

JUDGMENT SHEET

IN THE LAHORE HIGH COURT AT LAHORE.
(JUDICIAL DEPARTMENT)

C.R.No.3287 of 2010.

Muhammad Ramzan
Vs.
Muhammad Bashir and another

JUDGMENT

DATE OF HEARING: 12-10-2017.
PETITIONER BY: Mr. Muhammad Ikram Sheikh,
Advocate.
RESPONDENTS BY: M/s Naveed Shehryar Sheikh &
Ms. Unaiza Siddiqui, Advocate.

AMIN-UD-DIN KHAN, J. Through this civil revision the petitioner, who is one of the vendees-defendants, has challenged the judgment & decree dated 09.04.2010 passed by the learned Additional District Judge, Mankera whereby the appeal filed by the respondent/plaintiff was accepted, by way of which, the judgment & decree dated 18.06.2008 passed by the learned Civil Judge 1st Class, Mankera dismissing the suit for pre-emption were set aside.

2. Learned counsel for the petitioner argues that the well-reasoned findings of learned trial court whereby the suit for pre-emption filed by the respondent/plaintiff was dismissed have been reversed by the learned first appellate court, therefore, prays for setting aside of the judgment & decree of learned

appellate court and restoration of judgment & decree dated 18.06.2008 passed by the learned trial court. Relies upon “MUHAMMAD MAL KHAN versus ALLAH YAR KHAN” (PLJ 2001 SC 1378) to argue that the plaintiff/respondent had to produce the complete evidence of Talb-e-Muwathibat.

3. On the other hand, learned counsel for the respondent/plaintiff has raised the legal objection that there were two vendees-defendants and one is the petitioner Muhammad Ramzan, whereas the other vendee was Riaz ul Haq who compromised with the plaintiff/appellant on 23.07.2009 during the pendency of appeal and he made a statement that he has no objection if the appeal is accepted to his extent. Learned counsel has relied upon “NOOR and others versus Mst. SATTAN through Legal Representatives and others” (PLD 2013 Lahore 30), “MEHMOOD AHMAD and 12 others versus AZIZ and 2 others” (1997 CLC 1163) and “SHER MUHAMMAD vs. MUHAMMADI AND OTHERS” (1981 Law Notes (N.U.C.) (S.C.) 214).

4. I have heard the learned counsel for the parties at full length and also gone through the record minutely with their able assistance.

5. The petitioner has not appended the complete documentary evidence along with the instant revision petition. The revision petitioner was bound under the law to append with this civil revision the certified copies of all the documents available on the file as the same are the part of trial court record.

As per learned counsel for the respondent/plaintiff the transaction through the impugned mutation is not divisible when the compromise with one of the vendees was recorded by the learned first appellate court on 23.07.2009 which was not challenged any further by the present petitioner i.e. the other vendee, therefore, the judgment & decree passed by the learned first appellate court dated 09.04.2010 cannot be assailed by the present petitioner in the light of the judgments referred supra by the learned counsel for the respondent/plaintiff, which I have gone through.

6. The copy of impugned mutation has not been appended with the revision petition, therefore, the matter as argued by the learned counsel for the respondent/plaintiff that the transaction is indivisible, which cannot be disbelieved when due to the fatal defect committed by the petitioner qua non appending the copy of impugned mutation which was produced in evidence as Exh.P-1. From the perusal of learned trial court judgment it appears that the mutations were produced from Exh.P-8 to Exh.P-11. Even the statement of learned counsel through which the said mutation as well as the other documents which are up to Exh.P-15 were produced have also not been appended with this civil revision. Therefore, in the light of judgment “Mst. BANORI versus JILANI through Legal Heirs and others” (PLD 2010 Supreme Court 1186) this revision petition is liable to be dismissed on this score only.

7. In this view of the matter, when the transaction is not divisible and one of the vendees has admitted the claim of plaintiff/respondent of pre-emption and suit to the extent of one of the vendees was decreed on the basis of compromise and the petitioner who is the other vendee has challenged the judgment of learned appellate court through this revision petition, the other vendee has been arrayed as respondent No.2 in the instant revision petition, therefore, this revision petition cannot be allowed on the basis of a fatal defect in filing the revision as well as the legal infirmity attached to the petition in the light of case law cited by the learned counsel for the respondent/plaintiff.

8. In view of the above discussion, this civil revision being not maintainable stands dismissed.

(Amin-ud-Din Khan)
Judge

Qurban*

Approved for Reporting

Judge