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IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE MAZHAR ALAM KHAN MIANKHEL
MR. JUSTICE MUNIB AKHTAR

Civil Appeal No.342/2014 and CMA No.5890/2014 in CA.342/2014 and CMA No.3938/2016 in CA.342/2014.

(On appeal from the judgment dated 4.12.2013 passed by the Lahore High Court, Lahore in RSA No.133/2004).

Allah Ditta, etc

...Appellants/Applicants

VERSUS

Yaqoob Ali, etc

...Respondents

For the appellants/
applicants:

Mirza M. Aziz-ur-Rehman, ASC

For the respondents:

Syed Muhammad Kaleem Ahmed Khurshid, ASC

Date of hearing:

20.10.2020

JUDGMENT

MAZHAR ALAM KHAN MIANKHEL, J.-

CMA No.3938/2016:

For the reasons mentioned in the Civil Miscellaneous Application, the same is allowed.

Civil Appeal No.342/2014:

The Appellants being plaintiffs had filed a suit for specific performance of a registered agreement to sell dated 26th June, 1986 ('Agreement') against the Defendant/the original owner. After a full-fledged trial, suit of the Appellants was decreed by the trial court vide its judgment and decree dated 27th January, 1999. The appeal of the Defendant was dismissed by the appellate court of Additional District

Judge, Depalpur District Okara vide his judgment and decree dated 1st July, 2004. The Defendant, still not satisfied with the concurrent findings against him, filed a Regular Second Appeal (R.S.A.) before the Lahore High Court, Lahore. The learned Judge in Chambers, after hearing the parties, was pleased to allow the same by setting aside the concurrent findings of the courts below and dismissed the suit of the Appellants. The Appellants being aggrieved of the same have filed instant direct appeal against the impugned judgment.

2. Learned counsels for the parties were heard and record of the case was gone through with the valuable assistance of the learned counsel for the parties.

3. Perusal of the record would reveal that it is a simple suit for specific performance of an agreement dated 26th June, 1986 and that too the same was a registered one. The vendor/Defendant passed away during pendency of appeal on 23rd February, 2012 and this very fact gets support from interim order of Lahore High Court, Lahore but decree sheet of the High Court reflects that his legal heirs were not impleaded. However, legal heirs have been impleaded in the appeal in hand and would be referred as Respondents hereinafter. The deceased Defendant at the time of execution of the agreement and also before the Sub-Registrar had admitted receipt of an amount of Rs.3,44,000/- (Rupees three lac forty four thousand) out of Rs.3,54,000/- (Rupees three lac fifty four thousand) and only an amount of Rs.10,000/- (Rupees ten thousand) remained outstanding which was agreed to be paid at the time of registration of sale deed as the property agreed to be sold in favour of Appellants was mortgaged with a Bank (*Agricultural Development Bank of Pakistan-ADBP*) in respect of an agricultural loan. However, possession of the suit property was

also delivered to the Appellants at the time of execution of the document.

The deceased Defendant while submitting his written statement has categorically denied the execution and existence of the agreement as well as receiving of any sale consideration on the basis of that agreement.

We have gone through the entire evidence available on the record and observed that Appellants being beneficiaries of the agreement have proved the same in accordance with law. Besides the marginal witnesses, the Sub-Registrar who had registered the agreement was also produced as a witness to further strengthen their case.

Record would further reflect that the Defendant didn't appear himself to contest and defend his case and only one Muhammad Rafique was produced as DW-1 but he too didn't appear to face the test of cross-examination which reflects that denial on the part of Defendant was nothing less than an effort in futile and unproductive which is of no help to Defendant or his legal heirs, the present Respondents. The trial court after considering the entire evidence has rightly granted a decree in favour of Appellants and rightly upheld by the Appellate Court.

4. Perusal of the impugned judgment would reveal that the learned Judge in Chambers, in the light of judgment of this court rendered in the case of Gulshan Hamid v. Abdur Rehman (2010 SCMR 334), has held it to be a unilateral agreement as the same was not signed by the vendee, but perusal of the Ex-P-1 would reveal that no doubt neither of the vendees had signed the agreement to sell at the time of its execution but one of the vendees namely Muhammad Yar was very much present before the Sub-Registrar at the time of registration of the agreement and had signed the certificate of registration before the Sub-Registrar. Besides, the Defendant/vendor,

the witnesses had also signed. The above said observation by the learned Judge in Chambers appears to be against the record. Besides the judgment relied upon Gulshan Hamid *ibid*; was latter on held by a five Members Bench of this Court to be a view contrary to the judicial pronouncements of this court on the plea that a valid contract could be oral or it may be brought through exchange of communication between the parties. Once an offer is communicated, the acceptance of the same could be express or implied. So non-signing of an agreement to sell by the vendee will have no adverse effect against the rights of that vendee. The view rendered by five Members Bench in case of Muhammad Sattar v. Tariq Javaid (2017 SCMR 98) holds the field.

5. The learned counsel during the course of his arguments also tried to make out a case that the impugned agreement was against the provisions of 'Loans for Agricultural Purposes Act, 1973, (Act XLII of 1973)', but we may observe that this never remained the case of the Respondents before the courts below. Besides, there is no legal embargo upon a sale of the property under a charge; if a property is under a charge, it can legally be sold but alongwith the charge and it is up to sweet-will of the parties agreeing to such an agreement. However, in the light of Act of 1973 nothing was brought on the record to justify the arguments of the learned counsel for the Respondents which was nothing less than an afterthought.

6. In view of the above, we are constrained to hold that the findings arrived at by the High Court are against the law and record of the case, hence not maintainable. We are left with no option but to allow the instant appeal by setting aside the impugned judgment and decree of the Lahore High Court, Lahore by restoring the judgment

and decree of the trial court as well as the appellate court but with no orders as to costs.

CMA No.5890/2014 and CMA 3378/2016:

As the main appeal has been allowed, Civil Miscellaneous Application (CMA No.5890/2014) has become infructuous and is dismissed as such and CMA 3378/2016 is disposed of accordingly.

Islamabad,

20th October, 2020

Sarfraz/-

'Not approved for reporting'