

**SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

9/25

**Present:**

Mr. Justice Amin-ud-Din Khan  
Mr. Justice Irfan Saadat Khan

**C.P. No.3151/2021**

Against the judgment dated  
04.02.2021 passed by the Lahore High  
Court, Lahore in Civil Revision No.  
7582 of 2021.

***Muhammad Asif***

*....Petitioner*

***Versus***

***Amjad Iqbal and others***

*...Respondents*

For the Petitioner:

Mr. Muhammad Faiz Ahmad Cheema,  
ASC.  
Syed Rifaqat Hussain Shah, AOR.

For the Respondents:

Mr. Junaid Iftikhar Mirza, ASC for  
respondent No. 1.  
Rana Muhammad Tariq,  
Tehsildar/respondent No. 4 in  
person.  
Syed Muhammad Ashraf,  
Patwari/respondent No.5, in person.

Date of Hearing:

30.10.2024

**ORDER**

**Amin-ud-Din Khan, J:** Through this petition filed under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, petitioner has challenged the order of the learned High Court dated 04.02.2021 whereby Civil Revision No. 7582 of 2021 filed by the petitioner was dismissed.

2. After hearing the learned counsel for the petitioner on 18.1.2024 we issued notice to the other side. Today learned counsel for the petitioner as well as contesting respondent No.1 are present whereas respondent Nos.4 & 5 are in attendance in person.

3. Though there are concurrent findings recorded by the three *fora* below against the petitioner but it seems that the pleadings of the

plaintiff-respondent in his suit as well as principles of onus to prove skipped from the view of the learned courts below, therefore, they reached to a conclusion whereby suit of plaintiff/respondent was decreed and appeal as well as revision filed by petitioner/defendant No.4 were dismissed.

4. According to the brief facts, plaintiff on 4.7.2013 filed a suit for grant of a decree for declaration of his title to the suit property, fully described in the head-note of the plaint, whereby he challenged mutation No. 6884 of sale by him in favour of defendant No.4/petitioner attested on 20.10.2008. In the plaint it was pleaded that defendant No. 4/the vendee of the said mutation with the help of three unknown armed persons abducted the plaintiff and he was kept under fear and coercion and with the connivance of defendant Nos. 2 & 3, who are Tehsildar and Patwari Halqa respectively, got the property transferred in his name. The mutation is of the period when plaintiff was kept in illegal arrest/“*Hirasat*” under fear and threat of murder. In the column of cause of action plaintiff has pleaded that initially cause of action accrued to him on 20.10.2008 whereas lastly on 12.06.2013 when District Collector has observed that matter lies under the domain of civil court. Written statement was filed by the vendee/defendant, who has pleaded that the sale was for a consideration of Rs:20,00,000/- and after attestation of mutation, the plaintiff due to greed and bad intention challenged the mutation and even got an FIR registered after more than one month of the attestation of mutation with the connivance of the police whereas defendant/vendee was acquitted in the said criminal case. The plaintiff filed a pre-emption suit in order to get back the suit property by his uncle Muhammad Shafi and in the said pre-emption suit in the notice



of Talb-e-Ishhad the real brother-in-law (Saala) of plaintiff, Mukhtar Ahmad, was a witness which clearly shows that the sale through the impugned mutation was admitted by the near relative of the vendor/respondent when suit for pre-emption was filed. The learned trial court framed the issues and invited the parties to produce their evidence. Both the parties produced their oral as well as documentary evidence to support their version. Learned trial court was pleased to decree the suit vide judgment and decree dated 19.5.2018. Appeal filed by the petitioner was dismissed vide judgment and decree dated 12.01.2021 whereas Civil Revision was also dismissed on the ground that there are concurrent findings of two *fora* below vide judgment and decree dated 04.02.2021. Hence, this petition for grant of leave to appeal.

