

C.R.No.3199 of 2010

Mushtaq Ahmed

Zafar Iqbal etc.

Through the instant Civil Revision Mushtaq Ahmed petitioner has assailed the judgments and decrees dated 19.4.2010 passed by the learned Civil Judge Narowal and dated 16.7.2010 passed by the learned Additional District Judge Narowal in the matter.

2. Briefly stating the facts of the case are that the respondent No.1 Zafar Iqbal instituted a suit before the learned Civil Judge at Narowal for specific performance of an agreement to sell dated 15.2.2003 claimed by him from the respondents No.2 to 7 who were respectively defendants No.1 to 6 of the plaintiff, of land measuring 3 kanals 12 marlas, described in para-1 of the plaint dated 26.4.2004. This agreement to sell was for a sum of Rs.60,000/-and the respondent No.1/plaintiff claimed to have paid a sum of Rs.40,000/-at the time of execution of the agreement to sell dated 15.2.2003 and the remaining amount of Rs.20,000/-was to be paid at the time of the completion of the sale transaction when the mutation of inheritance was to be first got incorporated in the revenue record in favour of the respondents No.2 to 7. The respondent No.1/plaintiff contended that two mutations of inheritance No.175 and 176 dated 2.6.2003 were incorporated in favour of the respondents No.4 to 7 but for malafide purpose the

defendants/respondents No.2 to 7 got incorporated a mutation No.177 dated 2.6.2003 of sale of the subject land in favour of the present petitioner who was defendant No.7 in the suit. It was alleged by the respondent No.1 in para-2 of his plaint that the present petitioner/defendant No.7 was fully aware of the agreement to sell earlier entered by the respondents No.2 to 7 in favour of the Respondent No.1 and in order to frustrate the agreement to sell the petitioner got incorporated mutation of sale in his favour for malafide purposes in a collusive manner. The respondent No.1/plaintiff thus sought specific performance of his agreement to sell, possession of the subject property and the declaration that the mutation No.177 dated 2.6.2003 incorporated in favour of the petitioner/defendant No.7 was illegal and of no legal effect upon the rights of the plaintiff/respondent No.1. This agreement to sell was admitted in the written statement by the respondents No.5 to 7 who were respectively defendants No.4 to 6 in the suit. It was however contended by them that the agreement to sell was cancelled and the sale price was returned to the plaintiff/respondent No.1. The present petitioner/defendant No.7 contested the suit and took up the plea that he was bonafide purchaser for value of the subject land in good faith without knowledge of the first agreement to sell with the respondent No.1.

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

**ISSUES**

1. *Whether the plaintiff entered into agreement for the land measuring 3 Kanals 12 Marlas for the sum of Rs.60,000/-with defendants?OPP*
2. *If the above issue is proved, whether the plaintiff is entitled for decree of specific performance alongwith permanent injunction?OPP*
- 2.A. *Whether the defendant No.7 is the bona fide purchaser without notice with consideration of the land mutated in*

- his favour through mutation No.177 dated 02.06.2003, if so, its effect?OPD*
- 2.B. *Whether the amount so received through agreement of sale dated 15.02.2003 was duly returned to the present appellant/plaintiff on basis of the rescinding of the contract dated 15.02.2003, if so, its effect?OPD 4 to 6*
- 2.C. *Whether an amount of Rs.20,000/-was paid in case by the present appellant to the defendant No.1 to 6 in presence of the witnesses, if so, its effect?OPP*
3. *Whether the plaintiff has estopped from his words and conduct?OPD*
4. *Whether the suit is false and frivolous and the defendants are entitled for special cost U/S 35-A CPC?OPD*
5. *Relief.*

The learned Additional District Judge Narowal in the judgment dated 16.7.2010 has stated the facts that the additional issue No.2A to 2C were framed as a result of the remand order passed during the first round of litigation.

4. The parties produced their respective evidence. The learned Civil Judge vide judgment and decree dated 19.4.2010 decreed the suit in favour of the respondent No.1 as prayed for. Only the petitioner preferred an appeal against the judgment and decree of the learned trial court which appeal came up for hearing before a learned Additional District Judge Narowal and was dismissed vide judgment and decree dated 16.7.2010. The petitioner/defendant No.7 in the suit has thus elected to file the instant Civil Revision.

5. It is contended by the learned counsel for the petitioner that the petitioner was bonafide purchaser of the subject land without notice/knowledge of the agreement to sell dated 15.2.2003 in favour of the respondent No.1 and therefore the two courts below have illegally rejected the plea of the petitioner by passing a decree in favour of the respondent No.1 as prayed for.

6. The learned counsel for the respondent No.1 has appeared to contest this Civil Revision whereas the other respondents have been proceeded ex parte vide order dated

09.12.2011 passed by this Court. The learned counsel for the respondent No.1 contended that the onus to prove the issue No.2A regarding the claim of the present petitioner that he was a bonafide purchaser without notice of the agreement dated 15.02.2003 of the subject land was upon the present petitioner and he did not discharge the onus at all to prove the said issue therefore the two courts below have recorded concurrent findings of facts against the petitioner and the judgments and decrees accordingly passed by the two courts below do not call for any interference by this Court.

