IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE SAJJAD ALI SHAH

(AFR)

Civil Petition No.715 of 2018.

(On appeal against the judgment dated 23.11.2017 passed by the Lahore High Court at Lahore in C. R. No.14 of 2007)

Muhammad Akbar and others. ...*Petitioner(s)*

Versus

Province of Punjab through DOR, Lodhran and others. ...*Respondent(s)*

For the Petitioner(s): Mr. Aftab Alam Yasir, ASC.

For Respondents#2-5: Mr. Shahid Tabassam, ASC.

Date of Hearing: 17.11.2021.

JUDGMENT

IJAZ UL AHSAN, J.: Through the instant Petition, the Petitioners have challenged a judgment of the Lahore High Court, Multan Bench, Multan dated 23.11.2017 passed in Civil Revision No. 14 of 2007 (hereinafter referred to as "**Impugned Judgment**"). The Respondents, through their Civil Revision, had challenged the judgment and decrees of the lower *fora* dated 03.11.2006 and 15.03.2004 respectively, whereby, the suit of the Petitioner was dismissed. The High Court through the Impugned Judgment allowed the Civil Revision and set-aside the judgments of the lower *fora* noted above while decreeing the suit of the Respondents.

2. The brief facts giving rise to this controversy are that the Respondents claimed that the parties to the *lis* had equal shares in the joint holdings measuring 1798 *Kanals*and 13 *Marlas*. To settle their dispute regarding division, the suit

property was divided through a family settlement. Pursuant to the same, Award dated 25.05.2000 was made and, the same was handed over to the *Patwari* (Consolidation) for its incorporation in the Revenue Record. In spite of the family settlement and Award, it has been alleged that Mutation No. 2332 dated 05.06.2000 (hereinafter referred to as "**Impugned Mutation**") was sanctioned whereby the property was given to the Petitioners. The Respondents filed an appeal against the order dated 05.06.2000 which was dismissed on 28.06.2002. The Respondents filed a revision thereagainst, under Section 164 of the Land Revenue Act, 1967, which was dismissed vide order dated 04.02.2003. The Respondents then challenged the order dated 04.02.2003 before the Member, Board of Revenue, which was dismissed vide order dated 31.07.2003. Thereafter, the Respondents filed a suit for declaration. The suit in question was dismissed by the trial Court vide judgment and decree dated 15.03.2004. The Respondents preferred an appeal thereagainst, which too was dismissed vide judgment and decree dated 03.11.2006. Aggrieved thereof, the Respondents filed a Civil Revision which was allowed vide the Impugned Judgment. The Respondents have now approached this Court for redressal of their grievance.

3. The learned ASC for the Petitioners has argued that the Impugned Judgment is a result of misreading and non-reading of evidence. He has further argued that the Impugned Mutation was sanctioned in the presence of the parties and could not have been declared by the High Court

to be the outcome of connivance and fraud. The learned ASC has further argued that the findings of the High Court are violative of the fundamental rights of the Petitioners.

4. The learned Counsel for the Respondents has argued that the family settlement (hereinafter referred to as "**Settlement**") was proved and was also admitted by the Respondents. It has further been argued that Impugned Mutation was a result of connivance and fraud. He has further argued that there was another family settlement reached between the parties, which escaped the notice of the trial Court and the first Appellate Court. It has also been argued that once the Impugned Mutation was denied; onus to prove the same shifted on the Petitioners who failed to discharge the same.

5. We have heard the learned Counsel for the parties and have perused the record. The following questions require adjudication by this Court: -

i. Was the Family Settlement proved and, the effect thereof; and

ii. Could the Impugned Mutation be sanctioned;

WAS THE FAMILY SETTLEMENT PROVED AND, THE EFFECT THEREOF

6. The learned High Court has held that the case at hand is one of clear admissions on part of the Petitioners with respect to the existence of the Family Settlement. In this regard, the High Court has relied upon the statement of DW-5

to hold that the admission(s) on part of the Petitioners coupled with documentary evidence clearly establish the fact that the Settlement in fact existed and, that the revenue officials could not sanction any mutation which was contrary thereto. The learned High Court has further held that the Settlement was validly executed and, did not require compulsory registration. The High Court has examined the case thoroughly in reaching the said conclusions. It is worth mentioning that DW-5 (*Muhammad Sharif*) was the Attorney of the Petitioners and his admission of the existence of the Family Settlement carries weight due to the fact that an admission made by Attorney is binding on his Principal who authorized him to do so, unless a contrary intention was proved on behalf of the Petitioners or that he was not so authorized. His statement has not been disowned. There is nothing on the record, neither has it been argued, that DW-5 was not the Attorney of the Petitioners. At no occasion was the said witness declared hostile or, his statement challenged. Further, the said Attorney made an unqualified admission regarding the existence of the Settlement between the parties. As such, his statements during examination in chief and cross examination were conclusive and can be used as evidence to prove the fact that the Settlement was reached and, the parties were well aware of it. Reliance in this regard is placed on ***Anees A. Sheikh v. Col (Retd) Ghulam Rasool Qureshi (2005 SCMR 977 Supreme Court)***.

