

JUDGMENT SHEET

IN THE LAHORE HIGH COURT MULTAN BENCH,
MULTAN
(JUDICIAL DEPARTMENT)

Civil Revision No.497 of 1998.

Faqir Muhammad, etc

Vs.

Farhat Hussain, etc

JUDGMENT

DATE OF HEARING: 11-05-2015.
PETITIONERS BY: Mr. Muhammad Masood Bilal,
Advocate.
RESPONDENTS: Ex-Parte.

AMIN-UD-DIN KHAN, J. Through this civil revision the petitioners/plaintiffs have challenged the judgment & decree dated 06.07.1998 passed by the learned Additional District Judge, Lodhran, whereby the appeal filed by them was dismissed, and the judgment & decree dated 11.07.1996 passed by the learned Civil Judge 1st Class, Lodhran, whereby the suit for rectification of sale deed as well as rectification of decree was dismissed.

2. The brief facts of the case are that the petitioners-plaintiffs on 16.11.1983 filed a suit for rectification of sale deed registered on 15.03.1979 with the prayer that Khasra No.357/13, 404/10, 415/5-min Janubi,6-min measuring 51-kanals 11-marlas and 5/39 share of Khewat No.503 measuring 10-marlas, total area measuring 52-kanals 1-marla be included in the sale deed,

as well as a decree dated 25.11.1979 by inclusion of 34/594 share of Khewat No.288 measuring 34-kanals, entire total area 86-kanals 1-marla situated in Village Rajapur Tehsil Lodhran District Multan. The written statement was filed and suit was contested. Learned trial Court framed the issues and invited the parties to produce their respective evidence. Both the parties produced oral as well as documentary evidence in support of their versions. After the completion of trial vide judgment & decree dated 11.07.1996 suit was dismissed by the learned trial Court. An appeal was preferred before the learned first appellate Court, which also met with the same fate vide judgment & decree dated 06.07.1998. Hence, this civil revision.

3. Learned counsel for the petitioners/plaintiffs argues that respondent No.1 was owner of 910-kanals 16-marlas and respondent No.2 was owner of 592-kanals of land fully described in the plaint; that the land was with the plaintiffs under the tenancy by defendant No.1, who was also attorney of defendant No.2 from Khareef 1978 and at the time of realization of crop 04-kanals land was orally gifted to the plaintiffs on 15.09.1978; that an agreement was arrived at between the parties for transfer of whole of the land i.e. 1500-kanals 16-marlas for a consideration of Rs.22,34,000/- and the defendants received an amount of Rs.3,00,000/- as earnest money through drafts dated 16.09.1978 and 17.09.1978 and an agreement to sell was executed on 19.09.1978 as well as a receipt of Rs.3,00,000/-

also; that by procuring wrong document from the Patwari instead of 187-acres 04-kanals and 16-marlas, the defendants procured the document for alienation describing their ownership of 182-acres, therefore, defendant No.1 alienated his property measuring 856-kanals through registered sale deed instead of 910-kanals 16-marlas, after that the defendants backed out from their transaction and as such the plaintiffs were forced to file the suit for specific performance on 30.06.1979; that defendant No.1 also filed a suit to declare the transfer of his land through the above mentioned sale deed as null and void; that the parties entered into a compromise on 25.11.1979 and it was agreed that on further payment of Rs.7,51,003/- including the sum already paid, the suit for specific performance was decreed to the extent of 70-acres and suit filed by defendant No.1 was withdrawn. Learned counsel for the petitioners states that both the courts below fell in error while dismissing the present suit of petitioners/plaintiffs, which was liable to be decreed; that both the courts below finding that full particulars of fraud have not been given and further it has been held that an application u/s 12 (2) of the CPC should have been filed when fraud has been alleged.

4. For the service of respondents it was ordered that notice be sent to them through publication in the newspaper. The publication as well as postal certificate has been received but no one is present on behalf of the respondents, therefore, they are proceeded against ex-parte.

