

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Qazi Faez Isa, CJ
Mr. Justice Amin-ud-Din Khan
Mr. Justice Athar Minallah

Civil Petition No. 3030 of 2021

*(Against the judgment dated 10.03.2021 of the
Lahore High Court, Multan Bench passed in Civil
Revision No. 288-D/2020)*

Mehmood Khan and others.

... *Petitioners*

Versus

Sara Akhtar.

... *Respondent*

For the Petitioners:

Mr. Shahzeb Masud, ASC.
Mr. M. Anis Shahzad, AOR.

For the Respondent:

Mr. Muhammad Yasin Bhatti, ASC.

Date of Hearing:

26.10.2023.

ORDER

Qazi Faez Isa, CJ. The learned counsel representing the petitioners states that Sara Akhtar, whose maiden name was Sara Ghouri, had filed a suit in the year 2009, seeking declaration and cancellation of six sale mutations, bearing Nos. 30, 31, 32, 33, 37 and 38, all of which were attested on 16 January 1989 and together were in respect of 977 *kanals* and 19 *marlas* of land ('**sale mutations**'). The sale mutations were in favour of petitioners No. 1 to 6, three mutations were in favour of Mr. Mansoor Ahmed Khan's sons, namely, Mehmood Khan, Muhammad Ali Khan and Muhammad Ahmed Khan, one in favour of his wife, namely, Rubina Bibi, one in favour of his mother-in-law, namely, Sharafat Jaleel, and one in favour of his brother-in-law, namely, Shahid Jaleel. The suit was decreed on 28 June 2019, the petitioners' appeal against the same was dismissed on 26 November 2019 and the civil revision, filed before the Multan Bench of the Lahore High Court, was dismissed on 10 March 2021, which is the judgment impugned herein.

2. The learned counsel states that though there are three concurrent decisions against the petitioners, however, none of them considered the fact that the suit was belatedly filed and that possession of the subject land was not sought. He further states that the burden of proof lay upon the

plaintiff-respondent, which she had failed to discharge and had also failed to establish fraud, yet the High Court held that fraud was committed. He further states that there were other factual errors committed by all three courts, decisions whereof have been impugned herein.

3. Learned Mr. Muhammad Yasin Bhatti represents the respondent. He states that the respondent had denied selling her land pursuant to the sale mutations or otherwise; had denied receipt of sale consideration; and that the burden to establish the sale lay upon the beneficiaries of the sale, that is, petitioners No. 1 to 6. Responding to the contentions of the learned counsel for the petitioners he submits that the respondent was not aware of the sale mutations and upon coming to learn of them filed the suit well within the period prescribed in the Limitation Act, 1908. With regard to the burden of proof he stated that the one who asserts a fact has to prove it and in the instant case the sale mutations were relied upon by the petitioners, therefore, the burden to prove the same lay upon them, in terms of Article 115 of the Qanun-e-Shahadat, 1984. With regard to the contention that the respondent had not sought possession he submits that the respondent's lands were being looked after by her maternal uncle, namely, Mr. Mansoor Ahmed Khan (petitioner No. 7), and as such she was in constructive possession thereof, which fact is further confirmed as she did not claim mesne profits. He submitted that only one of the beneficiaries of the purported sale came forward to testify, that is, Muhammad Ali Khan (petitioner No. 2), who admittedly was a child at the time of the sale and as such could not have testified regarding facts thereof. His father (petitioner No. 1) also testified but stated that the sale consideration was paid by his wife, who did not come forward to testify, and in not doing so an adverse presumption, in terms of Article 129(g) of the Qanun-e-Shahadat, 1984, would be drawn that if she had testified it would be that she had not paid the sale consideration.

4. We have heard the learned counsel for the parties and have examined the record. The learned counsel for the petitioners has not been able to show any illegality committed in the impugned judgment of the learned Judge of the High Court. The burden to establish the sales and the sale mutations, lay upon the beneficiaries thereof, the petitioners, but they failed to discharge it, and when the same was not discharged it may be stated to constitute fraud. The contentions raised by the learned counsel

with regard to factual errors are not borne out from the record. We also agree with the submissions of the learned counsel representing the respondent.

5. Therefore, for the aforesaid reasons, leave to appeal is declined, and consequently this petition is dismissed with costs throughout. The revenue authorities of the area are directed to immediately ensure delivery of said land's exclusive possession to the respondent, as she was deprived of her land, which necessitated her filing of the suit in the year 2009, fourteen years ago.

Chief Justice

Judge

Judge

Islamabad:
26.10.2023

Approved for Reporting
(M. Tauseef)