

Judgment sheet
IN THE PESHAWAR HIGH COURT, PESHAWAR
[JUDICIAL DEPARTMENT]

Civil Revision No. 301-P/2025
(with CMs 462-P/2025 & 784-P/2025)

Muhammadi Gul
V/s
Sheikh Muhammad Javed & 06 others.

Present:

- Mr. Inayat ur Rehman, Advocate for the petitioner.
- Mr. Safdar Iqbal Khattak for respondents

Date of hearing: 16.10.2025.

JUDGMENT

MUHAMMAD FAHEEM WALI, I.- Through this revision petition under Section 115 of the Code of Civil Procedure, 1908, the petitioner Muhammadi Gul has assailed the judgment and decree dated dated 26.11.2024 passed by the learned Additional District Judge-XIX, Peshawar, whereby his appeal against the judgment and decree dated 27.09.2024 passed by learned Civil Judge-XXIII, Peshawar, has been dismissed.

2. Brief facts as per averments of the petition are that, respondents No.1 and 2/plaintiffs filed a

suit for partition, declaration and permanent injunction in respect of a house measuring 02 marlas situated at Mohallah Bawani Das, Jehangir Pura Road, Peshawar, claiming ownership of half share under Registry No.2929 dated 27.07.2001.

Their real sister, Mst. Khalida Younas (respondent No.3), owned the remaining half share but resided elsewhere. The plaintiffs alleged that they had spent Rs.1,790,000/- on construction and apprehended that respondent No.3 intended to sell her share to strangers without their consent, hence, the suit. During proceedings, respondent No.3 was proceeded against ex parte, and it came to limelight that she had sold her share to the present petitioner during pendency of the suit despite injunction orders. On plaintiffs' application, the petitioner was impleaded as defendant No.2. He appeared but failed to submit a written statement and was again placed ex parte. Later, after the death of respondent No.3, her legal heirs (respondents No.4 to 7) were substituted. The learned trial court, after completion of

proceedings, decreed the suit vide judgment and summary decree dated 27.09.2024, which was upheld by the learned Additional District Judge-XIX, Peshawar, on 26.11.2024. Aggrieved thereof, the petitioner has invoked the revisional jurisdiction of this Court, seeking setting aside of both the impugned judgments and decrees.

3. Arguments of learned counsel for the parties heard and record perused with their valuable assistance.

4. Perusal of the record reveals that respondents No.1 and 2 instituted a suit for possession through partition, along with other ancillary reliefs, against deceased respondent No.3, seeking partition of the suit property situated at Mohallah Bawani Daas, Jehangir Pura Road, Peshawar. The plaintiffs claimed to be co-owners to the extent of half share in the said house. They also prayed for the grant of a temporary injunction, which was allowed on 07.12.2018 with the mutual consent and no objection of the learned counsel for the parties; however, the injunction was limited

only to the extent of restraining further alienation or construction over the suit property.

Subsequently, on 21.11.2019, the plaintiffs moved an application for impleadment of the present petitioner as defendant No.2, contending that he had purchased the share of deceased respondent No.3/defendant No.1, Mst. Khalida Younas, during the pendency of the suit and in violation of the subsisting injunction order. They thus sought his addition as a necessary party to the proceedings.

The said application was allowed, and the petitioner was impleaded as defendant No.2 vide order dated 03.02.2020. After a full-fledged trial, the suit was decreed to the extent of possession through partition by way of a summary judgment, whereby a preliminary decree for partition was granted among the original co-owners according to their respective shares. However, the plaintiffs' claim for reimbursement of construction costs was dismissed for want of evidence. The learned trial court also declared the sale of defendant No.1's share, effected during the pendency of the suit and

despite the status quo order, to be void and ineffective. However, defendant No.2 (the present petitioner) was left at liberty to seek redress before the appropriate forum regarding any grievance arising out of his transaction of sale executed during the pendency of the suit and subsistence of the injunction order concerning the purchase of the deceased co-owner's share. This judgment was subsequently upheld by the learned appellate court, albeit with somewhat different reasoning.

5. The points for determination before this Revisional Court are, firstly, whether the transaction of sale and purchase of the suit property, effected between the petitioner and defendant No.1/respondent No.3 during the pendency of the partition proceedings, constitutes a nullity in the eyes of law; and secondly, what would be the legal effect of such a transaction when it was executed during the subsistence of an injunctive order passed by a competent court of law. In order to fully comprehend the controversy

involved in the present case, it is imperative to examine the scope and intent of Section 52 of the Transfer of Property Act, 1882, which has predominantly influenced the findings of the learned courts below in arriving at the impugned decision now under challenge before this Court.

