

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

**Present:**

Mr. Justice Munib Akhtar  
Mr. Justice Shahid Waheed

**Civil Appeal No.197-L of 2019**  
**And**  
**CMA Nos.3759 & 5618 of 2022**

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| 1. C.A.197-L/2019<br>(Against the order dated 29.04.2019 passed by the Lahore High Court, Lahore in CR NO.1657/2014) | Bashir Ahmed (deceased)<br>through his L.Rs., etc v.<br>Nazir Ahmad, etc |
| 2. C.M.A.3759/2022 IN C.A.197-L/2019<br>(For transposition of appellants No.1-b, 2-a and respondents No.3 and 4)     | Bashir Ahmed (deceased)<br>through his L.Rs., etc v.<br>Nazir Ahmad, etc |
| 3. C.M.A.5618/2022 IN C.A.197-L/2019<br>(For impleadment as party)   | Bashir Ahmed (decd.)<br>through his L.Rs., etc v.<br>Nazir Ahmad, etc    |

For the Appellant(s)/ : Mr. Mahmood Ahmad Bhatti, ASC  
Applicant(s) (CMA  
No.3759/22)

For the Applicant(s) : Mr. Mudassar Khalid Abbasi, ASC  
(CMA No.5618/22)

For Respondent NO.1 : Mr. Muhammad Munir Paracha, ASC  
Rana Abid Nazeer, ASC  
Mr. Tariq Aziz AOR

For Respondent No.2 : Barrister Umer Aslam Khan, ASC

For Respondents No.3&4 : Nemo

Date of Hearing : 30.04.2024

**JUDGMENT**

**SHAHID WAHEED, J-**. The appellants in this direct appeal are the legal heirs of one of the defendants, namely defendant No.2 who, though succeeded up to the first Appellate Court but, could not secure approval of a decree issued in their favour from the Revision Court. This case, therefore, necessitates a comprehensive review of both the facts and the law. This is essential not only due to the disparity in reasoning between the Revision Court and the

first Appellate Court but also because it sheds light on the concerning aspects of our society.

2. It is a well-established fact that family serves as the fundamental building block of our society, and despite advancements in various aspects of our lives, many business entrepreneurs still continue to uphold the tradition of living in a joint family setting, where the ownership of assets is often unclear. This social structure plays a pivotal role in their accomplishments. However, it is disheartening that such joint families frequently encounter internal conflicts and disagreements, ultimately leading to their disintegration. These disputes often culminate in legal battles, leaving a lingering bitterness among the family members involved. The case at hand is a poignant example of such a situation, where one brother thinks that the family is like a sponge in his hands, to be squeezed for his own benefit. With this lead-in note, we now move on to the details of the dispute, which calls for our decision.

3. This direct appeal involves a dispute among brothers. Nazir Ahmad, the plaintiff, had three brothers: Muhammad Sharif, Bashir Ahmad (Defendant No.2), and Abdul Rashid (Defendant No.3). Abdul Rashid's daughter, Bilqees Akhtar, was arrayed as defendant No.1 in the suit. It is important to note that Muhammad Sharif was not included in the suit. The brothers jointly and severally owned properties which included: (i) commercial land measuring 46 marlas, situated at Pasrur Road, Daska (Madina Industries), (ii) two commercial plots, 10 marlas each, situated at College Road, near Tank Water Supply

No.2, Daska, (iii) two shops comprising land measuring 15 marlas, situated at College Road, Daska, (iv) one plot measuring 1 kanal, situated at College Road, Daska, (v) agricultural land measuring 53 kanals and 17 marlas, situated at Jamke Cheema, Daska, (vi) one plot measuring 12 marlas, situated at Jinnah Road, Gujranwala, and (vi) a house measuring 11½ marlas at Zahid Colony, Gujranwala. A feud giving rise to this appeal relates to agricultural land measuring 53 kanals, 17 marlas at Jamke Cheema, Daska. This land was in the name of Nazir Ahmad, the plaintiff, who, in respect of it, constituted his brother Abdul Rashid (Defendant No.3) as his general attorney by a registered power of attorney, dated 15<sup>th</sup> of August, 2002 (Ex.D.9). Based on that authority, Abdul Rashid, firstly, sold 2 kanals land jointly to Bilqees Akhtar (Defendant No.1) and Bashir Ahmad (Defendant No.2) by mutation No.4766 dated 13<sup>th</sup> of November, 2002 (Ex.P.4), and then on 29<sup>th</sup> of April, 2003, sold the remaining 51 kanals, 17 marlas jointly to his daughter Bilqees Akhtar and brother Bashir Ahmad by a registered sale deed (Ex.P.3).

