

Writ Petition No.17829 of 2011

ZIA-UR-REHMAN VERSUS ADDITIONAL DISTRICT JUDGE etc.

06.09.2011 Mr. Taqi Ahmad Khan Advocate for
Petitioner

The present petitioner Zia-ur-Rehman instituted a suit on 27-10-2008 before the learned Civil Judge, Shakargarh District Narowal seeking declaration that a house constructed over an area measuring 13 Marlas was originally gifted in his favour by the defendant No.1 Abdul Rehman in the name of God. However, later on vide a registered gift deed dated 19-8-2004 the defendant No.1 gifted away the house in question in favour of his daughter Lubna Rehman the defendant No.2 and the said defendant No.2 on the basis of gift deed dated 19-8-2004 further sold away the house in question through registered sale-deed dated 17-10-2008 in favour of defendant No.3 Abdul Qayyum son of Muhammad Sharif. The petitioner thus sought declaration of his ownership rights and also cancellation of the subsequent gift deed dated 19-8-2004 in favour of defendant No.2 and the registered sale-deed dated 17-10-2008 in favour of defendant No.3 as being illegal, without lawful authority and having no legal effect upon his rights. The plaintiff also claimed the possession of the subject house with him in the plaint.

2. The defendant No.1 submitted a consenting written

statement dated 15-12-2008. The defendant No.3 submitted a contesting written statement and the suit is still pending. Later on, on 17-3-2011 one Shahid Iqbal son of Hussain Bakhsh moved an application under Order I Rule 10 of C.P.C. for his impleadment in the suit on the ground that the subject house has been purchased by him vide registered sale-deed dated 21-10-2010 from one Muhammad Nawaz and that the plaintiff in spite of the said sale-deed dated 21-10-2010 has not impleaded the said Shahid Iqbal in the suit. The present petitioner submitted reply to the application under Order I Rule 10 of C.P.C. and in paragraph No.3 stated that the applicant Sahid Iqbal has purchased the house in question in violation of ad interim injunction dated 29-6-2010 and that on 16-11-2010 the said Shahid Iqbal also forcibly took over the possession of the subject house and therefore prayed for the dismissal of the application under Order I Rule 10 of C.P.C. The learned Civil Judge vide order dated 31-3-2011 accepted the application of Shahid Iqbal, respondent No.6 in the instant writ petition. The petitioner preferred a Civil Revision against the order dated 31-3-2011 of the learned Civil Judge which civil revision came up for hearing before the learned Addl. District Judge, Shakargarh who vide order dated 4-7-2011 dismissed the same. Hence this writ petition.

3. It is contended by the learned counsel for the petitioner after relying upon the judgments reported as PLD 2002 SC 303, PLD 2003 SC 818, 2007 SCMR 1872, 2008 SCMR

1024, PLD 2009 SC 419, 2010 CLC 273 and PLD 2011 Lahore 437 that the respondent No.6 was not necessary or a proper party in the suit as he purchased the property during the pendency of the civil suit and the principles of *lis pendens* as incorporated in section 52 of the Transfer of Property Act, 1882 was fully applicable to the facts and circumstances of the instant case and the two courts below have illegally impleaded the respondent No.6 in the civil suit.

4. I have considered the arguments of the learned counsel for the petitioner and have perused the record available on this file.

5. The respondent No.6, as per record, stated in Para No.2 of his application under Order I Rule 10 of C.P.C. that he purchased the house in question on 21-10-2010 from one Muhammad Nawaz. This Muhammad Nawaz is further admittedly not a party to the proceedings as he is not impleaded there. The present petitioner in his reply to the application under Order I Rule 10 of C.P.C. further admitted that the respondent No.6 i.e. applicant of application under Order I Rule 10 of C.P.C. has taken over the possession of the house in question allegedly forcibly. Thus the respondent No.6 is also in possession of the subject property. In none of the case-law cited by the learned counsel for the petitioner before this Court the question of impleadment of a subsequently vendee from a vendee who is not a party to the suit is dilated upon by the Hon'ble superior courts. Therefore

