

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE MUNIB AKHTAR

MR. JUSTICE SAYYED MAZHAR ALI AKBAR NAQVI

CIVIL APPEAL NO. 226-P OF 2018

(On appeal against the judgment dated 17.04.2018 passed by the Peshawar High Court, Circuit Bench, Chitral in Civil Revision No. 352/2008)

Rehmat Wali Khan and another

... Appellants

Versus

Ghulam Muhammad and others

...Respondent(s)

For the Appellants:

Mr. Asif Hameed Qureshi, ASC
(Via video link from Peshawar)

For the Respondent (1):

Mr. Muhammad Aamir Malik, ASC
Syed Rifaqat Hussain Shah, AOR

For Respondents (2-6):

Ex-parte

Date of Hearing:

11.04.2023

JUDGMENT

SAYYED MAZHAR ALI AKBAR NAQVI, J.- Through this appeal under Article 185(2)(d) of the Constitution of Islamic Republic of Pakistan, 1973, the appellants have assailed the judgment dated 17.04.2018 passed by the learned Single Judge of the Peshawar High Court, Circuit Bench Chitral whereby the Civil Revision filed by the respondents was allowed, the judgment and decree of the learned Appellate Court dated 12.11.2007 was set aside and the judgment and decree of the learned Trial Court dated 26.08.2006 was restored.

2. Briefly stated the facts of the case are that predecessor-in-interest of the respondents namey Daud Ghulam filed a suit for declaration and permanent injunction in the PATA Court of EAC, Mastuj against the appellants claiming ownership of the land measuring 2 ½

chakorum situated in Boni, Tehsil Mastuj, District Chitral on the basis of an unregistered deed dated 08.06.1978. The learned Trial Court vide judgment and decree dated 04.11.1999 decreed the suit. The appellants filed appeal before the District Judge, Chitral, which was partly accepted and the case was remanded back to the Trial Court. The learned Trial Court again decreed the suit vide judgment and decree dated 09.07.2004. Feeling aggrieved by this judgment, both the parties filed separate appeals, which were again remanded to the learned Trial Court for a decision afresh. The learned Trial Court re-heard the parties for the third time and again decreed the suit vide judgment and decree dated 26.08.2006. Being aggrieved, the appellants filed two appeals before the learned Appellate Court, which were accepted vide judgment dated 12.11.2007 and decree in favour of the respondents was set aside. This led to filing of Civil Revision No. 352/2008 before the learned Peshawar High Court by the respondents. The learned High Court vide impugned judgment allowed the Civil Revision, set aside the judgment of the Appellate Court and restored that of the learned Trial Court dated 26.08.2006. Hence, this appeal.

3. At the very outset, learned counsel for the appellants contended that the alleged sale deed dated 08.08.1978 was an unregistered document, therefore, it did not confer any title on the respondents. Contends that the suit filed by the respondents was barred by time but the learned High Court did not consider this aspect of the matter. Contends that the appellant No. 2 Mir Nawaz was a *bona fide* purchaser from appellant Rehmat Wali on the basis of registered sale deed dated 22.10.1988, as such, his rights are protected under the law. Lastly contends that the impugned judgment is the result of mis-reading and non-reading of evidence, therefore, the same may be set at naught.

4. On the other hand, learned counsel for the respondent No. 1 has defended the impugned judgment by stating that the learned High Court has passed a well reasoned judgment, which is based on correct

appreciation of the evidence available on the record, therefore, the same needs no interference.

5. We have heard learned counsel for the parties at some length and have perused the available record with their able assistance.