4. On 10<sup>th</sup> of May 2003, Nazir Ahmad, the plaintiff, instituted a suit for declaration, cancellation of documents, and possession along with perpetual injunction, contending therein that he was the owner of 53 kanals, 17 marlas land, situated in village Jamke Cheema, Daska, and that he constituted Abdul Rashid (Defendant No.3), his brother as his general attorney to look after his affairs as well as the land held by him, employing a registered power of attorney (Ex.D.9). However, he revoked the same by a deed registered on the 5<sup>th</sup> of May, 2003 (Ex.P1). He alleged that his general

attorney misused his authority and abused his trust by executing a sale deed dated 29<sup>th</sup> of April, 2003 (Ex.P.3) in favour of Bashir Ahmad (Defendant No.2, now in this appeal, his legal heirs are representing him as the appellants) and Bilqees Akhtar (Defendant No.1) regarding land measuring 51 kanals, 17 marlas. Likewise, a mutation No.4766 dated 13<sup>th</sup> of November, 2002 (Ex.P.4) regarding 2 kanals of land was also attested by him in the name of the persons described above. He prayed that the above sale deed and the mutation be declared to have been executed and attested in excess of the authority conferred on the general authority and, as such, ineffective upon his rights.

5. The appellants' predecessor, Bashir Ahmed (Defendant No.2) and other defendants denied the claims set up in the plaint by submitting a joint written statement. They emphasized that the power of attorney (Ex.D.9) resulted from a family settlement by which the brothers agreed to divide the family properties among themselves. In paragraph 2 of the written statement, the scheme of how the properties stated above were to be divided among the brothers was described in the following words:

- i. Abdul Rashid: Land measuring 53 kanals and 17 marlas, situated at Jamke Cheema, Tehsil Daska, and plot measuring 7-marlas situated at Gali Sargodian College Road, Daska.
- ii. Muhammad Sharif: One commercial plot measuring 10-marlas, situated at Karkhana Rustam Road, College Road, Daska, and vacant plot measuring 12½ marlas in Gali Sargodian, Water Tank No.2, College Road, Daska.

iii. Bashir Ahmed: Plot measuring 12-marlas, situated at Jinnah Road Gujranwala, commercial plot measuring 10 marlas adjacent to house, and a house measuring 7-marlas situated at Gali Sargodian, College Road, Daska.

iv. Nazir Ahmed: Commercial area measuring 2-kanals and 6-marlas (46 marlas) situated at Pasrur Road, Daska, where "Madina Industries" is running along with a house measuring 15-marlas, situated at Gali Sargodian, College Road, Daska.

It was further maintained in paragraph 3 of the written statement that according to the scheme of the partition of properties, each brother was given the general power of attorney deed of the other brothers. In this way, Abdul Rashid (Defendant No.3) was given registered general power of attorney deed dated 20<sup>th</sup> of March, 2002 (Ex.D.9). It was also pointed out that Bashir Ahmed (Defendant No.2) had also executed a general power of attorney (Ex.D.6) in favour of Nazir Ahmed, the plaintiff. Based on this, Nazir Ahmed transferred the land owned by Bashir Ahmed to his sons. In essence, their plea was that this was a case of *quid pro quo*.

6. The first question on facts emanating from the parties' pleadings for determination was whether any family settlement embodied a scheme or the arrangement regarding the division of properties. A perusal of the record indicates that after the plaintiff presented his affirmative evidence, Bashir Ahmed (Defendant No.2) and Bilqees Akhtar (Defendant No.1) jointly filed an application with the Trial Court. They claimed that a scheme for partition of properties was documented in a memorandum dated 23<sup>rd</sup> of November,

2000, which the plaintiff and his brothers signed as an acknowledgement and the original memorandum was in the plaintiff's possession. They requested the Trial Court to direct the plaintiff to produce original memorandum dated 23<sup>rd</sup> of November, 2000, containing the scheme for properties partition, or alternatively to allow them to produce it as secondary evidence. The plaintiff contested this application. The Trial Court dismissed the application on 22<sup>nd</sup> of May, 2006, finding no merit in it. The revision of this order was sought. The Revision Court, on careful consideration of the affirmative evidence led by the plaintiff, revised the Trial Court's order on 5<sup>th</sup> of October, 2006, stating that the execution of the memorandum was proved and allowed it to be placed on record. This revisional judgment was not further assailed; thus, it became final. Given the situation, there is no need to reassess the evidence because the above revisional judgment, which has become final, is sufficient to conclude that a settlement to divide the family properties, as claimed by the defendants in their written statement, was reached among the brothers, and that was recorded in the memorandum dated 23<sup>rd</sup> of November, 2000 (Ex.D.1). Be it noted that this memorandum/document merely stated the nature of arrangement arrived at as regards the division of properties; it did not effect a partition.

