

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE MANZOOR AHMAD MALIK

MR. JUSTICE AMIN-UD-DIN KHAN

**CIVIL APPEAL NO.95-P OF 2014 AND C.M.A.NO.774-P
OF 2014 IN C.A. NO.95-P OF 2014**

(Against the judgment dated 06.06.2014, passed by the
Peshawar High Court, Peshawar in C.R.No.820-P/2013)

Shahbaz Gul & others

...Appellant(s)

VERSUS

Muhammad Younas Khan & others

...Respondent(s)

For the Appellant (s) : Ch. Muhammad Asif, ASC with
Mr. M.S. Khattak, AOR

For Respondent No.1 : Syed Mastan Ali Shah Zaidi,
ASC a/w
Respondent No.1

Date of Hearing : 19.02.2020

JUDGMENT

AMIN-UD-DIN KHAN, J.- Through this Civil Appeal filed under Article 185(2) of the Constitution of the Islamic Republic of Pakistan, 1973, the judgment passed by the learned Peshawar High Court dated 06.06.2014 in Civil Revision No.820-P of 2013, has been challenged.

2. We have heard the learned counsel for the parties at length and have perused the available record.

3. The Plaintiff/Respondent No.1, who himself is an advocate, has challenged the mutation of gift No.10899, attested on 05.01.2004 in favour of Defendants No.1 to 6, mutation No.11202, attested on 29.09.2004 in favour of Defendant No.1 and Mutation No.11634 attested on 23.07.2005 in favour of Defendant No.11, through a Suit for Declaration filed on 15.12.2006, on the ground that the Plaintiff and Defendants No.1 to 9 are the legal heirs of Dr. Rab Nawaz Khan, who died on 22.09.2005. The written statement was filed and the Suit was contested. Both the parties produced their oral as well as documentary evidence. After conducting complete trial, the learned Trial Court dismissed the Suit vide judgment and decree dated 26.09.2012. Thereafter, an appeal was preferred before the learned Additional District Judge-III, Kohat, who was pleased to dismiss the same vide judgment and decree dated 04.03.2013. A Civil Revision bearing No.820-P of 2013 was filed before the learned Peshawar High Court which was pleased to accept the same vide judgment dated 06.06.2014 and decreed the Suit, declaring that the suit property of late Dr. Rab Nawaz Khan devolved upon his legal heirs. Hence, this Civil Appeal.

4. We have gone through the judgments passed by all the three learned fora below. There are concurrent

findings of fact and law recorded by the two learned Courts below i.e. learned Trial Court and the learned First Appellate. The learned Peshawar High Court has reversed the concurrent findings of fact recorded by the two learned Courts below. The question for consideration would be that whether the learned High Court has rightly re-appraised the evidence permissible under the law in the light of Section 115 of the CPC. If there are two possible interpretations of the oral evidence, whether the learned High Court was competent to adopt an interpretation other than the one adopted by the two learned Courts below. Whether it was a case of misreading or non-reading of the evidence by the learned Courts below before the learned High Court? The Plaintiff opted to produce *Patwari Halqa*, PW-1, Syed Mujahid Shah, who produced the Revenue Records. In the statement, he produced copy of Mutations No.10899 and 11202 which were exhibited as Ex. PW-1/4 & Ex. PW-1/3, respectively. Both the two mutations are impugned in the Suit, yet, they were produced by the Plaintiff himself in his evidence through *Patwari Halqa*, who is the concerned person and in whose possession these documents are in the normal course of business. He also produced Ex. PW-1/5, copy of *Roznamcha Wakiati* No.3 dated 01.09.2004, on the basis of which Mutation

No.11202 was entered and he also produced Ex. PW-1/6, copy of *Roznamcha Wakiati* No.310 dated 21.09.2003, on the basis of which Mutation No.10899 was entered. Record shows that the copies of all the impugned mutations were again produced in the statement of PW-2 Daud Khan, ADK. The said *Roznamcha* was not disputed by the Plaintiff as the same was produced by him in his evidence which show that at least even the factum of *Tamleeks* were informed to the *Patwari* for noting in the *Roznamcha* and thereafter the *Patwari* entered mutation on the basis of said *Roznamcha*. The *Patwari* who recorded the *Roznamcha* was produced as DW-8 (Nasrab Shah). To prove the case pleaded by the Plaintiff, three things were to be proved by him to discharge the onus placed on him in Issue No.4; that his Father was physically and mentally paralyzed, that the Mutations No.10899 dated 05.01.2004 attested in favour of Defendants No.1 to 6 and Mutation No.11202, dated 29.09.2004, attested in the name of Defendant No.1 are bogus and fraudulent.

