

Stereo.HCJDA 38.
Judgment Sheet
IN THE LAHORE HIGH COURT
RAWALPINDI BENCH, RAWALPINDI
JUDICIAL DEPARTMENT

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CIVIL REVISION NO.672-D of 2011

MUHAMMAD MUNAWAR

Versus

ABDUL RAZAQ and 6 Others

JUDGMENT

Dates of hearing: 24.04.2017 & 25.04.2017

Petitioner by: Sh. Zamir Hussain, Advocate.

Respondents No.1&2 by: Mr. Saeed Yousaf Khan, Advocate.

Respondents No.3 & 4 by: Mr. Nadeem Akhtar Bhatti,
Assistant Advocate General.

Respondents No.5 to 7 by: Nemo.

MIRZA VIQAS RAUF, J. The petitioner namely Muhammad Munawar instituted a suit for declaration and permanent injunction averring therein that he alongwith respondents No.5 to 7 is the owner of the suit land which was purchased through mutation No.1013 from Nadir Khan who was ostensible owner of the same by way of mutation No.831 executed in his favour by respondents No.1 & 2 in lieu of sale consideration of Rs.50,000/-. As per averments contained in the plaint, after purchase of the land, petitioner as well as respondents No.5 to 7 raised construction on the same but on account of their ulterior motive, respondents No.1 & 2 moved an application for cancellation of said mutations as well as mutations Nos.829 and 830 to the revenue hierarchy, which was illegally

accepted by the District Officer (Revenue) vide his order dated 22nd of January, 2004 and mutation No.830 was reviewed. By way of suit, petitioner sought a declaration of title and decree to the effect that order passed by the District Officer (Revenue) reviewing the mutation is ineffective upon his rights. The respondents No.1 & 2, being the contesting defendants submitted their joint written statement, wherein the assertions contained in the plaint were controverted. From the divergent pleadings of the parties, following multiple issues were framed :-

ISSUES

1. Whether the plaintiff has no cause of action to file this suit?
OPD
2. Whether the suit is not maintainable in its present form? OPD
3. Whether the plaintiff and defendants No.5 to 7 are owners in possession of the suit property? OPP
4. Whether the order of the District Officer (Rev.) dated: 22.01.2004 for review of mutation No.830 is void and ineffective on plaintiff's rights? OPP
5. Whether the plaintiff is entitled to the decree of permanent injunction as prayed for? OPP
6. Relief.

After framing of issues both the parties were directed to produce their evidence. The petitioner as well as respondents No.1 & 2 produced their respective evidence, oral as well as documentary pro and contra to the issues and on completion of the same, suit was dismissed with costs vide judgment and decree dated 08th of September, 2010. The petitioner, while being dissatisfied with the said judgment and decree though preferred an appeal but the appeal was also dismissed vide judgment and decree dated 02nd of July, 2011 by the learned District Judge, Jhelum leaving the parties to bear their own costs, hence this petition.

2. Learned counsel for the petitioner submitted that the petitioner purchased the suit land alongwith respondents No.5 to 7 from Nadir Khan through sale mutation No.1013. Learned counsel added that Nadir Khan was ostensible owner, who purchased the property from respondents No.1 & 2 through mutation No.831 dated 31st of January, 1985. It is contended that respondents No.1 & 2 moved a frivolous application after the lapse of considerable period to the revenue hierarchy for review of mutations, including the mutation in favour of the petitioner, which was allowed and mutation No.830 was cancelled. Learned counsel maintained that though mutation in favour of petitioner was not interfered with but the exercise of jurisdiction by the revenue hierarchy is unwarranted. Learned counsel further contended that sale in favour of petitioner was duly proved but both the courts below, while misreading the available evidence non-suited the petitioner on extraneous grounds. Learned counsel emphatically argued that concurrent findings of the courts below are not sustainable, being the result of inapplication of judicious mind to the facts of the case.

3. Conversely, learned counsel for respondents No.1 & 2, while resisting the instant petition submitted that concurrent findings are based on proper appraisal of evidence which require no interference in exercise of revisional jurisdiction. Learned counsel contended that the petitioner alongwith other vendees have practiced fraud and mutation in their favour is having no lawful backing. Learned counsel maintained that no evidence was led by the petitioner to prove the sale transaction and he was rightly non-suited by both the courts below.

4. I have heard learned counsels for both the sides at considerable length and also perused the record in order to properly appreciate their respective contentions.

