

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

R.S.A No. 05/2014

Amina Welfare Trust (Regd.) through its Chairman

Versus

Additional District Judge-V (East), Islamabad and others.

Appellant by: Mr. Zahid Aziz Bhutta, Advocate

Respondent No.3 by: Mr. Tanvir Ul Islam, Advocate

Date of decision: 13.08.2020

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MOHSIN AKHTAR KAYANI, J. Through this Regular Second Appeal, the appellant has assailed the concurrent findings of the learned Civil Court as well as learned Appellate Court vide judgment and decree dated 22.01.2013, passed by learned Civil Judge (East), Islamabad and judgment and decree dated 09.06.2014, passed by learned Additional District Judge-V (East), Islamabad.

2. Learned counsel for the appellant contends that the appellant Amina Welfare Trust (Regd.) has filed their suit for cancellation of document and permanent injunction against Mst. Ghazala Khalil and Civilian Employees Co-operative Housing Society, Islamabad with the prayer that plot No.3, Street No. 5, Block-D, Soan Garden Housing Scheme, Islamabad was transferred in the name of Mst. Ghazala Khalil/respondent No.3 be cancelled from her name and same be declared as Trust property. It has further been contended that Mst. Ghazala Khalil/respondent No.3 was niece of Mst. Amina Ghani Ghuman Executor/Author of the Trust and after her demise, she managed the transfer of property through fraudulent means by declaring herself as nominee and as such she is just custodian and Manager of the Trust, who has to transfer the property to lawful owner

i.e. Trust. It has further been contended that both the Courts below have not considered the evidence in its true perspective and even not appreciated the record, whereby the property was owned by late Amina Ghani Ghuman, which could not be claimed by respondent No.3.

3. Learned counsel for the appellant has also rendered his arguments on C.M No. 580/2020 filed on 12.08.2020 with the contention that he intends to place on record the additional documentary evidence including the Auditor report of year 2001 and resolution on the minutes of meeting of Board of Trustees dated 14.12.2001, whereby late Mst. Amina Ghani Ghuman herself alongwith other trustees declared the plot in question as Trust property. It has lastly been contended that this Court while exercising its jurisdiction under Section 100 CPC has ample powers to grant permission to present the additional documents in the Court, even it has extraordinary discretionary powers. Reliance is placed on PLJ 2000 Lahore 1373.

4. Conversely, learned counsel for the respondent No.3 contends that both the Courts below have appreciated the evidence on its factual and legal side and as such appellant has failed to discharge its initial onus and as such there is nothing on record that property was ever transferred through fraudulent means, rather the same was transferred in the name of respondent No.3 by the Society concerned after the demise of Mst. Amina Ghani Ghuman being the nominee in the Society record and this is the position till date. It has lastly been contended that appellant side intends to file additional documents on record at this stage after 17 long years of filing of the suit, the same could not be considered nor even looked into as the same were not part of the pleadings and even the representative of the Trust, when appeared in the Court witness box did not utter a single word qua the said meeting or the resolution and as such the status of such documents would give

rise to a fraudulent situation rather amounts to playing fraud with the Court.

5. Arguments heard and record perused.

6. Perusal of record reveals that Amina Welfare Trust was registered on 13.09.2001 before Sub-Registrar Lahore by Chairperson of Trust Amina Ghani Ghuman, who owns plot No. 3, Street No. 5, Block-D, Soan Garden Housing Scheme, Islamabad and she had died on 12.08.2002, whereas after her demise, Ghazala Khalil/respondent No.3, who is niece of the late Amina Ghani Ghuman was appointed as nominee in the Society record at the time of purchase of said plot, approached the Society office, who transferred the property in her name being the nominee. Amina Welfare Trust has challenged the said transfer by filing a civil suit for declaration on 24.03.2003, which was transferred in the name of Ghazala Khalil/respondent No.3, the same was contested by respondent No.3 with different legal objections, i.e. the suit is time barred and even the Trust has no locus standi to file the suit qua the property was not specified in the list of properties in the Trust deed dated 13.09.2001. The matter was contested and issues were framed, whereafter Amjad Ali Janjua, appeared as PW-3, who represented the Trust being its trustee and reiterated the stance referred in the plaint and he has taken a specific stance that:-

"بیگم صاحبہ نے اسے ٹرسٹ پر اپنی ڈیکلر کیا ہے۔"

7. However, during the course of cross-examination, he acknowledged that the late Begum Amina Ghani Ghuman has referred the certain properties in the deed of Trust dated 13.09.2001, but the said property was not mentioned therein, similarly he even not denied the factum that Ghazala Khalil/respondent No.3 was appointed as nominee in the application for membership of Civil Employees Cooperative Housing Society and the property was transferred in her

name after the demise of Begum Amina Ghani Ghuman, the letter of transfer referred as Exh.D1/1, which confirms the transfer of plot in the name of Ghazala Khalil/respondent No.3 as nominee, however, the appellant has not rendered any evidence, whereby trustees have declared the property in dispute as Trust property including the late Amina Ghani Ghuman, however, at this stage, the plea raised by the appellant in C.M No. 580/2020, if considered and allowed, would amount to fill up the gap and to grant the pardon to the appellant, rather re-fix her previous stance, which is not permissible under the law as much water has been flown under the bridges as the suit was initially filed on 24.03.2003 after the demise of Amina Ghani Ghuman and instant documents have been disclosed for the first time in August, 2020 after 17 long years, such belated, delayed exercise of the appellant shows their intention and conduct to manage the affairs of the Trust in a casual and careless manner. The appellant is not aware of their basic documents, and even the case, as to how and under what circumstances the properties could be declared as a Trust property. The case law cited by the appellant side to justify the claim of remand of the matter to the learned Trial Court to reconsider the Board of Trustees meeting, resolution is also distinguishable from the principles laid down in **2008 SCMR 855 (Muhammad Iqbal Vs. Mukhtar Ahmad)**, **2010 MLD 166 (Raboo Vs. Abdur Rehman)**, **2017 CLC 839 (Naseem Ahmed Khan Vs. Syed Fahad Ali)**, **2004 SCMR 1342 (Abbas Ali Shah and others Vs. Ghulam Ali and another)**, whereby it has been settled that perfectly sound conclusion should not be interfered with by High Court in exercise of jurisdiction in terms of Regular Second Appeal, similarly it has been settled that scope of second appeal is limited, High Court would not sit as Court in Second Regular Appeal against the concurrent judgment, which could only be interfered, if there is a gross misreading of evidence, however, in this case, the

appellant has neither proved his case in terms of Article 117 of Qanun-e-Shahadat Order, 1984 nor discharged the onus through an independent means, rather withheld basic document, despite its availability if believed in terms of Article 129(g) of Qanun-e-Shahadat Order, 1984, therefore, at this stage, no premium could be given to the appellant for their misdeeds and negligence, even though no valid justification has been brought on record for placing such documents before this Court for the first time, the same is not permissible under the law.

8. I have confronted learned counsel for the appellant to justify any question of law, which was not agitated by the Courts below, whereby he contends that he may be allowed to submit the additional evidence, which was not even placed before the lower Courts, hence the claim put forward by the appellant in the learned Trial Court as well as in the Appellate Court qua the Regular First Appeal has rightly been adjudicated, no illegality has been observed, even the appellant has failed to raise any question of law.

9. For what has been discussed above, instant Regular Second Appeal is not maintainable and same is hereby **Dismissed**. However, C.M No. 580/2020 for submission of additional documents on record for the purpose of evidence is not justiciable and same is also **Dismissed**.

(MOHSIN AKHTAR KAYANI)
JUDGE

RAMZAN