IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE SAJJAD ALI SHAH
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI
MR. JUSTICE MUHAMMAD ALI MAZHAR

CIVIL PETITION No. 3958 OF 2019
(Against the judgment dated 25.09.2019 Lahore High Court, Lahore, in Civil Revision No.140/2016)

Nasir Ali. ...Petitioner

VERSUS

Muhammad Asghar. ...Respondent

For the Petitioner: Mian Muhammad Hussain Chotya, ASC,

For Respondent: Mian Muhammad Hanif, ASC

Date of Hearing: 02.02.2022

JUDGMENT

MUHAMMAD ALI MAZHAR, J. This Civil Petition for leave to appeal is directed against the judgment dated 25.09.2019, passed by the learned Lahore High Court in Civil Revision No.140/2016, whereby the Civil Revision was allowed and the concurrent findings recorded by the Trial Court and Appellate Court in their respective judgments and decrees were set aside.

2. The summation and recapitulation of the case is as under:-

> "The respondent filed a suit for declaration and alleged that he is owner in possession of land measuring 19-Marlas, in Khewat No.29 of Mouza Imli Moti, Tehsil Depalpur, District Okara. Basically, he had challenged the oral Sale Mutation No.1222 dated 31.05.1994 recorded in favour of petitioner and the suit was instituted on 18.04.2002 after 07 years 10 months. The petitioner claimed to have been in possession and also installed therein a saw machine with electricity connections etc. Out of divergent pleadings of the parties, issues were settled and finally vide judgment and decree dated 26.07.2012, the suit filed by the respondent was dismissed which was assailed in an appeal before the learned Additional District Judge, Depalpur, District Okara, which was also dismissed vide judgment and decree dated 25.11.2015. Both the impugned judgments and decrees were challenged by the respondent in Civil Revision before the Lahore High Court which was allowed vide impugned judgment.

3. The learned counsel for the petitioner argued that the impugned judgment of the learned High Court is based on misreading and non-reading of evidence recorded in the Trial Court and without any cogent reason or justification, the learned High Court upset the concurrent findings recorded by two courts below. It was further argued that the transfer of land through mutation under Section 42 of the Land Revenue Act, 1967 is a valid method of transfer of land. It was next contended that the suit was time barred, which important aspect was also ignored by the learned High Court. He further argued that the respondent personally appeared before the competent authority at the time of recording mutation of land in question in favour of the petitioner and ample evidence was available on record to confirm the presence of the respondent at the time of mutation.

4. The learned counsel for the respondent argued that after denial of the transaction of sale, recording of Rapat Roznamcha and attestation of impugned mutation, the onus of proving the same was shifted on to the petitioner. It was further contended that the Rapat Roznamcha No.336 dated 21.04.1994 was illegally incorporated and the Mutation No.1222 dated 31.05.1994, which mentions the presence of vendor/respondent, the vendee/petitioner and Muhammad Jahangir P.W.2, was a result of misapplication of law. The respondent during pendency of suit moved an application for amendment of the plaint which was partly allowed but the amendment for seeking possession of land was declined by the Trial Court. It was further argued that P.W.2, Muhammad Jahangir, fully supported the version of the respondent. It was further averred that mutation was recorded in violation of Section 42 of the Land Revenue Act, and mere availability of signatures of the parties, identifier and witnesses on the reverse side of the mutation cannot be made basis for sanction of the mutation. It was further contended that the original Mutation No. 1222 dated 31.05.1994 was not produced before the Trial Court but only attested photo copies were produced at the time of recording of evidence. The learned counsel fully supported the impugned judgment and concluded that the respondent neither appeared before the Tehsildar nor recorded his statement as he

was admitted in the hospital due to an accident whereby his leg was fractured.

