمه بی بی بیوہ محمد نواز 4-638264-90-316 مسماۃ کشمیر بی زوجہ غلام قاسم دختر
 محمد نواز 16-89-602716-316 مسماۃ مسرت پر دین زوجہ فضل حسین دختر محمد نواز 1-730391-74
 316-74 مسماۃ صائمہ مفہوم (فوٹوف) مسماۃ شگفتہ نواز (فوٹوف) ہے دختران محمد نواز قوم چہان
 ساکنان وارڈ نمبر 17 محلہ فیض آباد لیہ تحصیل لیہ کے ہیں اقرار معتبر بدرستی ہوش و حواس خمسہ و صحت
 بدن اس طور پر کرتے اور لکھ دیتے ہیں جو کہ دکان پر اپنی 1-C-II434-B مکیٹی یہ
 برلب سڑک چہان روڈ لیہ محدود بحدود ذیل خالصا مملوکہ و مقبوضہ ماقرآن ہے جو ما
 ماقرآن کو اپنے مورث مسکی محمد نواز ولد غلام محمد عرف گانموں متوفی سے وراثت ملی ہوئی ہے دکان مذکور
و دیگر پلاٹ بر قبہ 2 سر سائی ۔ 3 مرے مورث ماقرآن محمد نواز متوفی مذکور کی جدی ملکیت ہے۔“

(Emphasis supplied)

Before observing anything about the above referred document and/or the contents thereof and its effect on outcome of this case, this Court would like to state a settled proposition of law as to the tentacles of the revisional power of this Court. The question as to the scope and extent of revisional powers of a High Court fell for consideration before the Supreme Court in case reported as “Manager Jammu & Kashmir State Property in Pakistan vs Khuda Yar and another” (**PLD 1975 SC 678**) wherein the Supreme Court at Page-697 observed the simultaneous stiffness as well as agility of revisional powers in the following manners:

“...The scope of the revisional powers of the High Court though circumscribed by conditions of excess of jurisdiction, failure to exercise jurisdiction, illegal exercise of jurisdiction, is nevertheless very vast and corresponds to a remedy of certiorari and in fact goes beyond that at least in two respects inasmuch as: Firstly, its discretionary jurisdiction may be invoked by the Court suo motu, and Secondly, the Court “may make such order in the case as it thinks fit.”

(Emphasis supplied)

Thus, it is obvious that while the revisional powers may be circumscribed and cordoned off by conditions of excess of jurisdiction, failure to

exercise jurisdiction, illegal exercise of jurisdiction, it is very vast being in the nature of *certiorari* and rather travels beyond the same. While relying upon Manager Jammu & Kashmir State property (case) *supra*, this Court in case bearing C.R. No.852-D/2003 titled “Noor Muhammad Versus Niaz Ahmad etc.” (available at Lahore High Court website at **2021 LHC 8093**) held that High Court in exercise of its revisional and visitorial jurisdiction can undertake the exercise of analysis of the evidence for the first time regarding a piece of evidence not analysed and/or overlooked by the Courts below. With this legal position at the forefront, this Court, though not argued in this manner, inquired about the contents of the impugned sale deed dated 29.03.2003 executed by the respondents and recitals whereof have been reproduced hereinabove, which describes and refers the suit property being ancestral (جدی/Jaddi). The term “جدی ملکیت” used in the admitted document (the impugned sale deed) in favour of respondents No.6 to 11 hardly needs any judicial elaboration. It means the paternal or ancestral. If the respondents themselves admit that the suit property was not self-acquired asset of the deceased Muhammad Nawaz rather was in the ownership of Muhammad Nawaz as an ancestral property (جدی ملکیت), their claim of ownership on the basis of unregistered document falls, more particularly, when the registered sale deed in favour of Ghulam Muhammad alias *Gamoon* pertaining to the same property is intact and not cancelled. This crucial aspect of the case squarely brings the matter within the purview of the cardinal principle of evaluation of evidence that ‘a man may lie but the documents do not’. The Courts below clearly singled out incorrect assertion of a fact and discrepancies in evidence of the petitioners at the cost of the central issue regarding the preference to be attached to the registered document over an unregistered document and ignoring the contents of the impugned sale deed dated 29.03.2003, which this Court is obligated to correct in exercise of its revisional jurisdiction in terms of Section 115 of the Code of Civil Procedure, 1908.

12. Moreover, mere fact that the respondents are in possession of the suit property and their names exist in Excise and Taxation record and the utility bills for the connections installed thereat are in the name of deceased Muhammad Nawaz has no relevance when admittedly, the deceased Muhammad Nawaz was real eldest son of Ghulam Muhammad *alias* Gamoon, born from his first marriage and was residing with deceased Ghulam Muhammad *alias* Gamoon. It appears that deceased Muhammad Nawaz was put in possession of the suit property as a licensee by his father (Ghulam Muhammad *alias* Gamoon) and had the complete control thereof as asserted by the petitioners and corroborated by the attending circumstances of the case. Therefore, the petitioners who are children born from the second wedlock of deceased Ghulam Muhammad *alias* Gamoon were justified in relying on the hearsay evidence to substantiate their inheritance claim based on a registered deed.

13. At this juncture, it is imperative to observe that neither the pleadings can be treated as evidence nor documentary evidence can be brushed aside on account of the weak oral testimony of the plaintiffs, more particularly, when the case is that of inheritance and based on a registered document, which is more than 58 years old and holding the field. Therefore, the disconnect in the pleadings of the petitioners as also the oral evidence is not convincing for this Court to non-suit them when clearly, registered document in favour of the predecessor-in-interest of the petitioners is available on record as also the document in favour of the respondents, i.e., impugned sale deed dated 29.03.2003 that acknowledges the fact that the suit property was ancestral and was not self-acquired property of predecessor of the respondents-deceased Muhammad Nawaz, under prior unregistered document.

14. In view of the preceding discussion, this Court is of the view that both the Courts below have erred in appreciating the legal question

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involved and also could not appreciate the material documentary evidence on record. Therefore, this petition is **allowed**; the concurrent findings of the Courts below are set aside; and the suit of the petitioners is decreed.

(ANWAAR HUSSAIN)
JUDGE

Approved for reporting.

Judge

Akram