

2012 Y L R 291

[Lahore]

Before Muhammad Ameer Bhatti, J

KHUDA BAKHSH ANWAR and another---Petitioners

Versus

Mst. SHARIF BIBI and 2 others---Respondents

C.R. No.1030 of 2002, heard on 21st September, 2011.

(a) Specific Relief Act (I of 1877)---

---Ss. 12 & 22---Qanun-e-Shahadat (10 of 1984), Art. 79---Suit for specific performance of sale agreement---Execution of agreement denied by defendant, an old lady of 66/67 years---Proof---Stamp-vendor in his deposition did not state as to who had purchased stamp paper of agreement from him---Scribe of agreement in his deposition stated that he wrote agreement at direction of defendant without knowing her as she was clad in "Burqa"---Marginal witnesses had stated that defendant was an old lady of 66/67 years; that she was wearing "Burqa" and they were not known to her and that her son accompanied her at the time of such transaction---Validity---Testimonies of such witnesses did not inspire confidence as defendant was not known to any of them before such transaction---Plaintiff had not proved presence of defendant's son at time of transaction either by getting his signatures on any document or producing any cogent evidence---Court could refuse to decree such suit even if agreement had been proved as its specific performance was a discretionary relief---Plaintiff had failed to prove that defendant was not a pardah-observing lady and with her free consent and independent of her relatives had transferred land through agreement---Suit was dis-missed in circumstances.

Ali Muhammad v. Muhammad Hayat and others 1982 SCMR 816; Abdul Mannan and others v. Sikandar Khan and others 1992 CLC 505; Qamar-ud-Din and others v. Province of Sindh 2002 CLC 825; 1992 MLD 1758 and Province of Punjab v. Ch. Mehraj Din & Co. and others 2003 CLC 504 ref.

Abdul Aziz and others v. Abdul Rehman and others 1994 SCMR 111 rel.

(b) Pardahnashin lady---

---Illiterate and old pardahnashin lady---Execution of document by such lady, proof of---Standards stated.

The parameters in transaction, where the executant of transaction happens to be a lady specifically illiterate, old and pardah observing one, entail specific standards of substantiation. Not only the deed has to be read over to her, but it must be proved that it was substantially understood by the lady and it would be subject to her free will and intelligent act. Mere assertion that it was read over to the lady, does not fulfil the requirement, and the bona fides must also be proved that she has an independent advice.

PLD 2005 SC 658; Mst. Hafeeza Bibi v. Ali Hussain and others 1993 SCMR 1194 and Wing Commander (R) Abdul Majeeb v. Prime Minister of Pakistan 1998 SCMR 1345 rel

(c) Specific Relief Act (I of 1877)---

---Ss. 12 & 22---Suit for specific performance of agreement---Scope---Relief of specific performance of agreement being discretionary could be refused even if agreement had been proved---Such discretion could be exercised on equitable terms.

Abdul Aziz and others v. Abdul Rehman and others 1994 SCMR 111 rel

(d) Qanun-e-Shahadat (10 of 1984)---

---Art. 61---Disputed signatures of a party, comparison of---Powers of court---Scope---Court on its accord could compare such signatures and draw opinion.

Tasawar Hussain Qureshi for Petitioners

Messrs Munir Ahmed Khan Zai for Respondent No.1

Muhammad Kabir Khan and Asad Rashid for Respondents Nos. 2 and 3

Date of hearing: 21st September, 2011.

JUDGMENT

MUHAMMAD AMEER BHATTI, J.---Through this civil revision, the petitioners have challenged the concurrent finding of facts recorded by both the Courts below while dismissing the suit for possession through specific performance on the basis of written agreement to sell.

2. The facts necessary for the just decision of this case are that the petitioners filed a suit for possession through specific performance against the present respondent No.1, the owner of the land measuring 5-K 18-M and 82-Square Feet. The case as set up by the petitioners in the plaint is that the respondent No.1 agreed to sell her land for a consideration of Rs.70,000 out of which Rs.20,000 was paid as an earnest money at the time of execution of agreement to sell. This agreement was written on 23-6-1992 and period of one year with a specific target date i.e. 23-6-1993, was given for completion of the transaction. It is also the case of the petitioners that the possession was also handed over to them as part of agreement. Since the respondent No.1 has failed to honour the agreement and under the apprehension, the petitioners filed a suit on 19-5-1993. It is added that the land in dispute was alleged to have been further alienated to the respondents Nos.2 and 3 vide agreement to sell dated 22-11-1992. Hence after gaining the knowledge of this transaction, the respondents Nos.2 and 3 were impleaded as defendants in the suit.

