

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

C.R.No.217/2013

Ali Akbar

Versus

Daud Akhter and others

Date of Hearing: 15.04.2019
Petitioner by: Ch. Manzoor Ahmad Kamboh and Hafiz Liaqat Manzoor Kamboh, Advocates.
Respondents by: M/s Zulfiqar Ali Abbasi and Shahid Munir, Advocates.

MIANGUL HASSAN AURANGZEB, J:- Through the instant civil revision petition, the petitioner, Ali Akbar, impugns the judgment and decree dated 30.05.2013, passed by the Court of the learned Additional District Judge, Islamabad, whereby the respondents' appeal against the judgment and decree dated 10.04.2010, passed by the Court of the learned Civil Judge, Islamabad, was allowed and the suit for declaration and perpetual injunction instituted by the petitioner, was dismissed. Vide the said judgment and decree dated 10.04.2010, the learned Civil Court had decreed the said suit instituted by the petitioner challenging mutations No.3711 and 3715 on the ground of fraud and collusion.

2. Learned counsel for the petitioner submitted that the petitioner had never agreed to sell any of his land in *Mouza Kirpa*, Tehsil and District Islamabad to the respondents; that the petitioner had only agreed to mortgage his land measuring 8 *kanals* and 10 *marlas* in the said *Mouza* to the respondents against mortgage money amounting to Rs.40,000/-; that the petitioner was a simple villager and had been defrauded by the respondents in collusion with the revenue officer and the revenue staff; that mutations No.3711 and 3715, dated 17.04.2000, were wrongly entered as sale mutations; that at no material stage, did the petitioner receive any sale consideration from the respondents; and that the petitioner was deprived of his valuable land due to the fraud played by the respondents.

3. Learned counsel for the petitioner further submitted that once the petitioner took the position that he had never sold the suit land to the respondents, the burden shifted on to the respondents, being the beneficiaries of the alleged transaction, to prove that they had purchased the suit land from the petitioner; that since the respondents were not able to prove the sale transaction on which the impugned mutations were based, the learned Appellate Court ought not to have dismissed the petitioner's suit; that the respondents did not produce the *Patwari* who had attested the said mutations; that the attesting witnesses of the two mutations were also not produced by the respondents; and that the respondents had not been able to discharge their burden of proving that the petitioner had sold the suit land to the respondents. Learned counsel for the petitioner prayed for the impugned judgment and decree dated 30.05.2013 passed by the learned Appellate Court to be set-aside and for the judgment and decree dated 10.04.2010 passed by the learned Civil Court to be restored.

4. On the other hand, learned counsel for the respondents submitted that the impugned judgment and decree passed by the learned Appellate Court does not suffer from any legal infirmity; that the execution of mutations No.3711 and 3715, dated 17.04.2000, has been admitted by the petitioner; that in paragraph 2 of the suit, the petitioner has admitted that he had appeared before the revenue authorities when the said mutations were executed; that the petitioner has also admitted his thumb impression over the said mutations; that in his examination in-chief, the petitioner admitted the receipt of money from the respondents; that all the ingredients of a sale provided in Section 54 of the Transfer of Property Act, 1882, are fulfilled in the instant case; that the title in the suit land had also been transferred to the respondents; that in both *jamabandis*, the title in the suit land continues to remain in the respondents' name; that the burden of proving the execution of a document shifts on to the beneficiary only in cases where the execution of such a document is denied;

that the petitioner did not depose as to the type of mortgage executed by him; that the petitioner could not state the name of the person who cultivates the suit land; that the petitioner was a school headmaster and could read and write English as well as Urdu; and that the impugned judgment and decree dated 30.05.2013 passed by the learned Appellate Court did not suffer from any misreading or non-reading of evidence so as to warrant interference in the revisional jurisdiction of this Court. Learned counsel for the respondents prayed for the revision petition to be dismissed.

5. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

6. On 04.09.2001, the petitioner filed a suit for declaration and perpetual injunction against the respondents before the learned Civil Court. In the said suit, the petitioner had assailed the following mutations:-

- (i) Mutation No.3711, (Exh.P/1) dated 17.04.2000, whereby the title in agricultural land measuring 6 *kanals* and 11 *marlas* in *khasra* Nos.2619, 2627, 2633 and 2647 in *Mouza Kirpa*, Tehsil and District Islamabad, was transferred from the petitioner to the respondents.
- (ii) Mutation No.3715, (Exh.P/2) dated 17.04.2000, whereby the title in agricultural land measuring 1 *kanal* and 19 *marlas* in *khasra* Nos.3181 and 3214 in *Mouza Kirpa*, Tehsil and District Islamabad, was transferred from the petitioner to the respondents.

7. The 8 *kanals* and 10 *marlas* of land which was the subject matter of the above-mentioned two mutations shall be referred to as the "*suit land*". As per the pleadings in the said suit, the petitioner had mortgaged the suit land in favour of the respondents against the mortgage money of Rs.40,000/-. It is also pleaded that since the petitioner was a "*simple villager*" and the respondents were "*cunning persons*", they, in collusion and

connivance with the revenue officer and the revenue staff, entered the mutations as sale mutations, and in this way fraud had been played on the petitioner.

8. The respondents contested the said suit by filing a written statement. From the divergent pleadings of the contesting parties, the learned Civil Court framed the following issues:-

- “i. Whether the sale mutation No.3711 and 3715 dated 17.04.2000 relating to the land in dispute is wrong, illegal, against facts based on fraud and inoperative upon the rights of the plaintiff, if so then whether the plaintiff is entitled to decree as prayed for? OPP*
- ii. Whether the suit is not maintainable? OPD*
- iii. Whether the suit is barred by time? OPD*
- iv. Whether the plaintiff is estopped by his words and conduct to file this suit? OPD*
- v. Whether the plaintiff has not come to the court with clean hands? OPD*
- vi. Whether the plaintiff has got no cause of action and locus standi to file this suit? OPD*
- vii. Whether the suit of the plaintiff is false, frivolous and vexatious, if so then whether the defendants are entitled to special costs U/S 35-A CPC? OPD*
- viii. Relief.”*

9. The petitioner appeared as PW.1, whereas respondent No.1 appeared as DW.1. Mutation No.3711 was produced as Exh.P/1 and mutation No.3715 was produced as Exh.P/2. After the recording of evidence, learned Civil Court, vide judgment and decree dated 10.04.2010, decreed the petitioner's suit. The said judgment and decree was passed primarily on the ground that the respondents had failed to prove, through positive evidence, the sale transaction which had been incorporated in the said mutations. The learned Civil Court had also observed that the respondents had failed to produce the *Halqa Patwari* as well as the two marginal witnesses of the said mutations.

10. The respondents' appeal against the said judgment and decree dated 10.04.2010 passed by the learned Civil Court was allowed by the learned Appellate Court, vide judgment and decree dated 30.05.2013. The learned Appellate Court dismissed the petitioner's suit primarily on the ground that the petitioner was a well educated person and that a presumption of truth was

attached to the entries in the said mutations. Furthermore, it was held that the judgment reported as 2007 SCMR 729 relied upon by the learned Civil Court while decreeing the petitioner's suit, was distinguishable. The judgment and decree dated 30.05.2013, passed by the learned Appellate Court has been assailed by the petitioner in the instant revision petition.

11. The vital question that needs to be answered is whether mutation No.3711 (Exh.P/1) and mutation No.3715 (Exh.P/2) admittedly executed by the petitioner incorporated a mortgage (as asserted by the petitioner) or a sale transaction (as asserted by the respondents).

