

In the Supreme Court of Pakistan
(Appellate Jurisdiction)

Present:

Mr. Justice Anwar Zaheer Jamali
Mr. Justice Umar Ata Bandial

Civil Appeal No.697 of 2008.

(On appeal from judgment of Lahore High Court, Lahore
dated 24.5.2004, passed in Civil Revision No.680/2003)

Baja (deceased) through his L.Rs, etc

...Appellants

Versus

Mst. Bakhan & others

... Respondents

For the appellants: Ch. Muhammad Yaqoob Sindhu, ASC.

For respondents 1&5: Kh. Saeed-uz-Zafar, ASC.

Respondents No.2,3,4&6: Ex parte.

Date of hearing: 16.6.2015.

JUDGMENT

Anwar Zaheer Jamali, J.- This appeal, with leave of the Court in terms of the leave granting order dated 30.7.2008, is directed against the judgment, dated 24.05.2004, passed by the Lahore High Court, Lahore, in C.R. No. 680 of 2003, whereby this civil revision was dismissed and the findings of the learned Additional District Judge Nankana Sahib, decreeing the suit for declaration and permanent injunction filed by Respondent No. 1, vide judgment dated 17.04.2003, were maintained.

2. The brief facts relevant for the disposal of this appeal are that Respondent No. 1 (Mst. Bhakan), who is an illiterate village woman, filed a suit for declaration and permanent injunction against the Appellants and Respondents No. 2 to 4, stating that she was the

owner in possession of suit land admeasuring 9 kanals 1 marla which she had never gifted to Respondents No. 2 to 4, who were her cousin and co-sharers in the joint holding. She further stated that on 19.11.1967 Respondents No. 2 to 4 fraudulently managed some entry of gift on her behalf in their favour through mutation No.4 and thereafter fraudulently sold/transferred the suit land alongwith their other holding, total admeasuring 194 kanals 7 marlas in favour of Appellants through registered sale deed dated 25.6.1975. Hence the sale made by Respondents No. 2 to 4 in favour of appellants to the extent of her share was illegal.

3. The suit was contested by the Appellants, *inter alia*, contending to be the bona fide purchasers of the suit land, and also on the ground that the suit was hopelessly time barred as it was filed 30 years after the mutation entry of gift in favour of Respondents No. 2 to 4 made in the revenue records.

4. The civil Court framed twelve issues and after recording evidence of both the sides, dismissed the suit on 21.7.2001. Aggrieved by such judgment, Respondent No. 1 filed an appeal before the learned Additional District Judge Nankana Sahib, who, vide judgment dated 17.4.2003, allowed the appeal and decreed the suit in her favour. The Appellants challenged the said judgment of the learned Additional District Judge before the Lahore High Court, Lahore, where it was maintained and the Civil Revision filed by the Appellants was dismissed vide impugned judgment dated 24.5.2004.

The Appellants have now approached this Court seeking to challenge the said judgment of the Lahore High Court, Lahore.

5. We have heard the learned Counsel for the parties and perused the case record which reveals that Respondent No.1 herself appeared as PW-1 and stated that she has a son and four daughters, while Respondents No. 2 to 4 are her cousins, and that she neither gifted her share in the joint holding to them nor did she ever appear to get such mutation entered attested in the revenue records.

6. The law, expounded by this Court in the case of Arshad Khan v. Mst. Resham Jan and others (2005 SCMR 1859) in the context of Article 127 of the Qann-e-Shahadat Order 1984 is very clear, which grants special protection to illiterate and pardanashin ladies in such type of transactions. In the cases of gift, particularly, when the donor is some illiterate pardanashin lady, disputing the very genuineness of the gift on the allegation of fraud, for their satisfaction the Courts have to look into the surrounding circumstances to ascertain the true intent behind the gift so as to determine its validity, and to ensure that women are not deprived of their property through frivolous or fraudulent means by taking advantage of their illiteracy, weak social background and other compelling circumstances to which they may be easily exposed. In the instant case, there appears to be no justification or plausible reason in support of the alleged gift made by Respondent No. 1 in favour of Respondents No. 2 to 4, especially when Respondent No. 1 had five children of her own while alleged

donee's were closely related to her and they were in position to encash her shortcomings, as discussed above. Even otherwise, in view of Article 127 of the Qanun-e-Shahadat Order, 1984, the burden of proving the validity of gift vis-à-vis good faith was on the beneficiaries of such transaction. But, in the present case, Respondents No. 2 to 4, the donees, despite being served with the summons did not appear to contest the Suit, to establish the validity of the alleged gift in their favour, and the Appellants, being subsequent buyer in the year 1975, also failed to prove the necessary ingredients of a valid gift. Therefore, the findings of the learned Additional District Judge, and of the learned judge in chambers of the Lahore High Court, are unexceptionable.

7. Since the Appellants have failed to prove the validity of the gift allegedly made by respondent No.1 in favour of Respondents No. 2 to 4, we are inclined to hold that the consequent entry in the revenue record had been managed fraudulently and thus it is void. It is a settled principle of law that any superstructure built on the basis of a fraudulent transaction must collapse upon failure of such transaction. Therefore, the contention of the Appellants that they are bonafide purchasers of the joint holding, including the 9-kanals 1-marla land owned by respondent No.1, hence protected under section 41 of the Transfer of Property Act, 1882, does not carry any weight. Furthermore, it is also settled law that the period of limitation to challenge a fraudulent transaction runs from the date of its knowledge. According to the statement recorded by Respondent

No. 1 as PW-1, she came to know about the gift mutation in the year 1995, whereafter she filed the suit within five months. This statement has gone unchallenged during her cross examination. Therefore, the suit filed by Respondent No. 1 after gaining knowledge of the fraudulent transaction, was not barred by limitation.

8. In view of the above discussion, the impugned judgment of the High Court and the judgment of the learned Additional District Judge, are maintained and this appeal is dismissed.

9. However, it is made clear that such decree will not affect the sale transaction dated 25.6.1975, in favour of the Appellants, except to the extent of the 9 kanals 1 marla land owned by Respondent No. 1. Moreover, it is left open for the Appellants to sue Respondents No. 2 to 4, for compensation and damages arising out of the fraud played by them with Respondent No. 1, which ultimately resulted in financial loss to them.

Judge

Islamabad,
16th June, 2015.
Approved for reporting.

Judge

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