

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Sardar Tariq Masood
Mr. Justice Muhammad Ali Mazhar

Civil Petition No.2711 of 2019

Against the judgment dated 15.04.2019 passed
by Lahore High Court, Rawalpindi Bench,
Rawalpindi, in C.R.803-D/2012

Abdul Aziz

...Petitioner

Versus

...Respondents

Mst. Zaib-un-Nissa & others

For the Petitioner:

Agha Muhammad Ali, ASC
Chaudhry Akhtar Ali, AOR

For Respondent No.1:

Khizer Mehmood [Son of respondent No.1]

For Respondent No.6:

Israr Hussain [In person]

Date of Hearing:

10.05.2022

JUDGMENT

Muhammad Ali Mazhar, J. This CPLA is directed against the judgment dated 15.04.2019, passed by learned Lahore High Court, Rawalpindi Bench, in Civil Revision No.803-D/2012 whereby the Civil Revision of the petitioner was dismissed and the concurrent findings recorded by the Courts of the learned Civil Judge Rawalpindi as well as the Additional District Judge Rawalpindi were upheld.

2. The learned counsel for the petitioner argued that the suit of the respondents was time barred which important aspect was not considered by the Courts below. He further argued that the gift in favour of the answering defendant (the real brother of Respondent No.1 and Mst. Hameeda Bibi) was executed by free will and possession was also handed over. It was further averred that the learned Trial Court as well as the learned Appellate Court failed to consider the evidence adduced by the parties and even the learned

High Court in its revisional jurisdiction ignored the evidence. He closed his submissions with the assertion that all the judgments of the lower *fora* are based on misreading and non-reading of evidence and hence, are liable to be reversed by this Court.

3. Heard the learned counsel for the petitioner as well as the respondent No.6 who appeared in-person and also cautiously appraised the available record. The short and snappy minutiae of this Civil Petition are that the respondent Nos.1 to 7 filed a suit for declaration, permanent and mandatory injunction as well as possession in which it was straightforwardly supplicated that the gift was never executed in favour of defendant No.1 with free consent by the alleged donors; the alleged indenture of the gift was neither explained nor read out; moreover, all the said documents are based on fraud and misrepresentation and are liable to be cancelled and delivered up. The suit was instituted on 10.05.2007 and in paragraph No.9 of the plaint, it was assimilated that the cause of action accrued to the plaintiffs just two weeks back when the fraudulent act of defendant No.1 came into the knowledge of the plaintiffs. After filing their written statement, the learned Trial Court settled ten issues including the issue on the question of limitation but the learned Trial Court, with cogent reasoning, found that the suit was instituted within the prescribed time. After adducing of evidence by the parties, the suit was decreed *vide* judgment and decree dated 08.02.2011. The plaintiffs testified in the Trial Court that Mst. Zaib-un-Nissa and Mst. Hameeda Bibi both were illiterate and *Pardanashin* house wives and were unable to manage the affairs of their property.

4. In keeping with the evidence led by the plaintiffs in the Trial Court, it was proved that plaintiffs No.1 and Mst. Hameeda Bibi had never gifted their inherited property to their brother but the defendant

fraudulently prepared the gift deed in his favour and, further, got the thumb impressions of the plaintiff No.1 and Mst. Hameeda Bibi on blank paper through fraud and misrepresentation. The Plaintiff No.1 also took the stance that there was no occasion to give the property to the defendant/petitioner in the presence of her own children. All the Courts below categorically recorded the finding that the transaction of gift was not proved. The Revenue Officer, Sub-Registrar and *Patwari Halqa* were not brought into the witness box to testify whether the transaction of gift was true or a sham. Further, the petition-writer and the stamp vendor were also important witnesses but were also not brought to the witness box.

5. The rules regarding transaction by a *Pardanashin* lady are evenly applicable to an illiterate and ignorant woman though she may not be *Pardanashin* lady in a strict sense. The all-encompassing evidence recorded in the Trial Court exemplifies that the donors were not aware as to which type of document they are going to sign but, taking advantage of their illiteracy, the defendant managed the execution of the gift in his favour. Nothing was brought on the record to prove that any disinterested, neutral or nonaligned person read over the indenture of the gift to the illiterate and *Pardanashin* ladies. The document severely and gravely jeopardizing the interest of an illiterate and *Pardanashin* lady in favour of any person having a relationship of profuse confidence and faith with them requires stringent testimony and authentication of execution with the assurance of independent and unprejudiced advice to such lady with further confirmation and reassurance without any doubt that the description, repercussions and aftermath/end result of the transaction was fully explained and understood. The burden of proof shall always rest upon the person who entreats to uphold the transaction entered into with a *Pardanashin* or illiterate lady to

