

JUDGMENT SHEET
LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

C. R. No. 1933 / 2012

Abdur Rehman and 3 others

VERSUS

Manzoor Ahmed and 6 others

JUDGMENT

Date of Hearing	17.05.2023
Petitioners by:	Mr. Muhammad Younas Choudhary, Advocate Mr. Waqar Ahmad Hanjra, Advocate Mr. Sajid Hussain Qureshi, Advocate
Respondents by:	Malik Abid Jamshed, Advocate

ABID HUSSAIN CHATTHA, J. This Civil Revision brings a challenge to Judgments & Decrees dated 30.11.2010 and 23.05.2012 passed by Civil Judge, Ferozewala and Additional District Judge, Ferozewala, respectively, whereby, the suit for declaration filed by the Petitioners was dismissed and the suit for declaration instituted by the Respondents was decreed. The Petitioners filed two separate Appeals against the decision of the Trial Court which were dismissed and the findings of the Trial Court were maintained.

2. The stance of the Petitioners was that they are owners in possession of the property measuring 12 Kanals and 17 Marlas fully described in para No. 1 of the plaint (the “**suit property**”) which they purchased against sale consideration of Rs. 55,000/- through registered sale deed No. 230 dated 26.04.1984 (the “**Sale Deed**”). However, on account of an inadvertent error, the respective shares in the suit property of Respondents No. 1 and 2, namely, Manzoor Ahmed and Noor Ahmed were wrongly mentioned in the Sale Deed. Therefore, the shares of the Respondents listed in the Sale Deed were liable to be rectified so that mutation pursuant thereto may be incorporated in the revenue record. Conversely, the version of the Respondents was that they had given the suit property on lease to the Petitioners and had asked them to

prepare lease deed but they prepared and got registered the false and bogus Sale Deed in their favour in connivance with the officials. The execution of the Sale Deed and receipt of sale consideration was denied. It was alleged that the Petitioners have been paying the share of produce but lately stopped paying the same. Moreover, at the time of execution of the alleged Sale Deed, Mst. Zubaida Bibi and Mst. Hameeda Bibi, Respondents No. 5 & 7, respectively, were minors and as such, the Sale Deed was unlawfully executed which is liable to be set aside being void and ineffective qua the rights of the Respondents.

3. It is noted that in the first round of litigation, the suit of the Petitioners was decreed vide Judgment & Decree dated 01.10.2001 regarding which an Appeal was accepted and the case was remanded to the Trial Court for its decision afresh after framing additional issues and recording evidence. The Trial Court framed the following consolidated issues:-

- (1) Whether the registered Sale Deed is liable to be corrected? OPP
- (2) Whether the suit is barred by limitation? OPD
- (3) Whether suit cannot proceed in present form? OPD
- (4) Whether the Sale Deed is result of fraud and ineffective qua the rights of the defendants? OPD
- (5) Whether the suit is undervalued for the purpose of court fee, if so, its effect? OPD
- (6) Whether the plaintiffs have not come to the court with clean hands? OPD
- (6-A) Whether defendants No. 5 and 7 were minors at the time of execution of the impugned Sale Deed? OPD
- (6-B) Whether the Sale Deed is based on fraud and misrepresentation and ineffective upon the rights of the Plaintiffs? OPD
- (6-C) Whether the alleged Sale Deed was kept secret and in the year 1995, the defendants came to know the sale transaction? OPD
- (6-D) Whether the suit titled as Manzoor Ahmed etc. Vs. Abdul Rehman etc. is unnecessary and filed to harass the proceedings of the suit titled as Abdul Rehman etc. Vs. Manzoor Ahmed etc.? OPP
- (7) Relief.