6. This case has a chequered history. There is no denial to this fact that the matter is lingering on since 1989 and it was twice remanded back to the learned Trial Court due to one reason or the other and the suit of the respondents was thrice decreed by the learned Trial Court. In the instant round of litigation, the judgment of the learned Trial Court was set aside by the learned Appellate Court. Probably, it was due to this reason that the learned High Court has exhaustively examined the evidence to come to a definite conclusion. It was the claim of the predecessor-in-interest of the respondents namely Daud Ghulam that he was doing private business as motor mechanic and was living in Karachi to earn livelihood for the last 36 years. The appellant No. 1 Rehmat Ali sold the suit land to the said Daud Ghulam on installments and possession was also handed over to him in the year 1971. Daud Ghulam regularly paid the installments and after the completion of the installments, Rehmat Ali executed an un-registered sale deed dated 08.08.1978 in favour of the said Daud Ghulam, predecessor-in-interest of the respondents. During trial proceedings, the appellant Rehmat Ali, vendor, not only admitted the execution of the sale deed but also admitted the payment of sale consideration. He also admitted that the possession of the suit property had also been delivered in consequence of the sale transaction. During the course of arguments, learned counsel for the appellants had argued that the appellant No. 2 Mir Nawaz was a *bona fide* purchaser from appellant Rehmat Wali on the basis of registered sale deed dated 22.10.1988 (*which was subsequent in time*), as such, his rights are protected under the law. However, we do not tend to agree with the learned counsel. In the case of Sardar Arshad Hussain Vs. Mst. Zenat-un-Nisa (2017 SCMR 608) the question whether the un-registered sale deed can be given preference over the registered one when on the basis of un-registered sale deed

possession of the property has also been given, came up for consideration before this Court and this Court while relying on earlier judgments of this Court on the subject candidly held as follows:-

"A registered deed reflecting transfer of certain rights qua a property though will have sanctity attached to it regarding its genuineness, and a stronger evidence would be required to cast aspersions on its correctness but cannot be given preference over an un-registered deed vide which physical possession of the property has also been given. Subsection (1) of section 50 of the Registration Act, 1908 also provides that a registered document regarding transfer of certain rights in an immovable property will have effect against every un-registered document relating to the same property and conferring the same rights in the property as shown in the registered document but the law has also provided certain exceptions to the above said provisions of law. If a person being in possession of an un-registered deed qua transfer of certain rights in property along with possession of the same he can legally protect his rights in the property and even a registered deed subsequent in time will not affect his/her rights. The first proviso to section 50 of the Registration Act, 1908 provides so that such rights in the property can be protected under section 53-A of the Transfer of Property Act, 1882. Reliance in this regard can well be placed on the cases of *Fazla v. Mehr Dina and 2 others* (1999 SCMR 837) and *Mushtaq Ahmad and others v. Muhammad Saeed and others* (2004 SCMR 530)."

(underlined to lay emphasis)

7. Learned counsel for the appellanta had also argued that the suit filed by the predecessor-in-interest of the respondents was barred by time. However, we have noted that neither the appellants ever tried to get an issue framed on this point nor this question was ever considered by the courts below. Therefore, the same cannot be raised before this Court at this stage. Even otherwise, when pursuant to the un-registered sale deed, the respondents were put in possession of the suit land in the year 1971, a vested right had been created in their favour, which cannot be taken away merely on the basis of technicalities. In the case of Syed Hakeem Shah Vs. Muhammad Idrees (2017 SCMR 316) the sale consideration was totally paid and possession was also delivered to the vendee/transferee but the registered document could not be executed. This Court held that "*Section 53-A of Transfer of Property Act, 1882, in itself creates a right in favour of transferee to retain possession. Such right comes into existence when*

transferor put the transferee in possession in part performance of the contract/sale deed. Right created by Section 53-A in favour of the transferee in possession can be termed as an equitable title which he held in the property. Where the transferee continued to enjoy a right then the statute of limitation cannot take away such right as the law of limitation is not meant to take away an existing right. Right created under Section 53-A of the Transfer of Property Act, 1882 is an existing right and is not extinguished by any length of time. Law of limitation does not come in the way of a transferee in possession when he as a plaintiff, filed his own suit to preserve his right to retain possession that was granted to him under Section 53-A of the Transfer of Property Act, 1882." In this view of the matter, we are of the view that the learned High Court has correctly appreciated the material aspects of the case and the conclusions drawn are in line with the guidelines enunciated by this Court on the subject. Learned counsel for the appellants has not been able to point out any legal or factual error in the impugned judgment, which could be made basis to take a different view from that of the learned High Court.

8. For what has been discussed above, this appeal having no merit is dismissed with no order as to costs.

JUDGE

JUDGE

Islamabad, the
11th of April, 2023
Approved For Reporting
Khurram