5. Heard the arguments. The meticulous scrutiny of the evidence led by the parties in the Trial Court unequivocally demonstrates, inter alia, that the impugned document of Mutation No.1222 recorded on 31.05.94 was exhibited as Ex-P3 which translucent the name of respondent, Muhammad Asghar and his signature as well as his Identity Card number as vendor, whereas the name, signature and Identity Card number of Nasir Ali (petitioner) is also mentioned as vendee. The signature and ID card number of Muhammad Jahangir is mentioned as marginal witness. Khurshid Ahmad, Lambardar, identified the parties whose signature with ID card number are also mentioned while Niaz Ahmad, Naib Tehsildar, Depalpur attested this mutation. In the evidence Lambardar, Khurshid Ahmad, who identified the parties before the Revenue Officer recorded his statement. The Patwari produced the record and also confirmed the factum of entry of Rapt No.336 dated 21.4.1994 by the then Patwari. The Revenue Officer, Niaz Ahmad also confirmed and verified the physical appearance of the parties before him including the identification of parities by Khurshid Ahmad, Lambardar and appearance of Muhammad Jahangir, Pattidar. He also testified that the respondent admitted before him the sale transaction, receipt of sale consideration and alienation in favour of petitioner (Nasir Ali). The respondent denied the impugned mutation and termed it as a fake and forged document on the plea that when impugned mutation was attested, he met with an accident and due to fracture in his leg, he was admitted in hospital and for this reason it was impossible for him to appear and endorse his signature on any document ratifying the mutation but throughout the evidence he was miserably failed to lead any evidence, nor was he able to produce any medical record to prove this assertion. Another Mutation Document No.1220 was also attested on 31.5.1994 (same day) which was exhibited as Ex-D8 in the evidence of the lis to expose that the respondent, on the same day, alienated other property in favour of Munawar Ahmad s/o Noor Ahmad but neither was this mutation challenged, nor did the respondent take the plea that he was admitted in the hospital or bed ridden due to leg fracture rendering it impossible for him to

appear physically for that mutation too. The Ex-D8 displays that the same Revenue Officer attested this mutation while Khurshid Ahmad, DW-2, Lambardar, identified the parties and Muhammad Jahangir was alluded to as marginal witness in this mutation as well. A forthright and candid manifestation of the evidence including the documentary evidence stridently articulates that the petitioner/defendant had established the transaction, its execution as well as the genuineness of impugned mutation.

6. According to the Article 117 of the Qanun-e-Shahadat Order, 1984, if any person desires a court to give judgment as to any legal right or liability, depending on the existence of facts which he asserts, he must prove that those facts exist and burden of proof lies on him. The terminology and turn of phrase “burden of proof” entails the burden of substantiating a case. The meaning of “*onus probandi*” is that if no evidence is produced by the party on whom the burden is cast, then such issue must be found against him. The burden of proof for the deceitful transaction rests normally on the person who impeaches it. In a suit for declaration alleging that the sale was fictitious, the onus is on the plaintiff to prove the same. Where the evidence of plaintiff was self-contradictory and not confidence inspiring then he must fail and where the case is doubtful, the decision must be given in favour of defendant rather than the plaintiff. It is a well settled exposition of law that the plaintiff must succeed on the strength of his own case rather than the weakness of the defendant. The lawsuits are determined on preponderance or weighing the scale of probabilities in which Court has to see which party has succeeded to prove his case and discharged the onus of proof which can be scrutinized as a whole together with the contradictions, discrepancies or dearth of proof. It is the burdensome duty of the Court to detach the truth from the falsehood and endeavor should be made in terms of the well-known metaphor, “separate the grain from the chaff” which connotes and obligates the Court to scrutinize and evaluate the evidence recorded in the lis judiciously and cautiously in order to stand apart the falsehood from the truth and judge the quality and not the quantity of evidence.

7. The evidence led by the parties in the Trial Court makes it copiously and profusely translucent and cloudless that the

