

C.R.No.921 of 2004

Abdul Ghafoor

Arshad Ali etc.

23.11.2011

Mr. Amir Abdullah Khan Niazi, Advocate for the petitioner.
Mr. Ghulam Hussain, Advocate for the respondent No.1.

This Civil Revision is directed against the judgment and decree dated 10.11.2003 passed by the learned Additional District Judge Mianwali whereby he accepted the appeal preferred by the respondents against the judgment and decree dated 28.9.2001 passed by the learned Civil Judge Mianwali decreeing the suit of the petitioners and set aside the judgment and decree dated 28.9.2001 of the learned Civil Judge.

2. Briefly stating the facts of the case are that Abdul Ghafoor, whose LRs have now been impleaded in the Civil Revision after his death, instituted a suit on 23.2.1995 before the learned Senior Civil Judge against the twelve defendants seeking declaration that he is the owner with possession of land measuring 110 kanals 17 marlas described in the head note of the plaint and a mutation of gift No.305 dated 30.1.1983 be declared illegal and void. The plaint was subsequently amended and a mutation No.143-A dated 09.8.1990 in respect of the subject land was also assailed. This suit was contested by the respondents/defendants and in the first round of litigation vide judgment and decree dated 11.11.1997 the learned Civil Judge Mianwali dismissed the suit. The parties went in appeal and the learned Additional District Judge, Mianwali set aside the judgment and decree dated 11.11.1997 of the learned Civil Judge and further directed the framing of two additional issues

Nos.1-A and 1-B and the case was remanded back to the trial Court for its decision afresh after recording the evidence of the parties.

3. After the remand of the case the learned Civil Judge framed the following issues Nos.1-A and 1-B in addition to already framed issues all of which issues are reproduced:-

1. *Whether the plaintiff is owner-in-possession of the suit land and the defendants have no connection what-so-ever with it and Tamleek mutations No.305, dated 30.1.1983 & No.143/Alif, dated 9.8.1990 are illegal, contrary to the facts and liable to be set aside?OPP*
- 1-A. *Whether the Tamleek in the shape of family settlement was executed by Abdul Ghafoor in favour of the defendants?OPD*
- 1-B. *If the above issue is not proved in positive, if a gift was executed in favour of the defendants by the appellant through delivery of the possession?OPD*
2. *Whether the suit is time barred?OPD*
3. *Whether the suit has been wrongly valued for the purpose of court fee and jurisdiction?OPD*
4. *Whether the defendants are entitled for special costs u/s 35-A, CPC?OPD*
5. *Whether the plaintiff is estopped by his words and conduct to bring the present suit?OPD*
6. *Relief.*

The respective evidence of the parties was recorded and the learned Civil Judge vide judgment and decree dated 28.9.2001 decreed the suit as prayed for.

4. An appeal was preferred by the respondents against the judgment and decree dated 28.9.2001 of the learned trial court which appeal has been accepted by the learned Additional District Judge through the judgment and decree dated 10.11.2003. The learned Additional District Judge set aside the finding of the learned trial court on the point of limitation, the 'Tamleek' and on the point of fraud and dismissed the suit of the petitioners. Hence this Civil Revision.

5. The learned counsel for the parties have addressed the arguments and the short point which requires consideration for the decision of the instant Civil Revision is that after

narrating the facts of the case and the production of the evidence by both the parties the learned Additional District Judge recorded his finding about the fate of the appeal pending before him in paragraph No.8 of the judgment dated 10.11.2003. It is noted that the plaintiffs produced oral evidence in the form of statements of four PWs namely Abdul Ghafoor as PW1, Muhammad Yaqoob s/o Abdul Majeed as PW2, Mst. Salasan Bibi as PW3 and Muhammad Ramzan s/o Abdul Ghafar as PW4 and produced nine documents Exh.P1 to P9 in their documentary evidence. Similarly the defendants of the suit produced five witnesses namely Muhammad Jameel as DW1, Abdul Sattar s/o Abdul Bashir as DW2, Irshad Ali one of the defendants as DW3, Muhammad Bakhsh s/o Ahmed Khan as DW4 and Ghulam Abbas s/o Ahmed Khan as DW5 and documentary evidence in the form of Exh.D1 to D6 was produced by the defendants. The learned Additional District Judge while accepting the appeal did not discuss at all any piece of the evidence both oral as well as documentary produced by the parties and decided the appeal. This method of deciding of appeal by the learned first appellate court is contrary to the well known principles of administration of justice. The first appeal preferred against the judgment and decree has to be decided by the learned first appellate court in a lawful manner. The learned first appellate court is under a legal obligation to discuss the evidence produced by the parties, analyse the same, meet the findings recorded by the learned trial court and then decide the fate of the appeal. The manner in which the learned Additional District Judge has decided the appeal has resulted into miscarriage of justice. The parties who produced voluminous oral as well as documentary evidence have a right to be treated in accordance with law and their respective evidence be scrutinized and in the light of the discussion of the said evidence

the learned first appellate court is to decide the matter. When confronted with this situation the learned counsel for the respondents could not effectively support the judgment and decree dated 10.11.2003 passed by the learned Additional District Judge, Mianwali.

6. In view of the above the instant Civil Revision is accepted and the impugned judgment and decree dated 10.11.2003 of the learned first appellate Court is set aside and the matter is remanded back to the learned District Judge Mianwali for deciding the appeal preferred by the respondents in the matter afresh in accordance with law. The learned first appellate court shall discuss the respective evidence produced by the parties, shall meet the points decided by the learned Civil Judge and then announce the judgment of the appeal.

7. The learned first appellate court is directed to decide the appeal within a period of two months from 14-12-2011 on which date the parties are directed to appear before the learned first appellate court/learned District Judge Mianwali. The parties shall bear their own costs.

**(NASIR SAEED SHEIKH)
JUDGE.**