12. True, the beneficiaries of the said mutations were the respondents, since title in the suit land was transferred in favour of the respondents by virtue of the said mutations. As the execution of the said mutations had not been denied by the petitioner, it is my view that the burden of proving the sale transaction incorporated in the said mutations did not shift on to the said respondents. In the case of Rehmatullah Vs. Saleh Khan (2007 SCMR 729), relied upon by the learned Civil Court while decreeing the petitioner's suit, the vendor was an illiterate woman who knew nothing about the contents of the mutation impugned in the said case, and was incapable of understanding the nature of the transaction. Furthermore, in the said case, the vendor had not admitted the receipt of the sale price and there was nothing on the record to establish the payment of the sale price. In the said case, attestation of the mutation was held to be the result of fraud and collusion, and therefore, ineffective on the rights of the vendor and her successor-in-interest. It is my view that the facts of the said case are quite distinguishable from the ones in the case at hand. As regard the case at hand, the petitioner is a well educated person and was capable of understanding the contents of the mutations in question. The petitioner while giving evidence as PW.1 had admitted that he had served as a school headmaster and had retired in BS-18. He had also deposed that he could read and write English and Urdu. Therefore, it does not appeal to reason

that the petitioner, who had affixed his thumb impressions on the said mutations, was unaware as to their contents. There is no denying the fact that there is absolutely no reference to any mortgage in the said mutations. The petitioner did not even plead as to the type of mortgage that had been executed. The petitioner has also parted with the possession of the suit land. In his cross-examination, the petitioner could not even state as to who was cultivating the suit land.

13. The thrust of the petitioner's case was that the respondents in collusion with the revenue authorities had played fraud on him and in the process, deprived him of the ownership of the suit land. The perusal of the plaint shows that the petitioner has not given any material particular regarding the fraud. It is essential that in a case where fraud, undue influence, or coercion is put at the forefront, the complainant party should set out the facts in full and give essential particulars instead of making general allegations. This is a legal requirement enshrined in Order VI, Rule 4 of C.P.C and reiterated by the Superior Courts in several cases, including Faizum alias Toor Vs. Nander Khan (2006 SCMR 1931), Mst. Sahib Noor Vs. Haji Ahmed (1988 SCMR 1703), and Pakistan Banking Council Vs. Ali Maohtaram Naqvi (1985 SCMR 714). In the case of Lanvin Traders, Karachi Vs. Presiding Officer, Banking Court No.2, Karachi (2013 CLD 1581), the Hon'ble Supreme Court has held that it is an elementary principle of pleadings that where allegations of fraud, misrepresentation, collusion or *malafide* are attributed, necessary particulars and the details in that context are to be unfolded in the pleadings, and that bald or vague statements to that effect are of no legal consequence.

14. The petitioner appeared as PW.1, and in his examination-in-chief, deposed *inter-alia* that he had executed the mutations with respect to the suit land. In fact the two mutations were produced by him as Exh.P/1 and P/2. In his cross-examination, the petitioner deposed that he had come to the *Patwari* in the Tehsil office Islamabad to execute the said mutations. He also deposed that he knew the witness, who was the *Lumbardar* of his village. The

petitioner also admitted his thumb impressions on the said mutations.

15. Having gone through the evidence, I am of the view that the petitioner was not able to prove that he had entered into a mortgage with the respondents or that the said mutations had been executed for the incorporation of the mortgage. It is well settled that although a mutation is not a document of title, it would be a factor in proof of the transaction which had been reduced or incorporated in the mutation. Reference in this regard may be made to the law laid down in the case of Ghulam Zainab Vs. Said Rasool (2004 CLJ 323). Other than the petitioner's pleading in the suit and his own testimony, there is no document whatsoever, available on the record or any independent evidence to show that he had mortgaged the suit land to the respondents.

16. Since attested mutations carry a rebuttable presumption of correctness, and since the petitioner was not able to rebut the said presumption with respect to the two mutations incorporating a sale transaction between the petitioner and the respondents, I do not find the impugned judgment and decree dated 30.05.2013 passed by the learned Appellate Court to be the consequence of a jurisdictional error or the misreading or non-reading of evidence. Consequently, the instant revision petition is dismissed with no order as to costs.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

ANNOUNCED IN AN OPEN COURT ON _____/2019

(JUDGE)

APPROVED FOR REPORTING

*Qamar Khan**

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