3. Both sets of respondents/defendants filed their written statements independently and from the divergent pleadings of the parties, necessary issues were framed. The parties were allowed to

bring on record their evidence (oral as well as documentary) according to discharge onus on their respective issues. The learned trial Court vide judgment dated 8-12-1996 dismissed the suit and this judgment and decree was appealed against, which was accepted on 19-1-2001 by the learned Additional District Judge, who after setting aside the judgment and decree of the learned trial Court, remanded the case back for its decision afresh after framing the issue of bona fide purchaser. Consequently, the learned trial Court framed the Issue No.7-D and the parties tendered their evidence accordingly. However, in the second round, the learned trial Court vide a judgment dated 21-6-2001 again dismissed the suit and this judgment and decree was assailed by the petitioners before the learned First Appellate Court who vide a judgment dated 16-2-2002, dismissed the appeal and now the petitioners are before this Court through this Civil Revision.

4. The learned counsel for the petitioners contends that the agreement to sell has been proved without any shadow of doubt by producing the best available evidence in the shape of marginal witnesses, scribe and stamp vendor who appeared as P.W.2 and 4, 3 and 5 respectively but both the learned Courts below misread and misconstrued the evidence. The learned counsel for the petitioners further contends that the judgments of both the Courts below are not in consonance with the provision of law, i.e. Order XX, Rule V read with Order XXXXI, Rule 31, C.P.C., hence the judgments of both the Courts below are liable to be set aside, as they have committed material illegality and irregularity while recording the findings on issues. Since the judgment does not reflect the discussion of evidence on specific issue, hence it is no judgment in the eye of law. Reliance has been placed on *Ali Muhammad v. Muhammad Hayat and others* (1982 SCMR 816), *Abdul Mannan and others v. Sikandar Khan and others* (1992 CLC 505), *Qamar-ud-Din and others v. Province of Sindh* (2002 CLC 825 and 1992 MLD 1758). Learned counsel for the petitioners further contends that the Courts below have decided the fate of the agreement to sell on the basis of the comparison of signature. To elaborate his standpoint, the learned counsel contends that it was not within the jurisdiction of the Courts below to make comparison of the signature of the respondent No.1/defendant No.1 without obtaining his fresh signatures in the presence of the parties. Moreover, the comparison of the signatures on the agreement to sell of the petitioner have been made with another agreement to sell which was purportedly signed by the respondent No.1, keeping in view as admitted signatures. Although, this document has not been admitted nor signatures on that document have been admitted by the respondent No.1 in the evidence, hence comparison drawn by both the Courts below are not in conformity with the provision of law. On this account, the judgments of both the Courts below are not sustainable on this sole ground. He has relied on case-law reported as *Province of Punjab v. Ch. Mehraj Din & Co. and others* (2003 CLC 504).

5. Conversely, the respondent No.1 has argued that the findings of facts concurrently recorded by the courts below, cannot be challenged in the revision petition without pointing out any misreading or non-reading in the evidence. Since the judgments of both the Courts below are based on the evidence produced by the parties and the present petitioners have failed to point out any illegality or irregularity and misreading or non-reading in the judgments of learned Court below, hence the revision petition is liable to be dismissed on this score. He further contends that

the respondent No.1/ defendant No.1, the owner of the land in dispute is admittedly an old illiterate lady who has specifically took the denial stance about the execution of the agreement to sell, purchase of the stamp paper and signature on the stamp paper, hence petitioners were under legal obligation to prove the transaction as valid, as he was the beneficiary of this transaction which is forged and fictitious. Since the petitioner/ plaintiff has failed to prove the presence of the son of respondent No.1 at the time of the execution of the agreement to sell, as neither his signatures have been found anywhere on the document nor for that matter there is any cogent evidence through which the presence of the son of respondent No.1 could have been proved, hence the petitioners have miserably failed to prove the alleged agreement to sell and the judgments of both the Courts below are in line of the law laid down by the Hon'ble Supreme Court, and the suit of the petitioners was rightly dismissed. Learned counsel for the respondents Nos.2 and 3 although has endorsed the arguments of the counsel for the respondent No.1, however, added that the respondents Nos.2 and 3 have proved their case of bona fide purchaser. Since they have purchased the land in dispute after scrutiny of all the revenue record, hence their transaction cannot be hit by provision of law.

6. I have considered the arguments and perused the record with the valuable assistance extended by the learned counsel for the parties.