7. The learned ASC for the Petitioners argued that the Settlement was not registered. As such, ignoring it was the right course of action adopted by the lower *fora*. We are unable to agree with this contention. Firstly, a fact which has been expressly and unequivocally admitted by the Petitioners through their Attorney, would not require proof. Reliance in this respect is placed on ***Karachi Metropolitan Corporation, Karachi v. RaheelGhayas (2002 PLD 446 Supreme Court)*** wherein, this Court held as follows: -

> *"10. Legal position is that facts admitted are not to be proved. After categorical admissions of the respondent No. 1 that said plot was in Scheme No.28 the Petitioners were not required to prove the same, although in spite of above it was proved by the Petitioners that it was in Scheme No.28, a planned area. Learned High Court brushed aside 'above admissions of the respondent No.1 categorizing it as "innocent admission". Both First Appellate Court and High Court ignored the fact that the Petitioners in their written statement clearly stated that said plot was not a part of K.D.A. Scheme No.2, but it was a part of K.D.A. Scheme No.28. This fact was very well-known to the respondent No. 1 before he entered the witness-box.. He was, not taken by surprise. He had admitted the facts, mentioned earlier. Under the circumstances, there was absolutely no justification to ignore the aforesaid admissions of respondent No.1, which by themselves were enough to demolish his case."*

Secondly, the deed in question was a family arrangement and not a regular partition deed, as rightly held by the learned High Court. As such, it did not require compulsory registration. Reliance in this respect is placed on ***Anwar Khan v. Abdul Manaf (2004 SCMR 126)***, in which this Court held as under: -

> *"5. We have carefully examined the contentions as agitated on behalf of -petitioner in the light of relevant provisions of law and record of the case. We have perused the judgment dated 27-9-2000 passed by learned Rent Controller, Quetta as well as the judgment impugned. We have thoroughly scanned the entire evidence which has come on record. We are not persuaded to agree with Mr. Basharatullah, learned Senior Advocate Supreme Court that the partition of property by way of family arrangement by means of settlement/agreement (Exh.A/1) dated 19-4-2000 is compulsorily registrable and in absence of registration the*

ownership could not have been devolved upon the respondent-landlord and eviction application could not have been filed by him having no A locus standi simply for the reason that such family settlement is saved from inadmissibility in evidence due to the elimination of sub-clause (c) from section 49 of the Registration Act and the prohibition contained in section 49 would no longer be operative. A careful perusal of partition document (Exh.A/1) executed between the parties would reveal that the property has been distributed by way of family arrangements. If the parties are not interested in partition of property on permanent transfer basis they cannot be forced or compelled to do so as it depends 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, does not arise. If any authority is required reference can be made to case titled Jahanzeb and others v. Muhammad Abbas 1999 SCMR 2182."

Essentially, the Settlement operated as an agreement between the parties. This means that the parties to the Settlement were bound by the terms which were agreed between them. It has not been argued that the Settlement was a result of fraud or undue influence. As such, there is a presumption of validity attached to the said Settlement. It is pertinent to note that, the fact that it has been argued that the Settlement was not registered and therefore inadmissible in evidence, is itself an admission with respect to the existence of the Settlement. The Settlement in question was executed through the intervention of close relatives/successors of the Respondents. As such, the High Court has correctly held that it did not require compulsory registration.

8. The Petitioners never challenged the Settlement before any forum which effectively means that the Settlement still binds the parties thereto and their legal heirs. It is a settled principle of the law that a charge created on a property passes with the property. The fact that a Settlement

was reduced into writing means that the parties intended to bind themselves by its terms. As such, the Petitioners at this stage cannot wriggle out of the Settlement merely on the basis that it was not registered. Reliance in this respect is placed on ***Allah Dad and 3 others v.Dhuman Khan and 10 others (2005 SCMR 564)*** wherein, this Court held as follows: -

> *"It is to be seen that the object behind the family settlement is always to settle existing or future dispute of the property amongst the members of family and to 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 conduct of 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."*