7. Now, it becomes necessary to investigate one more question on facts. How did the brothers give effect to the arrangement among them regarding the division of properties? This takes us to the deposition made by the plaintiff (P.W.1) in his cross-examination. He admitted

during cross-examination that his brothers had granted him power of attorney for their properties. He also admitted that three different deeds of power of attorney were executed in his name. He clarified that the first power of attorney concerned the land behind Madina Industry, given by his two brothers, Muhammad Sharif and Bashir Ahmad. The second power of attorney pertained to Muhammad Sharif's house located in Gali Sargodian. The third power of attorney was related to Bashir Ahmad's 7-Marla house on College Road. Furthermore, the plaintiff acknowledged during cross-examination that, using the aforementioned power of attorney, he had gifted his sons the 27 Marla land of Madina Industry and transferred the College Road house to his wife. The above statement, when read with the documents tendered by the defendants in evidence, shows that the mode of distribution of the properties was the same as the defendants had disclosed in their written statement. A perusal of the evidence suggests that the defendants submitted three deeds of power of attorney. The first deed (Ex.D.2) was executed by Muhammad Sharif in favour of the plaintiff regarding 7½ Marlas of land. The second deed (Ex.D.3) was executed by Muhammad Sharif and Bashir Ahmad (Defendant No.2) in favour of the plaintiff regarding 2-Kanals of land. The third deed (EX.D.6) was executed by Bashir Ahmad (Defendant No.2) in favour of the plaintiff regarding 7-Marlas of land. The evidence further suggests that the plaintiff then executed a gift deed of 8-Marlas using a power of attorney (Ex.D.3) in favour of his sons Muhammad Qaisar, Muhammad Mehmood-ul-Hasan, and Muhammad Faiz-ul-Hassan. He also executed a registered

sale deed of 7-Marlas using a power of attorney (Ex.D.6) in favour of his son Muhammad Faiz-ul-Hassan. Moreover, the plaintiff executed a gift deed of land measuring 19 marlas (Ex.D.7) in favour of his sons Muhammad Qaisar Nazir, Muhammad Mehmood-ul-Hassan, and Muhammad Faiz-ul-Hassan using a power of attorney (Ex.D.3) issued by Muhammad Sharif and Bashir Ahmad (Defendant No.2). Lastly, the plaintiff executed a sale deed (Ex.D.8) using a power of attorney (Ex.D.2) issued by Muhammad Sharif, and transferred the land measuring 7-Marlas to his wife, Mst. Razia. From the above appreciation of evidence, it stands established that four brothers had joint properties and a partition took place between them. The brothers gave each other general power of attorney to formalize the partition. The plaintiff then alienated the land to his sons and wife, which he had obtained through the partition from joint properties based on the general power of attorney in his favour on behalf of his brothers. Similarly, Abdul Rashid (Defendant No.3) acted upon the general power of attorney (Ex.D.9) in his favour on behalf of the plaintiff and alienated the land measuring 53 kanals and 17 marlas to defendants No.1 and 2, which he had obtained from joint properties through the partition. So, the scheme of partitioning joint properties amongst brothers was proved, as stated in the written statement.

8. This brings us to the stage of examining the last question on facts whether the plaintiff had revoked the power of attorney (Ex.D.9) in favour of Abdul Rashid (Defendant No.3) and, therefore, the sale deed dated 29<sup>th</sup> of April, 2003 (Ex.P.3), and mutation No.4766 dated 13<sup>th</sup> of



November, 2002 (Ex.P.4) in favour of Bilquees Akhtar (Defendant No.1) and Bashir Ahmad (Defendant No.2) were illegal. It was claimed in the plaint that during the last ten days of March, 2003, in the presence of Muhammad Asghar (P.W.2) and Shahid Ali (P.W.3), the plaintiff had verbally told Abdul Rashid (Defendant No.3) that he had cancelled his power of attorney (Ex.D.9), so it could not be used; subsequently, on legal advice, the revocation deed was drawn on 29<sup>th</sup> of April, 2003, but the stamp vendor recorded this fact in his register on 30<sup>th</sup> of April, 2003; and finally, it was registered with the Sub-Registrar on 5<sup>th</sup> of May, 2003. Mere, this assertion is sufficient to hold that mutation No.4766 (Exh.P.4) was valid because it was sanctioned much before the alleged revocation of power of attorney. Now, we need to determine whether the sale deed dated 29<sup>th</sup> of April, 2003 (Exh.P.3) could be declared illegal, based on the facts pleaded in the plaint. We do not hold the view that the revocation deed (Exh.P.1) was signed on 29<sup>th</sup> of April, 2003, and came into effect from that date, and thus, the sale deed (Exh.P.3) based on the revoked power of attorney (EXh.D.9) was illegal. This is for two reasons. Firstly, the revocation deed (Ex.P.1) shows that on 30<sup>th</sup> of April, 2003, the plaintiff had purchased its stamp paper, but the writing upon it contained the date of 29<sup>th</sup> of April, 2003. This solitary fact is sufficient to infer that the revocation deed (Ex.P.1) was not scribed on 29<sup>th</sup> of April, 2003. It appears that due to this discrepancy, the plaintiff, in his plaint, stated that the stamp paper was purchased on 29<sup>th</sup> of April, 2003, but the vendor entered it in his register at Serial No.7040 on 30<sup>th</sup> of April, 2003. This position is unacceptable because it does not

