

IN THE COURT OF MANZAR HAYAT KHOKHAR
SENIOR CIVIL JUDGE (CIVIL DIVISION), JHELUM

Civil suit.....56/2011-19
Date of institution.....08.09.2011
Date of decision.....04.05.2023

1. Shafqaat Ahmad son of Abdul Rahim:
2. Yousaf Rahim son of Abdul Rahim:
3. Barkat Ahmad son of Abdul Rahim:
son of Safooran Begum deceased, Khokhar by caste,
resident of Baigpur, Tehsil & Distt. Jhelum. (Plaintiffs)

Versus:

1. Sughran Begum widow of Abdul Aziz:
2. Babar Aziz son of Abdul Aziz:
3. Zahid Mehmood son of Abdul Aziz:
4. Sajid Mehmood son of Abdul Aziz:
5. Amir Shahzad minor son of Abdul Aziz through
defendant No.1:
6. Ms. Nazia daughter of Abdul Aziz:
7. Ms. Maria daughter of Abdul Aziz
8. Ms. Shazia daughter of Abdul Aziz:
9. Ms. Iffat daughter of Abdul Aziz:
- 10-A. Saghir Ahmad son of Muhammad Sharif:
- 10-B. Akhlaq Ahmad son of Muhammad Sharif:
- 10-C. Sajjad Ahmad son of Muhammad Sharif:
- 10-D. Sheraz Ahmad son of Muhammad Sharif:
- 10-E. Aftab Ahmad son of Muhammad Sharif:
- 10-F. Ms. Rehana Kouser daughter of Muhammad Sharif:
- 10-G. Ms. Sajida Kouser daughter of Muhammad Sharif:
residents of Baigpur, Tehsil & Distt. Jhelum:
11. Tehsildar Jhelum:
12. Sub Registrar, Jhelum:
13. Zubaida Bibi wife of Bashir Ahmad, r/o House
No.292, Street No.70 Sector G8/5, Islamabad:
14. Zahida Bibi wife of Nisar Ahmad, resident of
Sanghoi, Tehsil & Distt. Jhelum:

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15. Nadia Shafqat wife of Muhammad Younas, r/o 54 Roy craft Ave Barking 1G11 London, UK:
16. Imtiaz Ahmad son of Safooran Begum, resident of Baigpur, Tehsil & Distt. Jhelum:
17. Mst. Nusrat Iftikhar widow:
18. Omair Ahmad son of Iftikhar Ahmad:
19. Waqas Ahmad son of Iftikhar Ahmad:
20. Mohsin Ahmad son of Iftikhar Ahmad:
21. Ms. Shawana Iftikhar daughter of Iftikhar Ahmad:
22. Ms. Tayyaba Iftikhar daughter of Iftikhar Ahmad:
23. Ms. Rehana Iftikhar daughter of Iftikhar Ahmad, residents of 12 Mont eagle Ave Barking Essey 1GII 8 PQ UK.

SUIT FOR DECLARATION ALONG WITH PERMANENT & MANDATORY INJUNCTION.

JUDGMENT:

It is pertinent to mention here that instant suit was received by way of remand order dated 03.10.2019 passed by the court of Mr. Muhammad Akmal Khan, the then learned District & Sessions Judge, Jhelum.

2. Concisely, necessary for disposal of the instant case, are that Mst. Safooran Bibi breathed her last and plaintiffs along with defendants No.13 to 16 are her legal heirs who have no adverse interest; that defendant No.10 has also died and defendants No.10-A to 10-H and have been impleaded as party to this suit; that Mst. Safooran Begum is resident of Baigpur, Tehsil & Distt. Jhelum and had been residing in England for the last 34 years; that Abdul Aziz predecessor-in-interest of defendants No.1 to 9 who had died; that deceased was residing in England and in his absence, predecessor-in-interest of defendants No.1 to 9 got mutated the suit property

