

**JUDGMENT SHEET**  
**IN THE LAHORE HIGH COURT**  
**MULTAN BENCH, MULTAN**  
**JUDICIAL DEPARTMENT**  
**JUDGMENT**

C.R.No.377-D/2003

Allah Bakhsh (deceased)  
through his legal heirs etc.

**VS.**

Muhammad Hanif (deceased)  
through his legal heirs etc.

<b>Date of hearing</b>	27.03.2024
<b>Petitioners by</b>	Syed Muhammad Ali Gillani, Advocate
<b>Respondents by</b>	Mr. Muhammad Khalid Khan Sikhani, Advocate

**Ch. Muhammad Iqbal, J:-** Through this civil revision, the petitioners have challenged the validity of judgment & decree dated 05.03.2003 passed by the learned Additional District Judge, Taunsa whereby the appeal of the respondents was accepted, the judgment & decree dated 20.04.2001 passed by the learned Civil Judge, Taunsa Sharif was set aside and the suit for declaration filed by the respondents was decreed.

2. Brief facts of the case are that Muhammad Din, predecessor-in-interest of the respondents, filed a suit for declaration against the petitioners/defendants and contended that he was owner in possession of suit property fully described in the headnote of the plaint as well as owner in Shamlat and Shamlat of Caste Sikhani according to the proportionate of his own land in Moza Tubb. The respondent/ plaintiff sold land measuring 126 Kanal 10 Marla through registered sale deed No.295 dated 12.12.1960 to Abdullah s/o Mehmood, predecessor-in-interest of the petitioners/defendants, but he did not sell his share of Shamlat

of Caste Sikhani to him. The respondent/plaintiff remained in possession of Shamlat Caste Sikhani in Moza Tubb. During the consolidation proceedings, share of respondent/plaintiff in Shamlat Caste Sikhani was transferred to the petitioners/defendants alongwith the ownership of the land sold by him. The respondent/plaintiff contended that the transfer of Shamlat Caste Sikhani of Moza Tubb to the petitioners/defendants is illegal and liable to be reversed. The respondent/plaintiff further contended that the petitioners/defendants alienated the suit land by different mutations within family which transactions are based on mala fide. The petitioners/defendants filed contesting written statement. The trial Court framed issues, recorded pro and contra evidence of the parties and finally dismissed the suit vide judgment & decree dated 20.04.2001. Being dejected, the respondents filed an appeal which was allowed vide judgment & decree dated 05.03.2003 by the appellate Court who by setting aside the judgment & decree dated 20.04.2001 passed by the trial Court, decreed the suit of the respondents. Hence, this civil revision.

3. I have heard learned counsels for the parties and have gone through the record.

4. In order to prove the asserted stance in the plaint Mehboob Ahmad has appeared as P.W.1, who stated that Muhammad Din his father was the owner of suit land and he has passed away; that the suit land is Shamlat of Caste Sikhani; that his grandfather sold 126 Kanal land to Abdullah; that during consolidation the said land was transferred to the defendants, whereas the plaintiffs are in possession of the suit land. During cross examination, he deposed that his grandfather sold land in the year 1961 but did not sold the share of Shamlat; that the land in Band Kucha is about 7-1/4 Kanal and the suit land is situated

in Moza Qom Sikhani Band Kocha; that his grandfather challenged the said consolidation proceedings through an appeal.

5. Conversely, Noor Muhammad, one of the petitioners/defendants has appeared as DW-1 and deposed that the suit land was purchased from Muhammad Din and later on consolidation proceedings were conducted and after the said proceedings, they filed appeal which was dismissed. During cross examination, he admitted it correct that the suit land is situated in Shamlat Qom Sikhani and they have not filed any appeal against consolidation proceedings as through said consolidation, the land of Shamlat came to their possession; that Ahmad Din filed appeal which was dismissed; that he did not know whether the Additional Commissioner in his order directed the plaintiff to approach Civil Court.

