

Stereo HCJDA 38  
**JUDGMENT SHEET.**  
**IN THE LAHORE HIGH COURT LAHORE**  
**JUDICIAL DEPARTMENT.**

**Muhammad Ishaque Vs. Addl. District Judge etc.**

**W.P. No. 30231/2014.**

**Date of hearing. 21.06.2016.**

Petitioners by: **Mr. Akbar Ali Shad, Advocate.**

Respondent by: **Malik Abdul Ghaffar, Advocate.**

**MUHAMMAD AMEER BHATTI-J,** By virtue of this constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has challenged the legality and validity of order dated 22.10.2014 passed by the learned Addl. District Judge, who while dismissing the revision petition of the petitioner maintained the order of the learned trial Court dated 18.12.2013, whereby his application under Section 12(2), C.P.C. was dismissed.

2. Brief facts of the case are that respondents No.3 to 7 had instituted a suit for declaration against petitioner challenging the transfer of land through gift from the father of parties alleging that same was obtained by practicing fraud and misrepresentation depriving them from their legitimate right of inheritance. The suit was contested by filing written statement by the defendant/petitioner wherein besides raising preliminary

objections, facts were also controverted. Astonishingly issues were never framed despite lapse of considerable time and then at one stage of proceedings, by virtue of an application, a decision of suit was sought on the basis of compromise arrived at between the parties. Record reveals that next date i.e. 26.01.2011 was fixed for filing reply and on the said date defendant/petitioner appeared in person alongwith his newly engaged counsel and made statement showing his willingness for passing decree in favour of the respondents and against him admitting the claim of the plaintiffs/respondents as correct. Thumb impression of the defendant/petitioner reflecting on the margin of the Court's order sheet alongwith signatures of learned counsel and CNIC number of defendant/petitioner were also obtained to prove the factum of his statement. Consequently on account of conceding statement of defendant/petitioner suit was decreed in favour of plaintiffs/respondents. Subsequently, on 19.12.2011 after about 11-months of said decree, the present petitioner/defendant filed an application under Section 12(2), C.P.C. for setting-aside the order and decree dated 26.01.2011 alleging that same was obtained by committing fraud inasmuch as there could be no justification for him to make the statement without gaining a benefit from compromise allegedly arrived at between the parties. Further alleged that the Reader of the Court had obtained his thumb impression on a blank paper and wrote the

statement on his behalf without his consent and the proceedings were not conducted by the learned Presiding Officer himself nor any certificate was given on footnote of proceeding sheet, which was the legal obligation of the learned trial Court if he was not found himself fit to record the proceedings.

3. On the other hand, the respondents/decreed holders in their reply controverted the factual position and claimed that the proceedings had been conducted in accordance with law by the Court considering free will of the defendant/petitioner and at this stage filing of this application amounts to sabotage/frustrate Court proceedings based on the statement of the defendant/petitioner, which was recorded by himself in absence of the decreed holders. Moreover neither any sort of fraud had been alleged nor could it be borne out from Court proceedings, therefore, the application under Section 12(2), C.P.C. was not maintainable and rightly dismissed by both the learned Courts below. Hence this petition is meritless and liable to a dismissal.

4. The learned trial Court after examining the record and considering the averments of pleadings concluded that since the Court record is under challenge, which apparently did not reflect any illegality or any sort of fraud, hence the application was not liable to be further processed and resultantly it was dismissed summarily. The revision petition preferred by the petitioner also met with the same fate. Hence this constitution petition.

5. Main stress of learned counsel for the petitioner is that it was the prime duty of learned trial Court to frame issues after receipt of written reply on behalf of respondents so that the parties could lead their evidence and by not doing so, the learned trial Court committed material illegality and irregularity in view of law laid down in case reported as *Mst. Zulaikhan Bibi through LRs and othrs v. Mst. Roshan Jan and others* 2011 SCMR 986, *Muhammad Iqbal through duly Authorized Attorney v. Muhammad Ahmed Ramzani and 2 others* (2015 CLC 396) wherein it was held that the application under Section 12(2), C.P.C. could not be dismissed summarily. He further contends that specific allegation with regard to the act of Reader of Court was leveled, who allegedly recorded statement of the defendant/petitioner against his wishes and this factual controversy could only be resolved unless opportunity to lead evidence was provided. Besides the note, as necessary under the law, had not been recorded by the learned Presiding Officer, therefore, the proceedings were otherwise not sustainable. Adds that the learned Courts below have not answered this specific allegation leveled in the application qua conduct of proceedings by the Reader. Further adds that after obtaining decree, respondents have not approached the Revenue hierarchy for review of mutation recorded in favour of petitioner/defendant on the basis of gift deed, till the filing of application under Section 12(2) C.P.C. by the petitioner. Lastly he prayed for the

remand of the case with a specific direction to the learned trial Court to frame issues and provide opportunity to the parties to lead their evidence in order to substantiate their stand taken in the application pro and contra.

