

Stereo. H C J D A 38.
JUDGMENT SHEET
IN THE LAHORE HIGH COURT
MULTAN BENCH MULTAN
JUDICIAL DEPARTMENT

Civil Revision No.1213-D/2003
Mst. Anwar Mai **Versus** Ghulam Sarwar etc.

J U D G M E N T

Date of Hearing:	08.09.2021
Petitioner by:	Mr. Arif Tareen, Advocate.
Respondents by:	Haji Muhammad Tariq Aziz Khokhar, Advocate.
Research Assistance by:	Mr. Muhammad Shafiq, Civil Judge/ Research Officer. Mr. Fakhar Bashir, Civil Judge/ Research Officer.

Anwaar Hussain, J. Precise facts of the case are that on 22.01.1997, the petitioner filed a suit bearing No.57/1997 for declaration and in alternate the specific performance (“**First Suit**”), alleging that her father, namely, Bachaya son of Naseer, defendant No.1 therein, was owner of land measuring 58 *kanals* and 01 *marla* who sold land measuring 11 *kanals* and 12 *marlas*, being 1/5th share of the said property to her, for consideration of Rs.25,000/-, but due to trust and fiduciary relationship between the parties, neither the sale agreement nor the receipt was reduced in writing; possession was given to her and the respondents and husband of the petitioner used to cultivate the land on her behalf. However, in breach of the trust, the respondents, who happen to be real brothers of the petitioner, got mutated the whole land of father of the parties in their favour through *tamleek* mutation No.173 dated 20.08.1985 (“**Impugned Mutation**”) by using undue influence upon their father, which constrained the petitioner to institute the First Suit. During the pendency of the First Suit, father of the petitioner and the respondents died and the petitioner also filed another suit bearing No.4/1999 (“**Second Suit**”) for declaration with consequential relief and cancellation of the Impugned Mutation against the respondents with the averments that

she is entitled to get 1/5th, share out of the property left by her father Bachaya in accordance with *Shariat-e-Muhammadi*; the Impugned Mutation in favour of the respondents is against law, fact and inoperative against the rights of petitioner; the Impugned Mutation was got sanctioned with the intention to deprive the petitioner from her legal and *shari* share from her deceased father's property. She prayed that the Impugned Mutation be cancelled and the respondents be directed not to interfere in the lawful possession of the petitioner.

2. The respondents contested the suits by filing written statements. Issues were framed and evidence led by the parties was recorded. Thereafter, learned trial court proceeded to dismiss the First Suit while the Second Suit was decreed in favour of the petitioner. Both sides preferred appeals. Learned lower appellate court, *vide* judgment dated 20.02.2002, accepted the appeals, reframed issues and remanded the case to learned trial court for decision afresh. In post-remand proceedings, both the suits were consolidated as directed by the appellate court, issues were accordingly framed and parties were put to trial. Learned trial court dismissed both the suits *vide* judgment and decree dated 21.02.2003. Feeling aggrieved, the petitioner preferred appeals, which were also dismissed by learned lower appellate court *vide* judgment and decree dated 01.11.2003. Hence, this Civil Revision, arising out of the Second Suit as well as Civil Revision No.237-D/2004, arising out of the First Suit were filed. The latter was dismissed for non-prosecution, *vide* order dated 24.05.2017, but no application for restoration thereof has been filed till date.

3. Learned counsel for the petitioner, *inter alia*, contends that learned courts below have erred in relying upon the written statement filed by the respondents in the First Suit of the petitioner against her father and the present respondents, which statement was never signed by his father on his own and hence, cannot constitute an admission on part of the deceased father of the parties regarding the Impugned Mutation in favour of the respondents. While relying upon Mst.

Gohar Khanum and others v. Mst. Jamila Jan and others (2014 SCMR 801), he submits that the petitioner cannot be deprived from her lawful share in the property left by her deceased father Bachaya as no limitation runs in the matters of inheritance. Prays that the impugned judgments and decrees be set aside and the Second Suit of the petitioner be decreed as prayed for by allowing the instant Civil Revision.

4. Conversely, learned counsel for the respondents opposes this Civil Revision and fully supports the impugned judgments and decrees while arguing that the stance taken by the petitioner in both the suits is diagonally opposed and hence, cannot be relied upon.