respondent as plaintiff had failed to prove his case. His testimony was based on falsehood and deceptiveness. On one hand he deposed that at the relevant time when the impugned mutation was recorded or attested he was bed ridden due to leg fracture, hence his personal appearance before the Officers of Revenue Authority was not possible for signing the document, while on the same date another Mutation was recorded duly signed by him which was never challenged by him and he failed to dispute said mutation recorded on the same date without any plea of hospitalization or being bed ridden on account of leg fracture. No proof of his indisposition was produced on record along with medical record or otherwise. The Revenue Officers deposed that respondent personally appeared and signed the document before them and also admitted to have received the sale consideration. No application was filed in the Trial Court for sending the document for the opinion of handwriting expert if he took the stand that he did not sign the relevant documents. According to him, Revenue Officers defrauded him but the plaintiff/respondent failed to mention as to what legal action was taken by him against the said Revenue Officers. At the time of institution of suit, he claimed to be in possession but he failed to prove his possession while the petitioner/defendant discharged his burden of proof. Later on the respondent allegedly applied for the relief of possession also in the same suit but his application was dismissed as informed by the learned counsel for the respondent but nothing has been placed on record whether any legal proceedings were instituted to challenge the order of dismissal of application allegedly passed by the Trial Court under Order VI Rule 17 C.P.C nor was any such order produced. The credibility and trustworthiness of the witness mandates to be tested with reference to the quality of his evidence which must be free from suspicion or distrust and must impress the court as natural, truthful and so convincing. “Falsus in uno, falsus in omnibus” is a Latin term which means "false in one thing, false in everything" which is a legal principle in common law that a witness who testifies falsely about one matter is not at all credible to testify about any other matter. This doctrine simply encompasses and footholds the weightage of evidence which the court may acknowledge in a given set of circumstances or situation and is more or less or as good as a rule of caution or

permissible inference which is essentially reliant on the Court to decide, however the Court cannot plainly relied on this doctrine to get rid of its arduous duty of analyzing the evidence en masse thoroughly so as to separate the falsehood from the truth.

8. Under the provisions of section 42 of the Specific Relief Act a person entitled to any legal character or to any right to property can institute a suit for declaratory relief in respect of his title to such legal character or right to property. The expression, legal character has been understood to be synonymous with the expression status. A suit for mere declaration is not permissible except in the circumstances mentioned in Section 42 of the Specific Relief Act. The proviso attached to this Section clarifies that no Court shall make any declaration where the plaintiff, being able to seek further relief than mere declaration of title, omits to do so. Whereas under Section 39 of the Specific Relief Act, any person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left outstanding, could cause him serious injury, may sue to have it adjudged void or voidable and the Court may, in its discretion, so adjudge it to be delivered up and cancelled. In the case in hand, the plaint reflects that the plaintiff/respondent brought the lawsuit only for declaration and at the same time alleged that he is in possession of the property in question, while in the written statement the petitioner categorically stated that he purchased the property against consideration, mutation was also effected in his favour and he is enjoying the possession. As indicated in the plaint, the respondent was allegedly in possession, which raises the question why application was moved for adding a relief of possession. Nothing was alleged regarding how he went out of possession and if it was done, whether any remedy available under the law was availed including filing of complaint under the Illegal Dispossession Act. The possession of the petitioner was proved in the Trial Court and there was nothing on record to show that during pendency of the suit the petitioner secured the possession of the suit property. Section 42 of Specific Relief Act expressly permits the plaintiff to ask for further relief but neither relief of possession was claimed nor the cancellation of mutation document as a consequential relief. Hence, mere suit for declaration without claiming the

consequential relief of possession and cancellation of mutation entry was otherwise not maintainable. A consequential relief means a substantial remedy in accordance with the decree of declaration, if prayed for. Mere declaration of title cannot be sought without asking for possession as consequential relief, but in this case relief for cancellation of mutation entry was also very significant which the plaintiff omitted to apply for. The claim of mere declaration as to alleged title does not suffice. Consequential relief denotes the relief which is an essential outcome to the declaratory relief prayed for. The plaintiff is not permitted to seek a mere declaration without consequential relief when it is necessary to the full and complete enjoyment of the property. The object of this condition is to avoid the multiplicity of suits and litigation. In the case of *Secretary to Government (West Pakistan) now N.W.F.P. Department of Agriculture and Forests, Peshawar and 4 others v. Kazi Abdul Kafil* **(PLD 1978 SC 242)**, this Court held that it is a common knowledge that a suit for the grant of a declaratory decree is filed under section 42 of the Specific Relief Act, 1877. However, one of the mandatory requirements of the said section is that if in a suit filed thereunder the plaintiff ought to have prayed for the grant of consequential relief but had failed to do so, then the suit filed by him would be incompetent. In the matter of *Ali Muhammad and another v. Muhammad Bashir and another* **(2012 SCMR 930),** this court held that the appellants have not sought cancellation of registered instruments in terms of Section 39 of the Specific Relief Act in the suit nor direction of their ejectment in suits have been sought. When confronted with this situation, the learned counsel for the appellants could not offer any plausible explanation except that he contended that the appellants had the right to file a separate suit for possession. Even this argument is without substance. The law does not permit a second suit if a right to the plaintiff is available at the time of filing of the suit. A second suit in such like situation is otherwise barred under Rule 2, Order II, C.P.C. In the case of *Dr. Faqir Muhammad v. Maj. Amir Muhammad etc* **(1982 SCMR 1178)**, this Court held that under section 42 of the Specific Relief Act the petitioner was required to ask for all other reliefs, which were opened to him. The relevant prayer for consequential relief in the present case, as rightly pointed out by the learned High Court