COULD THE IMPUGNED MUTATION BE SANCTIONED

9. The learned High Court has held that Muhammad Bashir, one of the Plaintiffs, stated on oath that the family settlement was affected through Aizaz Ahmed, who divided the shares of the parties vide the Settlement Award. The Settlement Award was then handed over to the Patwari for incorporation in the relevant Register. However, the Patwari procured their signatures/thumb impressions on a blank 'Parat' of the mutation and, the Award was not given effect. Contrarily, the property which was to be given to the Respondents was given to the Petitioners through the Impugned Mutation. The onus to prove the Impugned Mutation shifted on the Petitioners as soon as its validity was challenged. The father of the Petitioners, being their Attorney, specifically stated that the Settlement and Award were given to the Patwari. One of the attesting witnesses also stated this fact and further deposed that signatures and thumb

impressions were taken before the mutation could be sanctioned in line with the Award/Settlement.

10. The Patwari was duty bound to sanction a mutation in accordance with the terms of the Award/Settlement placed before him. It is settled law that a Patwari does not have power to arbitrarily make entries in the relevant register and, must make such entries based on evidence before him. The fact that the Patwari took signatures of the Respondents on a blank 'Parat' and later sanctioned the Impugned Mutation, goes to show that the Patwari did not perform his duty in accordance with the law. This furthers the stance taken by the Respondents that the Patwari's actions were tainted with *mala fide*. It has been observed by the High Court that the Patwari sanctioned the Impugned Mutation based on oral assertions. The fact that the Patwari did so is patently illegal and against the documentary evidence which has been placed before all *fora*. It has time and again been held by this Court that documentary evidence takes precedence over oral evidence. This is especially so when oral evidence/assertions are in direct conflict with documentary evidence i.e., the Award/Settlement. Reliance in this regard is placed on ***Sher Muhammad v. Muhammad Khalid (2004 SCMR 826 Supreme Court)*** wherein, this Court held the following: -

> *"5. The concurrent findings of the said learned Courts are based on the overwhelming documentary evidence available on record. Both the Courts were one in holding, and rightly so, that oral evidence which was contrary to the documentary evidence could not be given preference over the said documentary evidence. The only two entries i.e. relating to Rabi 1973 and Kharif 1973 which stood in*

favour of the petitioner-plaintiff were directed to be removed by the Collector of the District on an appeal filed before him. He had further ordered that the entries as they existed in Rabi 1972 should be restored. This order of the Collector was maintained in the second appeal filed by the petitioner before the Additional Commissioner of Sargodha who had dismissed the said appeal through an order dated .13-6-1979. In this view of the matter, the Honourable High Court and the learned Appellate Court were justified in holding that the oral evidence offered by the petitioner-plaintiff which was not supported by the strong documentary evidence available on record, could not be given any credit. The concurrent conclusions reached and the reasons offered therefore could not be said to be based either on misreading or non-reading of evidence." (Underlining is ours)

The fact that the Patwari sanctioned the Impugned Mutation is admitted by him in cross-examination. The Patwari has claimed that he did not receive the Award/Settlement. Nonetheless, there is nothing on the record which shows that the Patwari made any effort(s) to inquire about the genuineness of the claims made by the Petitioners. Rather, the Patwari has conceded that he sanctioned the Impugned Mutation based on oral claims made by the Petitioners. When the claim of the Petitioners was specifically opposed by the Respondents, the burden of proof shifted on the Petitioners to prove the authenticity of their claim. The Petitioners were unsuccessful in doing so and the learned High Court was correct in recording findings against them.

11. The Impugned Mutation was then upheld upto the level of Member (Consolidation), Board of Revenue, Punjab. It has been held by this Court in various pronouncements, that public officials owe a fiduciary duty to the public. They are to act in utmost good faith while discharging their duties. If a public official, especially one belonging to the revenue department, acts in a careless manner, his actions are bound

to cause not only distrust amongst the public, but also loss to the public exchequer. As such, we find that the Impugned Mutation could not have been sanctioned and upheld especially since there existed an admitted document in the shape of the Settlement, on the record. The Patwari so also the other revenue officials misinterpreted the record and passed orders which were unsustainable.

12. We find that the learned High Court has proceeded on correct factual and legal grounds in the impugned judgment. The learned ASC for the Petitioners has been unable to point out any misreading or non-reading of evidence by the High Court while passing the Impugned Judgment. Further, no jurisdictional defect, error or flaw in the Impugned Judgment has been found that may warrant interference of this Court. The learned Counsel for the Petitioners has been unable to convince us to take a view different from the one taken by the High Court.

13. In view of the foregoing, this Petition is found to be without merit. The same is accordingly dismissed. Leave to appeal is refused.

ISLAMABAD.
17.11.2021.
Haris Ishtiaq LC/*
'Not Approved For Reporting'