

SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

MR. JUSTICE AMIN-UD-DIN KHAN

MR. JUSTICE JAMAL KHAN MANDOKHAIL

APR

Civil Appeal No. 219 of 2015

*(Against the judgment dated
01.10.2014 passed by the
Lahore High Court,
Bahawalpur Bench in Civil
Revision No. 249-D of
2010/BWP)*

Abdul Aziz

...Appellant(s)

Versus

Abdul Hameed (decd) thr. LRs

...Respondent(s)

For the Appellant(s):

Mr. Muhammad Shahid Kamal
Khan, ASC

For Respondent No.1(i):

Mian Shahid Iqbal, ASC

Date of Hearing:

08.12.2021

JUDGMENT

AMIN-UD-DIN KHAN, J. - Leave was granted vide order

dated 31.03.2015, which is reproduced:-

"This petition has arisen out of the judgment dated 01.10.2014 passed by Lahore High Court, Bahawalpur Bench, whereby the learned Judge in its Chamber dismissed the revision petition of the petitioner and maintained the judgments of the *fora* below.

2. Learned ASC appearing on behalf of the petitioner contended that though the registered deed dated 27.09.2003 had been disputed by Abdul Hameed during proceedings before the Trial Court but the fact that the property thus transferred is still with Abdul Majeed would expose the myth of his denial. The learned ASC next contended that dismissal of the suit instituted by Allah Bakhsh for non-prosecution would not give a free hand to the respondent to deal with the property in dispute when the parties before its dismissal entered into a

binding agreement before the Court, which is Exh.P1 on the record. The respondent, the learned ASC maintained, denied the execution of even the said document but this had to be examined with reference to the other facts on the record. Element of fabrication, the learned ASC added, has to be excluded when the agreement sought to be enforced was executed between the father and the son.

3. The learned ASC for the respondents contended that when the documents relied upon by the petitioner, have been denied throughout, the petitioner could have sought the intervention of the Court for sending them to the handwriting expert for a comparison but his failure to do so resulted in loss of a golden opportunity to prove his case, which cannot, under any circumstances, be filled up by this Court, even by overstretching the application of Article 187 of the Constitution of Islamic Republic of Pakistan.

4. Points raised by the learned ASCs for the parties having substance cannot be summarily dealt with. We, therefore, grant leave to appeal to reappraise the evidence when many documents having relevance have not been appreciated in their correct perspective. Appeal shall be prepared on the present record, with liberty to the parties to file additional documents, if any."

2. We have heard the learned counsel for the parties. Appellant filed a suit for declaration on 09.02.2007 against predecessor of respondents who was real brother of plaintiff for transfer of two acres of land fully described in the head-note of the plaint on the basis of compromise and statement dated 11.03.2002 before the learned Civil Judge 1st Class, Bahawalpur titled "*Allah Bakhsh versus Abdul Hameed*". It is pleaded in the suit that the father of the plaintiff filed a suit for declaration on the basis that defendant is "*Benami*" owner of the land measuring 96 kanals situated in Mauza Dera Izzat, Bahawalpur. In the suit a compromise was arrived at between the parties, which was Mark-A, on 11.3.2002 and both the parties to the suit got recorded their statement in the Court. It is pleaded that in accordance with

the compromise six acres of land out of the suit land of said suit was to be transferred in favour of Abdul Aziz the plaintiff, his other brothers Abdul Majeed and Abdul Rasheed two acres each, when defendant refused to transfer 2 acres in his favour, therefore, the suit. Written statement was filed. The suit was contested. It was stated that the previous suit was dismissed for non-prosecution on 7.5.2002, the compromise and recording of statement was also denied. Learned trial court framed the issues, invited the parties to produce their respective evidence. Both the parties produced oral as well as documentary evidence.

3. The learned trial court dismissed the suit vide judgment and decree dated 20.07.2009. The plaintiff feeling dissatisfied by the judgment and decree of the learned trial court preferred an appeal before the learned District Judge which too was dismissed vide judgment and decree dated 25.2.2010. Against the concurrent judgments and decrees a civil revision was filed before the Bahawalpur bench of Lahore High Court, which too was dismissed vide judgment dated 01.10.2014, whereagainst a petition for leave to appeal was filed in which leave was granted. Hence, the instant appeal.