4. The Trial Court while rendering its findings on issue No. 6-A concluded on the basis of Ex. D-1 & Ex. D-2 that Respondents No. 5 & 7

were minors at the time of execution of the Sale Deed and as such, their shares in the suit property could not have been transferred without the appointment of their Guardian. The Trial Court with respect to issues No. 4, 6-B & 6-C found that all the witnesses of the Respondents corroborated their version that suit property was given to the Petitioners on lease for a period of 10 years. The Sale Deed (Ex. P-1) did not mention the Fard Malkiat on the basis of which the Respondents were owners which showed that it was passed with undue haste in favour of the Petitioners by the Revenue Authorities due to which their shares were incorrectly mentioned. It was further observed that the alleged mistake came in the knowledge of the Petitioners when they went to Halqa Patwari in the year 1984 but the suit for rectification was filed with a delay of 11 years which *ipso facto* meant that the sale transaction was kept secret by the Petitioners from the Respondents. These facts proved that the Sale Deed was based upon fraud. The Trial Court with respect to issue No. 6-D observed that the Respondents filed their suit for declaration on 09.07.2002, whereas, they appeared in the proceedings of the suit filed by the Petitioners in October, 1996, and as such, the suit of the Respondents was within the prescribed period of limitation of six years. Therefore, the Respondents did not file the suit for declaration in order to harass the Petitioners as they did not know about the existence of the Sale Deed till 1996 until they appeared in the suit filed by the Petitioners. Based upon the aforesaid findings, the Trial Court declined to rectify the Sale Deed by rendering its findings against the Petitioners to issue No. 1. Against issue No. 2, the Trial Court found that the Sale Deed was executed in the year 1984, whereas, the Petitioners filed the suit in the year 1995 which was barred by time since they had gained knowledge of the alleged mistakes when they had gone to Halqa Patwari a few days after the execution of the Sale Deed. Issue No. 3 was also decided in favour of the Respondents for reasons stated as aforesaid. Issues No. 5 & 6 were not pressed.

5. The Appellate Court while maintaining the findings of the Trial Court in addition thereto further opined that identity card numbers of some of the Respondents were not mentioned in the Sale Deed. Moreover, thumb impressions of some of the parties were hardly visible and the two marginal

witnesses were not produced by the Petitioners as beneficiaries of the Sale Deed to prove the transaction of sale as per law.

6. Learned counsel for the Petitioners submitted that the impugned Judgments & Decrees passed by the Courts below are result of misreading and non-reading of evidence on record as well as misapplication of law. He contended that the Sale Deed itself stipulated that the same was executed on the basis of Fard Malkiat but this fact escaped the attention of the Courts below. The Sale Deed was executed in the year 1984 and the observations that identity card numbers of some of the Respondents were not listed thereon or thumb impressions were dim were immaterial. It was unequivocally established on the basis of evidence on record that stamp papers were purchased by the Respondents themselves and execution of the Sale Deed was admitted in the written statement which required no further proof with respect to its execution. No particulars of fraud were mentioned by the Respondents in their plaint or written statement in both the suits. Similarly, no evidence was tendered pertaining to the alleged fraud. The observation that two marginal witnesses were not produced was based on misapplication of law. One marginal witness, namely, Malik Bashir had appeared as a witness fulfilling legal requirement in terms of Section 68 of the Evidence Act, 1872 (the "**Evidence Act**") as the Qanoon-e-Shahadat Order, 1984 was promulgated on 26.10.1984 after the execution of the Sale Deed. Hence, the sale transaction was duly proved especially when the same was admitted in the written statement. He stressed that both the Courts below were swayed to dismiss the claim of the Petitioners primarily for the reason that Respondents No. 5 & 7 were minors at the time of execution of the Sale Deed. It was the responsibility of the Respondents to have appointed Guardian in case of minority of Respondents No. 5 and 7. Notwithstanding the same, as per record, Respondents No. 5 & 7 having been born on 29.01.1967 and 16.06.1973 (Ex. D-1 & Ex. D-2) attained majority on 29.01.1985 and 16.06.1991, respectively and in terms of Sections 6 and 8 read with Article 91 to the First Schedule of the Limitation Act, 1908 (the "**Limitation Act**") were required to file suit within 3 years after the disability of minority ceased but the suit for declaration by the Respondents including

