

Stereo. H C J D A-38.

JUDGMENT SHEET
IN THE LAHORE HIGH COURT AT LAHORE
JUDICIAL DEPARTMENT

CIVIL REVISION NO. 1342 OF 2003.

(Shera etc. vs. Nazir Ahmad)

J U D G M E N T

Date of hearing 01:09:2010.
Petitioners by Syed Kazim Bukhari, Advocate.
Respondent by Chaudhary Muhammad Yousaf,
 Advocate.

NASIR SAEED SHEIKH, J:- The respondent Nazira son of Sardara instituted a suit for declaration praying that he is the owner with possession of 19-kanals, 15-marlas of land situated in village Naseerpur Kalan, tehsil Bhalwal, district Sargodha, described in the title of the plaint and that mutation of sale No.748, incorporated on 26.06.1995 in the revenue record in favour of the respondents is based upon fraud, misrepresentation and is illegal and of no legal effect upon the rights of the plaintiff. It was also prayed that a decree for permanent injunction be also granted to him restraining the defendants of the suit from further selling away the subject land or interfering into the possession of the plaintiff.

2. This suit was contested by the present petitioners, who were the defendants in the suit. A number of preliminary as well as factual objections were raised by the petitioners in their written-statement. The petitioners

claimed that an agreement to sell in respect of the subject land was entered into by the plaintiff of the suit in favour of the respondents and in consequence thereof the mutation in question was got incorporated by the plaintiff, which mutation proceedings were thumb marked by the plaintiff in the presence of the witnesses and this fact has been specifically stated in paragraph No.2 of the written-statement on facts by the petitioners. In paragraph No.3 of the plaint, the plaintiff specifically alleged that he filed an appeal against the revenue entry of mutation No.748, which came up for hearing before A.C/Collector, Bhalwal and the parties got recorded their statements before the said revenue appellate authority that if one Ghulam Muhammad son of Jaan Muhammad of Naseerpur appears in the Court and makes a statement on Oath upon the Holy Qur'an that the plaintiff has received the sale consideration as alleged and that he got this mutation entered and that no fraud was committed against him, the appeal as instituted by the plaintiff before the Collector be dismissed. The plaintiff contended that the said Ghulam Muhammad did not appear and inspite of that he was directed to file a suit by the revenue appellate authority. While replying to this paragraph No.3 in the written-statement, the petitioners/defendants admitted this fact.

3. The learned Civil Judge, Bhalwal framed the following issues:-

ISSUES.

1. *Whether the plaintiff is owner in possession of the suit property and mutation No.748 dated 26.06.1995 is result of fraud, mis-*

representation, against the facts and law, and is in operative upon the rights of the plaintiff? OPP.

2. *Whether the plaintiff has got no cause of action and locus-standi? OPD.*
3. *Whether the suit is not maintainable in its present form? OPD.*
4. *Whether the plaintiff is estopped through his words and conduct to bring this suit? OPD.*
5. *Whether the suit has been deficiently valued for the purposes of court fees? If, so what is its correct valuation? OPD.*
6. *Whether the suit is false, frivolous and vexatious and defendants are entitled to get compensatory costs u/s 35-A of CPC? OPD.*
7. Relief.

4. The parties produced their respective evidence. The learned Civil Judge recorded the findings on Issue No.1 and held that the mutation No.748, dated 26.06.1995 was proved to have been validly got entered by the plaintiff of the suit and was rightly sanctioned by the revenue authorities. The learned Civil Judge vide judgment and decree dated 22.03.2001 dismissed the suit of the plaintiff.

5. The respondent/plaintiff preferred an appeal against the judgment and decree dated 22.03.2001, passed by the learned Civil Judge, before the learned Additional District Judge, Bhalwal, who set-aside the judgment and decree passed by the learned Civil Judge by accepting the

appeal through the judgment and decree dated 08.07.2003.

6. The present civil revision has been filed against the judgment and decree dated 08.07.2003, passed by the learned Additional District Judge, Bhalwal.

7. The learned counsel appearing for the petitioners contended that the suit of the plaintiff was not maintainable as the respondent/plaintiff was not in possession of the subject land and without praying for the possession, the suit was not maintainable. It is next contended by the learned counsel for the petitioners that the plaintiff alone appeared in his evidence and no supporting witness was produced by him and, therefore, it was a case of no evidence from the side of the plaintiff. The learned counsel further contended that the learned Additional District Judge did not appreciate the evidence produced by the parties correctly and illegally set-aside the judgment and decree passed by the learned Civil Judge. The learned counsel has placed reliance upon the judgments reported as Muhammad Siddiq and 6 others vs. Zafar Iqbal and 9 others (2005 CLC 33, Abdur Razzaq and others vs. Zahoor Ahmad and others (2005 CLC 556), Jameel Ahmed vs. Saifuddin PLD 1994 Supreme Court 501), Abdul Ghafoor and 2 others vs. Muhammad Rafique and 13 others (2006 CLC 1796) and Ghulam Muhammad alias Gama and another vs. Waryam (2004 CLC 1) in support of his contentions that where the form of the suit is not in accordance with law and that mere statement of a plaintiff in support of his case is not sufficient for granting him a decree by Civil Court and that plaintiff has withheld

the best evidence in this case, therefore, the suit of the plaintiff was liable to be dismissed.