appeal to the mind of any prudent man. Secondly, on 29<sup>th</sup> of April, 2003, both the plaintiff and Abdul Rashid (Defendant No.3) were present at the Sub-Registrar's office to produce documents for registration. The plaintiff presented a sale deed (Ex.D.5) using the power of attorney given by his brother, Bashir Ahmed (Defendant No.2), while Abdul Rashid (Defendant No.3) presented the sale deed (Ex.D.3). If the plaintiff had revoked the power of attorney in March, 2003, he could have made a written request to the Sub-Registrar to not register the sale deed (Ex.D.3) by stating the revocation, but he did not. Given the state of affairs, the plaintiff's claim of revoking the power of attorney before the registration of the sale deed (Ex.P.3) was not plausible, and the testimonies of Muhammad Asghar (P.W.2) and Shahid Ali (P.W.3) were also not credible. Therefore, the sale deed (Ex.P.3) could not be considered illegal based on these circumstances.

9. It is important to note that our determination of factual questions aligns with the findings of the District Courts, which were based on the probable conclusions drawn from the preponderance of evidence presented by the parties to the suit. However, in its revisional jurisdiction, the High Court did not take into account the exposition of facts. Instead, it reversed the decrees in favour of the defendants, and upheld the plaintiff's claim because it found that the defendants had not complied with certain legal requirements. It is, therefore, essential to assess the points that prevailed with the High Court.

10. Before delving into the points on which the High Court revised the concurrent findings of its subordinate courts, it is imperative to discuss the general impact and

significance of family settlement. A family settlement involves members of the same family striving to resolve their differences and disputes to achieve lasting resolution. Through these arrangements, family members aim to bring about harmony and goodwill, settling conflicting claims or disputed titles to promote peace within the family. Courts recognise the special significance of family arrangements and uphold them when made in good faith. This principle has been developed by courts over a long period of time to discourage litigation driven by greed, particularly in cases involving the distribution of family estates, such as the one being considered here. In this context, we may refer to some earlier case law.

11. The oldest case on the subject that comes to our hands dates back almost *three hundred years*, which is the case of *Stapilton (1739)*.<sup>1</sup> In this case, Philip Stapilton, the father, in order to prevent disputes and ill consequences between his two sons, drafted an agreement to divide his real estate between them. The dispute in the case was that Stapilton's elder son, Henry, was a bastard and, thus, not a legal heir to the estate. The defendant, being the only legitimate son, claimed the right to all his father's estate. The Court held that the purpose behind this agreement was to save the family honour, preserve harmony and affection amongst family members and thus, resting upon grounds which would not have been considered satisfactory if the transaction had occurred between mere strangers, but because the agreement was entered into to save the honour of the family, and was a reasonable one, a court of equity

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<sup>1</sup> *Stapilton v. Stapilton* [(1558-1774) All ER 352].

should, if it is possible, decree a performance of it. It further observed that a court should be glad to lay hold of any just ground to carry the agreement into execution and establish the peace of a family giving effect to the agreement.

12. The second case is that of *Gordon (1821)*,<sup>2</sup> where Lord Eldon observed that when family agreements have been fairly entered into, without concealment or imposition upon either side, with no suppression of what is true, or suggestion of what is false, then, although the parties may have greatly misunderstood their situation and mistaken their rights, a Court of Equity will not disturb the quiet, which is the consequence of that agreement.

13. Coming to the third case of *Khunni Lal (1911)*,<sup>3</sup> their Lordships of the *Privy Council*, considering a compromise entered into between certain members of a family by which they had settled their disputes and divided the family property, quoted with approval certain observations in *Mewa Koonwer*<sup>4</sup> wherein the learned Judges had said that the true character of the transaction appeared to us to have been a settlement between the several members of the family of their disputes, each one relinquishing all claim in respect of all property in dispute other than that falling to his share, and recognising the right of the others, as they had previously asserted it to the portion allotted to them respectively. It was in this light, rather than as conferring a new distinct title on each other,

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<sup>2</sup> *Gordon v. Gordon* [(1821) 3 Swans 400].

<sup>3</sup> *Khunni Lal v. Gobind Krithna Narain* [(1911) 38 Ind. App. 87]. This decision was fully endorsed by a later decision of the Privy Council in *Mt. Hiran Bibi v. Mt. Sohan Bibi* [AIR 1914 PC 44].

<sup>4</sup> *Lalla Oudh Beharee Lall v. Ranees Mewa Koonwer*, [(1868) 3 Agra HCR 82 at P.84].

that the parties themselves seem to have regarded the arrangement, and it is the duty of the Courts to uphold and give full effect to such an arrangement. And so, through equity, a family settlement was cured and given full effect.

14. The fourth case that we need to look at is of *Mahomed Musa (1915)*,<sup>5</sup> where the Privy Council pointed out in a case of family settlement that although the compromise and the decree taken together were considered to be defective or inchoate as elements making up a final and validly concluded settlement for the extinction of the equity of redemption, the actings and the conduct of the parties founded upon the performance or part performance of such an agreement were sufficient to cure all defects; for equity will support a transaction clothed imperfectly in those legal forms to which finality attaches after the bargain has been acted upon.