establish that the said document was executed by her after mindfulness of the transaction. Whether a lady is a *Pardanashin* or illiterate is always a question of fact and the burden of proof rests upon the person asserting any right under any deed or document that was signed or affixed with a thumb impression by a *Pardanashin* or illiterate lady voluntarily and consciously. It is imperative for the Court as an assiduous duty and obligation that, while dealing with the instance of any document executed by a *Pardanashin* or illiterate lady, it ought to be satisfied with clear evidence that the said document was in fact executed by her or by a duly constituted attorney appointed by her with full understanding and intelligence regarding the nature of the document. The *Pardanashin* ladies have been given a protection time immemorial in view of social conditions that include an imperfect knowledge of the world being virtually excluded from communion with the outside world. The rationale of this rule of wisdom and concentration is obviously to shield them from deception, duress and misrepresentation.

6. In the case of Mst. Kharbuja Kuer. v. Jangbahadur Rai and others (**AIR 1963 SC 1203**), this Court held that the rule evolved for the protection of *Pardanashin* ladies shall not be confused with other doctrines, such as fraud, duress and actual undue influence, which apply to all persons whether they be *Pardanashin* ladies or not. In the first place, the lady was a *Pardanashin* lady and the law throws round her a special cloak of protection. It demands that the burden of proof shall in such a case rest, not with those who attack, but with those who found upon the deed, and the proof must go so far as to show affirmatively and conclusively that the deed was not only executed by but was explained to, and was really understood by the grantor. Whereas in the case of Janat Bibi versus Sikandar Ali and others. (**PLD 1990 Supreme Court 642**), it was held that the

question whether a lady is a *Pardahnashin* lady is a question of fact (See Bank of Khulna Ltd. v. Jyoti Prokash Mitra and others AIR 1940 Privy Council 147). It is also well settled that the burden of proof in respect of a document purported to have been executed by a *Pardanashin* woman, affecting her right or interest in the immovable property, is on the person claiming the right or interest under the document. If she is illiterate, it must have been read over to her. This Court also quoted the observation of Sir George Lowndes rendered in the case of (Valluri) Ramanamma v. Marina Virana AIR 1931 Privy Council 100 that the law as to disposition of property by pardanashin ladies has been discussed on many occasions. It is for the person claiming the benefit of any such disposition to establish affirmatively that it was substantially understood by the lady and was really her free and intelligent act. If she is illiterate, it must have been read over to her; if the terms are intricate they must have been adequately explained, and her degree of intelligence will be a material factor; but independent legal advice is not in itself essential. While in the case of Phul Peer Shah versus Hafeeza Fatima (2016 SCMR 1225), it was held that in a case of such transaction with old, illiterate/rustic village 'Parda Nasheen' lady onus to prove the transaction being legitimate and free from all suspicions and doubts surrounding it, can only be dispelled if the lady divesting herself of a valuable property, the following mandatory conditions are complied with and fulfilled through transparent manner and through evidence of a high degree. Amongst this condition, the pre-dominantly followed are:-

(i) that the lady was fully cognizant and was aware of the nature of the transaction and its probable consequences; (ii) that she was having independent advice from a reliable source/person of trust to fully understand the nature of the transaction; (iii) that witnesses to the transaction are such, who are close relatives or fully acquainted

with the lady and were having no conflict of interest with her; (iv) that the sale consideration was duly paid and received by the lady in the same manner and (v) that the very nature of transaction is explained to her in the language she understands fully and she was apprised of the contents of the deed/receipt, as the case may be. In the case of Mst. Farid-un-nisa. v. Munshi Mukhtar Ahmad and another (**A.I.R. 1925 Privy Council 204**). The Court held that the case of an illiterate Pardanashin lady, denuding herself of a large proportion of her property without professional or independent advice, is one on which there is much authority. The real point is that the disposition made must be substantially understood and must really be the mental act, as its execution is the physical act, of the person who makes it. They must satisfy the Court that the deed has been explained to and understood by the party thus under disability, either before execution, or after it under circumstances which establish adoption of it with full knowledge and comprehension.

7. The learned ASC for the petitioner has not been able to show any perversity, legal or jurisdictional defect in the impugned judgment calling for interference by this Court. We are not persuaded to take a view different from the one taken by the learned High Court. In this view of the matter, we do not find any merit in this civil petition, which is accordingly dismissed and leave to appeal is declined.

Judge

Judge

Islamabad
10th May, 2022
Approved for reporting