5. It is the claim of petitioner that he alongwith respondents No.5 to 7 purchased the suit land from one Nadir Khan by way of

mutation No.1013 (Exhibit-P2) which was sanctioned on 26th of June, 1994. As per available record, the vendor namely Nadir Khan purchased the suit land from respondents No.1 & 2 through sale mutation No.831 dated 31st of January, 1985 which was tendered in evidence as Exhibit-P2.

6. Record reveals that initially the suit land was owned by Muhammad Shafi, the predecessor-in-interest of respondents No.1 & 2 and on his death, the land devolved upon Qaim Din by way of mutation No.829 dated 29th of January, 1985. In pursuance to the said mutation on the death of Qaim Din, the land devolved upon respondents No.1 & 2 by way of mutation of inheritance No.830 (Exhibit-P1). On attaining the proprietary rights, respondents No.1 & 2 purportedly sold the same to Nadir Khan i.e. the vendor of petitioner by way of mutation No.831 (Exhibit-P2). The respondents No.1 & 2, while sensing a threat to their rights moved an application to the District Officer (Revenue), Jhelum for review/cancellation of mutations No.829, 830 and 831 and on the said application the District Officer (Revenue) by way of his order dated 22nd of January, 2004 cancelled the mutation No.830. While going through the application moved by respondents No.1 & 2 which was tendered in evidence it reveals that application was moved on the ground that Qaim Din predecessor-in-interest of the respondents was untraceable since 1979 and mutations of inheritance bearing No.829 & 830 as well as sale mutations bearing No.831 and 1013 were got sanctioned by Nadir Khan, while practicing fraud and the mutations were sanctioned in connivance with the revenue staff. Order dated 22nd of January, 2004 passed by the District Officer (Revenue), Jhelum clearly depicts that on the said application, only mutation No.830 was reviewed on the ground that said mutation of inheritance should have been sanctioned in favour of respondents No.1 & 2, being legal heirs of Qaim Din on the basis that he being untraceable for the last more than seven years, instead of being dead. It is thus clearly

evident that no interference was made either to mutation No.831 or 1013.

7. There is yet another important aspect, the exercise of jurisdiction by the District Officer (Revenue), Jhelum was highly unwarranted and uncalled for because when a person questions the *vires* of a mutation or long standing entries in the revenue record on the ground of fraud, he has to file a suit for declaration before the Civil Court as is required under Section 53 of The Land Revenue Act, 1967 which reads as under :-

“53. Suit for declaratory decrees by persons aggrieved by an entry in a record.-- If any person considers himself aggrieved by an entry in a record-of-rights or in a periodical record as to any right of which he is in possession, he may institute a suit for a declaration of his right under Chapter VI of the Specific Relief Act, 1877 (Act I of 1877).”

The revenue authorities are thus only competent to make the correction of any entry in a record of rights, periodical record or register of mutations, if the wrong entry is the outcome of any omission or inadvertence, as is envisaged in Section 172(2)(vi) of the Act *ibid*. If a person considers himself aggrieved by any entry in a record of rights or in a periodical record and he is of the view that such entries are the product of fraud, which are even longstanding then his remedy lies in filing a civil suit as per mandate of Section 53 *ibid*. Reference in this respect can be made to **“*RASTA MAL KHAN and others versus NABI SARWAR KHAN and others*” (1996 SCMR 78)** wherein the Hon’ble Supreme Court of Pakistan held as under:-

“10. Regarding bar of jurisdiction of the Civil Court under section 172, subsection (2), clause VI of the West Pakistan Land Revenue Act, 1967 it may be pointed out that exclusion of jurisdiction of Civil Court relates to the correction of the entries made by the Revenue Officer in

performance of his duty without touching the right of the persons in the land, but whenever such entries interferes with the rights of a person in the land record in the Record of Rights, and such person feels aggrieved, for correction of such entries he has to approach Civil Court for declaration under section 53 of the Act or in other words under section 42 of the Specific Relief Act both the relief available being of the same nature and identical. The dispute herein pertained to the nature of the transactions in the suits for pre-emption based on the impugned mutation. The suits were therefore rightly held triable by the Civil Court.”

Even this Court in the case of “*ALLAH RAKHA and another versus MEMBER (REVENUE), BOARD OF REVENUE, PUNJAB, LAHORE and 22nd others*” (2004 MLD 597) has also adopted the same principles.

