

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE MUSHIR ALAM
MR. JUSTICE YAHYA AFRIDI
MR. JUSTICE QAZI MUHAMMAD AMIN AHMED

Civil Petition No.1530 of 2019

(Against the order dated 04.03.2019 passed by the Lahore High Court Multan Bench Multan in F.A.O. 135 of 2011)

Muhammad Arshad Anjum

...Petitioner(s)

Versus

Mst. Khurshid Begum & others

...Respondent(s)

For the Petitioner(s): Mr. Ibad ur Rehman Lodhi, ASC
Syed Rifaqat Hussain Shah, AOR

For the Respondent(s): Maulvi Anwar ul Haq, ASC
Barrister Umer Aslam, ASC

Date of hearing: 16.04.2021

JUDGMENT

Qazi Muhammad Amin Ahmed, J.- Center of controversy is land measuring 298-Kanals 4-Marlas situating in the revenue limits of Mouza Lutafpur District Multan; it originally vested with Muhammad Manzoor respondent No.6 who sold it to Muhammad Akram, Muhammad Shameer, Muhammad Khalid and Muhammad Hamid sons of Wali Muhammad for a consideration of Rs.93,18,700/- vide mutation No.1994, attested on 17.8.2005; petitioner purchased this land from its previous owners through different transactions, mutated on 26.7.2007 and 27.10.2007, respectively; it is his claim that on 7.1.2010, his request to obtain certified copies of the revenue record relating to the said land was declined by the *Halqa Patwari* on the ground that it was under

attachment; he was astonished by a Family Court decree dated 30.05.2008 whereby a suit filed by Khurshid Begum against her husband, respondent No.6 for the recovery of maintenance, dower and dowry was decreed in consequence of latter's failure to take special oath; he also failed in appeal before a learned Additional District Judge at Multan on 15.07.2008; a Constitution petition before a learned Judge-in-Chamber of the Lahore High Court at Multan Bench met with no better fate on 5.11.2008. Baffled by the events, the petitioner first filed an objection petition on 9.1.2010, dismissed on 5.5.2010 due to pendency of an application under section 12(2) of the Code of Civil Procedure, 1908 (**the Code**); it was withdrawn in view of pendency of an identical application before a learned Additional District Judge, that too was dismissed on 9.4.2011, having regard to the failure of *supra* Constitution petition. Undeterred by successive failures, the petitioner once again approached the learned Additional District Judge for setting aside the decree with results no different than the previous; this once again brought him before the High Court with yet another setback by judgment dated 4.03.2019 to have his last recourse before us. In his arduous journey throughout, it has been his case that Family Court decree was procured through a surreptitious conspiratorial collusion that manifestly constituted "*fraud and misrepresentation*" within the contemplation of section 12(2) of the Code *ibid* and, thus, was liable to be set aside.

2. Learned counsel for the petitioner contends that suit filed by respondent No.1 against her husband was fraudulently devised, structured on a marriage certificate with interpolated entries, mischievously contrived to defeat petitioner's legitimate rights acquired through valid transactions and as such the impugned decree, based upon a dubious conduct as well as outcome of fraud cannot sustain. Fraud vitiates the most solemn proceedings, added the learned counsel. It is next argued that exclusion of provisions of the Code barring sections 10 & 11 does not stand in impediment to examination of a plea of fraud by a party before a Family Court particularly when it is evident on the record. The spouses seemingly remained in the wedlock throughout despite an ostensible acrimonious contest for a sizable

chunk of land claimed as deferred dower against a petty sum of Rs.500/- as prompt are circumstances by itself intriguing, clamouring for a thorough probe, concluded the learned counsel. Contrarily, the learned counsel for the respondents argued that the land in question was given by late Muhammad Manzoor to his wife as dower and, thus, no subsequent transaction could possibly defeat her interest in the said land; according to him, it was beyond jurisdictional competence of a Family Court to adjudicate upon the issues raised by the petitioner, a business to be best attended in a plenary jurisdiction; he has also referred to the limited application of the Code in proceedings before a Family Judge.

3. Heard. Record perused.

4. Petitioner's recourse to defend his title in the disputed land, decreed in respondent's favour as her dower, before the Family Court and latter before the Additional District Judge, though somewhat haphazard, nonetheless, was the only option available to him. The Family Court decreed the suit, without a full-dress trial merely upon failure of respondent's husband to take special oath, a circumstance that too prevailed with the learned Appellate Court. Ostensible contest remained restricted between the spouses without slightest breach in the nuptial bond, to the exclusion of rest of the world. Failure of petitioner's Constitution petition in the High Court also turned out a far cry. Throughout the contest, respondent relied upon technical barricades, thus, the questions that call for our consideration are whether exclusion of the provisions of the Code of Civil Procedure, 1908 barring sections 10 and 11 thereof, stood in impediment to petitioner's approach to the Family Court for reexamination of the judgment within the contemplation of section 12 (2) of the Code or that he should have asserted his claim of being a *bonafide* purchaser with consideration through an intervener in civil plenary jurisdiction?

