

W.P. No.1920 of 2011

Ghulam Muhammad

Muhammad Jehangir etc.

01.03.2011. Malik Shahzad Fareed Langrial Advocate, for the petitioner.

A civil suit for declaration was instituted on 27.10.1994 before the learned Civil Judge, Muzaffargarh against the present petitioner Ghulam Muhammad and Province of Punjab. This suit was instituted by 12 persons out of whom Muhammad Jehangir, Muhammad Ayyaz and Muhammad Aamer, the respondents No.1, 2 and 3 respectively were admittedly minors at that time. This suit was with respect to the declaration of ownership of the plaintiffs qua a shop bearing No.181 (38) B VII Khangarh City, District Muzaffargarh. The present petitioner Ghulam Muhammad also instituted a suit for possession through exercise of right of pre-emption in the Court of learned Civil Judge Muzaffargarh on 27.11.1995 against five persons out of whom the present respondents No.1, 2 and 3 were impleaded as defendants No.3,4 and 5 respectively and was also with respect to the shop in question. During the pendency of both the suits, the parties allegedly entered into a compromise which was recorded in writing through a document Mark-C, which was executed on 15.7.1995. It is important to note that on behalf of the minors respondents No.1, 2 and 3, their

mother Mst. Saira Bibi is stated to have thumb marked the compromise dated 15.07.1995 Mark-C. Vide order dated 18.06.1996, the document Mark-C was produced in both the suits and both the suits were dismissed as withdrawn in view of the document Mark-C. After the recording of the statement on 18.06.1996, the suits were disposed of by the learned Civil Judge. The respondent No.1, 2 and 3 instituted an application under Section 12 (2) CPC on 10.4.2002 in which they impleaded their brothers Muhammad Shahzad and Muhammad Aslam, their sisters and their mother Mst. Saira Bibi as respondents in addition to the present petitioner Ghulam Muhammad, Province of Punjab and Additional Deputy Commissioner General with powers of Deputy Commissioner, Muzaffargarh. In the application under Section 12(2) CPC, the decree dated 18.6.1996 passed in the matter was assailed on the ground that this decree has been obtained through fraud and misrepresentation by the present petitioner Ghulam Muhammad with the collusion of the brother of respondents No.1, 2 and 3 namely Muhammad Shahzad who appeared to make a statement before the Court on 18.6.1996.

2. This application was contested by the present petitioner only who submitted the written statement.

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

ISSUES:

1. Whether the decree dated 18.6.1996 is result of fraud, misrepresentation,

concealment of facts, without jurisdiction, collusive and as such is liable to be set-aside?OPA

2. Whether the petition is out of time?OPR

3. Relief.

4. The parties produced their respective evidence. The learned Civil Judge vide judgment and dated 27.7.2009 dismissed the application moved by respondents No.1, 2 and 3. A civil revision was preferred by the respondents No.1, 2 and 3 against the judgment dated 27.7.2009, which came up for hearing before the learned Addl:District Judge, Muzaffargarh, who vide order dated 4.12.2010 accepted the civil revision and set-aside the judgment and decree dated 18.6.1996 and remanded back the case to the trial Court to decide the same on merits after recording evidence of both the parties. This order dated 4.12.2010 passed by the learned Addl:District Judge has been assailed through the instant writ petition by the petitioner Ghulam Muhammad.

5. The learned counsel for the petitioner relies upon case law reported as **Jaffar Abbas and 2 others** Versus **Ahmad and another** (PLD 1991 SC 1131) and **Mst. Tahira Bibi** Versus **Shah Dad and 2 others** (PLD 1989 Peshawar 32) to contend that where a guardian *ad-litem* has been appointed in the proceedings of a suit,

then unless there is allegation of fraud and misrepresentation having been committed by such a guardian, the proceedings finalized on the basis of representation made by guardian *ad-litem* cannot be assailed or set-aside. The learned counsel for the petitioner also relied upon case law reported as **S. Zaheer Hussain Naqvi** Versus **Mrs. Sahebzadi Amna Saeed and others** (2002 YLR 1984) and **Muhammad Jamal** Versus **Mst. Gulshan Afroz and others** (2005 YLR 2352) to contend that where in a civil suit an attorney of a party has appeared and has made a statement, then Section 12 (2) of CPC is not attracted allowing an application to be moved by the principal of the attorney for setting aside of the judgment and decree passed in the matter. It is finally argued that the judgment and decree dated 18.06.1996 was validly passed and no question of commission of any fraud arises in view of the peculiar circumstances of the instant case.

6. I have considered the arguments of the learned counsel for the petitioner.

7. It is admitted fact that on 15.7.1995, when the compromise Mark-C was executed between the parties, the respondents No.1, 2 and 3 were minors. It is also recorded in the document Mark-C that the mother of the respondent No.1, 2 and 3 undertook to finalize the proceedings of the compromise, after obtaining the necessary permission from the Court of

Guardian Judge who had appointed Mst. Saira Bibi, the mother of respondents No.1, 2 and 3 as guardian of the said respondents. It is admitted position that on 18.6.1996, the mother of the respondents No.1, 2 and 3 did not make a statement before the Court and Muhammad Shahzad brother only appeared and made statement regarding exchange of the property belonging to minors with the property belonging to the petitioner. It is pointed out that through the compromise effected the land measuring 16 Kanals 10 Marlas in which the minor respondents No.1, 2 and 3 had a share of 1½ kanals was agreed to be exchanged with the present petitioner for the shop No. No.181 (38) B VII Khangarh City, District Muzaffargarh.

