

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Umar Atta Bandial  
Mr. Justice Sajjad Ali Shah  
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi

**Civil Appeal No. 346 of 2020.**

(Against the judgment dated 14.1.2020 passed by the  
Lahore High Court Multan Bench in CR No.903-D of 2009)

**Sardar Muhammad and others.**

**... Appellant**

**Versus**

**Imam Bakhsh (decd) thr. LRs and others.**

**... Respondents**

For the Appellant (s) : Mr. Ghulam Nabi, ASC.

For the Respondents 3-9: : Malik Javed Akhtar Wains, ASC.

For the LRs of Respondents : *Ex parte.*  
No. 1 and 2:

Date of Hearing : 15.12.2020

**Judgment**

**Sajjad Ali Shah, J.** This appeal arises from the judgment of the Lahore High Court whereby the said Court while reversing the concurrent findings of the Courts below, dismissed the suit filed by the appellant against the respondents seeking setting aside of orders dated 26.3.2002 and 19.8.2003 passed by the Deputy District Officer (DDO) & Executive District Officer (Revenue) (EDO) respectively. Cancellation of registered sale deed dated 29.3.2002 executed by one Imam Bakhsh predecessor in interest of respondent No.1, in favour of predecessor in interest of respondents No. 2 to 9 was also sought.

2. We are informed that the legal heirs of respondent No.1 and Respondent No. 2, in person, have refused to receive the notices. As a result, they are proceeded against *ex parte*.

3. Briefly, on 8.3.2002 Imam Bakhsh filed an appeal before the Deputy District Officer (Revenue) Lodhran seeking cancellation of sale mutation No. 4855 dated 28.2.2002 effected in favour of appellants on the ground that it was procured through misrepresentation and fraud. The DDO (R) Lodhran, after hearing the parties, vide order dated 26.3.2002 cancelled the mutation by holding that Imam Bakhsh was an old and sick man from whom lying was not expected and, therefore, his contention that the mutation was obtained through misrepresentation and fraud is to be given due weight. The record further reflects that on 29.3.2002, merely three days after the cancellation of sale mutation in favour of appellant, the said Imam Bakhsh, through registered sale deed, conveyed the same property to respondents No. 2 to 9. The appellant on 30.3.2002 challenged the said order of the DDO (R) before the Executive District Officer (Revenue) who vide order dated 19.8.2003 rejected the appeal on the ground that a registered sale deed could only be cancelled by a Court of competent jurisdiction. This gave rise to the present appellant to file a suit against the respondents challenging the order dated 26.3.2002 of DDO (R) and order dated 19.8.2003 of the EDO (R) alongwith seeking cancellation of the registered sale deed. The trial Court on 28.10.2008 decreed the suit as prayed for. Respondents No. 2 to 9 filed appeal which did not find favour with the appellate Court and was dismissed on 4.9.2009. The respondents thereafter filed a revision petition before the Lahore High Court which after hearing the parties, was allowed through the impugned judgment by setting aside the concurrent findings of the Courts below.

4. Learned counsel for the appellants while inviting our attention to mutation No. 4855 (at page 83) contended that the said mutation was carried out in *jalsa-e-aam* in presence of two witnesses viz. Muhammad Akmal and Muhammad Nawaz which records unequivocal sale of the subject land in favour of the appellant by the respondent Imam Bakhsh

against the sale consideration of Rs.1,20,000/- and such mutation could not have been cancelled by the DDO(R) on assumptions and presumptions. Per counsel, since the record did not require any rectification, therefore, the jurisdiction of the DDO (R) was not attracted. It was contended that the plea of fraud requires adjudication through evidence, a process which could not be adopted by the DDO (R) as proceedings before him are summary in nature. It was next contended that the findings of the learned High Court that the mutation was not effected in *jalsa-e-aam* are contrary to record. It was further contended that Imam Bakhsh never disputed the mutation entry but challenged it on the ground of fraud, therefore, the burden was upon Imam Bakhsh to prove the fraud, consequently, the appellants could not be non-suited by placing burden to prove the sale mutation. It was also contended that it is a settled law that the concurrent findings of fact are not to be interfered with by the High Court while exercising revisional jurisdiction and such principle was totally ignored.

5. On the other hand, learned counsel for the respondents contends that the findings of the DDO (R) declaring the mutation entry No. 4855 as procured through fraud and misrepresentation has attained finality and, therefore, at this juncture could not be interfered with. It was next contended that the respondents have purchased the subject land with clear title through a registered conveyance deed after the earlier sale mutation was cancelled and being *bona fide* purchasers, their sale deed was rightly restored by the High Court and such findings do not require any interference. It was lastly contended that the appellants have totally failed to prove the oral sale agreement which resulted mutation No. 4855 and has further failed to bring into the witness box one of the attesting witness and the concerned Tehsildar who recorded the mutation entry.