5. When questioned to the learned counsel for the respondent-plaintiff that whether the respondent-plaintiff was able to prove the facts pleaded in his plaint with regard to abduction, coercion and fear of death, he could not satisfy the Court whereas while going through the record, facts pleaded could not be proved by the plaintiff by cogent, acceptable and convincing evidence. The fact that real uncle of plaintiff filed a suit to pre-empt the sale of said land and in that suit proceedings in notice of Talb-e-Ishhad real brother-in-law of the plaintiff was a witness. This fact has been admitted by the learned counsel for the plaintiff-respondent. When a specific fact is pleaded by a person in his plaint on the basis of which he challenges the validity of an act of the officials of the revenue department, that person is required to prove that fact by clear, convincing and admissible evidence but as we have noted *supra*, the plaintiff failed to substantiate his pleadings by producing clear, convincing and



admissible evidence. Even there are self-contradictions in the pleadings as well as evidence. It is not clearly denied by the plaintiff that his thumb impression/signatures are not available on the impugned mutation, nor he could prove his non-appearance before the revenue officer at the time of attestation of impugned mutation and also at the time of entrance of mutation. If it was a case of the plaintiff that he was abducted and kept away from the proceedings of entrance and attestation of mutation then certainly his case would have been that someone else appeared at the time of entrance and attestation of mutation in his place but it is not the case of the plaintiff. He has not taken the stance that someone else appeared on his behalf at the time of entrance and attestation of mutation. Further in his statement when he appeared as PW-2, stated that the mutation is result of pressure (Zabardasti), fear (dar/khouf), which clearly means that he got the mutation attested but due to fear etc. Record shows that plaintiff has challenged the attestation of mutation on revenue side and said challenge went up to the Board of Revenue, when he failed, he came before the Civil Court without challenging the orders of the revenue hierarchy when he has filed his suit on 4.7.2013 to challenge the mutation which was attested on 20.10.2008, the suit was barred by time, when the orders of revenue hierarchy were not challenged. The principle of timeliness was firmly established in *Ghulam Ali v. Akbar alias Akoor* (PLD 1991 SC 957), where it was held that delays in filing suits cannot be excused without valid reasons. In this case, the plaintiff failed to challenge the orders in the revenue hierarchy and did not provide any justification for the delay in filing the suit, which renders it time barred.



6. It is not an ordinary case where a person having influence upon the vendor/transferor got the mutation attested as we ordinarily see in most of the litigation in our country where a person having undue influence over the vendor/transferor gets the mutation attested by using undue influence like a son gets property through gift or sale from his aged and ailing father/mother or a brother from his sister, or a husband from his wife. There are many more instances like this. In that eventuality, the law developed and pronounced by this Court is that when a person challenges the validity of the transaction and instrument of transfer, it may be a registered document or a mutation. The filing of suit and after that making a statement before the Court on oath that he/she has not made the transaction and the instrument, in that eventuality, it is very clear position of law that the onus to prove shifts and the beneficiary must prove the transaction as well as valid registration/attestation of document. In the instant case, the circumstances are entirely different. A grown-up person having married and having a daughter pleads that he was abducted by the vendee who kept him 4/5 days and got the mutation attested and denied the transaction of sale in favour of the petitioner/vendee/defendant. In this case, it was the primary duty of the plaintiff/respondent to prove a case pleaded by him. Plaintiff-respondent miserably failed to prove the case pleaded by him. Even the vendee/defendant has produced Patwari as well as the revenue officer, in the court as witnesses, who attested the impugned mutation, Patwari DW-3 who registered the mutation and then Qanoongo as DW-4 and the revenue officer as DW-5 who fully supported the entrance and attestation of mutation. In these circumstances, when the vendee has produced all the three revenue officials who entered and attested the mutation, whereas the plaintiff



himself appeared as PW-2, only witness he produced is Mukhtar Ahmad as PW-1. This witness states that the registered document is based upon deceiving the plaintiff. This witness further states that the plaintiff was missing for 15/16 days. Further states that registered document be cancelled. There is no registered document impugned in the suit and further the period of missing stated by this person has even contradicted the case of the plaintiff-respondent. This is the standard of evidence plaintiff has produced before the Court. In these circumstances, all the three courts below fell in error, rather while decreeing the suit and dismissing the appeal and Civil Revision on the basis of principles of law enunciated by this Court noted supra with regard to any transaction which is on the basis of undue influence by the person in whose favour that transaction is made, whereas, in the instant case there are no such circumstances as a married person of the grown up age is transferring the property through sale in favour of relative of his wife. In this view of the matter, this petition is converted into an appeal and same is allowed. All the three judgments are set aside. Suit filed by the plaintiff-respondent stands dismissed with cost throughout.

Islamabad, the

30<sup>th</sup> October, 2024

(Mazhar Javed Bhatti)

APPROVED FOR REPORTING