

JUDGMENT SHEET

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

Civil Revision No.371-D-2004.

Akhtari Khanum, etc

Vs.

Mst. Kaneez Fatima, etc

JUDGMENT

DATE OF HEARING: 06-05-2015.

PETITIONERS BY: Mr. Ahsan Raza Hashmi,
Advocate.

RESPONDENTS BY: Mian Bashir Ahmad Bhatti,
Advocate.

AMIN-UD-DIN KHAN, J. Through this civil revision the petitioners/defendants have challenged the judgment & decree dated 03.03.2004 passed by the learned Additional District Judge, Layyah, whereby the appeal filed by them was dismissed, and the judgment & decree dated 22.09.2001 passed by the learned Senior Civil Judge, Layyah, whereby the suit for declaration filed by respondent No.1/plaintiff was decreed.

2. Briefly, the facts as leading to this civil revision are that on 05.06.1994 respondent No.1/plaintiff filed a suit for declaration that she being residuary of Mst. Allah Rakhi is entitled in accordance with Sharai share from her property and challenged sale mutation No.865 attested on 25.02.1992 by Mst. Allah Rakhi in favour of Akhtari Khanum. The case pleaded by

the plaintiff is that Mst. Allah Rakhi was the maternal aunt () of the plaintiff as well as of defendants No.1, 3 and 4 and on her death when her right of inheritance was denied, she challenged mutation No.865 attested on 25.02.1992. It is pleaded that some other lady was produced at the time of attestation of said mutation and Mst. Allah Rakhi never appeared before the revenue officials for attestation of mutation. 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 22.09.2001 suit was decreed. Feeling aggrieved thereby the petitioners-defendants preferred an appeal before the learned first appellate Court, which was dismissed vide judgment & decree dated 03.03.2004. Hence, this civil revision.

3. Learned counsel for the petitioners argues that petitioner/defendant No.1 has purchased the property from her maternal aunt () Mst. Allah Rakhi for a consideration of Rs.200,000/- and Mst. Allah Rakhi remained alive after the attestation of impugned mutation for about one year, she never denied, challenged or agitated against the attestation of mutation and even in the plaint the plaintiff has not pleaded that Mst. Allah Rakhi ever challenged the said mutation in her life time or even that mutation was not in the knowledge of Mst. Allah Rakhi

when after the purchase possession was delivered to the petitioner/defendant No.1. Argues that the findings recorded by both the courts below are absolutely against the law, as the courts below have recorded their findings by misinterpretation of the settled principles of law annunciated by Superior Courts, therefore, prays for acceptance of this civil revision and setting aside the judgments & decrees passed by both the courts below.

4. On the other hand, learned counsel for respondent No.1/plaintiff argues that Mst. Allah Rakhi was of advanced age at the time of attestation of mutation and PW-2 who is attesting witness of impugned mutation appeared on behalf of plaintiff and has denied his signatures upon the said mutation or the knowledge of attestation of said mutation; that the evidence produced by the petitioner/defendant with regard to payment of consideration is contradictory one. Learned counsel has relied upon the judgments reported as “2006 SCMR 586 (Muhammad Din and others Vs. Mst. Naimat Bibi and others), 2000 CLC 500 (Aasa Vs. Ibrahim), 2007 SCMR 576 (Muhammad Hassan Vs. Khawaja Khalil-ur-Rehman), 2012 SCMR 730 (Administrator, Thal Development through EACO Bhakkar and others Vs. Ali Muhammad), 1995 SCMR 559 (Said Amir Vs. Manzoor Ellahi and 3 others), 2007 SCMR 1076 (Rafaqat Ali and others Vs. Mst. Jamshed Bibi and others), PLD 2008 Supreme Court 155 (Asmatullah Vs. Amanat Ullah through Legal Representatives), PLJ 2012 Lahore 70 (Fateh Ullah Vs. Noor Ahmed) and 2011

CLJ 13 (Ahmad Nawaz Khan Vs. Muhammad Jaffar Khan and others)” to argue that re-appraisal of evidence is not permissible under the law while hearing the revision petition under section 115 of the CPC.

5. I have heard the learned counsel for the parties at full length and also gone through the record minutely as well as the case law referred supra with their able assistance.

6. It is not a case of re-appraisal of evidence, rather the same is to be scrutinized that whether the law has rightly been applied by both the courts below and whether the interpretation by the Superior Courts has been taken into consideration or a wrong application of law and wrong interpretation has been made while deciding the suit and the appeal. This Court while hearing revision petition filed under section 115 of the CPC cannot blindly endorse the concurrent findings of fact recorded by two courts below, this Court can check that how concurrent findings have been procured.