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measuring 52 Kanals 11 Marlas through registered sale deed No.802 dated 03.04.1988 for consideration of Rs.15000/- which is illegal, ineffective and result of fraud and its inheritance mutation No.648 dated 30.05.1988 was sanctioned in connivance with the revenue official whereas predecessor-in-interest of defendants No.1 to 9, just to conceal his fraud, got transferred the suit property measuring 17 Kanals 15 Marlas through mutation No.583 dated 31.05.2002 to predecessor-in-interest of defendants No.10-A to 10-H namely Muhammad Sharif; that Muhammad Latif & Muhammad Hanif sons of Muhammad Yaqoob in connivance with revenue official got registered sale deed which being against law is liable to be cancelled. The plaint further speaks that mother of plaintiffs had never executed any stamp paper for gift mutation of disputed property; that neither any proof exists with Stamp Vendor nor deceased appeared before Sub Registrar for recording her statement nor gift mutation was attested by Numberdar of the village; that when mother of plaintiffs came to Pakistan during the year 2007, she came to know about fraudulent mutation pertaining to disputed land; that mother of plaintiffs approached Police Station concerned but in vain; that plaintiffs got registered FIR against Muhammad Hanif, Muhammad Latif, Stamp Vendor and Muhammad Khan Councilor of Mauza Baigpur through petition u/s 22-A, 22-B Cr.P.C; that during this period mother of plaintiffs became seriously ill and police cancelled the case without any investigation. The plaintiffs numerously requested the defendants to get the impugned mutations cancelled but they refused to do so; hence, this suit.

3. On the other hand, defendants contested this suit by filing written statement in contrast to the pleadings of plaintiffs and

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raised certain preliminary as well as factual objection on the grounds of maintainability, limitation, resjudicata, estoppel, mis-joinder & non-joinder of necessary parties, dismissal of plaint under Order VII Rule 11 CPC and prayed for dismissal of suit with special cost.

4. It is pertinent to mention here that at the time of framing of issues, with typographic mistake, the issues pertaining to suit titled "Shafqaat Ahmad etc versus Abdul Latif etc" running parallel to this suit, have been framed in this suit and the issues to be framed in instant suit have been formulated above-said suit. The mistake is rectified accordingly and following issues are here settled in this suit:

ISSUES:

1. Whether plaintiffs are entitled to get decree for declaration and permanent injunction as prayed for?
OPP
2. Whether registered sale deed No.802 dated 03.04.1988 and mutation No.468 were executed through fraud and ineffective to the rights of plaintiffs? OPP
3. Whether mutation No.583 dated 31.05.2002 is liable to be cancelled which has no connection with reality?
OPP
4. Whether instant suit is not maintainable and is liable to be dismissed? OPD
5. Whether plaintiffs have no cause of action to file this suit? OPD
6. Whether plaintiffs have filed instant suit just to harass the defendants and defendants are entitled to special cost of Rs.25000/- under section 35-A of CPC?
OPD
7. Relief?

5. Evidence of the parties was invited.
6. Shafqaat Ahmad, plaintiffs No.1 himself appeared in the witness box as PW-1 and examined Khan Rasheed son of

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Muhammad Rasheed as PW-2. In documentary evidence, learned counsel for the plaintiffs produced registered sale deed No.802 dated 03.04.1988 as Exh.P1, copy of order of DOR dated 04.01.2011 as Exh.P2, certified copy of file pertaining to case FIR No.26 dated 22.01.2008 (43 leaves) as Exh.P3, copy of Computerised National Identity Card of deceased Safooran Begum as Mark-PA, copy of her Passport as Mark-PB and closed the evidence.

