

THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL, HACJ
MR. JUSTICE SYED MANSOOR ALI SHAH
MR. JUSTICE MUHAMMAD ALI MAZHAR

CIVIL PETITION NO.2855 OF 2017.

(Against the Judgment of Lahore High Court, Bahawalpur Bench, Bahawalpur dated 11.04.2010 passed in Civil Revision No. 383/2010)

Muhammad Sarwar and others

... **Petitioners**

Versus

Hashmal Khan and others.

... **Respondents**

For the Petitioners : Rana Asif Saeed, ASC
Syed Rifaqat Hussain Shah, AOR

For LRs of Respondent : Chaudhry Abdul Khaliq Thind, ASC along
No.1 (b & c) with Ahmed Ali

Date of Hearing : 17.09.2021

JUDGMENT

MUHAMMAD ALI MAZHAR, J:- This Civil Petition is brought to challenge the order passed by learned Lahore High, Bahawalpur Bench on 11.04.2017 in Civil Revision Application No.383/2010 whereby the judgments and decrees passed by the Civil Court as well as Appellate Court were affirmed and Revision Application was dismissed.

2. The transient facts of the case are as under:-

The deceased Hashmal Khan (respondent No.1) filed a suit for declaration against the petitioners for challenging the sale deed for the land in question on the premise that the same is forged. An agreement to sell dated 12.1.1998 for the subject land was executed for the sale consideration of Rs.10,00,000/- out of which Rs.40,000/- was paid and rest of the payment was to be made before sale deed but the petitioners failed to make payment. The petitioners/defendants submitted that the sale deed was registered after payment of entire sale consideration. The Learned Trial Court decreed the suit which was assailed in appeal but the learned

Additional District Judge Minchinabad vide judgment dated 4.6.2010 also dismissed the appeal.

3. The learned counsel for the petitioners argued that the learned High Court ignored the evidence led by the parties. The plaintiffs had failed to discharge the burden of proof on issue settled with regard to the validity of registered sale deed 15.7.1999 which according to the plaintiffs was a managed document as a result of fraud, misrepresentation and without consideration. The impugned judgments are based on misreading of evidence. Admitted facts have been ignored including the existence of agreement to sell, receiving the payment, appearance of the respondents before the Registrar and affixation of thumb impression on the sale deed.

4. The learned counsel for the respondents argued that the concurrent findings recorded by the court below were affirmed by the learned High Court after careful consideration of evidence. It was further contended that the petitioner/defendants failed to prove the payment of sale consideration and committed fraud with respondent No.1 who was an illiterate and an old man. The defendants failed to prove their case through trustworthy and convincing evidence hence all the courts below rightly passed the judgments against them.

5. Heard the arguments. The dominant feature that was argued by the learned counsel for the petitioners is that the entire sale consideration was paid including the liability of bank before execution and registration of sale deeds. While examining this aspect we noted that alleged sale deeds were presented for registration on 14.7.1998 whereas the Debit Cash Voucher EX-D-3, divulges that a sum of Rs.226300/ were deposited in the Agricultural Development Bank of Pakistan on 17.7.1998 and the Debit Voucher shows the name of Hashmal Khan who deposited this amount. On the strength of this self-reliant document by the petitioners it can be safely concluded that this amount was paid after registration of sale deed and not before it so it is sufficient to belied the assertion of the petitioners that entire sale consideration including bank liability was paid by them before registration of sale deed. We have also scanned and analyzed the evidence which unequivocally demonstrates that deceased defendant/respondent

No.1 Hashmal Khan appeared as PW1. Though he admitted the agreement with Muhammad Hanif (defendant No.4) but also described the agreed payments terms. No trustworthy evidence was produced which may satisfy that the sale consideration was paid to the vendor. Manzoor Ahmad S/O Hashmal Khan appeared as PW2 deposed that due to nonpayment of agreed amount, the agreement was rescinded. Muhammad Zaman, Patwari appeared as PW4 and stated that he issued copy of Register Haqdaran Zameen (Exh.P1) on 08.07.1998 to Hashmal Khan for sale agreement but not for execution of sale deed nor it was obtained for such purpose. No evidence is available to decipher that pursuant to sale agreement or alleged sale deed, total sale consideration was ever paid to the vendor. DW-6, deposed in his statement that the amount was paid before the Registrar but when Registrar appeared as a witness, he deposed that no amount was paid before him. The witnesses of the sale deed stated that they did not appear before the Registrar at the time of registration of the sale deed. The Appellate Court and the High Court both had carefully examined the evidence led by the parties in the trial court and found no illegality in the trial court judgment.

6. It is well settled exposition of law, deducible from plethora of dictums laid down by superior courts that Section 115 C.P.C empowers and mete out the High Court to satisfy and reassure itself that the order of the subordinate court is within its jurisdiction; the case is one in which the court ought to exercise jurisdiction and in exercising jurisdiction, the court has not acted illegally or in breach of some provision of law or with material irregularity or by committing some error of procedure in the course of the trial which affected the ultimate decision. If the High Court is satisfied that aforesaid principles have not been unheeded or disregarded by the courts below, it has no power to interfere in the conclusion of the subordinate court upon questions of fact or law. In the case of Atiq-ur-Rehman Vs. Muhammad Amin (PLD 2006 SC 309), this Court held that the scope of revisional jurisdiction is confined to the extent of misreading or non-reading of evidence, jurisdictional error or an illegality of the nature in the judgment which may have material effect on the result of the case or the conclusion drawn therein is

perverse or contrary to the law but the interference for the mere fact that the appraisal of evidence may suggest another view of the matter is not possible in revisional jurisdiction. So far as challenge to the concurrent findings of the courts below in the revisional jurisdiction of the High Court, this Court has held in the case of Ahmad Nawaz Khan Vs. Muhammad Jaffar Khan and others (2010 SCMR 984), that High Court has very limited jurisdiction to interfere in the concurrent conclusions arrived at by the courts below while exercising power under section 115, C.P.C. Similar view was taken in the case of Sultan Muhammad and another. Vs. Muhammad Qasim and others. (2010 SCMR 1630) that the concurrent findings of three courts below are not opened to question at the revisional stage.

7. In our considerate view, the order passed by the High Court does not suffer from any misreading or non-reading of evidence nor any other illegality and or irregularity was called our attention for justifying any interference. This Civil Petition for Leave to Appeal was dismissed and leave was refused by our short order. Above are the reasons in the aid of short order.

Acting Chief Justice

Judge

Judge

Islamabad,
17.09.2021

Khalid
Approved for reporting