7. As I have noted while noting the facts supra that the impugned mutation is of a sale by Mst. Allah Rakhi in favour of Mst. Akhtari Khanum, who is sister’s daughter of the seller. The plaintiff is also sister’s daughter of the seller and the pedigree table carved out in Para 2 of the plaint shows that Atta-Ullah the brother of plaintiff was alive but he has not been made party as plaintiff or defendant in the suit, whereas defendants No.1 to 3 have filed joint written statement and contested the suit. As per

the pleadings of plaintiff Mst. Allah Rakhi never appeared before the revenue officials for attestation of mutation. It is nowhere pleaded that the attestation of mutation was not in the knowledge of Mst. Allah Rakhi in her life time. Admittedly she remained alive after one year of attestation of mutation and it is also admitted that she never disputed the impugned mutation nor she challenged the same before any forum. When it is the position, the plaintiff becomes a third party to challenge that mutation, for which the plaintiff was required to plead with full details the grounds of attack permissible under the law to challenge a mutation, when the impugned mutation had otherwise been entered and attested in official capacity by the revenue officials, who attested the mutation. Then it was necessary that the revenue officials who attested the mutation should have been impleaded as defendants, as directly the proceedings conducted by the revenue officials have been challenged but none of the officials has been made party to the suit. When a mutation is challenged by a person on whose behalf it has been said that the same has been attested, while appearing in the witness box that person denied the same on oath, then onus to prove shifts upon the other side being beneficiary but in this case it is not the position, mutation is by Mst. Allah Rakhi who is maternal aunt of plaintiff as well as defendant No.1 in whose favour the mutation was attested and plaintiff has not opted to appear in the witness box, rather she produced her special attorney as PW-1.

His statement shows that the sale is based upon fraud and impersonation and with bad intention and without consideration and the revenue officials have also been maligned. It is also stated that 4/5 months before the death of Mst. Allah Rakhi he came to the plaintiff. In the cross-examination this witness stated that he was not present at the time of attestation of mutation, he was not present at the time of recording of statement of vendor. He has showed ignorance that Mst. Allah Rakhi affixed her thumb impression on the mutation. The possession of defendant No.1 has been admitted by this witness. The stress of learned counsel upon the statement of PW-2 to show that when this witness has denied his presence at the time of attestation of mutation, therefore, mutation is proved to be non existent. I do not agree with the learned counsel for the respondents. If any witness is won over on the basis of his statement no benefit can be given to the plaintiff. If fraud was committed, what was the necessity to cite PW-2 as a witness to the attestation of mutation. As I have noted supra that the plaintiff is a third party to the mutation, therefore, it was her duty to plead specifically and prove her case through confidence inspiring evidence. If she was able to shake the attestation of mutation through specific pleadings and cogent convincing evidence, only then it was a case of shifting of onus to the other party i.e. beneficiary of mutation. When the plaintiff herself failed to shake or make any dent in the event of entry and attestation of mutation when her

attorney has even not denied the thumb impression of the seller upon the impugned mutation, the findings of two courts below are result of misinterpretation of law and wrongly applying the interpretation of law by the superior courts upon the facts of this case. The case law referred to by the learned counsel for respondent No.1/plaintiff that this Court while exercising jurisdiction u/s 115 of the CPC cannot reinterpret the evidence, there is no cavil to this rule but it is equally important that this Court has to see that how the concurrent findings have been procured and further that as I have noted supra, it is not a case of reinterpretation of evidence, rather it is a case of correct application of law as well as interpretation of law by the superior courts. In this view of the matter, when the plaintiff failed to make any dent in the proceedings of attestation of mutation and when fraud has been alleged without impleading the revenue officials who entered and attested the mutation, the suit could not have been decreed. Moreover, DW-1 Muhammad Arif Zia who attested the mutation appeared and fully supported the valid attestation of mutation. In these circumstances, the impugned judgments & decrees passed by both the courts below are result of misapplication and misinterpretation of law.

8. In the light of what has been discussed above, this civil revision is accepted and the impugned judgments & decrees passed by the learned courts below are set aside. The result

would be the suit filed by respondent No.1/plaintiff shall stand dismissed.

(Amin-ud-Din Khan)
JUDGE

Qurban*

Approved for Reporting

Judge