15. The fifth case that we may refer to here is of *Musammat Hardei (1919)*,<sup>6</sup> where the Privy Council held that the plaintiff was bound by her family agreement and did not allow her to repudiate it because a long period of time which had elapsed since it was made, nor to impeach the sale, which was made upon the faith of it.

16. The sixth case that we would like to mention is of *Martin Cashin (1938)*.<sup>7</sup> In this case their Lordships of the Privy Council observed that a parent can be generous to a son, or legitimate children to an illegitimate one, or a son to

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<sup>5</sup> *Mahomed Musa v. Aghore Kumar Ganguli* [28 Ind. cas. 930(1915)].

<sup>6</sup> (*Musammat Hardei v. Bhagwan Singh*) [24 C.W.N. 105(1919)]=[50 Ind. Case 812].

<sup>7</sup> *Martin Cashin and others v. Peter J. Cashin* [A I R 1938 PC 103].

a mother upon the occasion of a family arrangement without its being proper or possible in equity merely on that ground to suggest that the arrangement is an unfair one and ought to be set aside. It would indeed be strange if an agreement entered into by parties of full contracting capacity could be set aside in equity because, regarded from the standpoint of the family, it was generous as well as just.

17. The decision of the Indian Supreme Court is also an important reference to consider in this context. In *Tek Bahadur Bhujil*<sup>8</sup> (1966), it was pointed out that a family arrangement could be arrived at even orally and registration would be required only if it was reduced into writing. It was also held that a document which was no more than a memorandum of what had been agreed to did not require registration. The Indian Supreme Court had observed thus, "Family arrangement as such can be arrived at orally. Its terms may be recorded in writing as a memorandum of what had been agreed upon between the parties. The memorandum need not be prepared for the purpose of being used as a document on which future title of the parties be founded. It is usually prepared as a record of what had been agreed upon so that there be no hazy notions about it in future. It is only when the parties reduce the family arrangement in writing with the purpose of using that writing as proof of what they had arranged and, where the arrangement is brought about by the document as such, that the document would require registration as it is then

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<sup>8</sup> *Tek Bahadur Bhujil v. Debi Singh Bhujil* [AIR 1966 SC 292] .

that it would be a document of title declaring for future what rights in what properties the parties possess."

18. The next reference is to a case of this Court. In *Atta Hussain Khan (1979)*<sup>9</sup>, it was held that a document that embodies a bona fide settlement whereby a person agrees to surrender his rights for the preservation of peace, amity and harmony between the members of the family amounts to a family settlement arrived between the members for a lawful consideration, and is fully binding on them.

19. We would now refer to another case of this Court. In *Anwar Khan (2004)*<sup>10</sup>, it was argued that since the family arrangement was not registered, it could not be relied upon, nor could it be produced as evidence in Court. This Court concluded that if the parties were not interested in partition of property on permanent transfer basis, they could not be forced or compelled to do so as it depended upon their whims and wishes to distribute the property in any manner as may be deemed fit and proper, being their personal and family affair. In such an eventuality, the question of registration of such agreement, did not arise. The Court relied upon the case of *Jahanzeb*<sup>11</sup> to reach this conclusion.

20. The last case that we may refer to is of *Allah Dad*<sup>12</sup> (2005), where one of the questions before this Court was whether an unregistered family settlement was admissible in evidence. The Court observed that the object behind the family settlement is always to settle existing or future property disputes amongst the family members,

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<sup>9</sup> *Atta Hussain Khan v. M. Siddiqui Jan* [1979 SCMR 630]

<sup>10</sup> *Anwar Khan v. Abdul Manaf* [2004 SCMR 1261]

<sup>11</sup> *Jahanzeb and others v. Muhammad Abbas* [1999 SCMR 2182].

<sup>12</sup> *Allah Dad v. Duhman Khan* [2005 SCMR 564].

create goodwill, and avoid future disputes between the successors-in-interest. The bona fide transaction of family settlement would be binding on the parties and if the settlement by the conduct of the parties, is capable of receiving constant recognition for a long time, the right to assert under the agreement must not be subsequently allowed to be impeached, and Courts may not reject the family settlement on technical grounds.

21. On this subject, we found the relevant insights in section 132 of *"Commentaries on Equity Jurisprudence"*.<sup>13</sup> To better understand the effect and value of the family settlement, it would be helpful to read it here in extenso. It says: "There are cases of family compromise, where, upon principles of policy, for the honour or peace of families, the doctrine sustaining compromises has been carried further. And it has been truly remarked, that in such family arrangements the Court of Chancery has administered an equity, which is not applied to agreements generally. Such compromises, fairly and reasonably made, to save the honour of a family, as in case of suspected illegitimacy, to prevent family disputes and family forfeitures, are upheld with a strong hand; and are binding, when in cases between mere strangers the like agreements would not be enforced. Thus, it has been said, that if, on the death of a person, seised in fee, a dispute arises, who is heir; and there is room for a rational doubt, as to that fact, and the parties deal with each other openly and fairly, investigating the subject for themselves, and each communicating to the other all that he

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<sup>13</sup> Honourable Mr. Justice Story, *Commentaries on Equity Jurisprudence* [London: Stevens and Haynes (1892) P.79].



knows, and is informed of, and at length they agree to distribute the property, under the notion that the elder claimant is illegitimate, although it turns out afterwards that he is legitimate; there, the court will not disturb such an arrangement, merely because the fact of legitimacy is subsequently established. Yet, in such a case, the party acts under a mistake of fact. In cases of ignorance of title, upon a plain mistake of the law, there seems little room to distinguish between family compromises and others."