Judge, would have been for specific performance of the agreement. But the petitioner had not asked for it. Whereas in the case of *Khalid Hussain and others v. Nazir Ahmad and others* **(2021 SCMR 1986)**, this Court considered the crucial feature determining which remedy the aggrieved person is to adopt. In case of a voidable document, for instance, where the document is admitted to have been executed by the executant, but is challenged for his consent having been obtained by coercion, fraud, misrepresentation or undue influence, then the person aggrieved only has the remedy of instituting a suit for cancellation of that document under section 39 of the Act of 1877 and a suit for declaration regarding the said document under section 42 is not maintainable.

9. It is well settled exposition of law that Section 115 C.P.C empowers and mete out the High Court to satisfy and reassure itself that the order of the subordinate court is within its jurisdiction; the case is one in which the Court ought to exercise jurisdiction and in exercising jurisdiction, the Court has not acted illegally or in breach of some provision of law or with material irregularity or by committing some error of procedure in the course of the trial which affected the ultimate decision. If the High Court is satisfied that aforesaid principles have not been unheeded or disregarded by the courts below, it has no power to interfere in the conclusion of the subordinate court upon questions of fact or law. The scope of revisional jurisdiction is limited to the extent of misreading or non-reading of evidence, jurisdictional error or an illegality of the nature in the judgment which may have material effect on the result of the case or if the conclusion drawn therein is perverse or conflicting to the law. Furthermore, the High Court has very limited jurisdiction to interfere in the concurrent conclusions arrived at by the courts below while exercising power under Section 115, C.P.C. In the case of Cantonment Board through Executive Officer, Cantt. Board, Rawalpindi. Vs. Ikhlaq Ahmed and others. (**2014 SCMR 161**), this Court held that the provisions of Section 115, C.P.C under which a High Court exercises its revisional jurisdiction, confer an exceptional and necessary power intended to secure effective exercise of its superintendence and visitorial powers of correction unhindered by technicalities. In the

case of Atiq-ur-Rehman Vs. Muhammad Amin (**PLD 2006 SC 309**), this Court held that the scope of revisional jurisdiction is confined to the extent of misreading or non-reading of evidence, jurisdictional error or an illegality of the nature in the judgment which may have material effect on the result of the case or the conclusion drawn therein is perverse or contrary to the law, but the interference for the mere fact that the appraisal of evidence may suggest another view of the matter is not possible in revisional jurisdiction. There is a difference between the misreading, non-reading and misappreciation of the evidence therefore, the scope of the appellate and revisional jurisdiction must not be confused and care must be taken for interference in revisional jurisdiction only in the cases in which the order passed or a judgment rendered by a subordinate Court is found perverse or suffering from a jurisdictional error or the defect of misreading or non-reading of evidence and the conclusion drawn is contrary to law. This Court in the case of Sultan Muhammad and another. Vs. Muhammad Qasim and others (**2010 SCMR 1630**) held that the concurrent findings of three courts below on a question of fact, if not based on misreading or non-reading of evidence and not suffering from any illegality or material irregularity affecting the merits of the case are not open to question at the revisional stage.