For the sake of convenience Section 52 of the Transfer of property Act, 1882 is reproduced hereunder;

"Section 52. Transfer of property pending suit relating thereto. ---

During the pendency in any Court having authority in Pakistan or established beyond the limits of Pakistan by the [Federal Government) or any suit or proceeding which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose."

A bare reading of the aforesaid provision of the Transfer of Property Act reveals that, in order to invoke the applicability of Section 52, certain conditions must be fulfilled. There must be a pendency of a suit or proceeding which is not collusive in nature, and in which any right to immovable property is directly and specifically in question. During such pendency, the property in dispute cannot be transferred or otherwise dealt with by any party to the suit or proceeding in a manner that may affect the rights of any other party therein, which may ultimately accrue to them under any decree or order passed in their favour. However, this restriction is subject to the exception that such transfer may be permitted if it has been expressly authorized by the court concerned, subject to the terms and conditions imposed by it.

6. This manifestation is indicative of two essential conditions: firstly, that a transfer of property must not be effected during the pendency of a suit in which any right to immovable property

is directly and specifically in question; and secondly, that such transfer must be of a nature likely to affect the rights of any party under a decree or order that may ultimately be passed in his or her favour upon conclusion of the proceedings. When the facts of the present case are examined in light of this legal proposition, it becomes evident that the suit in question was filed for partition of the suit property among co-owners. Such a suit partakes the character of an administrative proceeding, primarily intended for equitable distribution of the property among the co-owners according to their pre-existing and admitted shares, rather than for determination of title or ownership rights inter se. The purpose of a partition suit is not to create new rights but merely to separate and define existing ones. Accordingly, in the instant case, no right to immovable property was directly or specifically in dispute so as to require adjudication by the civil court. The transfer effected during the pendency of such proceedings, therefore, would not materially affect the pre-

determined entitlement of any co-owner. In these circumstances, the ingredients necessary to attract the application of Section 52 of the Transfer of Property Act are not satisfied, and consequently, the penal consequences contemplated therein cannot be invoked against the petitioner.

7. Conversely, the transfer of the immovable property, to the extent of the share belonging to defendant No.1/respondent No.3, in favour of the petitioner, merely substitutes the petitioner in place of the said defendant, and that too only to the extent of the rights which were legally vested in her in accordance with her entitlement. In essence, the petitioner steps into the shoes of the transferor and acquires only those rights and interests that were available to defendant No.1/respondent No.3 at the time of transfer, and nothing beyond.

8. It is a well-settled proposition of law that a co-sharer in joint property possesses every right to transfer, alienate, or sell his or her undivided share to a third person. However, such alienation remains restricted and subject to the actual share

or interest of that co-owner, as may ultimately be determined upon partition. If the transfer is confined within the legitimate share of the transferor, the vendee would automatically assume all rights, interests, and obligations of the transferor following the completion of such transaction.

9. In the present case, since the petitioner (defendant No.2) has purchased the share of respondent No.3/defendant No.1, which was within her lawful entitlement, the instrument of sale would remain valid and operative to that extent. However, the petitioner cannot claim exclusive possession of any specific portion of the property until such time as partition is finally effected among all co-owners. The rights of the petitioner, as a transferee *pendente lite*, shall necessarily remain subject to the ultimate outcome of the partition proceedings. It is equally well recognized that Section 52 of the Transfer of Property Act, 1882, does not declare a transfer made during the pendency of a suit (*pendente lite*)

as void or illegal per se; rather, it renders the transferee bound by the result of the litigation. The doctrine of *lis pendens* does not annul or invalidate the transfer, it merely subordinates it to the rights of the parties as determined by the final decree or order passed by the competent court. In plain terms, this doctrine does not render a transaction void ab initio but operates only to protect the rights of the adversary claimant, whose entitlement may otherwise be prejudiced by a transfer made during the pendency of proceedings.

Applying this principle to the present case, it is apparent that the underlying controversy pertains solely to the partition of joint property among co-owners. Consequently, the rights of the plaintiffs cannot be deemed to have been jeopardized merely because one of the co-owners transferred her share to a subsequent purchaser. The transferee, in such a situation, acquires only those rights which were vested in the vendor at the time of the transfer, no more and no less, and continues to be bound by the final outcome of the partition

proceedings. In arriving at this view, I stand fortified by plethora of judgments rendered by the Hon'ble Supreme Court of Pakistan, wherein the apex Court has consistently reaffirmed the settled principle of *lis pendens* and delineated the respective rights and obligations of parties in transactions made during the pendency of judicial proceedings. In the case of "**Muhammad Ashraf Butt and others V/s Muhammad Asif Bhatti and others**" reported in [PLD 2011 Supreme Court 905], the Hon'ble Apex Court ruled that;

"The rule of lis pendens lays down that whoever purchases a property during the pendency of an action, is held bound by the judgment that may be made against the person from whom he derived his title (to the immovable property, the right to which is directly and specifically in question in the suit or proceeding) even though such a purchaser was not a party to the action or had no notice of the pending litigation. The intention of the doctrine is to invest the Court with complete control over alienations in the res which is pendente lite and thus to

render its judgment binding upon the alienees, as if they were parties notwithstanding the hardship in individual cases."