**7. I have considered the arguments of the learned counsel for the parties.**

8. The learned Civil Judge has framed the additional issue No.2 specifically in the following words:-

2.A. *Whether the defendant No.7 is the bona fide purchaser without notice with consideration of the land mutated in his favour through mutation No.177 dated 02.06.2003, if so, its effect?OPD*

The onus to prove this issue was upon the petitioner. He did not produce any evidence after the framing of this additional issue No.2.A. The present petitioner earlier appeared as DW1 and his statement has been read with the assistance of the learned counsel for the petitioner. He did not state a single word in his examination in chief about his claim as raised in his written statement that he was a bonafide purchaser without knowledge of the agreement to sell entered in favour of the respondent No.1 Zafar Iqbal the plaintiff decree holder. The honourable Supreme Court of Pakistan in the judgment reported as **HAFIZ TASSADUQ HUSSAIN VS. LAL KHATOON AND OTHERS (PLD 2011 SC 296)** has laid down the law that the initial onus to prove the purchasing the subject property without notice and knowledge of the first agreement to sell is upon the subsequent vendee. After considering the previous

case law on the matter the honourable Supreme Court of Pakistan in the said reported judgment laid down the law in para-9 at page 306 that this onus upon the subsequent vendee although is light one but is to be discharged first and it is only then that the onus shifts upon the other side to prove the knowledge of the subsequent vendee of the first agreement to sell. Paragraph No.9 is reproduced below:-

*"Considering the above rule in context with the proposition in hand in Lekh Singh v. Dwarka Nath and others (AIR 1929) Lahore 249) it has been held:-*

*"The onus of proving that the subsequent purchaser had no notice of a prior claim lies on such purchaser; and the onus of such a negative issue is ordinarily discharged by a denial and by a negative evidence."*

*In Mst. Khair-ul-Nisa and 6 others v. Malik Muhammad Ishaque and 2 others (PLD 1972 SC 25) this Court ordained:-*

*"Under section 27(b) of the Specific Relief Act negative is to be proved by the subsequent transferee. If he appears in Court and states on oath that he had no knowledge of the transfer that would be quite sufficient to discharge the burden and the onus will, then shift to the plaintiff to prove that the subsequent transferee had the notice of the original contract."*

*In Mst. Surraya Begum and others v. Mst. Suban Begum and others (1992 SCMR 652) while dilating on the proposition this Court laid down the law:-*

*"Since in civil suits an issue is to be decided by preponderance of evidence, the initial burden would be on the plaintiff to prove his prior contract, which if discharged, the burden of proving the subsequent bona fide transfer for value without notice would be on the party alleging it. Very little evidence and in certain circumstances a mere denial regarding want of knowledge of the earlier contract would discharge this burden and shift the onus on the plaintiff to prove that the subsequent transferee had the notice of the earlier contract."*

*In the light of the noted authoritative pronouncements, it can be safely concluded that though the initial onus is on the subsequent vendee, however, it is light one, and once it is discharged by abiding by the criteria set out hereinabove, it shall be the burden and duty of the plaintiff to prove positively that the subsequent vendee had the notice of his sale agreement; besides, the subsequent transaction is without the passing of the due consideration; it is a colourable or a fraudulent transaction entered into with dishonesty of purpose by the vendor and the subsequent vendee in order to cause prejudice his rights under the sale agreement. This in our view to an extent should settle the law regarding the rule providing protection to bona fide purchaser for value without notice and the standards of proof thereof."*

In another judgment reported as **RASOOL BAKHSH NAICH THROUHG L.Rs and others VS. SYED RASOOL BAKHSH SHAH THROUHG L.RS. AND OTHERS (2010 SCMR 988)** the honourable Supreme Court of Pakistan, elaborating the principles of section 27(b) of Specific Relief Act 1877 observed and laid down the law in para-11 in the following words:-

*"A close reading of the afore-referred provision and the precedent case law would indicate that the subsequent vendee has not only to deny notice of any previous transaction to claim relief in equity but has to prove it by affirmative evidence as well"*

9. The two courts below have recorded concurrent findings in this matter. The statement of the present petitioner as DW1 has also been perused and it is noted that the present petitioner did not discharge the onus to prove the issue No.2A in any manner. The judgments and decrees passed by the two courts below are in accordance with the evidence as well as in accordance with the law. No case is made out for interference by this Court in exercise of revisional jurisdiction u/s 115 of CPC.

10. The instant Civil Revision is accordingly **dismissed** with no orders as to costs.

**(NASIR SAEED SHEIKH)  
JUDGE.**

**\*AMJAD\***

APPROVED FOR REPORTING

