

**SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**PRESENT:**

MR. JUSTICE MANZOOR AHMAD MALIK  
MR. JUSTICE AMIN-UD-DIN KHAN

**CIVIL PETITIONS NO.2866 AND 2867 OF 2015**

(Against the judgments dated 13.04.2015 passed by the Peshawar High Court, D.I. Khan Bench in Civil Revisions No.69-D and 86-D of 2012)

***Sakhi Jan and others***

*(in both cases)*

*...Petitioner (s)*

***Versus***

***Shah Nawaz***

*(in C.P.2866/2015)*

***Ghulam Shabbir and others***

*(in C.P.2867/2015)*

*...Respondent(s)*

For the Petitioner (s) : Syed Mastan Ali Shah Zaidi,  
ASC *(in both cases)*

For Respondent No.1 : Nemo  
*(in both cases)*

For Respondents No.3 : Tufail Khan, Girdawar  
& 4 Fazl ur Rehman,  
*(in C.P.2867/2015)* Patwari, District Tank

Date of Hearing : 22.01.2020

**JUDGMENT**

**AMIN-UD-DIN KHAN, J.-** These Civil Petitions for Leave to Appeal have been filed under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973 against the judgment dated 13.04.2015, passed by the

learned Peshawar High Court, D.I. Khan Bench, whereby Civil Revisions bearing No.69-D and 86-D of 2012, were dismissed.

2. The subject matter of Civil Petition No.2866 of 2015 is a Suit for Specific Performance, filed by the Respondent, Shah Nawaz. The subject matter of Civil Petition No.2867 of 2015 is a Suit for Declaration, etc. filed by the Petitioners, the legal heirs of Mst. Zaro Bibi, to challenge the attestation of various mutations, i.e. mutations No.99 attested on 01.04.1986, No.112 attested on 01.03.1989 & No.133 attested on 14.07.1993, and subsequent transfer of land by mutation No.161 attested on 08.01.1998. These mutations were produced as evidence of transfer of the suit land on behalf of the Plaintiffs/Petitioners, etc. in favour of Respondent No.2, Gohar Nawaz and the subsequent sale by the said Respondent No.2, in favour of Respondent No.1, Ghulam Shabbir, and were alleged to be a result of fraud.

3. We have heard the learned counsel for the parties and perused the available record.

4. In Civil Petition No.2866 of 2015, this Court issued notice to the Respondents vide Order dated 17.12.2015 in the following terms:

“Contents inter alia where agreement to sell is violative of terms and conditions envisaged in paragraph 9 of the Land Reforms Regulation (Validation of Orders) Ordinance, 1978, it shall not be

voidable but void ab initio and that neither the fora below nor the High Court while deciding the case in hand considered this aspect of the case. Notice."

5. Briefly, the facts of the case are that the Plaintiff/Respondent in Civil Petition No.2866 of 2015 filed a Suit for Specific Performance for the land measuring 18 *kanals* 6 *marlas* on the basis of an Agreement to Sell dated 17.12.1978, pleading in the suit that predecessor-in-interest of Defendant Gul Khan agreed to sell his land measuring 52 *kanals* and 5 *marlas*; whereafter the seller passed away and inheritance mutation No.92 was attested on 26.10.1985 in favour of the Petitioners. Thereafter, through the mutations mentioned by the Petitioners in their Suit for Declaration, they transferred a part of suit property measuring 33 *kanals* and 19 *marlas* in favour of son of the Plaintiff, in recognition of an Agreement to Sell. However, when a part of the property was not transferred, he filed a Suit for Specific Performance. The learned Trial Court was pleased to decree the Suit for Declaration and dismissed that of Specific Performance. Two appeals were filed by the Plaintiff/Respondent, and the learned First Appellate Court reversed the judgments and decrees passed by the learned Trial Court and decreed the Suit for Specific Performance and dismissed that of Declaration. The Petitioners filed Civil Revisions and the learned High Court was pleased to dismiss both the Civil

Revisions. Resultingly, the Suit for Declaration filed by the Petitioners stood dismissed and the Suit for Specific Performance filed by the Respondents stood decreed. Hence, these Civil Petitions for Leave to Appeal.

6. Learned counsel for the Petitioners, while relying upon the judgment of this Court reported as Mst. Gulshan Hamid v. Kh. Abdul Rehman and others (2010 SCMR 334) states that the agreement does not contain the signature of the purchaser, therefore, the agreement was not enforceable. We are afraid that this is not the correct position of law as this Court in the judgment reported as Muhammad Sattar and others v. Tariq Javaid and others (2017 SCMR 98) has held as follows:

"21. ... it is evident that the proposition that where an Agreement to Sell pertaining to immovable property is not signed by one of the parties thereto, in each and every eventuality, is invalid and not specifically enforceable is fallacious and contrary to the law. The existence and validity of the Agreement and it being specifically enforceable or otherwise would depend upon the proof of its existence validity and enforceability in accordance with the Qanun-e-Shahadat Order, 1984, the relevant provisions of the Contract Act, 1872, the Specific Relief Act, 1877 and any other law applicable thereto."

