

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE MUNIB AKHTAR
MRS. JUSTICE AYESHA A. MALIK

C.P.L.A. No.1808-L/2015

(Against order dated 19.05.2015 passed by the
Lahore High Court, Lahore in Civil Revision
No.431/2004.)

Abdul Shakoor (deceased) through legal ... **Petitioner**
heirs.

Vs

Muhammad Hanif (deceased) through legal ... **Respondents**
heirs, etc.

For the Petitioner : Malik Noor Muhammad Awan, ASC

For the Respondents : N.R.

Date of Hearing : 25.02.2025

ORDER

Munib Akhtar, J.: The facts necessary to dispose of this matter, though somewhat tangled, may nonetheless be stated with brevity. Three persons, Fazal, Rustam and Hanif obtained certain State land in auction in equal share. An agreement was entered into among them whereby Hanif and Rustam agreed to sell their shares to Fazal for a stated consideration. For this purpose one Basharat Ali was appointed as the attorney (in 1972) by them to give effect to the transaction. Ultimately, on 27.11.1982 the attorney gave effect to the agreement, and the shares of Hanif and Rustam were transferred to Fazal by means of a sale deed. However, within a month thereof the heirs of Rustam filed suit to annul the transaction on the ground that Rustam had passed away on 12.09.1982 and the power of attorney granted by him to Basharat automatically stood revoked. The suit was decreed on 25.01.1988 and an appeal against the same failed on 03.02.1990. The sale deed was cancelled. This decree attained finality. It appears that the land was purchased from Hanif and Rustam (through his heirs) by one Shafi during the pendency of the suit. (As will be noted, the facts of the dispute go back several decades and in the meanwhile the various protagonists/parties passed away, to be substituted by their respective heirs. We will here generally refer to the parties

only, it being understood that such reference means and includes, as appropriate, the heirs.)

2. Thereafter the second round of litigation began. On or about 14.02.1990 the heirs of Fazal filed suit to enforce the agreement, noted above, between him and Hanif and Rustam. Shafi was also a defendant in this suit. During the pendency of this suit, on or about 21.02.1994 the present leave petitioner purchased the land from the aforementioned Shafi. Ultimately, this suit was decreed in favor of Fazal's heirs on 12.10.1999 and an appeal against the same failed. That appeal was, it is important to note, was filed by Hanif and was dismissed on 10.04.2000. That led to the filing of a revision petition in the High Court by the present leave petitioner, which was dismissed by means of the impugned judgment. It appears that the leave petitioner emerged on the stage for the first time in the proceedings when he filed the revision petition. The learned High Court held, in essence, that he did not have any standing to file the revision petition.

3. Before us, learned counsel for the leave petitioner renewed the submission that had been made unsuccessfully before the High Court, viz., that he was an assignee within the meaning of Order 22, Rule 10 CPC and could therefore maintain the revision petition. When queried as to the basis of this claimed assignment, learned counsel submitted that it was by virtue of the sale deed between him and Shafi. Reliance was placed on certain observations made in relation to Order 22, Rule 10 in *Surraya Begum and others v Suban Begum and others* 1992 SCMR 652, in particular in para 16 thereof.

4. Having considered the matter we were, with respect, not persuaded by the case sought to be made out. An assignment and a sale of immoveable property are not the same thing. The leave petitioner derived his claimed interest (which would, as a matter of law, be the title) through the sale of the land to him by the aforementioned Shafi during the pendency of the second suit. If at all valid, this was not an assignment but would be a sale, i.e., a divestment by Shafi of the whole of his claimed interest (which itself, as a matter of law, would be the title) in the suit land. Shafi himself derived his claim or title as vendee from Hanif and Rustam during the pendency of the first suit. The said suit, as noted, was

decreed. The sale deed in favor of Fazal was cancelled. The second suit was also decreed, in favor of Fazal. This decree (which is the one relevant here) was only appealed against by Hanif, which appeal failed and the matter was not thereafter taken further by Hanif or Rustam or their heirs. What then was the position that emerged? Once the first suit was decreed in favor of Hanif and/or Rustam and the sale deed in favor of Fazal stood cancelled, it could have been that the way was clear for Shafi to have a valid claim of title on the basis of his purchase of the land. But there was still the pre-existing agreement between Fazal on the one hand and Hanif and Rustam on the other to contend with. That agreement was sought to be enforced by the Fazal's heirs. In this suit (i.e., the second round of litigation) an issue was specifically framed as to whether Shafi was a bona fide purchaser without notice of the agreement. This issue (No. 6) was contested, and decided against Shafi, which finding was upheld by the learned appellate Court. Once this issue was decided that shut the door to the claimed interest (i.e., title) of the leave petitioner. To accept the leave petitioner as an assignee of an interest on the basis of the sale to him by Shafi in such circumstances would be to, in effect, recognize the creation of assignments in what could be (effectively) an endless chain, with each link being a attenuated claim than the one before it. The finding that Shafi was not a bona fide purchaser without notice set up an insuperable barrier which the leave petitioner could not surmount. Insofar as *Surraya Begum and others v Suban Begum and others* 1992 SCMR 652 is concerned, the facts of that case were quite different from those at hand. The general observations made in para 16 do not therefore, with respect, advance the case sought to be made out by learned counsel.

5. For the foregoing reasons it was announced at the conclusion of the hearing that leave was being refused and the petition stood dismissed.