

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Mushir Alam
Mr. Justice Qazi Faez Isa
Mr. Justice Qazi Muhammad Amin Ahmed

Civil Appeal No. 396 of 2018

(Against the order dated 19.01.2017
passed by Lahore High Court Rawalpindi
Bench in C.R. No.199 of 2008)

Fazal Ellahi deceased through his legal heirs

...Appellant(s)

Versus

Mst. Zainab Bi

...Respondent(s)

For the Appellant(s): Syed Moazam Ali Rizvi, ASC
Syed Rifaqat Hussain Shah, AOR

For the Respondent(s): Syed Hamid Ali Shah Bokhari, ASC
Mr. Tariq Aziz, AOR

Date of hearing: 24.09.2019

JUDGMENT

Qazi Muhammad Amin Ahmed, J. Mst. Zainab Bi, respondent herein, had been non-suited by a learned Civil Judge, at *Kahuta vide* judgment and decree dated 17.5.2006; praying for a declaration, she disputed *vires* of mutation No.596 dated 14.8.1970, purportedly entered in consequence of a sale effected by her father, *Alif*, incapacitated by paralysis, in favour of appellants' predecessor-in-interest; alleging fraud, she prayed for consequential reliefs. A learned Additional District Judge *vide* judgment and decree dated 22.5.2008, reversed the findings returned by the learned Trial Court and decreed the suit, a decision subsequently affirmed by a learned Judge-in-Chambers of Lahore High Court Rawalpindi Bench Rawalpindi, being assailed, by leave of the Court, on a variety of grounds, ranging from a duly

mutated valid transaction, expiry of period of limitation as well as alleged knowledge of the sale, attributed to the respondent on the basis of a suit filed by her for possession through preemption *qua* the same chunk of land. Controverted by the respondent on the ground that there was no occasion for the revenue staff to enter the impugned mutation on a national holiday, that too in the absence of the vendor as well as two respectable persons to confirm his identity before completion of the process. The bottom line is that a vulnerable lady in a rural neighborhood was surreptitiously duped and that she resorted to the law at the first available opportunity.

2. Heard. Record Perused.

3. Even if entry of mutation on 14th of August, a national holiday, is unsuspectingly ignored, there are many other intriguing aspects, surrounding the controversy that cannot be possibly overlooked. It is admitted, at all hands, that *Alif*, respondent's predecessor-in-interest was a physically incapacitated person and as such he neither attended the proceedings nor anyone was deputed to confirm/verify his assent. There is no entry in the *Roznamcha* as contemplated by Section 42 of the West Pakistan Land Revenue Act, 1967 (XVII of 1967), *inter alia*, providing identification by *two respectable persons* to confirm the transaction; non compliance with the procedure, though directory, nonetheless, puts us on caution. With a suspect entry, entire transaction is structured upon a self serving statement pointed upon the legitimate proprietary rights of a hapless female in a rural neighbourhood. It is by now well settled that a mutation by itself does not create title unless demonstrated to be backed by a valid transaction. A sale without a vendor or by his duly authorized attorney/agent is a farce. Appellants' emphatic stress on the period of limitation is beside the mark inasmuch as their reference to the institution of a suit for possession through preemption by no other than the respondent herself is a far cry as well, as nothing has been placed on the record throughout the proceedings before the Courts below to even obliquely suggest that the respondent ever instituted any suit for the same piece of land.

Documents placed, for the first time before this Court, are also devoid of relevant details. Even otherwise having found the impugned transaction with the strappings of deceit, we are not impressed by the argument. Fraud vitiates most solemn proceedings and thus period of limitation would not embargo a justiciable claim directed against fraud. View taken by the Appellate Court, affirmed by the High Court, being well within the remit of law, calls for no interference. Appeal is dismissed.

Judge

Judge

Judge

Islamabad

24.09.2019

Not approved for reporting.

Ghulam Raza/-