The Family Court Act 1964 (*W.P. Act XXXV of 1964*) (**the Act**) was enacted for "*..... expeditious settlement and disposal of disputes relating to marriage and family affairs and for matters connected therewith*"; provisions of the Qanun-e-Shahadat Order, 1984 (*P.O. No.10 of 1984*) and those of the Code except sections 10

and 11 have been excluded to achieve the legislative intent. The exclusion of normal rules of procedure and proof, applicable in civil plenary jurisdiction for adjudication of disputes in proceedings before a Family Court, is essentially designed to circumvent delays in disposal of sustenance claims by the vulnerable; this does not derogate its status as a Court nor takes away its inherent jurisdiction to protect its orders and decrees from the taints of fraud and misrepresentation as such powers must vest in every tribunal to ensure that stream of justice runs pure and clean; such intendment is important yet for another reason, as at times, adjudications by a Family Court may involve decisions with far reaching implications/consequences for a spouse or a sibling and, thus, there must exist a mechanism to recall or rectify outcome of any sinister or oblique manipulation, therefore, we find no clog on the authority of a Family Court to reexamine its earlier decision with a view to secure the ends of justice and prevent abuse of its jurisdiction and for the said purpose, in the absence of any express prohibition in the Act, it can borrow the procedure from available avenues, chartered by law.

Question of non-applicability of the Code barring sections 10 and 11 thereof came up before the Court in the case of Muhammad Tabish Naeem Khan Vs. Additional District Judge Lahore and others (2014 SCMR 1365), in the said case, plea of ouster of procedure was repelled as under:

"We are not persuaded to hold, that the ex parte decree dated 4.7.2008 was void, for the reason that there is no provision in the West Pakistan Family Courts Act, 1964 to strike off the defence of the petitioner, when he failed to file the written statement, thus, it (decree) should be ignored; suffice it to say that the Family Court is the quasi judicial forum, which can draw and follow its own procedure provided such procedure should not be against the principles of fair hearing and trial,.....".

In the case of Haji Muhammad Nawaz Vs. Samina Kanwal and others (2017 SCMR 321) it was reiterated that:

"Family Court, whether as a trial court or an executing court, are governed by the general principles of equity, justice and fair play".

Impact of fraud practiced upon tribunals exercising plenary or limited jurisdictions, respectively, cannot be procedurally classified as in all jurisdictions it unredeemably vitiates the very solemnity of adjudication, a wrong that cannot be countenanced and must be remedied through dynamic application of equitable principles of law and such approach has been approved by this Court in a good number of cases arising out of erstwhile rent laws that too excluded wholesale application of the Code. See PLD 1975 SC 331 The Chief Settlement Commissioner, Lahore Vs. Raja Mohammad Fazil Khan and others, 1992 SCMR 917 (Tanveer Jamshed and another Vs. Raja Ghulam Haider, 1992 SCMR 1908 Mst. Fehmida Begum Vs. Muhammad Khalid and another, 1993 SCMR 226 Fazal Elahi Malis through legal heirs Vs. Miss Abida Reasat Rizvi, 1997 SCMR 1986 Haji Khudai Nazar and another Vs. Haji Abdul Bari, 2000 SCMR 540 Masjid Intizamia committee and others Vs. Anjuman-e-Falah-o-Bahbood and others, 2001 SCMR 577 Hanif and others Vs. Malik Armed Shah and another, 2005 SCMR 882 Suhail Printing Press Vs. Syed Aley Eba Zaidi, 2007 SCMR 818 Muhammad Tariq Khan Vs. Khawaja Muhammad Jawad Asami and others, 2007 SCMR 1434 Ammanullah Khan Leghari Vs. Abid Shaikh Ahmed, 2014 SCMR 1694 Sheikh Saleem Vs. Mrs. Shamim Attaullah Khan and others and 1984 CLC 2855 Abdul Salam Vs. Mrs. Tahira Zaidi.

5. Recourse to plenary jurisdiction as suggested by the learned counsel for the respondent would be a journey into a blind alley as in the face of a final decree by the Family Court, holding the field, the proposed course would inevitably lead to a chaotic collusion, if at all the petitioner ever succeed. Therefore, in the circumstances, reconsideration/reexamination of the impugned judgment and decree by the learned Family Court is the only expedient option, conducive to the interest of the contestants. The petition is converted into appeal and allowed with no order as to costs. Impugned judgment dated 04.03.2019 is set aside, as a consequence thereof, appellant's claim in the property as mentioned in his application be attended by the learned Additional District Judge Multan before whom his application under section 12 (2) of the Code shall be deemed as pending. Since this matter is

Civil Petition No.1530 of 2019

pending for considerable time, the learned Court seized of the matter, in the fullness of time, shall decide it with all convenient dispatch sooner rather than later.

Judge

Judge

Judge

Islamabad

16th April, 2021

Not approved for reporting.

*Azmat/**