Respondents No. 5 & 7 was filed on 09.07.2002 which was way beyond the prescribed period of limitation. Finally, he emphasized that it was clearly evident from the deposition of DW-1 recorded on 20.09.2001 that the Respondents were aware about the Sale Deed executed in 1984. Hence, the suit filed by the Respondents was barred by time. Conversely, the suit of the Petitioners was within time as the date of knowledge of non-incorporation of mutation was misconstrued. Accordingly, he prayed that suit of the Petitioners was liable to be decreed in their favour as the execution of the Sale Deed was admitted and the Petitioners even otherwise, produced irrefutable evidence to substantiate and prove their claim in terms of execution of the Sale Deed and payment of consideration.

7. Conversely, learned counsel for the Respondents relied upon the reasoning of the Courts below and prayed that the concurrent Judgments & Decrees are not liable to be interfered.

8. Arguments heard. Record perused.

9. Issues No. 1, 4 and 6-B deal with the validity of the Sale Deed and are interlinked. Perusal of the plaint reveals that the Petitioners had merely sought rectification of the Sale Deed on the ground that on account of errors in the respective shares of the Respondents as sellers, the mutation on the basis of the Sale Deed could not be incorporated in the revenue record and as such, the rectification was liable to be ordered after refusal of the same by the Respondents. Importantly, in paragraph No. 2 of the written statement, the Respondents specifically admitted that they had signed and thumb marked the Sale Deed, however, the same was done with the understanding that it was lease deed and as such, the Sale Deed was result of fraud and misrepresentation. The possession of the Petitioners over the suit property was not disputed. The Petitioners filed the suit on 22.11.1995. Initially, the suit was decreed by the Trial Court vide Judgment & Decree dated 01.10.2001. In the said Judgment, it was observed by the Trial Court that the Sale Deed executed in the year 1984 had remained unchallenged and the Respondents had not filed any suit against the Petitioners although the Petitioners had instituted the suit in the year 1995. The entries in the revenue record provided a fresh cause of action and as such, the suit of the Petitioners

was not barred by time. It was also observed therein that DW-2 had admitted in his cross-examination that the other Respondents had told him after 2 years from 1983-84, that a fraud had been committed with them but even then they did not challenge the Sale Deed in favour of the Petitioners after getting knowledge of the institution of the suit. It was further observed therein that the Respondents did not produce any witness to substantiate their defence regarding lease of the suit property. It was further observed that defence of the Respondents that Respondents No. 5 & 7 were minors at the time of execution of the Sale Deed cannot be considered as they had not filed any independent suit for cancellation of the Sale Deed despite gaining knowledge of the same. The passing of sale consideration before the Sub-Registrar was fully proved and one of the witness who had identified the parties had expressed the intention of the parties regarding the sale transaction. As such, the validity of the Sale Deed was confirmed and the required rectification was ordered by decreeing the suit. The said Judgment of the Trial Court was set aside by the Appellate Court vide its Judgment & Decree dated 26.02.2002 with a direction to frame additional issues and decision of the case afresh after recording of evidence of the parties.

10. The observations of the Trial Court in the first round of litigation prompted the Respondents to file an independent suit for declaration on 09.07.2002 seeking cancellation of the Sale Deed based upon their initial stance taken in the written statement in the suit for declaration filed by the Petitioners. In the said suit, it was alleged that it was upon the filing of the suit by the Petitioners that the Respondents came to know about the existence of the Sale Deed against them.