5. Arguments heard. Record perused.

6. There is no cavil to the proposition that in an overwhelmingly patriarchal society as ours, there is a wide spread social practice to deprive the females from their legal and *shari* share in inheritance, which the superior courts have always deprecated. Such deprivation is generally effected through instrument such as gift/*tamleek* and mutations sanctioned in pursuance thereof. Honourable Supreme Court of Pakistan in a recent judgment has held such agreements to be against the public policy. Reference is made to Farhan Aslam and others v. Mst. Nuzba Shaheen and another (2021 SCMR 179). The agreements and/or contracts which the honourable Supreme Court has held to be against the public policy are those which are purportedly entered into or executed between the male legal heirs and the female legal heirs to deprive the latter from their right to inherited property by surrendering their rights. Such agreements are generally result of exploitation, emotional or otherwise of females which takes away element of free consent from such contracts. Another category of such agreements and/or contracts is one where male legal heirs claim to be donees of the inherited property from the predecessor-in-interest to the exclusion of the female legal heirs and such transactions come to surface either before or after the

demise of the predecessor-in-interest of the parties and is mostly result of exercise of undue influence, fraud or misrepresentation committed by the donees/beneficiaries. However, every case has its own peculiar facts and circumstances, and the same requires proper analysis and adjudication. The instant case stands poles apart from such categories of cases where the females are deprived of by the male family members by committing some sort of fraud and undue influence over them or their predecessor-in-interest as the petitioner herself, prior to the demise of her father, had laid claim of 11 *kanals*, 12 *marlas* forming part of the suit property against the father and the respondents, on the basis of purported oral sale by the father in her favour, and in this regard, arrayed the father as defendant No.1 in the First Suit. This part of suit property is exactly the same share i.e., 1/5th of the suit property, which she later claimed as her share in inheritance forming subject matter of the Second Suit. Perusal of evidence, both pre-remand and post-remand proceedings, brings forth glaring and stark contradictions on the surface, which have been duly analysed and appreciated by both learned courts below. These contradictions, *inter alia*, relates to date of knowledge of the Impugned Mutation and possession of the property on the basis of purported sale by the father of the parties in favour of the petitioner. The petitioner in her First Suit stated as under:

”2۔ یہ کہ مدعا علیہ نمبر 1 نے عرصہ تقریباً 11/12 سال قبل مدعیہ کے ہاتھ باقرار زبانی اراضی متدعوئیہ بالعوض بدل جائز بیع کر دی اور سالم زر بیع اس سے وصول کر کے قبضہ اراضی بھی اسے منتقل کر دیا جس پر وہ بطور مالک قابض و متصرف رہی ہے۔“

(Emphasis provided)

In post-remand proceedings, while being cross-examined, the petitioner as PW-1, on oath, stated as under:

”سودا کے وقت میرے والد نے قبضہ نہ دیا تھا۔“

(Emphasis provided)

Similarly, as regards the knowledge of date of the Impugned Mutation, in the First Suit the petitioner stated as under:

”...ایک ہفتہ قبل تنصیب ٹیوب ویل کی بابت فریقین کے مابین تنازعہ پیدا ہوا تو پٹواری حلقہ سے کاغذات اراضی کے پڑتال اور حصول نقول کی ضرورت لاحق ہوئی جس پر انکشاف ہوا کہ مدعا علیہم نمبر 2، 3 نے مدعیہ اور مدعا علیہ نمبر 1 کے اعتماد کو ٹھیس پہنچاتے ہوئے اراضی سالم اپنے نام منتقل کرائی اور اس طرح مدعیہ کو اس کے حقوق سے محروم کرنے کی جسارت کا ارتکاب کیا۔“

(Emphasis provided)

Whereas while being cross examined she stated that;

”جب میرے والد نے مدعی علیہم کے نام انتقال کرایا تو مجھے اس کے آٹھویں دن کے بعد پتہ لگ گیا تھا کہ میرے والد نے مدعا علیہم کے نام انتقال تملیک کرا دیا ہے مجھے پٹواری نے اس انتقال کے بارے میں بتایا تھا کہ تمہارا باپ اپنی زمین بیٹوں کو دیا آیا ہے۔“

(Emphasis provided)

PW.2 Manzoor Ahmed, who is husband of the petitioner, deposed as under:

”جب ہم ٹیوب ویل لگوانے تو ہمیں معلوم ہوا کہ غلام سرور اور نور محمد نے زمین متدعو علیہ بذریعہ تملیک اپنے نام دھوکہ دہی سے کرائی۔ بعد ازاں میرے سسر اور میری بیوی کے والد کا انتقال ہوا جس کیلئے میری بیوی نے دعویٰ برائے حصہ شرعی جائیداد کیلئے کیا۔“

(Emphasis provided)

In cross-examination, PW.2 deposed as under:

”ہم نے سال 1985 میں علم ہو گیا تھا کہ اللہ بچایا نے اراضی متدعو علیہم کو تملیک کر دی ہے۔ ہم نے اس انتقال کے خلاف کوئی چارہ جوئی محکمہ مال میں نہ کی تھی۔ بلکہ دعویٰ جات زیر سماعت دائر کر دیا تھا۔ ہم نے سودا کی بابت کوئی ریپٹ پٹواری کے پاس درج نہ کرائی تھی۔ گواہ نے خود کہا کہ مدعا علیہم زور آور ہیں ہمیں راستہ سے بھی نہ گزرنے دیتے ہیں۔ 1985 سے لے کر آج تک مدعیہ نے یا اس کی طرف سے میں نے اراضی کاشت نہ کی ہے۔“

(Emphasis provided)