22. Here, it would also be apposite to cite the points made in the treatise "*Kerr on Fraud and Mistake*"<sup>14</sup> regarding family arrangements. On page 168, it is noted that: "the principles which apply to the case of ordinary compromises between strangers do not equally apply to the case of compromises in the nature of family arrangements. Family arrangements are governed by a special equity peculiar to themselves, and will be enforced, if honestly made, although they have not been meant as a compromise, but have proceeded from an error of all parties, originating in mistake or ignorance of fact as to what their rights actually are, or of the points on which their rights actually depend."

23. The law in England on this point is almost the same. In Halsbury's Laws of England,<sup>15</sup> on pages 623-625 following apt observations regarding the essentials of the family settlement and the principle governing the existence of the same are made:

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<sup>14</sup> Dennis Lane McDonnell & John George Monroe, *Kerr on the Law of Fraud and Mistake* [London: Sweet and Maxwell Limited (1952) P.168].

<sup>15</sup> Lord Mackay of Clashfern, Halsbury's Laws of England [Fifth Edition, Volume 91 (2012), Para 903 and 906].

**903. Meaning of family arrangements.** A family arrangement is an agreement between members of the same family, intended to be generally and reasonably for the benefit of the family either by compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation or by saving its honour.

The agreement may be implied from a long course of dealing, but it is more usual to embody or to effectuate the agreement in a deed to which the term 'family arrangement' is applied.

**906. Principles governing family arrangements.** Family arrangements are governed by principles which are not applicable to dealings between strangers'. When deciding the rights of parties under a family arrangement or a claim to upset such an arrangement, the court considers what in the broadest view of the matter is most in the interest of the family, and has regard to considerations which, in dealing with transactions between persons not members of the same family, would not be taken into account. Matters which would be fatal to the validity of similar transactions between strangers are not objections to the binding effect of family arrangements. Conversely, an intention to create a legally enforceable contract may be negatived more readily where the parties to an arrangement are members of the same family than where they are not.

Although usually and necessarily present where a family arrangement is made, parental influence will not by itself render the transaction voidable, but where, at a time when he is not fully emancipated from his parent's influence, a child enters into a family arrangement under which the parent benefits to the total exclusion of the child or benefits to an extent out of all proportion to the benefit accruing to the child,

there is a presumption of undue influence. The presumption will be rebutted if it appears that, when the arrangement was entered into, the child was able to form a free and unfettered judgment independent of any sort of control.

24. The principles governing family settlement or arrangements that may be deducted from the above referred survey of case law and the law books may be outlined in the following form:

(i) The family settlement has to be genuine, bona fide and must aim to resolve family disputes and conflicting claims by ensuring a fair and equitable distribution or allocation of properties among all family members.

(ii) When an agreement is entered into to preserve the honour of a family and is reasonable, the Court will seize any justifiable reason to enforce the agreement and promote peace within the family.

(iii) The settlement must be made willingly and should not be influenced by fraud, social or familial pressure, and undue influence.

(iv) Like an oral contract, family settlements may well also be oral and if it is, no registration of the settlement is necessary.

(v) It is well established that registration of a family settlement is required only if the terms of the settlement are put into writing. However, it is important to distinguish between a document that includes the terms and details of a family settlement and a simple memorandum created after the arrangement has been made, intended either for record purposes or for informing the Court to effect necessary mutation. In such cases, the

memorandum does not create or extinguish any rights in immovable property and, therefore, does not fall under the requirements of the Registration Act, 1908 making it not subject to compulsory registration.

(vi) In cases where the parties are not inclined to divide property permanently, they cannot be forced to do so. The decision to distribute the property is based on their own preferences, and it is considered a personal and family matter. In such situations, there is no requirement for registering such an agreement.

(vii) The members involved in the family settlement must have a pre-existing title, claim, or interest, even a potential claim, in the property that is recognised by all parties to the settlement. If one party lacks a title but, under the arrangement, another party relinquishes all claims or titles in favour of that person and acknowledges them as the sole owner, a pre-existing title will be assumed. Consequently, the family arrangement will be upheld, and the Courts will readily endorse it.

(viii) A genuine and bona fide family settlement can resolve disputes, whether current or potential, even if they do not involve legal claims. As long as the arrangement is fair and equitable, it is final and binding on all parties involved.

