

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CIVIL REVISION NO.308/2018

Ghulam Murtaza

Vs.

Ghulam Mustafa

Petitioner by : Syed Wusat-ul-Hassan Shah, Advocate
Respondent by : Raja Amir Azad, Advocate
Date of decision : 03.10.2019

MOHSIN AKHTAR KAYANI J. Through this Civil Revision, petitioner has assailed the judgment and decree dated 16.12.2016 passed by the learned Senior Civil Judge (East), Islamabad whereby suit filed by the respondent Ghulam Mustafa for Declaration, Permanent and Mandatory Injunction as well as recovery qua the house measuring 06 Marlas in Khasra No.1280 at Revenue Estate Sohan, Tehsil & District, Islamabad, with the entitlement of Rs.1,50,000/- from the petitioner was decreed. The Petitioner has also assailed the judgment and decree dated 29.5.2018, passed by appellate Court whereby the decision of the learned trial Court was upheld.

2. Learned counsel for the petitioner contends that petitioner and respondent are real brother and in order to resolve the issues of different properties they executed the exchange deed Ex.P1, registered with Joint Sub Registrar, Islamabad for exchange of the properties on specific terms. It is further contended that respondent Ghulam Mustafa had filed suit for the possession of the property defined in the exchange deed alongwith the amount. Although the petitioner has performed all due acts under the said exchange deed but the respondent had not transferred the possession of land which was to be settled in exchange of the property transferred from the petitioner side. It has lastly been contended that the Courts below have not appreciated the evidence in true perspective. Even revenue record has not been considered whereby the rights of the petitioner have been jeopardized.

3. Conversely, learned counsel for respondent contends that petitioner has performed all acts in the implementation of exchange deed Ex.P1 and transferred the properties in the name of petitioner who further alienated the transferred land through Mutation No.5751 Ex.P2, and Mutation No.4643 Ex.P3 and as such the claim of petitioner is an afterthought who has illegally occupied the possession of house which was agreed to be delivered to the respondent with the term of Ex.P1.

4. Arguments heard. Record perused.

5. Perusal of record reveals that respondent Ghulam Mustafa has filed suit for possession, permanent and mandatory injunction as well as recovery of Rs.1,50,000/- against the petitioner on the basis of sale deed/exchange deed registered at Sr.No.3478 dated 01.10.2001 before the Joint Sub Registrar, Islamabad, referred as Ex.P1. In compliance of the terms of the exchange deed the plaintiff/respondent transferred the land measuring 2K-13M in the name of petitioner in exchange of land measuring 15 Marlas from Khasra No.1280 situated in revenue state Sohan, Islamabad however as per contention petitioner/defendant is under obligation to transfer a house consisting of 05 rooms comprising of 06 Marlas of land with specific boundary referred in para 3 of the plaint in addition to original land described in the deed. The respondent as well as petitioner transferred the properties through registered instrument as a result whereof the properties were transferred in their respective names, however, as per contents of the plaint and claim of the respondent the petitioner had sought time of one month for vacation of the subject house but lateron refused to transfer the same whereby respondent filed suit for possession of the house as well as for recovery of an amount of Rs.1,50,000/- in respect of cost of construction material which has been removed by the petitioner/defendant through demolition of 04 rooms of said house. The suit was

contested by way of written statement whereby exchange deed No.3478 dated 01.10.2001 was admitted.

6. The trial Court has framed 11 issues including the issue relating to the fulfillment of exchange deed Ex.P1. The respondent / plaintiff appeared as PW-1 in the civil suit and reiterated his stance in the examination in chief including the detail of house and claim of Rs.1,50,000/-. During the course of cross examination present petitioner/defendant has acknowledged the decision of Jirga and has also acknowledged the transfer of land. Similarly, present petitioner appeared as DW-1 who also acknowledged the relationship with the respondent as real brother as well as description of land in detail alongwith the decision of a Jirga. The petitioner has acknowledged the following facts in his cross examination:-

یہ درست ہے کہ 21 مرلہ رقبہ تبادلے کے عوض مدعی کے نام ٹرانسفر کروایا تھا۔ یہ درست ہے کہ میں نے جو رقبہ تبادلے میں دیا تھا اُس کے نمبرات خسره 1280 اور 1380 ہے۔ یہ درست ہے کہ خسره 1380 میں مکان 6 مرلے کا بنا ہوا تھا البتہ خسره نمبر 1280 میں کوئی تعمیرات نہ تھی یہ درست ہے کہ یہ مکان مشتمل 5 کمرہ جات تھا۔ یہ درست ہے کہ مکان والی جگہ آبادی دیہہ میں واقع ہے۔ یہ درست ہے کہ میں نے بوقت تبادلہ میں دی ہوئی جگہ اور اُس پر تعمیر شدہ مکان کا قبضہ مدعی کو نہ دیا۔