4. Learned counsel for the appellant argues that originally the suit land was owned by the father of the parties to the suit, who sold the same in favour of Muhammad Shafi. On that sale the father of the parties to suit got filed a suit in the name of defendant Abdul Hameed being minor to pre-empt the said sale on the basis of being "*Yak Jaddi*" of the vendor and the suit was ultimately decreed and in execution of the decree mutation No. 322

was sanctioned in favour of the defendant Abdul Hameed on 26.5.1961. Record shows that real uncle of the decree holder in a pre-emption suit appeared for getting the mutation sanctioned as Abdul Hameed was minor at that time being 13/14 years of age, therefore, the defendant was "Benami" owner. Allah Bakhsh father of the parties filed a suit for declaration that Abdul Hameed is "Benami" owner of the said property actually Allah Bakhsh is the owner in which the statement for compromise was recorded and a compromise was filed in the court, therefore, states that findings recorded by all the three fora below are in ignorance of law and evidence available on the file. When it was admitted in the agreement that partial claim of the suit filed by Allah Bakhsh the father of the parties was admitted and it was admitted that two acres in favour of each of the three brothers will be transferred out of the suit land and in pursuance thereof through gift deed Exh.P4 registered on 27.9.2003 as document No. 3446 with Sub Registrar, Bahawalpur has transferred 2 acres of land in favour of Abdul Majeed another brother and which contains reference of the suit and the compromise. The relevant portion of which is reproduced:-

جب کہ بروے دعوی استقرار حق بہ عنوان لڈ بخش بنام عبدالحمید مثل
نمبر 896 مرجوعہ 11.10.2000 فیصلہ شدہ مورخہ
07.7.2003 عدالت جناب ملک محمد اقبال صاحب سول جج بھاول
پور میں بھی اراضی تعدادی دو/۲ ایکڑ برادر م عبدالحمید کو دینا بیان کیا
ہے۔ من قراب فیصلہ کے مطابق اراضی مذکورہ برادر م مذکور کو بہ کرنا
چاہتا ہے۔ چنانچہ من بہ دہندہ نے اپنی ملکیت مقبوضہ زرعی اراضی
مندرجہ کھیوٹ نمبر 50 سابق نمبر 49 کھتونی نمبر 78 میں منتقلہ
رقبہ 320/1962 حصہ رقبہ تعدادی سولہ کنال $(\frac{K}{16} - \frac{M}{0})$ واقع

موضع ڈیرہ عزت تحصیل و ضلع بھاول پور - متذکرہ بالا معہ جمیع حقوق
مالکانہ متعلقہ و منسلکہ اش داخلی - خارجی - لواحق - مرافق و سایل گزر
گاہ نکاس پانی و روشنی - و سایل آبپاشی حقوق شاملات دیہہ معہ دورہ چاہ -
درختان ثمرہ و غیر ثمرہ - بالعوض حق الخدمت و فیصلہ مزکور - بحق و بدست
برادر حقیقی عبدالحمید ولد ملک اللہ بخش ذات پنوار سکنہ موضع ڈیرہ عزت
تحصیل و ضلع بھاول پور رہبہ بالقبضہ کر دیا ہے -

When confronted with the learned counsel for the respondent that when defendant/predecessor of the respondents had denied the compromise and his statement of compromise recorded in the court in suit titled "Allah Bakhsh vs. Abdul Hameed" whether the same was challenged before any forum or the court, the answer is in the negative and further the registered "*Hibba Nama*" has not been denied by the defendant when appeared in the witness-box in case in hand. He has only denied the reference of the compromise in the previous suit and on the basis of said compromise transfer of two acres of land in favour of other brothers of defendant and real son of the original owner and further it is a fact that it is recorded in the said *Hibba Nama* which is a registered document and exhibited as Exh.P.4 relevant portion of which has also been referred and reproduced supra, learned counsel is unable to respond that why this portion of the *Hibba Nama* was not got corrected by filing any petition for correction of the registered *Hibba Nama* if it was incorrectly mentioned in Exh.P.4. The law is well settled that strong presumption of correctness and sanctity of high order is attached to judicial proceedings and records and to outweigh the same, strong and unimpeachable evidence is required. In this regard reference may be made to the cases of

"Waqar Jalal Ansari vs. National Bank of Pakistan and another" (2008 SCMR 1611), "Fayyaz Hussain vs. Akbar Hussain and others" (2004 SCMR 964), "Muhammad Ramzan vs. Lahore Development Authority, Lahore" (2002 SCMR 1336), "Syed Ali Asghar and 3 others vs. Creators (builders) and 3 others" (2001 SCMR 279), "Abdullah vs. Shaukat" (2001 SCMR 60). Moreover, with respect to the proof of "contents of document" Article 72 of Qanun-e-Shahadat Order, 1984 provides that contents of documents may be proved either by primary or secondary evidence. The best evidence about the contents of a document is, therefore, the document itself and it is the production of the document that is required by law in proof of its content "Muhammad Nawaz vs. Ahmad Bibi" (1995 SCMR 466).