6. The stance of the respondents/plaintiffs is that while alienating the land measuring 126 Kanal 10 Marla through registered sale deed No.295 dated 12.12.1960 their predecessor Ahmad Din had not transferred the land of Shamlat Caste Sikhani to the petitioners/defendants. Perusal of sale deed (Exh.P.3) executed by Muhammad Din in favour of Abdullah, predecessor-in-interest of the petitioners/defendants, shows that he sold only his owned land and in the said instrument the alienation of Shamlat has nowhere been mentioned therein. The said sale deed (Ex.P3) was entered in the Revenue Record through a mutation Ex.P14 which also shows that only the owned land was transferred but the land of Shamlat Deh was not sold. The documents of sale deed Exh.P.13 and mutation Exh.P.16 does not show any entry of transfer of Shamlat land. The above Registered

cum official documents wear a legal presumption of correctness. It is settled law that a man can tell a lie but a document cannot.<sup>1</sup>

7. As per Section 3 of West Pakistan Dispositions (Saving of Shamilat) Ordinance, 1959, Shamlat cannot be presumed as transferred unless specifically mentioned in the instrument of disposition. For ready reference, aforesaid provision is reproduced as under:

“3. *Shamilat not included in disposition of land unless specifically mentioned as subject-matter of the disposition.*—(1) Notwithstanding any law, usage or custom to the contrary, in any disposition of land, whether testamentary or otherwise, effected by the maker by means of a writing or orally and whether made before or after the commencement of this Ordinance, words or phrases of a general nature, purporting to convey rights or interests, incidental, contingent, or collateral, to that land, shall not be so construed as to include therein the Shamilat or any portion thereof appurtenant to such land, unless such Shamilat or a portion thereof has been specifically mentioned as the subject-matter of the disposition.”

Under Para 7.19 of the Land Records Manual it is necessary to show in the mutation whether such transfer of land includes the shares of the Shamlat. The Hon'ble Supreme Court of Pakistan in Abdur Rauf Khan's case<sup>2</sup> has held that the possession follows title in such cases. In this case, the petitioners/defendants purchased only land but not the Shamlat. The Hon'ble Apex Court in Fazal Rahim's<sup>3</sup> case has held that in case at the time of selling of land without specifying Shamlat only the ownership of the land will be transferred and not the Shamlat. In Chiragh Shah's case<sup>4</sup> it has

<sup>1</sup> Abdul Ghani & Others. Vs. Mst. Yasmeen Khan & Others (2011 SCMR 837) and Saleem Akhtar Vs. Nisar Ahmad (PLD 2000 Lahore 385)

<sup>2</sup> Abdur Rauf Khan and another Vs. Firm Babu Munir Ghulam Siddique etc. (1976 SCMR 436)

<sup>3</sup> Fazal Rahim and others Vs. Faqir Muhammad and others (1987 SCMR 1667)

<sup>4</sup> Chiragh Shah (represented by legal heirs) Vs. Akhtar Munir and 25 others (1983 CLC 51)

been held that Shamlat will not be presumed to be alienated if it has not specifically been mentioned in the registered sale deed.

8. So far as arguments of learned counsel for the petitioners/defendants that the suit was hopelessly time barred and the suit land/Shamlat was given to the petitioners/defendants during consolidation proceedings and civil court has no jurisdiction, suffice it to say that the Consolidation Authorities, in appeal and revision, categorically advised the respondent/plaintiff to approach Civil Court for correction of entries in the revenue record and every new entry in revenue record creates fresh cause of action and in this case recurring cause of action is available to the respondents/plaintiffs. Further, the respondents/plaintiffs are in possession of the suit land as such the suit is well within time and the Civil Court has rightly adjudicated the matter.<sup>5</sup> Thus, the above arguments of learned counsel for the petitioners/defendants is without any force and the same are hereby repelled.

9. The trial court has failed to appreciate the legal and factual aspects of the case and dismissed the suit of the respondents/plaintiffs whereas the appellate court, after discussing the facts as well as evidence of the parties, through a well-reasoned judgment & decree has rightly allowed the appeal of the respondent and decreed their suit as prayed for. It is well settled law that in the event of conflict of judgments, findings of appellate Court are to be preferred and respected, unless it is shown from the record that such findings are not supported by evidence.<sup>6</sup>

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<sup>5</sup> *Abdul Sattar Khan and another Vs. Rafiq Khan and others* (2000 SCMR 1574) and *Muhammad Yousaf through his L.Rs and others Vs. Noor din and others* (1993 MLD 763)

<sup>6</sup> *Muhammad Hafeez & Another Vs. District Judge, Karachi East & Another* (2008 SCMR 398) and *Rao Abdul Rehman (deceased) through legal heirs Vs. Muhammad Afzal (deceased) through legal heirs and others* (2023 SCMR 815)

10. In view of above, this civil revision being devoid of any merit is hereby **dismissed**. No order as to costs.

**(Ch. Muhammad Iqbal)**  
**Judge**

Approved for reporting.

**Judge**

*Abdul Hafeez*