

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT: Mr. Justice Mushir Alam
Mr. Justice Mazhar Alam Khan Miankhel

Civil Petition No.2144/2016

(Against the judgment dated
11.05.2016 passed by the Peshawar
High Court, Abbottabad Bench in
C.R. No.21-A/14)

Sardar Arshid Hussain and others

Petitioners

Versus

Mst. Zenat un Nisa and another

Respondents

For the Petitioners:

Mr. Hassan Raza Pasha, ASC
Mr. Ahmed Nawaz Ch. AOR (Absent)

For the Respondents:

N.R.

Date of Hearing:

26.01.2017

ORDER

Mazhar Alam Khan Miankhel, J.- This petition is directed against the judgment dated 11.05.2016 of the Peshawar High Court, Abbottabad Bench whereby Civil Revision No.21-A, filed by the petitioners, was dismissed.

2. We have heard the learned counsel for the petitioners and perused the record with his assistance. The perusal of the record would reveal that the controversy between the parties revolves around a house which was initially transferred by Muhammad Irfan to Respondent No.1-Mst. Zenat-un-Nisa being his wife in lieu of dower vide an un-registered sale/dower deed dated 15.02.1987 alongwith possession whereas the said Muhammad Irfan subsequently transferred the said house in the name of his two sons i.e. Petitioners No.1 & 2 through a registered gift deed bearing No.1036 dated 2.10.1998. On getting knowledge of the same, the Respondent No.1 filed a suit for declaration questioning the genuineness of the above said registered gift deed. The Respondent No.1 through her evidence established her stance

of transfer of suit house in her favour by her husband vide an un-registered sale/transfer deed in lieu of dower and the physical possession of the suit house was also given to her on the strength of that deed. Besides, the report of the Forensic Science Laboratory (FSL) i.e. Exh.CW-1/1 has also confirmed the signatures of Muhammad Irfan on the said deed. The defendants/petitioners have failed to shatter the evidence so produced by the plaintiff/Respondent No.1 in support of her stance and thereby the factum of transfer of suit house vide above said un-registered deed has been established. But in the peculiar circumstances of the case in hand, the question would be as to whether the above said un-registered sale/dower deed can be given any preference over the registered gift deed in favour of defendants/petitioners. The answer to this question would be a simple yes. The law on the point is now very much settled. A registered deed reflecting transfer of certain rights qua a property though will have sanctity attached to it regarding its genuineness and a stronger evidence would be required to cast aspersions on its correctness but cannot be given preference over an un-registered deed vide which physical possession of the property has also been given. Sub-section (1) of Section 50 of the Registration Act, 1908 also provides that a registered document regarding transfer of certain rights in an immovable property will have effect against every un-registered document relating to the same property and conferring the same rights in the property as shown in the registered document but the law has also provided certain exceptions to the above said provisions of law. If a person being in possession of an un-registered deed qua transfer of certain rights in property alongwith possession of the same he can legally protect his rights in the property and even a registered deed subsequent in time will not affect his/her rights. The first proviso to Section 50 of the Registration Act, 1908 provides so that such rights in the property can be protected under Section

53-A of the Transfer of Property Act, 1882. Reliance in this regard can well be placed on the cases of Fazla Vs. Mehr Dina and 2 others (1999 SCMR 837) and Mushtaq Ahmad and others Vs. Muhammad Saeed and others (2004 SCMR 530).

So irrespective of the fact that the petitioners have a registered gift deed in their favour but the same is subsequent in time and they having no possession of the property cannot get any advantage of the same. Besides, the petitioners have claimed the gift in their favour vide the impugned registered deed but the basic ingredients of gift i.e. offer, acceptance and delivery of possession have also not been proved by them. The most important aspect of the case is that after the earlier transfer to Respondent No.1, legally Muhammad Irfan had nothing left to further transfer the same property to anyone else. So, the subsequent transfer vide the above said registered gift deed is illegal and void having no adverse effects on the rights of the plaintiff-Respondent No.1 and that has rightly been held so by the fora below. The petitioners have failed to rebut the evidence led by Respondent No.1 and they only tried to prove the factum of the alleged registered gift deed in their favour but the transfer in their favour, in view of the above discussion, is not a valid transfer. Even the petitioners did not question that very un-registered transfer deed in favour of Respondent No.1. Placing reliance on the case of Abdul Majeed and 6 others Vs. Muhammad Subhan and 2 others (2000 SCJ 135) would be of great significance here, wherein, it has been observed that unless and until a substantial defect in reading oral or documentary evidence is pointed out the finding relating to factual appreciation of controversy need not be gone into by the Supreme Court.

3. In view of what has been discussed above, the concurrent findings of the fora below do not suffer from any illegality or irregularity calling for interference by this Court. Resultantly, this petition is dismissed and leave to appeal is refused.

The above are the reasons for our short order of even date which reads as under:-

“For the reasons to be followed leave is declined and petition is dismissed.”

Judge

Judge

ISLAMABAD
26th January, 2017
NOT APPROVED FOR REPORTING
(Nasir Khan)