

2011 M L D 1851

[Lahore]

Before Muhammad Ameer Bhatti, J

ZAHOOR-UD-DIN and 2 others---Petitioners

Versus

JANNAT BIBI and another---Respondents

Civil Revisions Nos.2165 and 2166 of 2007, decided on 24th June, 2011.

Specific Relief Act (I of 1877)---

---Ss.42 & 54---Qanun-e-Shahadat (10 of 1984), Arts. 79, 117 & 120---Declaration of title and injunction---Sale deed, proof of---Onus to prove---Failure to produce two witnesses---Each party filed a suit, respondent sought declaration of title on the basis of sale deed whereas petitioner sought recovery of possession---Both the courts below concurrently passed judgments and decrees in favour of respondent on the ground that sale deed in question was admitted document and suit filed by petitioner was dismissed---Validity---Where contents of a document were put to the executant, the construction of that document would have been proved but the contents could not be considered to have been proved by simply acceptance of document by executant---Mere admission of petitioner of sale deed in question was not tantamount to admission of entire series of acts as would give validity to the sale deed itself and it could not dispense with proof of attestation of the sale deed---Original owner of suit property did not appear before the Registrar at the time of registration of the sale deed but a commission was appointed for obtaining his signatures---Neither any commission was produced for verification of the sale deed nor any other evidence was brought on record by respondent for proving of the sale deed, thus the same had cast doubt about the validity of the sale deed---Respondent was beneficiary of the sale deed who failed to prove the document and both the courts below wrongly held that due to admission made by petitioner in another document, about the sale deed in question, there was no need for respondent to prove the sale-deed---Both the courts below had overlooked such principle of law---High Court in exercise of revisional jurisdiction set aside the judgments and decrees passed by two courts below and suit filed by respondent was dismissed and that of petitioner decreed in his favour---Revision was allowed in circumstances.

Ejaz Anwar for Petitioners.

Muhammad Akhtar Rana for Respondents.

Date of hearing: 20th June, 2011.

JUDGMENT

MUHAMMAD AMEER BHATTI, J.---Through this single judgment I dispose of two Civil Revisions Nos. 2165 and 2166 of 2007 filed by the petitioner which are outcome of one suit filed by the respondent i.e. suit for possession and the other suit filed by the present petitioner for declaration. These civil revisions have been filed against the judgment and decree passed by both the Courts below whereby the suit filed by the present petitioner was dismissed and the suit filed by the respondent has been decreed and appeals filed against both the judgments and decrees were also dismissed by the learned Additional District Judge vide judgment and decree dated 29-10-2007.

2. The brief facts of the case are that the respondent purchased the suit-land from his father-in-law through registered sale-deed dated 5-11-1997 against a consideration of Rs.2,35,000. The present petitioner was also in occupation of one of the portion of disputed house. Before filing this suit, the respondent filed ejectment petition against the present petitioner which was allegedly withdrawn, keeping in view the settlement reached between the parties as averred by the respondent and for that purpose, the respondent had paid Rs.1,50,000 as compensation to the present petitioner.

3. However, even after receiving this amount, the present petitioner refused to vacate the premises which necessitated the filing of another ejectment petition but it was dismissed on the main ground that there existed no relationship of landlord and tenant between the parties. Appeal filed against this order was also dismissed. Thereafter, the present petitioner filed a suit for declaration against the respondent on 17-9-1999. During pendency of the suit, the respondent filed a suit for possession on 30-1-2001 for the possession of one room from the present petitioner's custody. Both the suits were consolidated and 14 issues were framed. Parties led their evidence according to the issues. The present petitioner produced five P.Ws. including himself. However, his documentary evidence was closed under Order XVII Rule 3, C.P.C. The respondent also produced two witnesses and himself appeared as D.W.1 and also placed on record documentary evidence in the shape of Exh.D.1 sale-deed, Exh.D.2 correction and Exh.D.3 compromise deed.

4. Learned Trial Court vide its judgment and decree dated 8-2-2007 dismissed the suit of the present petitioner and decreed the suit of the respondent. The petitioner filed two separate appeals against the independent judgments of the two suits which were heard by the Additional District Judge and ultimately dismissed both the appeals, thus leading to the instant two civil revisions.