6. We have heard the learned counsel for the respective parties and have minutely perused the record. The primary question which

requires our attention is as to whether the DDO (R) had the power to strike off a sale mutation carried out in a *jalsa-e-aam* in the presence of witnesses on the ground that such sale was procured through misrepresentation and fraud and if the answer is in the negative, whether the subsequent sale deed in the peculiar circumstances of this case would fall to the ground. It has been repeatedly held, and the law itself provides that the proceedings before the Revenue Officer or before the Revenue Courts are summary in nature and, therefore, complicated questions of law and disputed question of fact are not to be adjudicated in the hierarchy. The determination of complicated questions of law and disputed questions of fact fall within the sole domain of the civil Court. The plea of the respondents that the mutation entry No. 4855 was procured through fraud, in our opinion, could not have been decided in proceedings which are summary in nature as such controversy requires adjudication by allowing the parties to adduce evidence in support of their respective claims. There is no doubt in our minds that the DDO (R) transgressed his limits by declaring mutation No. 4855 as having been obtained through fraud and misrepresentation.

7. The provisions of Section 172 of the West Pakistan Land Revenue Act, 1967 allocate certain matters to the sole competence of the Revenue authorities, to the exclusion of civil courts. However, it must be noted that Section 172 only empowers Revenue authorities to exercise administrative powers; the *raison d'être* for the same is that the proceedings conducted by a Revenue Officer or a Revenue Court are summary in nature; they possess a limited scope of enquiry and do not possess the characteristics of a civil suit that necessitates framing of the issues or recording evidence of the parties, as such matters fall within the sole domain of the civil courts. Besides, Section 172(2)(xvi) of the Act, 1967 leaves the adjudication of plea of fraud to the competence of the civil courts. Resultantly, once the appellants have successfully proved that the

sale mutation in their favour was struck off by DDO (R) illegally without jurisdiction and that the respondents No. 2 to 9 before purchasing the subject property had notice of such fact, then the sale deed in their favour automatically has to give way to the subject mutation no sooner it is revived. Reference can be made to the case of Noor Muhammad vs. Allah Ditta (PLD 2009 Supreme Court 198), Fida Hussain vs. Abdul Aziz (PLD 2005 Supreme Court 343), Abad Muhammad (thr. LRs) vs. Mst. Sakina and another (PLJ 1987 (d) Revenue 22) and Mst. Surraiya Bano vs. Nazia Bano (1996 CLC 1690).

8. Additionally, the High Court against all the settled principles of law, has very lightly brushed aside the concurrent findings of the Courts below where it was specifically taken note of the fact that after three days of the cancellation of such mutation, the respondent Imam Bakhsh has sold out the property to the respondents coupled with the statement of DW-1 who categorically stated that when they purchased the subject land from Imam Bakhsh on 29.3.2002 through sale deed, he was hardly of 65 years, mentally fit, with the addition that his father in whose name the sale deed was executed by Imam Bakhsh had helped Imam Bakhsh in pursuing the appeal before the DDO (R) seeking cancellation of subject mutations in favour of appellants. Thus, the two concurrent findings of fact not only negate the facts on the basis whereof DDO (R) had cancelled the subject mutation but also destroyed the plea of the respondents that they were *bona fide* purchasers for valuable consideration without notice. Our perusal of the record further clearly demonstrates that the appellant, though it was not required of him, had not only produced one of the witnesses of the sale mutation but also produced Muhammad Ajmal and Wahid Bakhsh Patwaris who had not only supported the sale but also deposed that at the relevant time Imam Bakhsh was perfectly in good physical and mental health. Consequently, once the appellants have successfully proved that

the sale mutation in their favour was struck off by DDO (R) illegally without jurisdiction and that the respondents No. 2 to 9 had notice of such fact, then the sale deed in their favour automatically has to give way to the subject mutation. However, it was open for Imam Bakhsh to question such mutation on the stated ground before a Court of original civil jurisdiction which could have competently decided such *lis*.

9. For what has been discussed above, this appeal is allowed by setting aside the impugned judgment of the High Court and restoring the judgments of the Courts below. No orders as to costs.

Judge

Judge

Islamabad, the  
15<sup>th</sup> December, 2020  
A.Rehman  
Approved for Reporting.

Judge