11. The witnesses of the Petitioners deposed in line with their pleadings. The execution of the Sale Deed and passing of sale consideration of Rs. 55,000/- was duly testified. The fact of incorrect recording of shares of the Respondents in the Sale Deed was highlighted by the Petitioners. The allegation of fraud or lease of the suit property as alleged by the Respondents was denied in the suggestion put forward to the witnesses. The stamp vendor, PW-6 candidly deposed that he issued the stamp paper and scribed the Sale Deed upon the instructions of the parties before the concerned Sub-Registrar.

The independent witnesses also testified the due execution of the Sale Deed, the possession of the Petitioners and the fact that the same was known to the residents of the Mouza. It was also testified that the Sale Deed was read out to the parties. PW-9 specifically deposed that although the Petitioners had gone to the Halqa Patwari for attestation of mutation after a few days from the date of registration of the Sale Deed but they came to know 5 to 6 years later that the mutation had not been entered in the revenue record for the reason that there were errors in the Sale Deed with respect to the shares of the Respondents incorporated therein.

12. DW-1 in his cross-examination categorically admitted that he did not know the location of the suit property and he came to know 8 to 9 years ago that the Petitioners were not paying the lease money and a fraud had been committed with them. Similarly, DW-2, an independent witness produced by the Respondents deposed that he met the Respondents in the year 1983-84 and they had told him that they had been fraudulently deprived from the suit property. Manzoor Ahmad, DW-3 in his cross-examination admitted that price of the suit property was between Rs. 50,000/- to Rs. 60,000/- at the time of execution of the Sale Deed. He admitted his thumb impressions on the Sale Deed though stated that the suit property was given on lease. He also admitted that he executed the stamp papers in Sharqpur and the Tehsildar also inquired him about the receiving of consideration. He also testified that there were mistakes in the shares of the Respondents in the Sale Deed.

13. Conspicuously, the pivotal document, the Sale Deed (Ex. P-1) specifically stipulates that the shares of the Respondents are listed as per *Fard Bah*, Register *Haqdaran Zamin* for the year 1979-80 issued by the concerned Halqa Patwari alongwith mutation of inheritance No. 414. As such, the observation of the Courts below that the Sale Deed was not incorporated with reference to any *Fard Bah* was clearly result of non-reading of evidence. It, therefore, follows that execution of the Sale Deed, passing of sale consideration and due registration of the Sale Deed were duly proved. The Respondents did not mention any particulars of fraud with respect to execution and registration of the Sale Deed and the same were also not proved through production of evidence. The Respondents also failed to

prove any counter lease deed in terms of the stance taken by them. They also did not produce any receipts of payment regarding the lease money and relied upon their oral evidence in this respect. It is also noted that Qanoon-e-Shahadat Order, 1984 was promulgated on 26.10.1984, whereas, the Sale Deed was executed on 26.04.1984 and as such, it was required to be proved in terms of Section 68 of the Evidence Act which required that one marginal witness was sufficient to prove the sale transaction. For reference see case titled, “Noor Muhammad v. Nazar Muhammad” (**2002 SCMR 1301**). Notwithstanding the same, a number of witnesses including independent and official witnesses were produced by the Petitioners to prove the transaction. Therefore, the Courts below fell in error while rendering their findings to issues No. 1, 4 and 6-B.

14. The questions of limitation, maintainability of the suit and secrecy of the Sale Deed were encapsulated in issues No. 2, 3 and 6-C. It was established on the basis of evidence on record that the Sale Deed was never kept secret and was known to the inhabitants of the concerned Mouza as stated above. The witnesses of the Respondents had admitted their knowledge about the Sale Deed in the year 1984. It was also admitted in the written statement that a suit for declaration and cancellation of the Sale Deed was instituted in the light of the observations of the Trial Court vide Judgment & Decree dated 01.10.2001 in the first round of litigation. Therefore, the suit instituted by the Respondents was patently barred by time. Needless to mention that Article 91 to the First Schedule of the Limitation Act prescribes a period of 03 years for filing the suit for cancellation of document from the date of knowledge. Reliance is placed on cases titled, “Muhammad Irfan Polani v. Mst. Farida Shaukat, etc.” (**PLJ 2017 Lahore 776**); and “Dr. Muhammad Javaid Shafi v. Syed Rashid Arshad and others” (**PLD 2015 Supreme Court 212**). Conversely, it was proved on record that the Petitioners gained knowledge regarding non-attestation of the mutation pursuant to the Sale Deed after 6 to 7 years from the date of its execution i.e. in the year 1990 or 1991 and as such, the suit filed by them in the year 1995 was within time in terms of Article 120 to the First Schedule of the