(Emphasis supplied)

Therefore, an Agreement to Sell, if proved despite absence of signatures of the purchaser, would be valid in the eyes of law

and enforceable. In the instant matter, there are concurrent findings of two learned Courts below whereby it has been held that the Plaintiff/Respondent in the Suit for Specific Performance, fully proved the case pleaded by him and the decree for Specific Performance was granted; whereas Suit for Declaration was dismissed by the two learned Courts below on the basis of appreciation of evidence produced by the parties available on the file. The learned High Court has further observed that the mutation is incorporated in the Revenue Records and possession is also delivered on the basis of said mutations as well as on the basis of an Agreement to Sell. The said Agreement to Sell is, therefore, otherwise proved by producing witnesses, including real uncle of the present Petitioners. In the light of above, contention of the Petitioners regarding absence of signatures meriting dismissal of the case is repelled, more particularly, where an Agreement to Sell has been otherwise proved on the basis of reliable and cogent evidence.

7. Now, coming to the question noted by this Court vide Order dated 17.12.2015, the objection regarding the bar on transfer of property is raised by the Petitioners/Vendors, who are responsible for the sale themselves. To this effect, there are concurrent findings of the two Courts below in favour of the Respondents and against the Petitioners. The two learned Courts below have affirmed that the Plaintiffs

have sold the suit property through mutations, which had been challenged in their Suit for Declaration, even though the Petitioners had themselves sold the property through the impugned mutations. Further, it was held that the predecessor-in-interest of the present Petitioners entered into an Agreement to Sell *vis-a-vis* the suit property. It is evident from the facts that the Petitioners filed the Suit for Declaration despite having executed the mutations, and with *mala fide*, now want to take cover under the law claiming that a bar existed against the transfer made by them. The Petitioners want to take benefit of their own wrong. If there was a bar for transfer of the property then the Petitioners cannot be allowed to benefit from the same after entering into a valid sale agreement. The Petitioners now want to take benefit of the obstante clause mentioned under the law. If, on the basis of that obstante clause, the mutations are reversed, the beneficiary of said reversal will be the sellers, to whom the property will revert. It will be against the administration of justice that benefit of wrong be given to a wrong doer and it would also be against the well-established maxim *Nullus Commodum Capere Potest De Injuria Sua Propria* (A person cannot benefit from his own wrong). In this regard, reference may be made to the judgment of this Court reported as Mian Muhammad Saeed and another v. The Province of West Pakistan and others (PLD 1964 SC 572). The Petitioners,

therefore, cannot claim benefit of the obstante clause, if any, at this stage.

8. In the instant case, the plea regarding bar on transfer of property was neither taken before the Civil Court nor evidence was adduced to prove the same. The point was also not pressed before the learned Appellate Court and the learned High Court with force, or on basis of strong and cogent evidence. A perusal of the Land Reforms Regulation (Validation of Orders) Ordinance, 1978 shows that the same is not attracted to the instant matter. Even otherwise, it is settled law that where proprietary rights had been transferred by the Government in full, then there is no bar on further alienation of suit land, unless the proprietary rights have not yet been vested with the allottee in full. Even if that is the case, the Agreement to Sell would become enforceable when the bar on alienation would be lifted, which in this case, was admittedly 25 years after transfer of property, which have now passed. Therefore, the suit property can validly be transferred in favour of the Respondent/Plaintiff without any encumbrance pursuant to a valid Agreement to Sell. The learned counsel has failed to convince us on any point agitated by him. In this regard, reference may be made to the judgments reported as Ghulam Hussain through Legal Heirs v. Khadim Hussain (2012 MLD 69), Muhammad Asghar v. Member Board of Revenue and others (2009 MLD 1023) and

Fayyaz Mahmood Khan v. Haji Abdul Rehman through Legal Heirs and others (2015 YLR 411). Consequently, we are of the firm view that after transfer of proprietary rights in the immovable property by the State, the bar contained on a subsequent transfer has little value.

9. Lastly, we have noted that the Petitioners Suit for Declaration, as rightly dismissed, was also defective for non-impleadment of the concerned revenue officials and the Provincial Government, even though the mutations sanctioned by the public functionaries were challenged. It is settled by now that the Provincial Government and the relevant authorities appointed by the same, who sanctioned a public document, are required to be produced before the Court when the validity of said document needs to be proved. This is because the person who scribes a document is needed to be produced before the Court to prove the validity of said document as under Article 78 of the Qanun-e-Shahadat Order 1984, which provides as under:

**"78. Proof of signature and handwriting of person alleged to have signed or written document produced.-** If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting."



However, where a public document or document sanctioned by a public officer is challenged, it cannot be left at the whims of the parties to produce the same before the Court. Particularly, this burden would fall upon the Defendant, trying to defend the sanctity of the impugned mutation or registered document, to bring the revenue officer in the witness box. However, the principles of justice dictate that the person whose act is challenged before the court should be allowed an opportunity to defend his actions. Even if no direct interest of said officer is being affected, his acts as a public officer carry the presumption of regularity and correctness attached to them which needs to be actively rebutted; further, he must also be provided with an opportunity to defend the same. Therefore, the revenue officers and the Provincial Government are proper parties in cases where registered sale deeds and mutations have been challenged. In the instant matter, where fraud and collusion of revenue officers had been alleged, their presence before the court was indispensable for proper and complete adjudication of the matter. Yet, they were not impleaded while seeking a declaration against the impugned mutations.

10. In this view of the matter, the findings of the two learned Courts below merit no interference. The learned counsel for the Petitioners has failed to make out a case for

grant of leave. Consequently, both the titled Civil Petitions are dismissed and leave declined.

**JUDGE**

Islamabad, the  
22<sup>nd</sup> of January, 2020  
'APPROVED FOR REPORTING'  
*Syed Farhan Ali*

**JUDGE**