6. On the other hand, learned counsel for respondents contends that it was not always necessary to frame issues in proceedings under Section 12(2), C.P.C., therefore, the learned Courts below have not committed any illegality and irregularity by not framing issues and recording evidence, as the petitioner had not alleged any fraud or misrepresentation against respondents/decree-holders. Further contends that the allegation of the petitioner that proceedings have been recorded by the Reader in absence of learned Presiding Officer, is not borne out from any part of the proceedings nor did he point-out any specific act to prove his contention. Since Court proceedings have the sanctity, hence recording of evidence was not necessary to refute the allegation being baseless. Thus the orders of learned Courts below are in consonance of principles of equity and law and application of judicious mind, therefore, the contention of learned counsel for petitioner has been rightly turned down by the learned Courts below. He placed reliance on Mst. Nasira Khatoon and another v. Mst. Aisha Bai and 12 others (2003 SCMR 1050), Anwr Hayat and 4 others v. Mst. Durre Samin and 4 others 2012 CLC 1536 (Peshawar), Abdul Rasheed and 7 others v. Nasrullah and 8 others 2010 YLR

309 (Karachi), *Riaz Ahmad (Rana Riaz Anjum) and another v. The Bank of Punjab* 2016 CLD 596 (Lahore), *Lahore Development Authority v. Firdous Steel Mills Pvt. Ltd.* (2010 SCMR 1097), *Mst. Zaitoon v. Mst. Rehmi through L.Rs.* 2005 MLD 978 (Lahore), *Muhammad Azeem and 3 others v. National Bank of Pakistan and 8 others* 2001 MLD 135 (Lahore), *Mrs. Shakila Zaidi through Attorney and 8 others v. Hammad Asif Dossani and others* 2011 CLC 1011 (Karachi), *Mehr Din through Legal Heirs v. Azizan and another* (1994 SCMR 1110) and *Muhammad Ramzan v. Muhammad Akbar Bhatti and others* 2013 CLC 1561 (Sindh).

7. I have heard the learned counsel for the parties and examined record of the case. Undeniably in the suit filed by the respondents against the petitioner, transfer of land-in-dispute on the basis of purported gift deed allegedly executed by father of the parties was challenged on the allegation of fraud and misrepresentation. During pendency of said suit, appearance of the petitioner to make the statement and putting his thumb impression on the margin of order sheet has undoubtedly a significant effect, which has been called-in-question by virtue of application under Section 12(2), C.P.C. by the petitioner with the assertion that it was obtained from the Court through fraud, therefore, justification given in application has been examined with the assistance of learned counsel for the parties wherein the petitioner took the stand that he was persuaded by his newly

engaged counsel that the respondents/plaintiffs intended to withdraw the suit on account of fear of its failure, therefore, he embossed his thumb mark on the margin of order sheet and Reader being collusive obtained the same on a blank paper; has no substance for the reason that the withdrawing party always put its thumb impression or signatures when the statement is made even with regard to any sort of development in the suit. Moreover when the plaintiffs/respondents had the intention to withdraw the suit then neither engagement of a new counsel was necessary on behalf of defendant nor obtaining his thumb impression on the margin of order sheet was justifiable whereas, the respondents/plaintiffs' presence was necessary, who undeniably were found absent from the scene, hence I feel no hesitation to hold that the averment of defendant/petitioner qua obtaining of his thumb impression by practicing fraud with collusion of Reader of the Court, has no substance/force, which being after thought was rightly discarded by the learned Courts below. If the respondents had any intention to withdraw their suit neither involvement of petitioner/defendant was required nor putting of his thumb impression on the margin of order sheet was indispensable. I am not persuaded with the assertion as alleged by the petitioner/defendant that new counsel was engaged to manage all these affairs.

8. Since record of Court did not reflect recording of statement of defendant/petitioner by the Reader and it is also

well settled law that sanctity is attached with Court proceedings and merely filing of affidavit by any party or even by learned counsel could not be considered sufficient unless procedural defect in the Court proceedings is not floating on the surface. Therefore, it is held that the statement had been recorded by the learned Presiding Officer himself, as apparent and reflecting from the proceedings in this regard. In this context I am fortified from the ratio decidendi laid down in a case reported as Fayyaz Hussain v. Akbar Hussain and others (2004 SMCR 964) wherein it was held:-

*“-----Arts. 129 (e)----Judicial proceedings-----Presumption of correctness is always in favour of judicial proceedings-----Credibility is attached to proceedings before a judicial forum----Strong and unimpeachable evidence is required to rebut such presumption”.*

Likewise in Muhamamd Ramzan v. Lahore Development Authority, Lahore (2002 SCMR 1336) it was observed as under:-

*-----Art. 91-----Judicial proceedings-----Strong presumption of correctness and sanctity of high order is always attached to judicial proceedings”.*

Mere assertion of the defendant/petitioner that Court's Reader had recorded his statement in Urdu and learned Presiding Officer subsequently recorded the order on the basis of statement in English language, is insufficient to conclude that there was any deficiency or illegality in the proceedings conducted by the learned trial Court. Mere recording of

statement in Urdu and order in English does not constitute a presumption that the proceedings were conducted by two different persons i.e. Reader and Presiding Officer, for the simple reason that the Courts always used to record statements of the parties in Urdu language. So that the maker of it could understand it easily and this also leaves no room for the maker to raise any objection at subsequent stage taking the excuse viz 'he being illiterate could not understand the tenor of his statement recorded by the Court'. Anyhow, this fact being related to the Court proceedings did not constitute any fraud necessitating leading any evidence for which framing of issue was necessary. No doubt if disputed question of facts relating to the parties irrespective of Court proceedings have been raised, not only framing of issues essential but recording of evidence is also obligatory to prove the factual dispute raised in the application under Section 12(2), C.P.C. but it is not imperative on all applications to hold the trial because the application under Section 12(2) C.P.C. can be dismissed on the basis of pleadings of the parties simpliciter as the facts of the case may warrant.

9. For what has been discussed above, I reach on the conclusion that the orders/judgments of both the learned Courts below are in consonance with the law laid down by Hon'ble Supreme Court and this Court and there is no infirmity in the orders impugned persuading this Court to

exercise the extraordinary jurisdiction provided under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, hence this petition fails and stands **dismissed** with no order as to cost.

**(Muhammad Ameer Bhatti)**  
**Judge.**

**Announced in open Court on 28.06.2016.**

**JUDGE.**