

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

C.R. No.33 of 2013
Waqar Hussain Abbasi
Versus
Mst. Tabassum Ali Kazmi and others

Date of Hearing: 22.01.2020.
Petitioner by: Khawaja Hasan Riaz, Advocate.
Respondents by: Mr. Shahbaz Akram, Advocate for
respondents No.1 and 2.
Respondents No.3 to 5 proceeded against
ex-parte.

MIANGUL HASSAN AURANGZEB, J:- Through the instant civil revision petition, the petitioner, Waqar Hussain Abbasi, impugns the judgment and decree dated 06.12.2012 passed by the Court of the learned District Judge, Islamabad, whereby his appeal against the judgment and decree dated 08.12.2010 passed by the Court of the learned Civil Judge, Islamabad was dismissed. Vide the said judgment and decree dated 08.12.2010, the learned Civil Court dismissed the suit for declaration, possession and permanent injunction instituted by the petitioner.

2. The petitioner's case is that he had purchased a plot of land measuring 01 *kanal* in *khewat* No.228, *khatooni* No.400, *hasra* Nos.2045 and 2047 in *Mouza Phulgran*, District Islamabad ("the suit land") from respondents No.3 to 5 through registered sale deed No.6539, dated 30.09.2003. The said land is said to have been mutated in the petitioner's favour vide mutation No.8259. The said land was stated to have been purchased by M.K. Robin Akhtar from Abdul Razzaq through mutation No.3607, dated 05.11.1992. Subsequently, after the demise of the M.K. Robin Akhtar, respondents No.3 to 5 along with other heirs of minor age inherited the said land. The above-mentioned registered sale deed dated 30.09.2003 was executed between the petitioner and respondents No.3 to 5, respondent No.3 was also guardian of remaining heirs suffering from legal disability due to minor age and lunacy.

3. In his suit, the petitioner had pleaded *inter alia* that respondents No.1 and 2 in connivance with each other had trespassed on to the said land when the petitioner was abroad and started raising construction thereon. Upon his return, the petitioner is said to have tried to stop respondent No.1 from raising further construction. The petitioner had instituted the said civil suit on 04.05.2005. Prior to the filing of a written statement, respondent No.2 submitted an application for the appointment of a local commission in order to determine the location of the suit land and whether the suit land has any nexus with the land in respondent No.1's occupation.

4. Vide order dated 11.05.2005, the learned Civil Court appointed a local commission with the mandate to visit the suit land and demarcate the same and then submit a report. On 08.06.2005, the local commission submitted his report to the learned Civil Court. Perusal of the said report (Exh.C/1) shows that the local commission had examined the registered sale deed No.902, dated 13.03.2001 executed between Mst. Tabassum Ali Kazmi and Mst. Rahat Shahid under which the former had purchased 17 *marlas* of land in *khasra* Nos.2045 and 2047 in *Mouza Phulragan* from the latter through respondent No.2. The said report also shows that the boundaries of the land are written in the said deed. According to the said report, Waqar Hussain Abbasi (the petitioner) had purchased land measuring 01 *kanal* in *khasra* Nos.2045 and 2047 in *Mouza Phulgran* from Mst. Munawar Sultana through registered sale deed No.6539, dated 30.09.2003. The said registered sale deed does not mention the boundaries of the land said to have been purchased by the petitioner. The report of the local commission clearly mentions that the land purchased by Mst. Tabassum Kazmi is in accordance with the situation on the ground i.e. plot of Mushtaq Ahmad to the East, road to the West, road to the North (30 feet), and house of B.A. Malik to the South. The plot purchased by Mst. Tabassum Kazmi was said to have been surrounded by a boundary wall, whereas an empty plot exists at some distance to

the South of the plot purchased by Mst. Tabassum Kazmi in the same *khasra* numbers.

5. On 13.07.2005, the petitioner filed objections to the report of the local commission. One of the objections raised by the petitioner was that respondent No.1's stance that he had purchased the suit plot from Mst. Rahat Shahid was not correct since she was the owner of a different plot through registry No.515, dated 22.02.1993.

6. Written statement was filed on behalf of respondents No.1 and 2 on 16.06.2005. From the divergent pleadings of the contesting parties, issues were framed on 03.10.2005. Subsequently, an additional issue was framed on 18.05.2006. The petitioner appeared as PW-1, whereas Muhammad Shabbir Abbasi as PW-2 and Saadat Iqbal Shah as PW-3. Respondent No.2 appeared as DW-2, whereas Shahid Jamil Butt and Muhammad Murtaza as DW-1 and DW-3 respectively.

7. Vide judgment and decree dated 08.12.2010, the petitioner's suit was dismissed. The petitioner's appeal against the said judgment and decree was also dismissed by the learned Appellate Court on 06.12.2012. The said concurrent judgments and decrees have been assailed by the petitioner in the instant civil revision petition.

8. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant civil revision petition, submitted that the petitioner was the lawful owner of the suit land measuring 01 *kanal* in *khasra* Nos.2045 and 2047 in *Mouza Phulgran*, Islamabad; that the said land had been purchased by the petitioner from Mst. Munawar Sultana through registered sale deed dated 30.09.2003; that while the petitioner was abroad, respondents No.1 and 2 occupied his land and started raising construction thereon; that after the petitioner was unable to stop the said respondents from raising construction on the petitioner's land, he filed the suit for declaration, possession and permanent injunction; that prior to the filing of the written statement, respondent No.2 filed an application for the appointment of the local commission to determine the location of

the suit land; that vide order dated 11.05.2005, the learned Civil Court appointed a local commission with the mandate to demarcate the petitioner's land from the one claim to be owned by respondent No.1; that the local commission instead of demarcating the land, examine the registered sale deeds on the basis of which, the petitioner and respondent No.1 were claiming to be the owners of the suit land; that the local commission went beyond his mandate by reporting that since the boundaries of the land purchased by respondent No.1 were mentioned in the sale deed in his favour, whereas the sale deed in the petitioner's favour did not mention the boundaries of the land purchased by him; that the land in occupation of respondent No.1 was owned by the said respondent and not by the petitioner; that since the report of the local commission was unlawful, the petitioner filed objections to the said report; that the said objections were not decided by the learned Civil Court at any material stage; that the original sale deed on the basis of which respondent No.1's claim to have purchased the suit land was never produced in evidence; that only a copy of the said sale deed was produced as Mark-E; that such a document did not have any evidentiary value; that the learned Courts below could not have given credence to a copy of the document produced as a Mark over the original sale deed which had been produced by the petitioner; that original sale deed dated 30.09.2003 which had been produced by the petitioner as Exh.P/1 and mutation No.8259, dated 18.11.2003 as Exh.P/2; and that the concurrent judgments passed by the learned Courts below suffer from non-reading and misreading and are liable to be set-aside. Learned counsel for the petitioner prayed for the revision petition to be allowed and for the impugned concurrent judgments passed by the learned Courts below to be set-aside.

9. On the other hand, learned counsel for respondents No.1 and 2 submitted that respondent No.1 was in lawful possession of the land purchased by her through registered sale deed dated 13.03.2001; that the said land had been purchased by respondent No.1 from Mst. Rahat Shahid through respondent

No.2; that respondent No.1 has not encroached any person's land; that the report of the local commission does not suffer from any legal infirmity; that in the said report, it is clearly mentioned that the boundaries of the land in respondent No.1's possession are commensurate with the boundaries that have clearly been mentioned in the registered sale deed dated 13.03.2001; that the registered sale deed dated 30.09.2003 relied upon by the petitioner is a doubtful document since it does not describe the boundaries of the land purchased by the petitioner from respondents No.3 to 5; that in the said sale deed, it has not been mentioned that the plot in question is a corner plot whereas the plot of land in respondent No.1's possession is a corner plot; that the petitioner did not raise any objection when a copy of the registered sale deed 13.03.2001 was produced as Mark-E; and that the concurrent judgments passed by the learned Courts below do 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 respondents No.1 and 2 prayed for the revision petition to be dismissed.

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

11. The facts leading to the filing of the instant civil revision petition have been set out in sufficient detail in paragraphs 2 to 7 above, and need not be recapitulated.

12. Registered sale deed dated 13.03.2001 executed between respondent No.1 (purchaser) and Mst. Rahat Shahid with respect to land measuring 17 *marlas* in *khasra* Nos.2045 and 2047 in *Mouza Phulgran* , District Islamabad is prior in time to the registered sale deed dated 30.09.2003 executed between the petitioner (purchaser) and Mst. Munawwar Sultana / respondent No.3 (seller) with respect to land measuring 01 *kanal* in the above-mentioned *khasra* numbers. Although a copy of the said registered sale deed dated 13.03.2001 was tendered in evidence during the statement of learned counsel for respondents No.1 and 2 as Mark-E, but the petitioner did not take any objection

when the same was produced. The petitioner had taken an objection only with respect to the documents produced as Marks-G and H.

13. As regards the contention of the learned counsel for the petitioner that the learned Civil Court had left the petitioner's objections to the report of the local commission undecided, suffice it to say that after the filing of the said objections, the learned Civil Court had framed an additional issue (i.e. issue No.1A) as to whether or not the report of the local commission was liable to be set-aside. The onus to prove this issue was placed on the petitioner. The petitioner appeared as PW-1, and in his examination-in-chief, made no deposition with respect to the report of the local commission. Since the petitioner was unable to discharge his onus of showing that the report of the local commission was not valid, the petitioner is estopped from questioning the report of the local commission at the revisional stage.

14. The learned Civil Court did not commit any jurisdictional irregularity by giving credence to the sale deed in respondent No.1's favour over the sale deed in the petitioner's favour. This is because the sale deed in respondent No.1's favour clearly mentions the boundaries of the land purchased by respondent No.1 whereas the sale deed in the petitioner's favour makes no mention of the boundaries of the land purchased by him. As regards the alleged dispossession of the petitioner at the hands of respondents No.1 and 2, the former was not able to bring on record any credible evidence to prove that he was dispossessed. The petitioner had admitted that he had purchased the land from respondents No.3 to 5. The petitioner did not produce the sellers as witnesses of the said land so that it could be proved that the sellers had handed over possession of the said land to the petitioner. It may be mentioned that respondent No.1 had produced the seller from whom she had purchased the land as DW-2, who testified that possession of the land had been handed over to respondent No.1 at the time of the purchase. The

petitioner also did not make any complaint regarding the dispossession to the police or any other authority.

15. Since neither any jurisdictional irregularity nor any misreading or non-reading of evidence by the learned Courts below was pointed out by the learned counsel for the petitioner, I have no reason to interfere with the concurrent findings of the learned Courts below. Consequently, the instant civil revision petition is dismissed with no order as to costs.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

ANNOUNCED IN AN OPEN COURT ON _____/2020.

(JUDGE)