8. The petitioner in his plaint though has specifically asserted that respondents No.1 & 2 sold the suit land to Nadir Khan after receipt of sale consideration of Rs.50,000/- by way of mutation No.831 and on the same day he transferred the same to the petitioner and respondents No.5 to 7 through mutation No.1013 but this fact was not specifically controverted by respondents No.1 & 2 in their written statement, rather it was pleaded that respondent No.2 was minor at the relevant time and he was not competent to enter into any sale transaction. Law is well settled that every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleadings of the defendant, shall be taken to be admitted except against a person under disability as is provided under Order VIII Rule 5 of The Code of Civil Procedure (V of 1908).

9. In order to prove the sale transaction the petitioner examined Abdul Hameed Lambardar, who appeared as PW1 and fully supported the case of the petitioner. The petitioner himself appeared as PW3 and reiterated the stance taken in the plaint. On the contrary, respondents No.1 & 2 did not appear in the witness box, rather on

their behalf Ghazanfar Ali, being special attorney appeared as DW2. The special power of attorney tendered by him in the evidence as Exhibit-D1, reflects that he was appointed as special attorney by one Saima Naz, who is purportedly general attorney of respondents No.1 & 2. Non-appearance by respondents No.1 & 2 in the witness box under the circumstances is sufficient to give rise a negative presumption of withholding of best piece of evidence in terms of Article 129(g) of The Qanun-e-Shahadat Order, 1984.

10. Record is indicative of the fact that initially mutation No.831 was questioned by way of suit for pre-emption instituted by wife and daughters of respondent No.1 including Saima Naz, who is now having a general attorney on his behalf and the suit was later on withdrawn vide order dated 14th of March, 1988 as is evident from Exhibit-P13. It is obvious from the record that despite sanctioning of mutation No.831 in the year 1985, the respondents remained mum for a considerable period and after being unsuccessful in the suit for pre-emption moved the application for cancellation of mutations before the District Officer (Revenue) in the year 2003 without any explanation to this effect.

11. While examining the propriety of the judgments under scrutiny passed by the courts below, it is observed that petitioner was non-suited on the sole ground that mutation of inheritance in favour of respondents No.1 & 2 was sanctioned on the false pretext, as at the relevant time Qaim Din, the predecessor-in-interest of respondents No.1 & 2 was not dead but untraceable. To my mind both the courts below, while non-suited the petitioner have grossly misread the material pieces of evidence as noted hereinabove and concurrent findings are the outcome of misconception. The respondents No.1 & 2 being the legal heirs of Qaim Din, in any case were entitled to inherit the suit land and this was the reason that even on their application only mutation No.830 was reviewed to the extent that instead of event of death, reason of untraceable was inserted.

12. There is no cavil that revisional jurisdiction is always exercised with great care and caution, while interfering with the concurrent findings of the courts below but such findings are neither sacrosanct nor it is an inflexible rule that despite observing material flaws, the revisional court will abdicate to exercise its jurisdiction. The judgment of both the learned courts below are not based on proper appraisal of evidence and the learned Civil Senior Judge, while dismissing the suit filed by the petitioner has grossly mis-read the evidence as already noted above. The learned lower Appellate Court, while maintaining the judgment of learned Senior Civil Judge also committed a procedural defect. This amounts to a material irregularity on the part of the learned courts below. Thus this Court under Section 115 of The Code of Civil Procedure (V of 1908) is obliged and fully competent to correct such error in exercise of its revisional jurisdiction contemplated under the said provision of law. When once it is established on the record that concurrent findings are fraught with legal infirmities hedged in Section 115 of the Code *ibid*, it becomes the boudan duty of court exercising revisional powers to curb and stifle such illegalities and material irregularities. Reliance in this respect if needed, can be placed on “*Malik MUHAMMAD KHAQAN versus TRUSTEES OF THE PORT OF KARACHI (KPT) and another*” (2008 SCMR 428) and “*IMAM DIN and 4 others versus BASHIR AHMED and 10 others*” (PLD 2005 Supreme Court 418).

13. The nutshell of above discussion is that both the courts below have acted in an illegal and unlawful manner, while passing the impugned judgments and decrees which are hereby set aside and the instant petition is **accepted**. As a consequence thereof, suit filed by the petitioner/plaintiff is **decreed** with no order as to costs.

(MIRZA VIQAS RAUF)
JUDGE

Shahbaz Ali*

APPROVED FOR REPORTING