5. We also note that registered document carries presumptions attached to it under sections 35, 47 and 60 of the Registration Act, 1908 and under Article 90 of the Qanun-e-Shahadat Order, 1984 and the court will presume correctness of the registered document in accordance with the presumptions attached unless the same are disputed or rebutted. For this if any authority is needed, reference may be made to "Muhammad Siddique (deceased) vs. Mst. Noor bibi (deceased)" (2020 SCMR 483), "Abdul Razaq vs. Abdul Ghaffar" (2020 SCMR 202); "Anjuman-e-khuddam-ul-Qur'an, Faisalabad vs. Lt. Col (R) Najam Hameed" (PLD 2020 SC 390); "Muhammad Idrees vs. Muhammad Pervaiz" (2010 SCMR 5); "Rasool Bukhsh and another vs. Muhammad Ramzan" (2007 SCMR 85). Further Rule 136 of the Punjab Registration Rules, 1929 is also relevant and very important which is reproduced: -

“What persons are to be considered to be executors of documents. (1) The expression “a person executing a document” shall be held to include ---

- a. any person who becomes surety for the repayment of a loan or the fulfilment of a contract and in that capacity affixes his signature to a document;
- b. any person who endorses a negotiable document;
- c. any person who signs a receipt or a discharge endorsed on a document;
- d. any person who signs a document as an executants in token of his assent to the transaction and not merely as a witness, even though he may not be described as an executants in the body of the document.

(2). In the case of a document purporting to be executed by an attorney, or by a guardian of a minor, or by a legal curator of an idiot or lunatic, such attorney or guardian or curator shall be held to be a person executing the document for the purposes of sections 32, 34, 35 and 58 of the Act; but for the purposes of section 55, the principal or minor or idiot or lunatic as well as the attorney or guardian or curator shall be considered to be the executing parties.

(3). Meaning of execution. The legal meaning of the phrase ‘execution of document’ is ‘signing a document as a consenting party thereto’ and the word ‘signing’ includes the affixing of a mark. Before signing a document a man is supposed to take every reasonable means of satisfying himself as to its terms and if he signs it without due care and attention --- unless his signature was obtained by illegal compulsion or fraud -- he must take the consequences, at least so far as registration of the document is concerned. The registering officer has no option but to accept the document as actually signed and all he can do for the executor in such cases is to record a note of his refusal to endorse the document.”

The registration of the document as well as the document of gift has not been denied by the defendant. The only defence of the defendant was that he has not mentioned the fact that in the suit filed by his father a compromise was arrived at between the parties to the said suit and on the basis of that compromise and in “Haq-e-Khidmat” he is transferring the land in favour of his brother.

6. So far as the discussion and observation made by the learned High Court that a suit under section 42 of the Specific Relief Act was not competent when the plaintiff was not recorded owner of the suit land, we observe that when a previous suit was filed by the father of the present defendant against the present defendant on the basis that defendant is a *Benami* owner of the whole of the land measuring 96 kanals and when facts suggest that Allah Bakhsh was the original owner of the said land and he sold the same in favour of Muhammad Shafi, thereafter got filed a suit for pre-emption in the name of the defendant Abdul Hameed who was minor at that time and the suit was decreed and the said land measuring 96 kanals was transferred in the name of Abdul Hameed defendant and mutation No. 322 was sanctioned in execution of decree for pre-emption on 26.5.1961 when brother of original owner Allah Bakhsh namely Abdul Sattar son of Muhammad Bakhsh real paternal uncle of decree-holder appeared and mutation was sanctioned and subsequently the statement for compromise was made which is proved that Allah Bakhsh father of the parties to the suit was real owner which has not been challenged by the predecessor of respondents till date and when the said compromise and admission that he will transfer two acres in favour of present appellant admitting that it was a *Benami* transaction the registered document Exh.P.4 confirms the same leads us to conclude that in the peculiar circumstances of this case the suit filed under section 42 for declaration of title was competent. The findings of all the three courts below are not sustainable under the law, same are set aside and suit of the

plaintiff-appellant is decreed as prayed for. Consequently, this appeal is allowed.

Islamabad, the
8th of December, 2021
(*Mazhar Javed Bhatti*)

APPROVED FOR REPORTING.