Limitation Act. Therefore, the findings of the Courts below to afore referred issues are reversed.

15. The last aspect of the case is with respect to the minority of Respondents No. 5 & 7, respectively who attained majority on 29.01.1985 and 16.06.1991, respectively. Sections 6 and 8 of the Limitation Act prescribe a period of 03 years for the minors to challenge a transaction entered on their behalf after ceasing of their disability. However, it had been established that the Respondents had gained knowledge regarding the execution of the Sale Deed but instituted the suit in the year 2002 which was patently barred by time even to the extent of Respondents No. 5 & 7 regarding their plea that the transaction was not valid on account of their minority at the time of execution of the Sale Deed. It is importantly noted that in case titled, “Tanveer Mahboob and another v. Haroon and others” (**2003 SCMR 480**), it was observed that in a case in which a minor defendant in the suit was represented by his father or brother or sister as co-defendant without any conflict of interest with sincerity and they effectively defended the rights and interest of the minor in the property, it would be deemed that such rights were sufficiently safeguarded and mere fact that minor was not sued through guardian-ad-litem would not make the decree invalid and the same would be binding on the minor. It was also observed based upon the Judgment of Indian jurisdiction that non-fulfillment of formal requirement of appointment of guardian ad-litem of a minor defendant under Order XXXII, Rule 3, C.P.C. would not affect the proceedings in the suit and decree, if ultimately passed, unless it is shown that due to omission of appointment of guardian-at-litem of a minor, who was being represented by his natural guardian, the minor was caused prejudice and the objection would be of technical nature. Further, reliance is placed on case titled, “Abdul Razzaq v. Add: District Judge and others” (**2016 YLR 2694**). Hence, the findings to issue No. 6-A of the Courts below are reversed. It is also abundantly clear that the Respondents filed their suit merely as an afterthought as a counter blast to the suit of the Petitioners. Issue No. 6-D is answered, accordingly.

16. In view of the above discussion, it is manifestly evident that the Courts below have misread and non-read the evidence on record. It is a general rule

that the Revisional Court while exercising jurisdiction vested under Section 115 of the C.P.C. does not upset the concurrent findings recorded by the Courts below. This principle is based on the premise that the Appellate Court is the final Court of fact but it is equally established that where there is gross misreading and non-reading of evidence or the Courts below have acted in exercise of their jurisdiction illegally or with material irregularity, the concurrent findings of facts are liable to be set aside in exercise of revisional jurisdiction. Reliance is placed on cases titled, “Haji Wajdad v. Provincial Government through Secretary Board of Revenue Government of Balochistan, Quetta and others” (**2020 SCMR 2046**); “Malik Bahadur Sher Khan v. Haji Shah Alam and others” (**2017 SCMR 902**); “Nazir Ahmad and another v. M. Muzaffar Hussain” (**2008 SCMR 1639**); and “Ghulam Muhammad and 3 others v. Ghulam Ali” (**2004 SCMR 1001**).

17. In view of the above, this Civil Revision is allowed; the impugned Judgments & Decrees dated 30.11.2010 and 23.05.2012 passed by the Courts below are set aside and in consequence thereof, the suit of the Petitioners stands decreed and that of the Respondents is dismissed.

(Abid Hussain Chattha)
Judge

Approved for reporting.

Judge

Abu Bakker