In her First Suit, the petitioner categorically stated that she came to know about the Impugned Mutation based on *tamleek* a week before filing of the First Suit when a dispute on installation of tubewell arose, whereas PW.2 made following statement:

”ٹیوب ویل کا بھی کوئی جھگڑا نہ تھا۔ پھر اپنے کونسل کی مداخلت پر کہا کہ ٹیوب ویل کا جھگڑا تھا۔“

(Emphasis provided)

7. Above referred contradictions in addition to those highlighted by learned courts below while appreciating the evidence on record indicate that the petitioner's statement is not trustworthy. Contradiction is the act of saying something that is opposite or very different in meaning to something else that is said earlier and the same come in the way of inspiring confidence about credibility and veracity of testimony of a witness. The contradictions referred above are not minor discrepancies on trivial issues but go to the root of the matter and shake the basic stance of the petitioner. When the entire evidence of the petitioner side in both suits is read as a whole, it appears that the ring of truth is conspicuously missing on account of above-discussed glaring contradictions. The case of the petitioner squarely falls under the *maxim* **Allegans Contraria Non Est Audiendus** (A person who alleges things contradictory to each other is not to be heard) disentitling the petitioner from any relief.

8. Contrary to the stance of the petitioner and submissions made on her behalf during the course of arguments, there is sufficient and cogent evidence to show that the Impugned Mutation, on the basis of *tamleek*, was legally made by the father of the petitioner and the respondents, and the same was never objected to by the father during his life time. Presence of the father of the parties during the proceedings of the First Suit before the trial court is also not denied by the PWs and hence, the submissions and stance that he was not well is also not inspiring confidence, more so when the petitioner during cross examination admitted that her late father was cultivating the land himself. In fact, good health of father of the parties is also admitted by PW.2 while being cross-examined. Regarding health condition of Bachaya, PW.1 stated as under:

”جب میں نے پہلا دعویٰ کیا تھا تو میرا باپ عدالت میں پیش ہوا تھا وہ اس قابل تھا کہ
اینا دفاع کر سکتا تھا۔“

(Emphasis provided)

Whereas PW.2 described health of Bachaya in the following words:

”میں نے اپنے پہلے بیان میں یہ بھی کہا تھا کہ جب بجایا نے انتقال بحق مدعا علیہم نمبر 1،2،3 کرایا اس وقت ٹھیک ٹھاک تھا پھر کہا بیمار تھا جب مدعا علیہم نمبر 1 نے اپنے پسران مدعا علیہم نمبر 2،3 کو اراضی منتقل کر دی تو ہم نے گلہ کیا اور پھر اس کی زندگی میں مقدمہ دائر کر دیا۔“

(Emphasis provided)

The fact that the deceased donor himself defended the Impugned Mutation through his presence before learned trial court also negates the stance of the petitioner that some sort of influence was exercised upon him by the respondents.

9. In view of the above, reliance on Gohar Khanum supra is of no help to the petitioner as the facts in both the cases are clearly distinguishable. In Gohar Khanum supra, it was the case where the petitioner therein was excluded from the mutation of inheritance after the demise of her father whereas in the instant case, the Impugned Mutation is based on a *tamleek* effected by the father during his life time in the year 1985, which was challenged after a gap of 12 years through First Suit and the father defended the same.

10. It is relevant to point out that Impugned Mutation is dated 20.08.1985 and both PW-1 and PW-2 admit that they came to know about the same, through the *halqa patwari*, within 7 to 8 days after the same was sanctioned and the suits were instituted after 12 years. Validity of the Impugned Mutation has been challenged, by filing a declaratory suit, beyond the period of six years provided under Article 120 of the Limitation Act, 1908 and hence, was hopelessly barred by time and on this ground alone, concurrent findings of facts of learned courts below merit no interference. Reference is made to Noor Bibi and 6 others v. Fazal Hussain and others (1998 SCMR 230).

11. This takes me to the kernel of the matter, which is the effect of filing of First Suit over the Second Suit. The First Suit was dismissed along with the Second Suit through Impugned Consolidated Judgment by learned trial court, which was upheld by the Impugned Consolidated Judgment and Decree of learned appellate court below and the Civil Revision arising out of the First Suit has been

admittedly dismissed for non-prosecution. No effort has been made to get it restored and hence, same has attained finality, which fact alone renders the Second Suit incompetent and not maintainable inasmuch as in the First Suit, if the Impugned Mutation had not been found to be illegal and the claim of specific performance of oral agreement to sell of part of the suit property had been failed, no question of inheritance of any estate as legal heir arises, where no estate had been left by the deceased father of the parties, who during his life time effected the *tamleek* in favour of the respondents and upon challenge by the petitioner through First Suit, the father himself defended the same by attending the trial court.

12. Both learned courts below have analysed and appreciated the evidence in detail and hence, reached a just conclusion which does not merit interference in revisional jurisdiction by this Court.

13. In the light of what has been discussed above, this civil revision has no substance. The same is accordingly **dismissed**.

(ANWAAR HUSSAIN)

Judge

Approved for reporting.

Judge

Akram