

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Civil Revision No. 41 of 2009

Muhammad Munir and another
Versus
Muhammad Younis through L. Rs. and others

JUDGMENT

<i>Dates of hearings</i>	16.10.2025, 06.11.2025 & 11.11.2025
<i>Revision-petitioners by:</i>	Mr. Ghulam Rasool Chaudhary, learned Advocate
<i>Respondents No. 3 and 4 by:</i>	Mr. Salman Asif Warraich, learned Law Officer
<i>Respondents No. 1(i) to 1(iii) and 2(i) to 2(iv):</i>	Ex-parte vide order dated 18.09.2025

Sultan Tanvir Ahmad, J:- This civil revision was instituted *inter-alia* on the grounds of misreading / non-reading of evidence, failure to give finding on each issue by the learned Appellate Court and alleging that the finding on issue No. 4-A is based on surmises and conjectures. However, on 16.10.2025 and 06.11.2025 the learned counsel for the revision-petitioners opted not to press any other ground and stated that due to death of Muhammad Yousaf, some further land in concerned *khata* was inherited by Muhammad Younis / the seller, therefore, benefit of section 43 of the Transfer of Property Act-1882 (the ‘*Act*’) should be given to the revision-petitioners. He has relied upon case titled “*Noora (deceased) through L.Rs. versus Province of Punjab and others*” (2025 YLR 566).

2. I have heard the arguments and gone through the record.

3. The revision-petitioners filed suit dated 03.12.1998, for declaration and permanent injunction, with averments that they have paid Rs. 150,000/- as consideration for 7-kanals 06-marlas land (the ‘*suit land*’) to Muhammad

Younis, possession of the *suit land* was delivered to them and mutation No. 1424 dated 28.05.1995 was correctly incorporated in their favour; that this mutation was wrongly reviewed by the Deputy Commissioner, without hearing them. In the written statement, it is alleged that the mutation No. 1424, over and above 3-kanals 17-marlas land, is the result of a fraud.

4. It is admitted position that Muhammad Younis-deceased was owner of 3-kanals 17-marla by way of inheritance and acquired share in 1-kanal 5-marlas through successful claim of pre-emption (total 4-kanals and 6-marlas) at the time of alleged sale. The remaining land fell to the share of his brother and sisters. The payment of alleged consideration of Rs.150,000/- for 7-kanals 06-marlas land is denied in written statement as well as by the witnesses of the defendants / respondents. The possession of revision-petitioners also remained disputed. Muhammad Yousaf-deceased (DW-1) deposed that the land over and above 3-kanals and 17-marlas was never sold. He also stated that the possession is still with him.

5. Muhammad Younis / the seller appeared as DW-2. Questions were put to him regarding payment of full consideration of Rs. 150,000/- for the *suit land*. Hardly any favourable answer could be extracted. He in his examination-in-chief stated that he never appeared before the *Tehsildar*.

6. Muhammad Munir-plaintiff appeared as PW-1. He failed to produce any witness to support him as to payment of Rs.150,000/- as consideration. Revenue Officer, *lambardar*, *patidar* or any other person from the village could not be produced to depose in his favour.

7. The learned trial Court summoned Muhammad Asif-patwari (CW-1), whose signatures are alleged on Ex.P-8. He deposed that Ex.P-8 is bogus and his signatures thereupon are falsely attributed to him. He further

stated that mutation No. 1424 in favour of the revision-petitioners is incorrect. The record was produced by him, negating the assertions of revision-petitioners of possession over 7-kanals 6-marlas.

8. The claim on the basis of section 43 of the Act can only be justified on proof of payment of consideration. This important element of consideration was not proved with the required degree of cogency. Reproducing the following extract from judgment in case titled “*Nabi Ahmed Shah versus Mirwaiz Muhammad Abdullah and others*” (1976 SCMR 132) will be beneficial:-

*“As regards the petitioner's reliance on section 43 of the Transfer of Property Act, we find that the same is not attracted to the facts of this case. This section comes into play where a person fraudulently or erroneously represents that, he is authorized to transfer certain immovable property and professes to transfer such property for consideration, then such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists. Now, it will be seen that the respondent had not made any fraudulent or erroneous representation to the present petitioner; on the contrary in first round of litigation the present petitioner was fully associated with the respondent but the petitioner then gave up and the respondent was left to pursue the litigation alone. **There was no proof on the record that the petitioner had paid any consideration to the respondent, and on this ground also section 43 could not be invoked.**”*

(Emphasis supplied)

9. The Honourable Supreme Court of Pakistan in case titled “*Rab Nawaz and others versus Muhammad Ali through Legal Representative*” (2007 SCMR 1120) has set-aside a judgment of this Court which was also reported as “*Muhammad Ali versus Rabnawaz and 14 others*” (2001 YLR 1282). However, paragraph No. 6 of the judgment of the Honourable Supreme Court reflects that payment of consideration was an admitted fact. Likewise, case titled “*Haji Abdul Ghafoor Khan through Legal Heirs versus Ghulam Sadiq through Legal Heirs*”

(PLD 2007 Supreme Court 433) is also based on certain proven facts.

10. The learned counsel for the revision-petitioners has referred to “Noora-deceased” case (*supra*) but he has ignored that in the case this Court has laid down the principle that equity favours the claimant who has paid the price. In the present case the bargain, genuineness of revenue record and consideration remained disputed, therefore, judgment referred is not applicable to the facts of the present case.

11. The learned trial Court while deciding issue No. 4-B observed:-

“.....However, plaintiffs have right to claim the excess amount allegedly paid by them regarding share of the land which defendant No. 1 was not competent to sell out and for this purpose, they can avail independent remedy if permissible under the law....”

The revision-petitioners have not availed the indicated remedy or sought to prove payment of excess amount. This is the position upto now. Section 43 of the *Act* incorporates the doctrine known as feeding of estoppel. Learned counsel for the revision-petitioners has failed to establish from the record that any excess payment was made by the revision-petitioners.

12. As per process server report, Muhammad Younis (the alleged seller) has also passed away. Permitting to further maintain this civil-revision, in the absence of proof of excess payment, will be inequitable, unfair and unjust. I am fully satisfied that the relief sought by the learned counsel for the revision-petitioners cannot be granted. This revision-petition is, therefore, **dismissed**, without any order of cost.

(Sultan Tanvir Ahmad)
Judge

Approved for reporting