10. The learned counsel for the respondent relied on the case of *Muhammad Akram and another v.Altaf Ahmad* **(PLD 2003 SC 688)**, in which this Court held that once a mutation is challenged, the party that relies on such mutation(s) is bound to revert to the original transaction and to prove such original transaction which resulted into the entry or attestation of such mutation(s) in dispute. The burden squarely lay on him to prove the transaction because the existence thereof has throughout been alleged by him in affirmative. He was bound to fail in the event of the non-proof of transaction. He also referred to the case of Rehmatullah and others v. Saleh Khan and others **(2007 SCMR 729)**, in which this Court held that it is settled law that entries in the mutation registers are by themselves not conclusive evidence of the facts which they purport to record. It is settled law that any person who is acquiring title through mutation, the burden of proof of proving transaction embodied in the mutation is upon him. It is also settled law that

mutations by themselves do not create title and the persons deriving title thereunder have to prove that the transferor did part with the ownership of the property, the subject of mutation in favour of the transferee and that the mutation was duly entered and attested as law laid down by this Court in the case of Hakim Khan vs. Nazeer Ahmed Lughmani and 10 others (1992 SCMR 1832) and Niaz Ali and 16 others vs. Muhammad Din through Legal Heirs and 13 others (PLD 1993 Lahore 33). It is settled law that an attested mutation may carry a rebuttable presumption. See Karam Shah vs. Mst. Ghulam Fatima and 3 others (1988 CLC 1812) and Ghulam Muhammad vs. Mukhtar Ahmad and others (1992 MLD 1335). Mutation is to be proved through evidence of title. Whereas this Court in the case of *Arshad Khan v. Mst. Resham Jan and others* **(2005 SCMR 1859)** held that there is no cavil to the proposition that the presumption of truth is attached with the Revenue Record but this presumption is always rebuttable. This is settled law that the mutation itself does not confer or extinguish any right or title and if the mutation on the basis of which right in the property is claimed, is disputed, the onus of proving the correctness of mutation and genuineness of the transaction contained therein would be on the party claiming right on the basis of such mutation. While in the case of *Muhammad Bakhsh v. Zia Ullah and others* **(1983 SCM 988)**, it was held that the entries of the revenue record like the Jamabandi do not provide the foundation of title in property but are mere items of evidence to prove titled Wali Muhammad v. Muhammad Bux (AIR 1930 PC 91). They have a presumption of correctness which is rebuttable. The moment during scrutiny one reaches the transaction on the basis of which a change in the revenue record has been brought about then it is not the record but the transaction itself, not the secondary source but the primary one, which becomes the foundation of all claims and rights. It is clear that in the two cases before us, the justification for the entries in the revenue record showing the plaintiffs as co-sharers or owners was an oral transaction of purchase given effect to by a mutation in contravention of Section 54 of the Transfer of Property Act. Such a transaction must satisfy the legal requirements and it is only when its conformity to law is established that title to property is created, legal rights and liabilities come into existence.

11. In our considerate view, the judicial precedents relied on by the learned counsel for the respondent are based on well settled expositions of law but the case in hand is distinguishable mainly for the reason that the petitioner/defendant in the Trial Court fully proved the execution of mutation documents by the respondent in his favour including the factum of possession without any shadow of doubt. The Revenue Officers also appeared as witnesses and they fully supported the case of the petitioner in the Trial Court and testified that the respondent personally appeared and signed the relevant documents before them without any demur. After scanning and browsing the evidence comprehensible on record, we reached to an irresistible conclusion that the interference made by the High Court in exercise of powers conferred under Section 115 C.P.C in the concurrent findings recorded by the Trial Court and Appellate Court was unjustified and unwarranted. Neither the Courts below have ignored material evidence or acted without evidence or drawn wrong inferences or conclusions from proved facts by applying the law erroneously, nor do the findings recorded amount to a dearth of evidence or suffering from any jurisdictional error or perversity.

12. In the wake of above discussion, this Civil Petition is converted into Civil Appeal and allowed, the impugned judgment of the learned High Court is set aside and judgments and decrees passed by the learned Trial Court and Appellate Court are restored.

Judge

Judge

Judge

Islamabad the
2nd February, 2022
Approved for reporting.