the case-law cited by the learned counsel for the petitioner is distinguishable on its own facts. Although the learned Civil Judge has accepted the application under Order I Rule 10 of C.P.C. moved by the respondent No.6 on the basis of propriety but the learned Addl. District Judge while dismissing the revision petition of the present petitioner against the order dated 31-3-2011 relied upon two judgments of Hon'ble Supreme Court of Pakistan reported as Rashid Ahmad v. Mst. Jiwan, and others (1997 SCMR 171) and Fazal Karim through Legal Heirs and others v. Muhammad Afzal through Legal Heirs and others (PLD 2003 SC 818), wherein the Hon'ble Supreme Court of Pakistan laid down the law that the principles incorporated in section 52 of the Transfer of Property Act, 1882 do not preclude the impleadment of a subsequent vendee from a transaction during pendency of a lis. In the reported judgment PLD 2003 SC 818, the Hon'ble Supreme Court of Pakistan after relying upon another earlier judgment of the Hon'ble Supreme Court of Pakistan reported as PLD 2001 SC 449 observed as follows:--

"A close perusal of the section would clearly indicate that a lis pendens transaction is not void on this score alone that it was done during the pendency of some lis but the fate thereof would remain suspended till final verdict of the court which is seized of the matter. Similar situation had come before this Court in Muhammad Zafar-uz-Zaman v. Faqir Muhammad (PLD 2001 SC 449), where this court had held that vesting of title through a lis pendens transaction is not prevented by section 52 of the T.P. Act, 1882 but the only impediment laid down by the section is that the validity of the such transaction, keeping in view the rights of third parties, shall always be subject to the final decision by the court. A lis pendens transaction is perfectly valid so far as the parties to such transaction are concerned but the effect thereof on a third party is kept pending till the decision of

the suit or proceedings. The courts should not discard a transaction merely because it had taken place during the pendency of a lis but its fate should be deferred to the final verdict. It merely operates as a status quo. Such transaction is not bad even if it takes place during the existence of a status quo order by the court. In such case it can, of course, entail any punitive action contemplated by Order XXXIX of the C. P. C. but would not nullify the transaction between the parties on account of being lis pendens; the validity or otherwise whereof shall remain subject to final verdict by the court. The courts below and the High Court have therefore, wrongly determined that the transaction in hand was hit by section 52 of the Transfer of Property Act because this court always have been determined by the court which was seized of the matter and which had failed to give any such verdict due to collusive and fraudulent disposal of appeal."

6. The learned Addl. District Judge relied upon two judgments of the Hon'ble Supreme Court of Pakistan for dismissing the civil revision of the petitioner against the order dated 31-3-2011 passed by the learned Civil Judge, Shakargarh, whereby while exercising his discretion the learned Civil Judge accepted the application under Order I Rule 10 of C.P.C. moved by the respondent No.6. Not only because that a discretionary power has been exercised by the two courts below in favour of respondent No.6 but also for the reasons that both the courts below exercised their respective discretion in favour of the respondent No.6 in accordance with law and the learned Addl. District Judge particularly after relying upon the two judgments of the Hon'ble Supreme Court of Pakistan, came to the conclusion that the respondent No.6 is to be impleaded in the matter. It is settled principle of law that this Court is reluctant to interfere in the orders passed by the subordinate courts exercising discretion in favour of one of the parties if the order passed is

neither fanciful, nor arbitrary or perverse. Reliance is respectfully placed upon case-law reported as Mian Rafique Saigol and another v. Bank of Credit and Commerce International (Overseas) Ltd. and another (PLD 1996 Supreme Court 749) and Muslim Commercial Bank Ltd. v. Judge Banking Court No.2, Faisalabad and 8 others (2002 CLD 991).

7. In view of the above and also on account of the peculiar circumstances of the present case, I am not persuaded to declare that the orders passed by the two courts below accepting the application under Order I Rule 10 of C.P.C. moved by the respondent No.6 in the matter are either illegal or without lawful authority. The instant writ petition therefore being devoid of any legal force is dismissed in limine.

(NASIR SAEED SHEIK)
Judge