

**JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT**

Writ Petition No.6404 of 2020

Aashiq Hussain

Versus

Fida Hussain & others

J U D G M E N T

Date of hearing: 24.01.2023.

Petitioner by: Mr. Muhammad Ihsan Gondal, Advocate.

Respondents by: Mr. Muhammad Ashraf Saggu, Advocate.

MUHAMMAD SAJID MEHMOOD SETHI, J.: Through instant petition, petitioner has called into question order dated 10.12.2019 & judgment dated 20.01.2020, passed by learned Civil Judge and Additional District Judge, Darya Khan, respectively, whereby petitioner's application for comparison of thumb impressions / signatures of witnesses namely Ghulam Muhammad (DW-7) and Madah Hussain (DW-8) was concurrently dismissed.

2. Learned counsel for petitioner submits that once a party denies execution of a document, it is for the other party to get comparison of the signatures or thumb impressions with that of appearing on the document. Further submits that expert opinion on the question whether the documents or statements are signed by same person is relevant fact within the contemplation of Article 59 of the Qanun-e-Shahadat Order, 1984, thus, petitioner's application is liable to be accepted. Contends that learned Courts below have not rightly appreciated the applicable law and failed to exercise jurisdiction vested in them, hence, impugned decisions are unsustainable in the eye of law. He has relied upon Ghulam Haider v. Fateh Muhammad (2005 MLD 1501), Mst. Nusrat Bibi v.

Muhammad Ashraf Mehr and others (2007 YLR 41), Sarfraz v. Khizer Hayat and another (2008 YLR 818) and Muhaar v. Muhammad Yousaf and others (2010 MLD 1745).

3. Contrarily, learned counsel for respondents defends the impugned orders.

4. Arguments heard and available record perused.

5. Admittedly, petitioner and respondents are legal heirs of deceased Muhammad Ramzan. In suit, respondents / plaintiffs challenged the veracity and authenticity of different mutations executed by predecessor-in-interest of the parties in favour of petitioner / defendant. Under the law, a beneficiary of the document(s) is required to establish valid execution of the transaction(s) in his favour by producing attesting / marginal witnesses. In a situation, where the thumb-impressions / signatures of the executant or witness of a document are denied, a person pleading positivity of the thumb impressions / signatures will be under a heavy burden to prove the same by seeking comparison with the admitted thumb impressions / signatures. Reference can be made to Mst. Nusrat Bibi v. Muhammad Ashraf Mehr and others (2007 YLR 41), Abdul Haq and others v. Iftikhar Ahmad and others (2017 MLD 1792) and Shabbir Ahmed and others v. Cholistan Development Authority and others (2020 CLC 243).

6. In the instant case, petitioner / defendant is the beneficiary of the disputed mutations and in evidence, he produced Ghulam Muhammad as DW-7, who categorically denied to have attested the disputed mutations and signed the same. Whereas, DW-8, Madah Hussain also refuted attestation of the mutations and existence of his thumb impressions thereon. In such eventuality, it was duty of petitioner to apply to the Court for getting thumb impressions / signatures of aforesaid witnesses compared from an expert, which he duly performed but his request was declined. In case of failure to opt such course by a party / beneficiary, there might be a presumption against him that had the thumb impressions /

signatures of aforesaid witnesses been got compared from the expert, the report would have received against him. Guidance can also be sought from the cases reported as Wali Muhammad Khan and another v. Mst. Amina and others (2018 SCMR 2080) and Nazir Abbas through L.Rs. v. Ghulam Muhammad through L.Rs. (2017 CLC 996).

7. It is well-established by now that the Courts must take liberal view regarding acceptance of request for comparison of signatures / thumb impressions, as there is no express provision in law to decline such request. Moreover, report of the expert will tend to supplement the evidence of either party enabling the Court to reach just and correct decision and pronounce a balanced judgment. Learned Courts below have failed to exercise jurisdiction vested in them under the law on an unjustified ground. The observation of learned Trial Court that this exercise would linger on the proceedings is misconceived as there will be no harm to any party rather it will be appropriate and imperative to reach a just and proper conclusion even at the cost of some delay. It is a right of a party to seek and demand every possible assistance from the Courts of law and to hold him/her responsible only when he or she is found to have acted contrary to law. The interest of justice can only be safely dispensed after the signatures and thumb impressions of aforesaid witnesses are got verified from the expert. Reference is made to Mst. Akhtar Begum v. Muslim Commercial Bank Ltd. (2009 SCMR 264), Syed Sharif Ul Hassan through L.Rs. v. Hafiz Muhammad Amin and others (2012 SCMR 1258), Zafar Ullah Khan v. Mst. Hakim Bibi and another (2000 YLR 2789), Talib Hussain v. Additional District Judge etc. (PLJ 2014 Lahore 193), Syed Akbar Hussain through L.Rs. and another v. Mst. Naziran Begum and another (2014 CLC 1760) and Lal Din v. Muhammad Saleem (deceased) through L.Rs. and others (2019 CLD 894).

8. In view of the above, instant petition is allowed and impugned orders passed by learned Courts below are declared to be

illegal and without lawful authority and set aside. Petitioner's application for comparison of thumb impressions / signatures of witnesses namely Ghulam Muhammad (DW-7) and Madah Hussain (DW-8) is accepted. Learned Trial Court is directed to do the needful expeditiously and decide the suit within two months after the receipt of report of the expert, even if it is to be heard on day-to-day basis.

(Muhammad Sajid Mehmood Sethi)
Judge

Sultan