8. Another factor which is also important that the mother of respondents No.1, 2 and 3 who was their guardian did not contest the application under Section 12 (2) CPC moved by respondents No.1, 2 and 3. The learned Addl:District Judge in the operative part of the impugned judgment dated 4.12.2010 came to the conclusion that the mother of the respondents No.1, 2 and 3 was not granted any permission by the Guardian Judge to enter into compromise or dispose of the property belonging to respondents No.1, 2 and 3, therefore, the judgment and decree dated 18.6.1996 and the proceedings of compromise were without any authorization and suffered from inherent illegality. In this respect, para No.11 of the impugned judgment

dated 4.12.2010 passed by the learned Addl:District Judge is relevant which is reproduced as under:

“11. After minute consideration to the arguments and record, I am not in agreement with the observation of the learned trial court because there is no peculiar circumstance of this case due to which specific permission by the competent court was not necessary to enter into compromise on behalf of the minor. It is an admitted fact that the petitioners Jehangir were minor at that time when compromise was effected consequently the suit was withdrawn. Although, the mother and the elder brother of the petitioners were party in the suit but even then I am of the considered view that specific permission was necessary to be obtained by the court of competent jurisdiction, as it is an admitted fact that even the real mother of the minor having no adverse interest against the minors cannot sale out the property of the minors without permission of the court and even if permission is granted and if the property is sold out even then guardian of the minor has to submit the detail account that how much amount he obtained from the sale and how it has been spent and whether he spent amount for the welfare of the minors. Therefore, I am of the view that it can rightly be said that the petitioners have been succeeded in proving their version that specific permission to enter into the “compromise” was necessary but the alleged compromise has been effected without permission of the court, hence the same has no legal force and decree dated 18-6-1996 is liable to be set aside.”

9. The provisions of Section 29 of the Guardian and Wards Act 1890 are also relevant and reproduced below:-

“29. Limitation of powers of guardian of property appointed or declared by the Court:
Where a person other than a collector, or than

a guardian appointed by will or other instrument, has been appointed or declared by the court to be guardian of the property of a ward, he shall not without the previous permission of the Court,-

(a) mortgage, or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of his ward, or

(b) lease any part of that property for a term exceeding five years or for any term extending more than one year beyond the date on which the ward will cease to be a minor.”

10. The learned counsel for the petitioner argued that Section 29 of the Guardian and Wards Act, 1890 is only applicable when some proceedings under Guardian and Wards Act 1890 are undertaken, therefore, the provisions of Section 29 of the Guardian and Wards Act, 1890 are not applicable and attracted in the case in hand.

11. This contention of the learned counsel for the petitioner has no substance. The guardian of person and property is appointed under the provisions of Guardians and Wards Act, 1890 and this Act specifically deals with powers of a Guardian appointed by the Judge Guardian Court and Section 29 creates a specific bar for guardian of the property to enter into any transaction for the disposal of the property belonging to a minor without the prior permission of the Court. The case law reported as **Jaffar Abbas and 2 others** Versus **Ahmad and another** (PLD 1991 SC 1131) and **Mst. Tahira Bibi** Versus **Shah Dad and 2 others** (PLD 1989 Peshawar

32) is distinguishable on its own facts as in those cases the question of power of guardian of property to dispose of the property of the minor without the permission of the Guardian Judge was not specifically involved. The learned Addl:District Judge has recorded sound legal reasons for coming to the conclusion that the judgment and decree dated 18.6.1996 was without the permission of the Guardian Judge insofar as the rights of the respondents No.1, 2 and 3 qua the property belonging to them is concerned. The other judgments cited by the learned counsel for the petitioner **S. Zaheer Hussain Naqvi** Versus **Mrs. Sahebzadi Amna Saeed and others** (2002 YLR 1984) and **Muhammad Jamal** Versus **Mst. Gulshan Afroz and others** (2005 YLR 2352) do not support the case of the petitioner at all because it was laid down that where an attorney makes a statement in the Court on behalf of his principal, then section 12 (2) of CPC is not attracted. In the instant case, the mother of respondents No.1, 2 and 3 was admittedly appointed as guardian of the property of the minors but she did not appear in the Court on 18.6.1996 and did not make any statement against the interest of respondents No.1, 2 and 3, therefore, this case law cited by the learned counsel for the petitioner has no relevance to resolve the controversies in question.

12. For all what has been stated above, I find no illegality in the order passed by the learned Addl:District

Judge. The matter has been rightly decided on merits by the learned Addl:District Judge. No interference by this Court is called for. The instant writ petition is **dismissed** *in limine*.

(NASIR SAEED SHEIKH)
JUDGE.

M.YOUNAS*

Approved for reporting