

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Civil Revision No.620 of 2014

Muhammad Younis and others

Versus

Mst. Dolat Bibi and others

J U D G M E N T

Date of hearing: **22.06.2023**

Petitioner(s) by: Sardar Muhammad Ramzan, Advocate

Respondent(s) by: Mr. Sohail Shafique and Ms. Ambar Abid,
Advocates for respondents No.1, 2(ii) to
2(vii)

Mr. Muhammad Farooq Ahsan, Advocate
vice counsel for respondents No.2-vii(a)(b)

M/s Mian Abdul Aziz and Fazal Ur
Rehman, Advocates for respondent No.3

Respondents No.2(i)(iv) ex parte

SHAHID BILAL HASSAN-J: Succinctly, the petitioners

instituted a suit for declaration alongwith permanent injunction maintaining therein that about 20 years ago petitioners No. 1 & 2 borrowed some amount from Musawar Hussain respondent for their personal use who asked them to pledge their land measuring 14-kanals with his wife respondent No. 1. In this way pledge mutation No.234 was attested on 31.07.1986 in favour of respondent No.1. Muhammad Younis petitioner again borrowed some amount for which additional pledge mutation No.247 dated 07.02.1987 was attested. Later on, when the petitioners asked the respondents to receive amount on

10.11.1988 and get the land redeemed, respondent No.2 got attested one mutation for redemption and two mutations of sale in collusion with the revenue department in his favour and on 27.03.1990 respondent No.2 through another sale mutation transferred 2-kanals land in favour of Muhammad Iqbal respondent No.3 who alienated the same to respondent No.1 vide mutation No.415 dated 24.08.1995. It is maintained that respondents have committed fraud with the petitioners, therefore, all the mutations are against law and facts, ineffective upon the rights of petitioners and are liable to be cancelled. The petitioners came to know about the alleged fraud three months before filing of the suit upon checking the revenue record. The contents of plaint were controverted by respondents No.1 and 2 by filing of written statements and raised preliminary as well as legal objections. However respondent No.3 did not appear and he was proceeded ex-parte vide order dated 18.10.2006. The learned trial Court, out of the divergent pleadings of the parties, framed as many as eight (8) issues including "Relief". The petitioners produced Muhammad Younis (PW-1), Muhammad Sharif (PW-2), Abdul Ghafoor (PW-3), Abdul Ghafar (PW-4) and Zulfiqar (PW-5). The petitioners also produced documentary evidence in the shape of exhibits P-1 to P-15. The respondents produced Ghulam Sarwar (DW-1), Abdul Haque (DW-2), Ghulam Murtaza (DW-3), Nawab Din (DW-4), Khadim Hussain (DW-5), Musawar Hussain (DW-6), Zafar Ali

Girdawar (DW-7) and Muhammad Ishaque (DW-8). In documentary evidence they produced exhibits D-1 to D-12. The learned trial Court after giving issue-wise findings vide impugned judgment & decree dated 26.11.2009 dismissed the suit. The petitioners being aggrieved preferred an appeal but the same was dismissed vide impugned judgment and decree dated 26.06.2010; hence, the instant revision petition.

2. Heard.

3. Subsection (7) of section 42 of the Land Revenue Act, 1967 binds the Revenue Officer, who is going to attest the mutation, to ensure the presence of a person whose right is going to be acquired by such transaction. The said provision of law also requires the identification of such person by two respectable persons. However, in the instant case, neither the disputed sale mutations carry signatures or thumb impressions of the vendors/petitioners nor the petitioners/vendors were identified at the time of attestation of the mutation and even Sarfraz Lumberdar was not produced by the respondents. All these facts establish the non-appearance of the petitioners and non-identification at the time of attestation of the disputed sale mutations; therefore, it can safely be held that the disputed sale mutations were attested in violation of sub-section (7) of Section 42 of the Act *ibid*.

4. In addition to the above, it is a settled principle of law that mutation entry is not a document of title, which by

itself does not confer any right, title or interest, and the burden of proof lies upon the person, in whose favour it was attested to establish the validity and genuineness of transfer in his/her favour. It is also a well settled law that if the foundation is illegal and defective then entire structure built on such foundation would have no value in the eyes of law. It is a settled principle of law that once a mutation is challenged the party that relies on such mutation(s) is bound to revert to the original transaction and to prove such original transaction which resulted in the entry or attestation of such mutation(s) in dispute. However, in the present case, the respondents have miserably failed to plead and prove the time, date, place and names of witnesses in whose presence such original transaction of sale took place inter se the petitioners and respondents because the written statement of the respondents is silent in this regard. When the position is as such, it can safely be held that the respondents have miserably failed to establish their case that the disputed mutations were sanctioned legally. Reliance in this regard is placed on Muhammad Akram and another v. Altaf Ahmad (PLD 2003 Supreme Court 688) and Province of Sindh through Secretary and 2 other v. Rahim Bux and others (2022 CLC 2063).

5. Apart from the above, the respondents have failed to establish by leading unimpeachable and confidence inspiring evidence that the possession of the suit property was delivered

in pursuance of the disputed sale mutations, rather it is admitted and established fact on record that the possession was with them in pursuance of purported pledge mutation and not being owner of the suit land. This fact is also an admitted one that the respondent No.2 (deceased) was a Patwari of the area, so if for the sake of arguments it is admitted that the respondents are in possession of the suit property, it cannot be ruled out that the respondent No.2 managed the entry of possession in Khasra Girdawri against the physical possession at spot. In this view of the matter, it can be said the disputed sale mutations in favour of the respondents are result of collusion with the revenue staff.

6. Article 95 of the Limitation Act, 1908 provides that while seeking some relief, if fraud is alleged, the period of limitation will be three years which will commence to be computed from the date of knowledge. The date of knowledge in the present case, as per version of the petitioners/plaintiffs is three months prior to the institution of the suit, which could not be rebutted by the other side through solid and cogent evidence rather only evasively denied while submitting written statement and it is a settled principle of law that evasive denial is not a denial. Therefore, in the light of Article 95 of the Act *ibid*, the suit instituted by the petitioners was well within time.

7. Pursuant to the above discussion it is observed that the learned Courts below have failed to adjudicate upon the matter in hand by appreciating law on the subject; thus, the

Courts below have misread and non-read evidence of the parties and when the position is as such, this Court is vested with ample jurisdiction and authority to undo the concurrent findings in exercise of revisional jurisdiction under section 115, Code of Civil Procedure, 1908 as has been held in Mst. Nazir Begum v. Muhammad Ayyub and another (1993 SCMR 321), Sultan Muhammad and another v. Muhammad Qasim and others (2010 SCMR 1630), Ghulam Muhammad and 3 others v. Ghulam Ali (2004 SCMR 1001) and Muhammad Khubaib v. Ghulam Mustafa (deceased) through LRs (2020 CLC 1039-Lahore).

8. For the foregoing reasons and while placing reliance on the judgments supra as well as judgment reported as Muhammad Ali v. Sohawa (deceased) through L.Rs. and others (2019 CLC 626-Lahore), the revision petition in hand is allowed, impugned judgments and decrees passed by the learned Courts below are set aside, consequent whereof suit instituted by the petitioners is decreed as prayed for. No order as to the costs.

(SHAHID BILAL HASSAN)

Judge

Approved for reporting.

Judge