Furthermore in the case titled "**Mst. Tabassum Shaheen V/s Mst. Uzma Rahat and others**" reported in **[2012 SCMR 983]**, the Apex Court laid down the principle that;

"---S. 52--- *Lis pendens, principle of--- Rights of parties---* Scope---Principle of lis pendens unambiguously prescribes that the rights of the party to the suit, who ultimately succeeds in the matter are not affected in any manner whatsoever on account of the alienation, and the transferee of the property shall acquire the title to the property subject to the final outcome of the lis---In view of the rule/doctrine of lis pendens, a transferee of the suit property, even if a bona fide purchaser, without notice of the pendency of suit, shall be bound by the result of the suit stricto sensu in all respects, as his transferor would be bound---Transferee therefore does not acquire any legal title free from the clog of his unsuccessful transferor, in whose shoes

he steps in for all intents and purposes and has to swim and sink with his predecessor in interest.”

Similarly, in the latest judgment reported as

[2023 SCMR 2158] in case titled “***Sheikh Muhammad Iftikhar Ahmad and others V/s Faiz Ahmad and others***”, the Hon’ble Supreme Court concluded that;

“----S. 52---Transfer of property pending suit relating thereto--- Doctrine of lis pendens---Scope--- Principle of lis pendens shall be applicable when one purchases from a party pending a suit where the same property is the subject matter and consequently, the parties are bound by the final decision notwithstanding any intermediate alienation of the property.”

10. After an elaborate discussion on the applicability or otherwise of the doctrine of *lis pendens*, another important and intriguing aspect of the case that arises for consideration is whether, in the presence of a subsisting injunctive order passed by a competent court of law, any action

taken by the parties in clear violation of such restraining order would render the transaction a nullity in the eyes of law. Upon careful examination of the settled legal principles on the subject, the answer to this proposition also appears to be in the negative. A violation of an injunction order, though constituting a contemptuous act against the authority and dignity of the court, does not, by itself, have the effect of rendering the underlying transaction void in law. Such a transaction may, however, be subject to appropriate legal consequences in terms of contempt proceedings or any other remedial measures as the court may deem fit, but the sale or transfer so made does not automatically become void or inoperative merely because it was executed during the currency of a prohibitory order. The object of an injunction is to maintain the status quo and to prevent alteration of the subject matter pending adjudication; its breach, therefore, invites penal or disciplinary action against the violator, yet does not ipso facto extinguish or invalidate the rights that may have

been created inter se between the parties to the transaction. In other words, while an act done in defiance of a court's injunctive order may expose the party to consequences of contempt, the transaction itself continues to exist in the eyes of law, subject to the final determination of the rights of the parties by the competent forum. The courts have consistently maintained that the proper remedy in such circumstances lies not in treating the transaction as void ab initio, but in enforcing the sanctity of judicial orders through appropriate contempt proceedings. To elaborate further upon the matter, it is pertinent to note that the temporary injunction is granted under the provision of Order XXXIX Rule 1 of the Civil Procedure Code, which for ready reference is reproduced as under;

"1. Cases in which temporary injunction may be granted. --- Where in any suit it is proved by affidavit or otherwise-- (a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in

execution of a decree, or (b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defraud his creditors, the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the Court thinks fit, until the disposal of the suit or until further orders."

This rule empowers the Court to grant a temporary injunction by order to restrain the defendant from performing any act for the purpose of preventing the wasting, damaging, alienation, sales, removal or dispossession of the property as the court deems fit until the disposal of the suit or till further order. However, interesting aspect of the matter is that this rule does not provide any penal consequences for violation or breach of the injunctive order. Nevertheless, the only provision which provide consequences for violation of any injunctive order is enshrined in Order 39 Rule (2) Sub-rule (3). Order 39 Rule 2, empowers a Court to

pass a restraining order to the defendant from committing a breach of contract or other injury of any kind, whereas its Sub-rule (3) provide a mechanism for enforcement of the restraining order issued by the Court under Rule (2) in general. For ready reference Rule 2 of Order 39 is hereby reproduced;

***"2. Injunction to restrain repetition
or continuance of breach.----***

(1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

(2) The Court may by order

(3) In case of disobedience, or of breach of any such terms, the Court granting

an injunction may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in prison for a term not exceeding six months, unless in the meantime the Court directs his release.