5. I have heard the learned counsel for the petitioners at full length and also gone through the concurrent findings recorded by two courts below as well as the evidence led by the parties.

6. The case of petitioners/plaintiffs is of two independent reliefs. One prayer is for rectification of sale deed and the other is for rectification of the judgment & decree passed by the learned trial Court on the basis of compromise statement of the parties dated 25.11.1979. If the argument advanced by the learned counsel for the petitioners and the story narrated by him is entirely accepted to be true, even then I am unable to understand that how it is a case of rectification of sale deed and rectification of the decree. If there was an agreement to sell with the plaintiffs by defendants for whole of the property as claimed by them of respondent No.1 measuring 910-kanals 16-marlas and owned by respondent No.2 measuring 592-kanals, even then after the agreement the plaintiffs opted to get the property of defendant No.1 measuring 856-kanals through registered sale deed without intervention of the court, which act of transfer through registered sale deed shows that the present plaintiffs were satisfied with the transfer of property by defendant No.1 through registered sale deed in their favour for their entire satisfaction with regard to respondent No.1.

7. So far as the second part is concerned, property of defendant No.2 measuring 592-kanals was to be transferred,

whereas 560-kanals has been transferred and to the extent of 32-kanals defendant No.2 in suit in hand made a statement in the previous suit that he has already transferred part of the suit property measuring 32-kanals to Bakhoo etc before entering into an agreement to sell, which statement has been produced by the plaintiffs themselves as Ex.P-7 in the instant suit and on the basis of compromise statement of the parties a decree was passed, how afterwards the present suit was competent on the ground that the statement of defendant No.2 was not correct. There are concurrent findings of fact recorded by two courts below. There is no need to further dilate upon the oral as well as documentary evidence and reinterpret the same while exercising jurisdiction under section 115 of the CPC, which has already been interpreted and both the learned courts below reached to a right conclusion, as the sale deed and compromise decree are of the year 1979, whereas the present suit was filed on 16.11.1983, therefore, it was certainly time barred. The argument that the onus of issue No.5 was on the defendant and no evidence was produced, even then under section 3 of the Limitation Act, 1908 it is the basic duty and responsibility of the Court to check that a lis has been initiated within the prescribed period of limitation. For filing a suit for declaration the limitation under Article 120 of Schedule-II of the Limitation Act is three years from the date of accrual of cause of action. There is no dispute about the accrual of cause of action when the documentary evidence has

been produced which relates to the previous litigation between the parties. Therefore, the finding that suit has been filed after the prescribed period of limitation is correct.

8. So far as the finding of Court that the application u/s 12 (2) of the CPC should have been filed is concerned, I do not agree with the same, as the application u/s 12 (2) of the CPC lies only when misrepresentation or fraud has been committed with the Court by any of the parties or the order of Court is without jurisdiction. No such eventuality is available in this case. The case of petitioners/plaintiffs is that by giving them wrong information with regard to their title at the time of compromise they have been defrauded. This contention is not borne out from the record. It seems that consciously the parties entered into a compromise to settle the matter, otherwise there was no occasion to enter into a compromise and when the matter was resolved through compromise, this suit was not competent to set aside the same in the present suit. In this view of the matter, the concurrent findings of two courts below cannot be set aside in the light of judgments reported as “**PLD 1994 SC 291** (Haji Muhammad Din Vs. Malik Muhammad Abdullah), **PLD 1983 Lahore 687** (Mst. Rashida Hussain Vs. Qazi Aslam Hussain and 8 others) and **2002 CLC 295** (Ghulam Muhammad Vs. Malik Abdur Rashid and 2 others)”. I am unable to disagree with the concurrent findings recorded by both the courts below. No

case for interference by this Court while exercising jurisdiction under section 115 of the CPC has been made out. Therefore, this civil revision being devoid of any substance is hereby dismissed.

(AMIN-UD-DIN KHAN)
JUDGE

Qurban*

Approved for Reporting

Judge