

**MUHAMMAD SALEEM---Petitioner**

**Versus**

**MUHAMMAD NASIR and another---Respondents**

Civil Revision No.1890 of 2003, heard on 2nd September, 2010.

**NASIR SAEED SHEIKH, J.**---This civil revision is directed against the judgment and decree dated 17-11-2000 passed by the learned Civil Judge, Gujranwala and dated 10-6-2003 passed by the learned Additional District Judge, Gujranwala.

2. Briefly stating the facts of the case are that the petitioner instituted a suit for declaration and permanent injunction before the learned Senior Civil Judge, Gujranwala against the respondents with the prayer that the registered sale-deed dated 5-9-1993 claimed by the defendants from Khalil Ahmed father of the petitioner in respect of the house/property No. BXII-7S-110 detailed and described in the plaint, is fake and fraudulent and result of collusion and fraud in order to deprive the plaintiff of his due rights in the said house. The plaintiff also prayed for possession of the house and return of the house hold articles belonging to the late father of the plaintiff lying in the said house. A permanent injunction was also sought by the plaintiff restraining the defendants from further transferring the ownership or possession of the house to anybody during the pendency of the suit.

3. This suit was resisted by the respondents who submitted their written statement and claimed that the house in question was purchased by them through registered sale deed from Khalil Ahmad. It was further contended by the respondents that the mother of the defendants/ respondents is the real sister of Khalil Ahmed, the executant of the sale deed in question and that the property No. BXII-7S-110 total measuring 7 marlas was jointly owned by deceased Khalil Ahmed and the mother of the defendants and as a result of a judgment and decree dated 20-11-1989 passed by the Civil Judge Gujranwala the mother of the defendants Mst. Sardaran Bibi and Khalil Ahmed got partitioned the subject property and the house situated on 5 marlas poition came to the share of Khalil Ahmed whereas the mother of the respondents got the remaining portion of the said property. It was further contended that Khalil Ahmed deceased in his life time through registered sale deed sold out the house comprising 5 marlas with all his rights for a consideration of Rs.225,000 in favour of the defendants. It was further contended that Khalil Ahmed deceased has no household items left in the said house. The relationship of the petitioner-plaintiff with Khalil Ahmed deceased was also denied by the defendants. It was also contended that the plaintiff even did not participate in the funeral ceremonies of the deceased Khalil Ahmed and the claim of the petitioner was totally denied. The learned Civil Judge framed the following issues:--

- (1) Whether disputed house/property No.BXII-7S-110 was ownership of Khalil Ahmed father of plaintiff? OPP.
- (2) Whether plaintiff is sole heir of his father? OPP
- (3) Whether sale deed dated 5-9-1993 in favour of defendants is fake, collusive and without consideration? OPP
- (4) Whether plaintiff is entitled to get the possession of the disputed house? OPP
- (5) Whether plaintiff has got cause of action to bring this suit? OPP

- (6) Whether the defendants are bona fide purchasers for value? OPD
- (7) Whether suit is false and defendants are entitled to get special costs under section 35-A C.P.C.? OPD
- (8) Whether suit is bad for misjoinder of cause of action? OPD
- (9) Whether the suit is not maintainable in its present form? OPD
- (10) Relief.

4. The parties produced their respective evidence and the learned Civil Judge vide judgment and decree dated 17-11-2000 dismissed the suit of the plaintiff. The petitioner preferred an appeal against the said judgment and decree of the trial Court which was entrusted to a learned Additional District Judge who dismissed the appeal vide judgment and decree dated 10-6-2003, hence this Revision Petition against the concurrent judgments and decrees passed by the two courts below.

5. The learned counsel for the petitioner contends that the document Exh.P1 sale deed in question was without consideration and the respondents being beneficiaries of the sale deed in question were under obligation to prove the payment of the consideration. The learned counsel then contended that the conduct of the respondents is also relevant as respondents denied the relationship of the petitioner with deceased Khalil Ahmed. According to the learned counsel for the petitioner, the petitioner was son of the deceased Khalil Ahmed. It is contended that the learned first Appellate Court did not decide the matter issue-wise. It is further contended that the deceased Khalil Ahmed was an illiterate person and was also infirm on account of being an old person of 70 years. The learned counsel relied upon **Muhammad Rasheed Khan v. Mst. Mehr un Nisa (2009 SCMR 740) and Naushad Khan v. Punjab Cooperatives Board for Liquidation (2009 YLR 2154)** in support of his contentions.

6. Conversely the learned counsel for the respondents has contended that the petitioner appeared as P.W.3 during the trial before the learned Civil Judge and did not produce any other evidence to prove the case as alleged in the plaint. It is further contended that one of the vendees Muhammad Nasir appeared as DW5 and made a categorical statement in examination-in-chief that the subject house was purchased for Rs.225,000 by the vendees from Khalil Ahmed deceased. It is further contended that no cross-examination on this aspect was put to the said defendant Muhammad Nasir by the petitioner therefore it shall be presumed that the statement in examination-in-chief which has not been challenged in the cross-examination and deemed to be admitted. The learned counsel further contended that in order to prove the execution of the sale deed in question not only the two marginal witnesses appeared as DW3 and DW4, being the Tehsildar was also produced in witness as DW4. It is further contended that the respondents also produced the scribe of the sale deed Exh.P1 as DW1. The cumulative effect of the above argument is that respondents have proved the execution of the sale deed; that the statement made in examination-in-chief regarding the payment of sale consideration of Rs.225,000, is not questioned in cross examination; the petitioner has failed to prove his case and the two courts below have recorded concurrent findings of facts against the petitioner. It is finally contended that no case for acceptance of civil revision is made out.

7. I have considered the arguments of the learned counsel for the parties and have perused the record with their valuable assistance.

8. The petitioner instituted the suit with respect to the sale deed executed by his father Khalil Ahmed of the subject house. The evidence produced by the petitioner and his statement reflected that the mother of the petitioner was divorced by Khalil Ahmed deceased long-long ago and the petitioner had been residing with his mother and after the death of Khalil Ahmed, the interest in the subject property got

developed. The important fact which is on the record that the petitioner gave three dates of the death of the deceased Khalil Ahmed in his statement which are 12-9-1993, 21 and 22 as stated in his examination in chief appearing as P.W.3. Once the execution of the sale deed Exh.P1 is established by the respondents, the contentions of the learned counsel for the petitioner that sale deed was without any consideration is not sustainable particularly due to the statement recorded by the respondent Muhammad Nasir that the sale deed in question was executed in favour of the defendants by the vendor for Rs.225,000 which fact has not been questioned in cross-examination. The two courts below after correctly appreciating the evidence have recorded the concurrent findings of facts against the petitioner. The two marginal witnesses of the sale-deed, scribe and the Tehsildar before whom the sale-deed was registered appeared as witnesses to prove its execution. Although the petitioner alleged in his evidence that this sale deed was got fraudulently executed and was a fake document, the respondents successfully have proved the execution of the sale deed in question by producing all the necessary evidence and the petitioner was unable to shake the statements made by the above witnesses. The learned counsel for the petitioner could not point out any other point of mis reading or mis-appreciating of evidence by the two courts below. The contentions raised by the learned counsel for the petitioner are not entertainable. The learned Additional District Judge thoroughly discussed all the points in his judgment and dismissed the appeal. The case-law relied upon by the learned counsel is distinguishable on its own facts. In view of the circumstances of the case that the respondents successfully proved the execution of sale-deed in their favour, no case for interference by this Court in exercise of its Revisional power is made out. This civil revision is accordingly **dismissed** with no orders as to costs.

A.R.K./M-167/L

Revision Dismissed.