(4) No attachment under this rule"

Sub-rule (3) of Rule 2 distinctly provide that in case of disobedience of an injunctive order passed for restraining a party from the breach of contractual terms or other injury of any kind, the court who has granted an injunction may pass an order for attachment of the property of the person who has been guilty of such disobedience or breach of the contract and may also order detention of the violator in prison for a maximum period of six (6) months, unless in the meantime the court directs his release. Combined reading of Rule (1) & (2) and Sub-Rule (3) of Rule (2) of Order 39 CPC is suggestive of the fact that the enforcement tool available with the Civil court for violation of its restraining order has only been provided by the legislatures to the extent of Rule

(2) only because if the same had been meant otherwise, then such a provision could have easily been added to Rule (1) also, but it is apparently clear that the law framers never intended to provide such a power to the court in case of any violation of the orders passed under Sub-Rule (1) of the Code of Civil Procedure.

11. Be that as it may, even by invoking a legal fiction and giving an extended interpretation to the relevant provision, if it is assumed though not conceded that sub-rule (3) of Rule 2 also governs the operation of Rule 1 of Order XXXIX, Code of Civil Procedure, 1908, even then, the legal consequences would not extend to the nullification of any act or transaction made in violation of an injunction order. At the most, such violation would render the contemnor or violator liable to the penal consequences explicitly prescribed under the said provision i.e attachment of his property and detention in civil prison for a term not exceeding six months. However, such penal liability cannot, by any stretch of interpretation, be

construed as empowering the court to declare the transaction or act done in contravention of the injunction as void ab initio. In other words, the existence or continuation of an injunction order does not, by itself, invalidate or nullify an alienation made in disregard of such order. The law merely treats such an act as a contempt of court, attracting penal or coercive measures against the violator, without affecting the intrinsic validity of the transaction inter se between the parties. Furthermore, even if sub-rule (3) of Rule 2 were to be construed as encompassing within its scope the violations contemplated under Rule 1, such an interpretation would not align with the true legislative intent. The purpose of the provision is to preserve the authority of the court and ensure compliance with its orders, not to confer upon the court an additional power to invalidate transactions executed during the subsistence of an injunction. Therefore, the assumption that sub-rule (3) of Rule 2 extends to violations under Rule 1 is not only legally

untenable but also inconsistent with the plain language and underlying purpose of the statutory scheme. In holding this opinion, I am fortified by the judgment of Allahabad High Court, rendered in case titled "***Balbhaddar V/s Balla and others***", reported as **[A.I.R. 1930 Allahabad 387 (2)]**

wherein the Hon'ble Court held as under;

(a) Civil P. C., O. 39, R. 1 - Injunction granted pendente lite ends with suit. An injunction granted pendente lite until the disposal of the suit or further orders will end in any case on the disposal of the suit or any earlier date on which further orders may be passed. The words "until further orders" do not extend its duration beyond the date of decree.

(b) Civil P. C., O. 39, R 1 and 2 (3)- Provisions of R. 2 (3) may be applied to breach of injunction under R. 1---- (Obiter). Provisions of R. 2 (3), O. 3.) were intended to be applied to breach of injunction under R. (1) also but as Cl. (3) is included under R. 2, it would follow that the provisions of that clause will not apply to R. 1. It is suggested

that the clause may be split into separate rules (obiler).

(c) Civil P. C., O. 39 R. 1 - Existence of injunction does not render void alienation -Transfer of Property. The existence of a temporary injunction does not render void alienation made in contravention of the injunction."

12. For the reasons stated above both the learned courts below have fallen in error while misreading and non-appreciating the material available on record in its true legal perspective. The findings recorded suffer from illegality and material irregularity, resulting in miscarriage of justice. Consequently, the impugned judgments and decrees passed by the learned trial court as well as the appellate court are not sustainable in the eye of law. Accordingly, the revision petition is allowed; judgment of the learned Appellate Court is set aside, while judgment of the trial court is modified to the extent that the suit is preliminary decreed in the following terms:-

(i) the suit property is ordered to be partitioned amongst the co-sharers according to their respective shares;

(ii) the sale of defendant's No.1 share in favour of defendant No.2/petitioner, during pendency of the suit and the status quo order is declared to be lawful and is not hit by the doctrine of lis pendens and the petitioner/ defendant No.2 is held entitled to the extent of the share so purchased by him from defendant No.1/respondent No.3;

(iii) the share of the defendant No.1 so allocated to her in the judgment of the Civil Court is decreed in favour of the petitioner being the admitted transferee of the property to the extent of such purchase.

13. In view of the above discussion, the instant revision petition, along with listed CMs, stands disposed of accordingly. Parties shall bear their own costs.

Announced.
16.10.2025

J U D G E