(ix) Courts tend to favour maintaining the family arrangement rather than disturbing it on technical or trivial grounds. Where the Courts find that the family arrangement suffers from a legal deficiency or a formal defect, the principle of estoppel is invoked and applied to turn down the plea of the person who, being a party to family arrangement, seeks to set aside a settled dispute, and claims

to revoke the family arrangement under which he himself has received some material benefits.

25. We will now have a go at applying the principles mentioned above to the facts of the present case. This is to determine whether the legal issues that influenced the High Court's decision could justify accepting the plaintiff's claim and reversing the first Appellate Court's decree.

26. The first legal omission that the High Court noticed was that the attorney Abdul Rashid (Defendant No.3) had transferred the plaintiff's property to his own relatives (i.e., his brother Bashir Ahmed, Defendant No.2, and his daughter Bilqees Akhtar, Defendant No.1, who are also close relatives of the plaintiff) without his specific permission. This was founded on the precautionary principle first expounded by this Court in *Fida Muhammad (1985)*<sup>16</sup> and subsequently followed in different cases<sup>17</sup>, as referenced in the High Court's judgment. According to this principle, the agent transferring the principal's property is obligated to firstly, in case of difficulty (and it will be a case of difficulty if a power of attorney is susceptible to doubt about its interpretation), use all reasonable diligence in communicating with the principal and seeking to obtain his instructions. Secondly, if the agent deals on his own account with the property under the agency, e.g., if he purchases it himself or for his own benefit, he, in his own interest, should obtain the consent of the principal in that behalf after acquainting him with all material circumstances on the subject, failing which the

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<sup>16</sup> *Fida Muhammad v. Pir Muhammad Khan (Deceased) through Legal Heirs and another* [PLD 1985 SC 34]

<sup>17</sup> *Jamil Akhtar v. Las Baba* [PLD 2003 SC 494], *Muhammad Ashraf v. Muhammad Malik* [PLD 2008 SC 389], *Amina Rani v. Ashfaq Ahmad* [2008 SCMR 805], and *Mst. Naila Kausar v. Sardar Muhammad Bakhsh* [2016 SCMR 1781].

principal is at liberty to repudiate the transaction. We take the view that there was no warrant to apply this principle to the peculiar facts of the present case. The general powers of attorney accompanied by a family settlement, exchanged by the parties to achieve the objectives of a family settlement, are to be treated as a species apart and an exception to the above-mentioned precautionary principle. It is reminded here that family settlements are not governed by principles that apply to dealings between strangers<sup>18</sup>. When deciding the rights of party under the family settlement or claims to upset such settlement, the Court considers what, in the broadest view of the matter, is most for the interests of a family<sup>19</sup>. Matters that would be fatal to the validity of a similar transaction between strangers are not objections to the binding effect of a family settlement or arrangement<sup>20</sup>. Considering this legal perspective, upon reviewing the evidence presented, it becomes apparent that the true intention behind the arrangement outlined in the memorandum dated 23<sup>rd</sup> of November, 2000 (Ex.D.1) was to fairly distribute the properties among real brothers to buy peace of mind and bring about complete harmony in the family and prevent potential legal disputes and, for this purpose, each brother acknowledged the claims of the other brothers and granted them a general power of attorney, allowing them to easily transfer their respective share of the properties through sale, gift, etc. to anyone they deemed fit. Such arrangements are governed by a special equity peculiar to them and must be enforced if honestly made. In this case,

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<sup>18</sup> *Dudley Persse v. Henry Persse* (1840) VII Clark & Finnelly 279.

<sup>19</sup> *Jodrell v. Jodrell* (1851), 14 Beav. 397.

<sup>20</sup> *Hoblyn v. Hoblyn* (1889) 41 Ch. D. 200.

the plaintiff did not claim that the property distribution arrangement embodied in the memorandum dated 23<sup>rd</sup> of November, 2000 (Ex.D.1) was unfair or involuntary. He also did not allege any fraud, coercion, or undue influence. Therefore, the precautionary principle did not apply in this situation and could not be used to disrupt the family settlement. If it did, it would essentially allow the plaintiff to exploit the family settlement for his own gain, potentially straining harmony and goodwill within the family. This was not wholesome and permissible under the law. It is important to note that the plaintiff had previously used general powers of attorney (i.e., Ex.D.2, Ex.D.3, and Ex.D.6) from his brothers, given to him under the same family settlement (Ex.D.1), without seeking their permission in favour of his sons and wife. The details whereof have been stated hereinabove in paragraph 7. This conduct constitutes and operates against the plaintiff as an estoppel to challenging transactions recorded in the sale deed (Ex.P.3) and mutation (Ex.P.4) made by Abdul Rashid (Defendant No.3) based on a power of attorney (Ex.D.9) given by him.

