

2010 M L D 1745

[Lahore]

Before Nasir Saeed Sheikh and Mian Shahid Iqbal, JJ

MUHAMMAD ANWAR---Appellant

Versus

MUHAMMAD YOUSAF and others---Respondents

R.F.A. No. 481 of 2005, heard on 25th March, 2010.

(a) Specific Relief Act (I of 1877)---

---S. 12---Qanun-e-Shahadat (10 of 1984), Art.84---Suit for specific performance of agreement--Disputed signatures and thumb-impressions on the agreement---Application for verification of--Dismissal of said application---Plaintiff filed suit for specific performance of agreement to sell on the ground that he had paid a sum of Rs. 38,50,000 out of Rs. 4,400,000 in respect of the disputed property and the remaining amount was to be paid at the time of execution of the sale-deed---Defendant contested suit and denied execution of agreement to sell as well as receipt of the amount---Trial Court dismissed suit of the plaintiff---Plaintiff asserted that during pendency of suit he had filed an application, before Trial Court for comparison of signatures and thumb impressions of the executant of the said agreement, which was wrongly dismissed by the Trial Court---Validity---Executant of agreement to sell did not appear in person during trial---Interest of justice could only safely be dispensed after the signatures and particularly the thumb-impressions of the executant were got verified from handwriting and finger print expert---Rejection of plaintiff's application had materially affected proceedings of the case and lack of exercise of powers by Trial Court needed to be corrected--High Court set aside the impugned judgment and decree of Trial Court and order of rejection of application for comparison of signatures and thumb impressions and remanded the case for decision afresh---Appeal was disposed of by High Court.

(b) Qanun-e-Shahadat (10 of 1984)---

---Art. 84---Specific Relief Act (I of 1877), S.12---Agreement to sell---Execution of---Comparison of signatures and thumb-impressions---Plea of person being permanently settled abroad and an old and sick person---Effect---High Court directed the son of executant to procure the specimen signatures and thumb-impressions of the executant from abroad after getting the same verified from Consulate of Pakistan in the said country and send the same in original to Pakistan which should be placed on the record by the son of the executant before the Trial Court---Such exercise should be undertaken by son of the executant within a period of one month---Trial Court should then send the specimen signatures and thumb-impressions of the executant for comparison and verification with the agreement to sell and receipt and after

obtaining the opinion of the handwriting and finger print expert on the said documents, the case should be decided afresh in accordance with law by the Trial Court.

Hafiz Khalil Ahmed for Appellant.

Abdul Khaliq Safrani for Respondent.

Date of hearing: 25th March, 2010.

JUDGMENT

MIAN SHAHID IQBAL, J.---This appeal arises out of the judgment and decree dated 19.10.2005 passed by the learned trial Court Faisalabad whereby suit of appellant was dismissed.

2. Precise facts are that on 2-6-1999 a suit for specific performance of agreement dated 23-1-1999 was filed wherein it was alleged that land measuring 37-Kanals and 2-Marlas comprises, of Khasra Nos.11, 19, 20, 21 and 22, Square No.49 Khewat No. 85-Min, Kahtuni No. 224 situated in Chak No.226/GB, Tehsil Samundari District Faisalabad was sold to the appellant for a sum of Rs.44,00,000 out of which Rs.38,50,000 was paid by the appellant and remaining sum of Rs.5,50,000 was to be paid at the time of execution of sale deed. Along with said agreement to sell a receipt Exh.P3 was executed in confirmation of receipt of money. In the said suit, written statement was filed by the respondent thereby totally denying the execution of agreement to sell as well as receipt of money. Out of divergent pleadings four issues including that of relief was framed onus of Issues Nos.1 and 2 was placed on the defendant whereas onus of Issue No.3 was to be discharged by present appellant.

3. In order to support the averments of plaint, appellant produced Muhammad Abu Bakar as P.W.1, Mahmood ul Hassan as P.W.2., Shahid Riaz P.W.3 Muhammad Muneer as P.W.4, Muhammad Akram as P.W.5 and himself appeared P.W.6. Along with oral evidence he also produced photo copy of Register Exh.PI, agreement Exh.P2, receipt Exh.-P3, copy of Fard Jamabandi Exh.P4 and Exh.P5 and copy of Mutation No. 618 as Exh. P6.

4. In order to rebut the claim of appellant, one of the respondents appeared as D.W.1 along with Ghulam Hussain as D.W.2. After hearing the parties, learned trial Court dismissed the suit; as far as findings on Issue No. 1 is concerned, since the defendant No.3 has correctly been made party in the proceedings, as such Courts at Faisalabad did have the jurisdiction to entertain and try the suit. The issue was thus decided that court has the jurisdiction to try the suit.

