

IN THE SUPREME COURT OF PAKISTAN
(Appellate/Review Jurisdiction)

Present:

Mr. Justice Qazi Faez Isa, CJ
Mr. Justice Amin-ud-Din Khan
Mr. Justice Athar Minallah

Civil Misc. Application No. 6336 of 2023

*[For restoration of CRP which was dismissed for non-prosecution
on 27.04.2023 by this Court]*

In

Civil Review Petition No. 272 of 2022

*[For review of the order dated 25.05.2022 passed by
this Court in CP. No. 2627/2019]*

*Muhammad Mumtaz Khan (deceased)
through L.Rs and others.*

... *Applicants*

Versus

*Mst. Siraj Bibi (deceased) through
her L.Rs and others.*

... *Respondents*

For the Applicants:

Malik Saleem Iqbal Awan, ASC.
a/w Ghulam Sajjad Khan, P.No.9(b)

For the Respondents:

Not represented.

Date of Hearing:

03.11.2023.

ORDER

Qazi Faez Isa, CJ.

Civil Misc. Application No. 6336/2023: Civil Review Petition No. 272/2022 ('**the CRP**') filed in Civil Petition for Leave to Appeal No. 2627/2019 ('**CPLA**') was dismissed for non-prosecution on 27 April 2023. Through the instant application the order dismissing the CRP is sought to be recalled on the ground that the petitioner's counsel was indisposed; the application attaches a document issued by a doctor which states, '*Not Valid for Court*'. When a document states it is *not valid for court*, reliance thereon cannot be placed. However, in the interest of justice, the application for restoration of CRP is granted and the CRP is restored to its original number/position, and we proceeded to hear it.

Civil Review Petition No. 272/2022: The CPLA was dismissed on 25 May 2022 and three concurrent decisions were upheld.

2. A power-of-attorney was executed in favour of Fayaz Ahmed Khan by his sister, namely, Mst. Siraj Bibi (the respondents are her legal heirs), which was used to purportedly sell 109 *kanals* of land to his four sons, namely, Muhammad Mumtaz Khan, Ghulam Abbas Khan, Ghulam Shabbir Khan and Ghulam Ali Khan. The power-of-attorney did not specifically authorize the sale of the land in favour of the attorney or his sons, and Fayaz Ahmed Khan had misused it. Therefore, the principal (Mst. Siraj Bibi) could repudiate the said transaction as stipulated in section 215 of the Contract Act, 1872. Mst. Siraj Bibi repudiated the sale transactions and filed a suit for declaration and cancellation. The suit was decreed and the decision of the Trial Court was upheld throughout. Without getting the benefit of the decisions Mst. Siraj Bibi passed away, having remained deprived of her 106 *kanals* of land. Her legal heirs (the respondents herein) now represent her.

3. The conduct of the attorney, Fayaz Ahmed Khan, and his four sons, the purported buyers, was deplorable. A sister and aunt was illegally deprived of her land. It often happens that vulnerable members of society are exploited and deprived of their properties by such dubious methods, and then they spend a lifetime to regain what is rightfully theirs. Mst. Siraj Bibi was entangled in a web of perpetual litigation, and, even though all the decisions were in her favour, she remained deprived of the land and its produce throughout her lifetime. The petitioners and their predecessor violated Article 24(1) of the Constitution of the Islamic Republic of Pakistan, which guarantees that *no person shall be deprived of his property save in accordance with law*. The conduct of Fayaz Ahmed Khan and his sons was reprehensible.

4. The purported sale/transfer of Mst. Siraj Bibi's land was effected in derogation of section 42 of the Land Revenue Act, 1967, and of the judgments of this Court which stipulate that extra care must be exercised with regard to the property of women. In this regard reference may be made to *Muhammad Rafiq v Mst. Ghulam Zoharan Mai*,¹ *Tahsinullah v Mst. Parveen*,² *Mst. Parveen LRs v Muhammad Pervaiz*,³ *Ghulam Qasim v Mst. Razia Begum*,⁴ *Atta Muhammad v Mst. Munir Sultan*,⁵ *Farhan Aslam v Mst.*

¹ 2023 SCMR 988

² 2022 SCMR 346

³ 2022 SCMR 64

⁴ PLD 2021 SC 812

Nuzba Shaheen,⁶ *Mirza Abid Baig v Zahid Sabir*⁷ and *Muhammad Naeem Khan v Muqadas Khan*.⁸ It was observed in *Mst. Parveen v Muhammad Pervaiz* that:

‘We are dismayed to observe the all too frequent practice in Pakistan of male heirs resorting to fraud and other tactics to deprive female heirs from their inheritance. While this deprivation causes suffering to those deprived, it also unnecessarily taxes the judicial system of the country, resulting in a needless waste of resources. Each and every day that a male heir deprives a female heir is also an abomination because it contravenes what has been ordained by Almighty Allah.’

5. The revenue officers/officials were either complicit in recording the illegal mutations or were incompetent. The department should weed out such officers/officials from within their ranks as they undermine the credibility of the record of rights, and as a consequence destroy lives too. The Government of Punjab would be well advised to initiate action against those who were involved in the said sale mutations, which could only have been done with their collusion or through incompetence.

6. Therefore, whilst dismissing this CRP the petitioners are directed to immediately hand over the possession of the subject land to the respondents, and if they do not do so the concerned revenue authorities should immediately dispossess the petitioners therefrom. The petitioners benefitted from illegally retaining the said land. Section 216 of the Contract Act, 1872 stipulates that the principal (Mst. Siraj Bibi) is entitled to the benefit derived from transactions illegally made. But, this claim was not put forward, and, therefore, not considered. In the facts and circumstances of the case and on account of the petitioners’ most unreasonable conduct we direct them to pay to the respondents one million rupees as costs. Till payment is made such amount shall constitute a charge on the landholding of the petitioners.

7. Copy of this order be sent to the concerned revenue authorities of the area where the said land is situated, to the Senior Member Board of Revenue, Punjab and to the Revenue Department of the Government of the

⁵ 2021 SCMR 73

⁶ 2021 SCMR 179

⁷ 2020 SCMR 601

⁸ PLD 2022 SC 99

Punjab for information and compliance. Copy of this order be also sent to the respondents for information.

Chief Justice

Judge

Judge

Islamabad:
03.11.2023
(M. Tauseef /Hassan K.W)

Approved for reporting