27. The High Court also discounted the memorandum dated 23<sup>rd</sup> of November, 2000 (Ex.D.1) for three reasons. Firstly, it was not attested by a witness in accordance with Articles 17 and 79 of the Qanun-e-Shahadat, 1984. Secondly, it fell under Section 17 of the Registration Act, 1908 and was a document that should have been registered, and since it was not registered, it was considered ineffective for transferring any rights. Lastly, the High Court found that it was not proved in accordance with the law. The objections raised by the High Court regarding

the memorandum (Ex.D.1) appear to be based on a misinterpretation of the evidence and a flawed application of the law; as a result, these objections do not hold up under legal scrutiny. We explain why. In legal terms, members of a family descending from a common ancestor or a near relation can make an agreement to settle their dispute and divide their property either orally or in writing to foster peace within the family. In the case at hand, a document (Ex.D.1) detailing the distribution of properties was drafted on 23<sup>rd</sup> of November, 2000. This document could be categorized as a family arrangement rather than a standard partition deed. Its contents revealed that the brothers initially reached an oral agreement regarding property distribution, which was then recorded in a memorandum (Ex.D.1). The property division outlined in the memorandum (Ex.D.1) did not involve transferring property from one brother to another, nor did any brother derive their property rights from another. Instead, the arrangement embodied in the memorandum (Ex.D.1) acknowledged the rights of each brother to specific properties listed under their names. How the properties were to be transferred from one brother to another was verbally settled among the four brothers, and general powers of attorneys were exchanged among all the brothers to give effect to this verbal agreement, which details have been explained above. Since the memorandum (Ex.D.1) did not constitute a deed of transfer, gift, exchange, surrender, etc., it did not fall under the clauses of Section 17 of the Registration Act, 1908, which require registration<sup>21</sup>. It also did not contain any financial or future obligations

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<sup>21</sup> Muhammad Akbar and others v. Province of Punjab through DOR, Lahore and others [2022 SCMR 1532]



requiring attestation by two witnesses as per Article 17 of the Qanun-e-Shahadat, 1984. However, it is made clear that if the settlement were used as a document to create or declare rights in immovable property worth more than Rs.100, it would have needed attestation by two witnesses and also registration. It is important to note that, even though the memorandum (Ex.D.1) was not registered, it was open for either party to prove that there had been a family settlement which was acted upon. It seems that the defendants were aware of this legal position and, therefore, not only presented oral evidence to establish the family settlement but also requested to present secondary evidence of the memorandum (Ex.D.1). The Additional District Judge granted permission to produce secondary evidence by his order dated 5<sup>th</sup> of October, 2006, as the evidence on record proved its execution. As the plaintiff did not challenge this order, it became final. Therefore, the High Court's conclusion that it was not proved according to law was incorrect.

28. Having analyzed the questions on facts and law, we have found that the cause for bringing the suit, giving rise to this appeal, was not *bona fide* but an outcome of greed and an attempt to foil the unity achieved by the family settlement. Although this bitter fact stood established in the Trial Court, still the plaintiff manipulated his niece Bilqees Akhtar (Defendant No.1) to employ another tactic at the appellate stage to disrupt the family peace. He took her to the first Appellate Court and had her statement recorded. In her statement, she claimed to have reached a compromise with the plaintiff and stated that she would have no objection if the suit was decreed. How did this happen? Why

did she give a statement against her father, Abdul Rashid (Defendant No.3)? A perusal of the record suggests three plausible reasons therefor. The first is that by then, her father had died; secondly, her daughter married to plaintiff's son; and lastly, she had sold the property to Shazia Yaqoob by registered sale deed dated 17<sup>th</sup> of February, 2005. These factors cast a reasonable doubt on the mind of a prudent man that Bilqees Akhtar's statement was not voluntary but under the undue influence of the plaintiff. Given the situation, Bilqees Akhtar's statement could not be considered credible. As such, it could not be made basis for accepting the plaintiff's claim, and it was rightly excluded from consideration by the first Appellate Court. We are in complete agreement with the first Appellate Court because we subscribe to the principle that if the entire foundation of the cause of action is found to be false, the suit cannot succeed in part on the same cause of action even as regards a defendant admitting the plaintiff's claim<sup>22</sup>. In this background, we are not inclined to implead subsequent purchaser, Shazia Yaqoob as a respondent in this appeal; so her application (i.e., CMA No.5618 of 2022) is dismissed.

29. CMA No.3759 of 2022 is an application for transposing Appellants No.1-b, Imtiaz Ahmed, and legal representatives of Muhammad Asghar, Appellant No.2-a, as Respondents No.3, 4-a, and 4-b. Based on the reasons stated in this application, it is allowed as prayed for.

30 Given the preceding discussion, we conclude that the opinion propounded by the Lahore High Court

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<sup>22</sup> Habib Khan v. Mst. Taj Bibi and others [1973 SCMR 228]

suffers from misreading of facts and evidence and misapplication of law and thus cannot be approved. This appeal, therefore, succeeds. The decree granted by the judgment dated 29<sup>th</sup> of April, 2019, of the Lahore High Court is set aside, and resultantly, the decree drawn by the first Appellate Court is restored with costs throughout.

**Judge**

**Judge**

Announced in Open Court  
at Islamabad on 19.08.2024.

**Judge**

**APPROVED FOR REPORTING**