5. The most important issue in the case was Issue No.2 in which learned court after scanning through the evidence, had finally come to the conclusion firstly that the stamp paper was not purchased by Muhammad Yousaf respondent No.1, moreover signatures on the stamp paper along with receipts do not resemble. The basis of his decision was that P.W.1 who produce the stamp vendor register, had categorically stated in his statement that he does not know the person who came to him and purchased stamp paper, P.W.2 while appearing on behalf of plaintiff had stated that stamp paper of Rs.100 was purchased by one Shahid who is respondent No.2 and also

son of respondent No. 1. This witness even does not know Shahid or Muhammad Yousaf. In cross-examination he also categorically stated that both of them are not known to him nor he has mentioned Identity Card Number of the person who had purchased - the stamp paper. He also admitted in his statement that stamp paper as per his record, was purchased by Muhammad Yousaf but his signatures do not appear on his register which shows the purchase of stamp paper was doubtful.

6. As far as P.W.3 is concerned, he has categorically stated that at, the time of execution of agreement Ghulam Hussain, Malik Habib, Yousaf and Shahid were present. It is' also admitted by the scribe that he has not entered the said agreement in his register in spite of the fact that it was of huge amount.

7. On the other hand, D.W.2. Ghulam Hussain who happens to be one of the marginal witnesses of agreement to sell stated that neither any agreement vis-a-vis the property concerned was settled in his presence nor agreement was executed between the parties in his presence. He had only signed the said agreement on the asking of Riaz scribe who happens to be resident of village and he had relations with him since long. On the basis of this wavering evidence, learned trial court decided the issue No.2 and held that plaintiff failed to prove that agreement was executed and amount in question was delivered. As far as Issue No.3 is concerned, since, the result of Issue No.2 was against the plaintiff, therefore, on the basis of result of the Issues No. 2, Issue No.3 was also decided against the appellant/plaintiff with the result that suit was dismissed. The present appellant feeling aggrieved by the judgment and decree passed by the learned trial Court has filed present R.F.A.

8. Learned counsel for the appellant submits that judgment and decree is liable to be set aside on the sole ground that during the pendency of suit, he had filed an application before the learned trial court for comparison of signatures which has wrongly been dismissed by the learned trial Court for the reason that in order to un-earth the truth regarding execution of agreement Exh.P2 and Exh.P3, it was necessary that signatures and thumb-impressions of the executant of the said document should have been verified, which would have finally settled the matter, as such appeal is liable to be remanded. Moreover, the evidence produced by him was full of confidence and have stood the test of cross-examination, therefore the judgment and decree is liable to be set aside.

9. On the other hand, learned counsel for the respondent has vehemently opposed the present R.F.A firstly on the ground that statements given by the witness are contradictory and even otherwise shaky which shows that agreement to sell was never executed by respondent No.1 who is residing in U.K. since 1953, fraud has been committed by the present appellants who on coming into knowledge that person is out of country has attempted to usurp his property. Learned counsel further submits that no useful purpose is served if the case is remanded and signatures/thumb-impressions are verified, for the reasons that there are number of judgments or the apex Court In this regard in which it has been held that courts can themselves undertake the examination of signatures, as such this court is fully competent to do so and decide the matter after comparison of the same.

10. We have considered the arguments of learned counsel for the parties and have perused the record.

11. The basic controversy involved in the instant R.F.A. revolves around the currents i.e. Exh.P2 (sale agreement) and the receipt Exh.P3. Both these documents are attributed to the respondent No.1 Muhammad Yousaf and are further alleged to have contained his signatures as well as thumb-impression. The appellant moved an application before the learned trial court dated 19-5-2005 for getting the signatures and thumb impressions of the executant Muhammad Yousaf verified, which application was rejected by the learned trial court/Civil Judge vide order dated 7-7-2005. This rejection of the application has materially affected the proceedings in the instant suit. The executant Muhammad Yousaf did not appear in person during the trial and his son who appeared as D.W. 1 as one of the defendants did not produce any power of attorney in his favour from or on behalf of his father Muhammad Yousaf. The interest of justice can only be safely dispensed after the signatures and particularly the thumb-impressions of the executant Muhammad Yousaf are got verified from Hand-writing and Finger-print Expert. This lack of exercise of its powers by the learned trial Court needs to be corrected.

12. We, therefore, set aside the impugned judgment and decree dated 19-10-2005 and remand the case to the learned Civil Judge. We also set aside the order dated 7-7-2005 whereby the application moved by the plaintiff for getting the signatures and thumb-impressions of the executant Muhammad Yousaf was rejected.

13. The learned counsel for the respondent has stated that respondent No.1 is permanently settled in England and therefore, it is not possible to arrange for his visit to Pakistan in the near future as the said respondent No.1 is an old and sick person.

14. We direct his son respondent No.2 to procure the specimen signatures and thumb impressions of the respondent No.1 from England after getting the same verified from Consulate of Pakistan in England and sent the same in original to Pakistan which shall be placed on the record by the respondent No.2 before the learned Civil Judge/trial court. This exercise shall be undertaken by respondent No.2 within a period of one month. The learned Civil Judge shall then sent the specimen signatures and thumb impressions of respondent No.1 for comparison and verification with the documents Exh.P2 and Exh.P3 and after obtaining the opinion of the Hand-writing and Finger-print Expert on the said documents, the case shall be decided afresh in accordance with law by the learned civil judge/trial Court.

15. With these observations, the instant R.F.A: is disposed of with' no order as to costs.

M.U.Y./M-392/L

Application dismissed.