Similarly, DW-2 Muhammad Najeeb in order to support the case of petitioner acknowledged the following facts:-

میں نے مدعا علیہ سے 10 مرلے جگہ خریدی از خود کہا کہ میرے بھائی نے خریدا۔ میرے بھائی نے تقریباً 6 سے 7 سال قبل خریدا تھا۔ یہ درست ہے کہ مدعی اور مدعا علیہ آپس میں بھائی ہیں۔ یہ درست ہے کہ فریقین نے 01.10.2001 کو اپنی جائیدادوں کا تبادلہ کیا تھا۔ یہ درست ہے کہ تبادلہ کی رو سے مدعی نے اپنا رقبہ تعدادی 2 کنال 13 مرلہ مدعا علیہ کو دیا تھا اور مدعا علیہ نے 21 مرلہ رقبہ مدعی کو تبادلہ میں دیا تھا۔ یہ درست ہے کہ مجھے یاد نہ ہے کہ اس زرعی اراضی پر کوئی مکان بنا ہوا تھا یہ درست ہے کہ جو رقبہ مدعا علیہ نے تبادلہ میں دیا تھا اس میں 5 مرلے کا مکان تھا۔

7. The above referred admission on the part of the petitioner left nothing in dispute as Ex.P1 has been acknowledged which provides term and condition of the exchange whereby petitioner has not delivered the possession of

the constructed house to the respondent/plaintiff and even the land which was transferred in the name of petitioner by the respondent was further alienated through Ex.P2 and Ex.P3.

8. I have gone through the judgment of the learned trial Court whereby specific findings have been given in detailed with reference to issues No.9 & 10. The relevant extract of the judgment of learned trial Court referred in para 17 of the judgment is reproduced as under:-

"In view of the aforementioned position, it is obvious that the plaintiff has not only transferred the land measuring 02 kanal 13 Marlas in favour of the defendants, but has also handed over the possession of the same as evident from the contents of exchange deed No.3478 dated 01.10.2001 and as such, the obligation upon the plaintiff has been fulfilled to the extent of the transfer of the land. However, the defendant did not fulfill his part obligation as per his admission available on record. Hence both issue No.09 & 10 are hereby answered in affirmative in favour of plaintiff."

9. The above referred findings of the learned trial Court was upheld by the first Appellate Court in appeal referred in para 17 & 18 of the Appellate Court judgment is reproduced as under:-

"The evidence existing on record suggested that the respondent has performed his part of agreement. On contrary to that the appellant who stepped into the witness box of lower Court while cross examination upon him has admitted the facts of transfer of 02 kanal 13 Marlas of land in favour of Malik Azhar and Malik Amir. He did not dispute his possession over the suit property house built upon 06 Marlas of land. Relevant portion of evidence is reproduced as below:-

یہ درست ہے کہ میں نے بذریعہ انتقال نمبر 5057 مورخہ 30.06.2002 ایک کنال 10 مرلہ
اظہر حسین ولد محمد بنارس کو فروخت کر دیا۔
"یہ درست ہے کہ میں بقیہ 6 مرلے میں بنا ہوا ہے وہ آج بھی میرے قبضے میں ہے۔"

The appellant has not produced on record any proof that land transferred to Malik Azhar and Malik Amir was infact not the land which was transferred in his favour by the respondent.

10. The evidence existing on record suggested that the respondent has performed his part of agreement. On contrary to that the appellant who stepped in the witness box of lower Court while cross examination upon him has admitted the facts of transfer of 02 kanal 13 Marlas of land in favour of Malik Azhar and Malik Amir. He did not dispute his possession over the suit property house built upon 06 Marlas of land.

11. The petitioner has not produced on record any proof that land transferred to Malik Azhar and Malik Amir was infact not the land which was transferred in his favour by the respondent.

12. The above referred concurrent findings of fact recorded by the trial Court as well as Appellate Court is substantiated on the basis of documentary evidence on record as well as through unqualified admission on the part of petitioner. Even no illegality has been observed in the impugned judgments of Courts below, therefore, the decree passed in favour of respondent qua the possession of house as well as amount of Rs.1,50,000/- is fully justified. No interference is required in this case in terms of Section 115 CPC, therefore, instant Civil Revision is dismissed.

(MOHSIN AKHTAR KAYANI)
JUDGE

M.S.ZAKI.