5. Learned counsel for the petitioner contends that the respondent has failed to prove Exh.D.1 inasmuch as he has neither produced local commission who recorded the statement of Fakhar-ud-Din, the original owner of the disputed property, hence the Exh.D.1 could not be proved in accordance with law as the requirement of Article 79 of the Qanun-e-Shahadat Order, 1984 has not been complied with for only one witness out of the two marginal witnesses was produced. A sale-deed (Ex.D.1) could not be considered to have been proved in accordance with law and both the Courts below have ignored this fact by alleging that Exh.D.1 has been admitted by the petitioner/defendant. So, there was no need to prove this

document by way of corroborative evidence. He contends that it is the duty of the plaintiff to stand on his own legs instead of getting the benefit from the weaknesses of the defendant. He further argued that both the Courts below have wrongly held that the petitioner has admitted Exh.D.1 to Exh.D.3 which is based on conjectures and surmises. Since both the Courts below have misread and misconstrued the evidence produced by the petitioner, hence the judgments of both the courts below are not sustainable in the eye of law.

6. On the other hand, learned counsel appearing on behalf of respondent supported the judgment and decree of both the Courts below and stated that the concurrent findings of facts have been recorded against the petitioner by both the Courts below and he has no case to challenge the same through this civil revision petition. He has referred the evidence of P.W.3 who has admitted this fact that he heard about the sale of disputed property 4/5 years ago. On the basis of this statement, he contends that the witness of the petitioner himself admitted this fact about the factum of sale. In the given situation, he cannot get any benefit from the non-production any of marginal witnesses by the respondent. He further contends that since the petitioner himself accepted the existence of Exh.D.3 in which the existence of Exh.D.1 has been specifically mentioned, so the admission on the part of the petitioner about the Exh.D.3 meant admission of Exh.D.1. In the light of this admission, if one of the marginal witnesses had already died before recording of evidence, this fact had already been brought on record by the respondent and P.W.3 was produced to prove this fact. The respondent did not have the option to produce other marginal witness (who had already died) and the petitioner was/is entitled to benefit from non-availability of one of the marginal witnesses as provided under the law. He further contends that there is no misreading or non-reading and illegality or irregularity in the judgments of both the Courts below. The jurisdiction has been exercised rightly by both the Courts below, hence this revision petition is liable to be dismissed.

7. I have considered the arguments of both the parties and also perused the record.

8. It is admitted fact that the respondent has produced only one marginal witness. However, to prove this fact that the other marginal witness had died before the recording of evidence, he produced P.W.3 for this purpose but that does not absolve him of his duty. Moreover, the respondents are trying to get the benefit of admission made about the Exh.D.3, which documents have been alleged to have been obtained under duress i.e. on gunpoint. So, it would have been obtained from the petitioner and he has admitted to the extent of this document but that does not mean that he has admitted the contents of this document. The settled law is that unless the contents of the documents have not been put to the executant, the construction of that document would have been proved but the contents could not be considered to have been proved by simply acceptance of the document by executant and mere admission of the petitioner of Exh.D.3 is not tantamount to admission of entire series of acts as would give validity to the document Exh.D.1 itself and it cannot dispense with proof of attestation of Exh.D.1. I cannot be oblivious of the fact that the original owner Fakhar-ud-Din has not appeared before the Registrar at the time of registration of Exh.D.1 but a commission was appointed for obtaining his signature but neither any commission was produced for verification of this Exh.D.1 nor any other evidence had been brought on record by the respondent for proving of this document Exh.D.1 which cast doubt about the validity of Exh.D.1 which cast doubt about the validity of Exh.D.1. Even otherwise, it is not denied

by any party that Fakhar-ud-Din and both these parties were living in the same house. The respondents have also failed to prove the narrative of paying compensation to the tune of Rs.1,50,000 to the petitioner at the time of withdrawal of ejectment petition. It is also a fact which has not been proved by the respondent that he obtained the registry on 5-11-1997 but remained silent till the death of the original owner Fakhar-ud-Din and after his death, he filed this ejectment petition and embarked on litigation against the present petitioner. The respondent has also failed to prove this crucial fact as to what was the necessity for selling this disputed house by Fakhar-ud-Din, the father-in-law of the present respondent. There is no evidence on the record that for what purpose he sold out his disputed property and what was done with that amount by Fakhar-ud-Din, the original owner. Even otherwise, after the death of Fakhar-ud-Din, this property had to be divided between the legal heirs of present petitioner and respondent, the husband of the respondent. Thus, it was the duty of the respondent to prove all these facts which he has failed to prove but both the Courts below ignored all these relevant facts. It is must to prove his case. Since the respondent/ beneficiary of Exh.D.1 has failed to prove his document and both the Courts below wrongly held that due to the admission made in the Exh.D.3 about the Exh.D.1, there was no need for the respondent to prove Exh.D.1, they have overlooked the settled principles of law.

9. The upshot of the above discussion is that both the civil revisions are allowed and the decrees and judgments passed by the Courts below are set aside. Consequently, the suit filed by the present petitioner is **decreed** and the suit filed by the respondent is hereby **dismissed**. No order as to costs.

M.H./Z-32/L

Revision allowed.