7. It is matter of record that P.W.5 stamp vendor has not stated in his examination-in-chief about the purchase of the stamp paper by Sharif Bibi/respondent No.1. He has only stated that this stamp paper has been issued by him but his evidence is silent about as to who purchased it. So far as the evidence of P.W.3, the scribe of this document who simply stated that he has reduced the document in writing (Exh.P.1) on the direction of Sharif Bibi. In cross-examination, he admitted that Sharif Bibi was not known to him. Moreover, he has also admitted in cross-examination that Sharif Bibi was clad in "Burqa". Now turning to the evidence of P.Ws. 2 and 4, the marginal witnesses, they also admitted that they were not known to Sharif Bibi. Even at one stage, P.W.2 in cross-examination admitted that her signature on Iqar Nama is not there and this has also been admitted by P.W.2 that Sharif Bibi was a parda-observing lady who was wearing "Burqa" at the time of this transaction and further he admitted that she was an old lady aged about 66-67 years.

8. From the reading of the evidence of the petitioners/plaintiffs, although they have produced all the witnesses but the testimonies of all these witnesses is not trustworthy for the main reason that an old and illiterate lady has been described to have been entered into this transaction independently. This lady was not known to any witness before this transaction. The testimonies of these witnesses do not inspire confidence. The parameters in suchlike transaction, where the executant of transaction happens to be a lady specifically illiterate and old parda observing one, entail specific standards of substantiation. It has been held that not only the deed has to be read over to her but must be proved that it was substantially understood by the lady and

it would be subject to her free will and intelligent act. Mere assertion that it was read over to the lady, does not fulfil the requirement and it has been further required that the bona fides must also be proved that she has an independent advice. For ready reference reliance can be placed on PLD 2005 SC 658, Mst.Hafeeza Bibi v. Ali Hussain and others (1994 SCMR 1194) and Wing Commander (R) Abdul Majeeb v. Prime Minister of Pakistan, (1998 SCMR 1345). It is also a settled law that suit can be refused to be decreed even if the agreement has been proved as it is discretionary relief and on this discretion it can be exercised on equitable terms. Since it is a discretionary relief and in the present circumstance, the same can be refused as per law laid down by the Hon'ble Supreme Court reported as Abdul Aziz and others v. Abdul Rehman and others (1994 SCMR 111). It has also been admitted by all the P.Ws. that Mst. Sharif Bibi was an old and parda-observing lady and it is also admitted by all the witnesses that her son accompanied her at the time of transaction but neither his presence has been shown by getting his signature on any document nor his presence has been proved through any cogent evidence, which was the duty of the petitioners. The excerpts of evidence referred to by the learned counsel for the petitioners did not persuade this Court to conclude that the case is exceptionable. Since legal protection has been provided to the old illiterate parda-observing lady, in suchlike transactions and this Court sees eye to eye with the judgments passed by both the Courts below. As the petitioners/ plaintiffs have failed to prove on record that the executant of agreement was not a parda-observing old lady and she with her free consent transferred the land through document purported to have been executed by the lady who had not independent advice of her relatives, hence the suit is not liable to be decreed, being a discretionary relief and can be refused in suchlike circumstances.

9. So far as the contention of the learned counsel for the petitioners that both the Courts below have committed illegality while not dictating the issue wise findings. I have gone through the judgments of both the Courts below, each and every piece of evidence has been thoroughly discussed and properly appreciated, hence for this purpose, the case cannot be remanded back for sheer re-writing of judgment. This court cannot be ignorant of the fact, that the petitioners have already dragged the respondents in litigation since 1993 and it would neither be expedient nor in the interest of justice to keep the parties entangled in another round of decades long litigation. It is also undesirable that the respondent/owner of the land be denied the benefit of decrees on technical grounds, which have been passed in their favour and for that purpose they are litigating for the last more than two decades.

10. So far as the question of comparison drawn by the petitioners is concerned, that comparison has been made with the document which has not been admitted by the petitioners. It is settled law that Courts have powers to compare the signatures of the parties which are disputed on its own accord and can draw opinion, hence the Courts have not committed any illegality or irregularity while comparing the alleged signature on the purported agreement to sell with the admitted agreement to sell executed in favour of the respondents Nos.2 and 3. So, the comparison made by the Courts below was in accordance with law and they were fully competent to make this comparison, hence the petitioners cannot get any benefit from this act of

the Courts below.

11. In this view of the matter, the petition merits rejection and accordingly dismissed.

S.A.K./K-48/L

Revision dismissed.