8. Conversely, the learned counsel for the respondent has contended that the learned Civil Judge did not properly consider the evidence produced by the parties and after relying upon the judgment reported as Sardaran Bibi and others vs. Muhammad Ameen and others (1987 CLC 1653) the learned counsel contended that where the judgments are at variance, this Court can uphold the judgment passed by the learned first appellate court if it is based upon the correct appreciation of evidence. The learned counsel contended that the learned Additional District Judge considering thoroughly the entire evidence produced by the parties reversed the finding of the learned Civil Judge on Issue No.1 and thus rightly passed the impugned judgment. It is further argued by the learned counsel for the respondent that insofar as the objection of form of the suit is concerned, the learned Civil Judge himself recorded a finding under issue No.3 that the objection to the maintainability of the suit on the ground of defect of form is neither proved by the defendants nor is maintainable. The learned first appellate court also confirmed the finding of the learned Civil Judge that the issue of defect of the form of the suit is not sustainable. The learned counsel further argued that the petitioners failed to prove the entering into an agreement of sale by the respondent in favour of the petitioners nor the petitioners/defendants succeeded in proving the passing of consideration under the alleged sale agreement in their favour. It was also argued that the petitioner did not produce any convincing evidence to establish rightful

incorporation of the mutation in question in the revenue record and the learned Additional District Judge validly concluded that the mutation in question was not a *bona-fide* one and thus the decree was passed in favour of the plaintiff/respondent by the learned Additional District Judge vide judgment and decree dated 08.07.2003, which does not call for any interference by this Court.

9. I have heard the arguments of the learned counsel for the parties and have gone through the record as well as the impugned judgment and decree passed by the learned Additional District Judge dated 08.07.2003.

10. The learned Additional District Judge while recording his findings on Issue No.1 has held that the petitioners/defendants failed to prove the oral agreement to sell claimed by them in respect of the subject land. The learned Additional District Judge held that in order to prove the agreement to sell, the petitioners produced Manak (DW.3) and Abdul Sattar (DW.4) and their statements were held to be mutually contradictory. It was also observed by the learned first appellate court that the witnesses produced by the respondents were not only mutually making inconsistent statements but their statements were also inconsistent with the statements of Aziz-ur-Rahim Shah, Naib Tehsildar (DW.1) and Fiaz Ahmad Patwari (DW.2).

11. The plaintiff Nazira appeared as (PW.1) and fully supported his case as put up in the plaint and categorically stated that he did not enter into any sale agreement with the petitioners/defendants and that the mutation in question is a fraudulent entry. The plaintiff

also stated that before the appellate court of Assistant Collector on the revenue side, the parties undertook to abide by the statement of one Ghulam Muhammad on Oath if the said person is produced by the petitioners/defendants and it is a matter of record that the said Ghulam Muhammad was not produced by the petitioners. During cross-examination, (PW.1) plaintiff was given a suggestion by the petitioners that the sale price has been taken by his nephew (). Muhammad Zafar one of the petitioners appeared as (DW.5), and stated that the agreement to sell was entered by the petitioners with the plaintiff/respondent the same day when mutation in question was incorporated and a sum of Rs.50,000/- was paid as earnest money and that no writing with respect to the payment of earnest money was prepared by the parties, whereas, (DW.4), who claimed to be the witness of sale transaction stated that the agreement to sell was entered between the parties fifteen days prior to the mutation in question and that at the time of sale agreement, a sum of Rs.1,00,000/- was paid as earnest money to the plaintiff and a receipt of the payment of earnest money was prepared, which was thumb marked by the plaintiff. Admittedly, no such document has been produced.

(DW.3) Manak stated in his examination-in-chief that the mutation in question was witnessed by him and before the Tehsildar the plaintiff affixed his thumb impression upon the mutation in question after receiving a sum of Rs.5,00,000/- in the presence of the said Tehsildar.

It is important to note that the mutation in question (Ex.D.1) admittedly does not bear the thumb impression of the plaintiff. It is also noted that the total sale

consideration alleged by the petitioners of the transaction in question is Rs.5,00,000/- as is recorded in the mutation, whereas, the defendant Muhammad Zafar made contradictory statement with respect to the payment of earnest money, which facts are clearly in contradiction to the entries of the mutation (Ex.D.1). Similarly, Naib Tehsildar as well as Patwari, who appeared respectively as (DW.1) and (DW.2) did not corroborate the statements of the defendants/petitioners as well as of other two witnesses of the transaction.

12. The learned Additional District Judge after discussing all the evidence rightly came to the conclusions drawn by him to the effect that the transaction in question as claimed by the defendants/petitioners is not free from doubt and has not been proved so as to entitle them to the decree granted by the learned Civil Judge in their favour.

13. The learned counsel for the petitioners could not point out any evidence, which has been misread and misappreciated by the first appellate court. The judgment and decree dated 08.07.2003, passed by the learned first appellate court is in accordance with the evidence and is also validly passed. The case-law cited by the learned counsel for the petitioners is not on the point and is distinguishable on its own facts and is not relevant.

14. In view of all the above circumstances, instant civil revision has no merits and is **DISMISSED** with no orders as to costs.

(Nasir Saeed Sheikh)
JUDGE.