5. Coming to the issue, whether these mutations are bogus and fraudulent. The evidence of the Plaintiff does not suggest that the mutations are bogus one, as admittedly the same are available in the record of the Revenue Department. The concerned *Roznamchas* as well

as the copies of mutations were brought on the record by the Plaintiff himself from the proper custody through the statement of the concerned witnesses. Now, coming to the question of fraudulent attestation of the mutations, in our view, asserting that a mutation is fraudulent as well as bogus is a self-contradictory plea. If the mutations are bogus, then there should be no record available in the Revenue Records of these mutations. It is not the case here; impugned mutations duly attested by the Revenue Officer at the relevant time in due course of law are available in the Revenue Records.

6. Now, coming to the alternative plea that the mutations are fraudulent, a fraud must be committed with respect to the transfer of property by getting the mutations attested. There is no evidence on the record that any fraud was committed with the donor i.e. Dr. Rab Nawaz Khan for getting the impugned mutations attested. In these circumstances, the learned Peshawar High Court was not justified in reversing the well reasoned findings recorded on the basis of true appreciation of evidence by the two learned Courts below. Furthermore, where two different interpretations were possible of the evidence brought on record, as is the matter in the instant case, then appraisal of facts of lower courts should not have been overturned by the

learned High Court in its revisional jurisdiction under Section 115 CPC. Between two possible interpretations, the one adopted by the learned Trial and Appellate Courts should have been maintained, keeping in mind the limited scope of revisional jurisdiction.

7. It must also be noted that Plaintiff/Respondent No.1, who himself is an advocate, appeared as PW-5, and stated that the signatures of his father upon the impugned mutations are doubtful. He further stated that since the father of the Plaintiff was unable to move at the time of sanctioning of mutations, hence the same were illegal and a result of fraud. Against the evidence of the Plaintiff, the Defendants produced nine witnesses. DW-7, Juma Khan, a servant living in the same house along with the father of the Plaintiff has given his statement about the signatures and attestation of mutation. The suggestions put to DW-7 in cross-examination by the learned counsel for the Plaintiff/Respondents are of much significance, particularly the suggestion pertaining to the fact that the mutation was attested in the *veranda* of the house. Further, the official who attested the mutation, appeared as DW-9, and his cross-examination is also of material consequences. Relevant portion of the same is reproduced hereunder:

"یہ درست ہے کہ انتقال متدعویہ نمبر 11202 میں نے تحصیل کوہاٹ کی حدود میں تصدیق کیا تھا۔ اور ڈاکٹر ربناواز موقع پر موجود تھے۔۔۔"

The clear-cut suggestion put forth by the counsel for the Plaintiff to DW-7 and DW-9 pertaining to place of signature and attestation of mutation by the propositus, Dr. Rab Nawaz Khan, are sufficient to disprove the claim of the Plaintiff/Respondents and dismiss the Suit. In these circumstances, the Plaintiff himself has suggested that the signatures upon the disputed mutation of propositus and the attestation of the mutation by the officer attesting the same. Noting this implied admission the findings recorded by the learned High Court are absolutely against the available record, the evidence as well as the law, therefore, are not sustainable. The same are reversed. The judgment and decree dated 26.09.2012 of dismissal of the suit, passed by the learned Trial Court, is restored.

8. Consequently, this appeal is allowed with no order as to cost.

CMA No.774-P of 2014:

9. As the main appeal is allowed, therefore, the instant Civil Misc. Application is disposed of.

JUDGE

Islamabad, the
19th February, 2020
'APPROVED FOR REPORTING'
Mahtab H. Sheikh/*

JUDGE