7. Conversely, Babar Aziz, defendant No.2 himself appeared as DW-1 and examined Muhammad Khan son of Muhammad Walayat as DW-2, Farrukh Mehmood son of Muhammad Latif as DW-3 & Muhammad Hanif son of Muhammad Yaqoob as DW.4. In documentary evidence learned counsel for defendants submitted special attorney deed as Exh.D1, registered sale deed No.802 Exh.D2, certified copy of record of rights for the year 2019-20 as Exh.D3, certified cop of Khasra Girdawari as Exh.D4, certified copy of order of DRO as Exh.D5, certified copy of order of Hon'ble Lahore High Court, Rawalpindi Bench, Rawalpindi as Exh.D6, copy of cancellation report as Mark-DA and copy of Challan No.5 & order passed therein as Mark-DB.

8. In rebuttal evidence, plaintiffs produced nikahnama of Shafqaat Ahmad Exh.P4, certified copy school certificate of Shafqaat Ahmad as Exh.P5, dearth certificate of Abdul Rahim as Exh.P6, copy of record of rights for the year 2009-10 as Exh.P7, certified copy of death certificate of Muhammad Yaqoob as Exh.P8, certified copy of nikahnama of plaintiffs as Exh.P9, copy of mutation No.309 as Exh.P10, copy of mutation No.313 as Exh.P11, copy of mutation No.283 as Exh.P12, certified copy of appeal titled Muhammad Hanif

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versus Safooran dated 21.11.2012 as Exh.P13 and certified copy of order dated 21.11.2011 of Apex Court as Exh.P13.

9. My issues-wise findings are as under:

ISSUE NO.2, 3:

10. Both these issues are inter-connected and inter-linked, therefore, they are decided collectively. Onus of prove these issues was placed upon the plaintiffs. These are important issues and fate of issue No.1 also depends upon the findings and decision of these issues. In support of these issues, plaintiff No.1 Shafqaat himself appeared as PW-1 and deposed that his mother Safooran Begum had not transfer the suit property through registered letter No.802 dated 03.04.1988 and said registered sale deed is a result of fraud and against the law and facts and same is ineffective upon the rights of plaintiffs and liable to be cancelled. He further alleged that his mother did not appear before any deed writer for the execute of registered sale deed. He further alleged that his mother neither put thumb impression on any stamp paper or register nor she appeared before any Registrar. PW-1 has contended that suit property is in their possession. When his mother knew about this fictitious registered sale deed she went to police station and filed an application for registration of criminal case which remained fruitless. She moved an application in Sessions Court upon criminal case registered but the police did make any progress. Then they approached Sub Registrar for cancellation of registered sale deed who advised the plaintiff to approach Civil Court; hence, this suit.

11. Khan Rasheed son of Muhammad Rasheed appeared as PW-2 and corroborated the version of the plaintiffs as mentioned in plaint as well as narrated by the PW-1. The plaintiffs have also

produced the following documents, registered sale deed No.802 as Exh.P1, copy of order of DOR dated 04.01.2011 as Exh.P2, copy of complete file pertaining to case FIR No.25 as Exh.P3, copy of Computerised National Identity Card of deceased Safooran Begum as Mark-PA & copy of her Passport as Mark-PB. In rebuttal Farrukh Babar Aziz/defendant No.2 who is special power of attorney of his all brothers/sisters appeared as DW-1 and produced power of attorney as Exh.D1. DW-1 deposed that his father Abdul Aziz purchased the suit property from sister Safooran Begum through registered sale deed No.802 dated 03.04.1988/Exh.D2 against the consideration of Rs.15000/-. The registered sale deed was executed/sanctioned in the presence of witnesses Muhammad Latif, Muhammad Hanif and Councillor Muhammad Khan. The DW-1 has further deposed that Safooran Bibi got registered FIR No.26 dated 22.01.2008 against us. the DW-1 and they were acquitted from the above said case. He further alleged that suit of the plaintiff is false & fictitious. DW-2 Muhammad Khan and DW-3 Farrukh Mehmood corroborated the version of the defendants as taken in the written statement. The defendants have also produced documentary evidence in shape of Exh.D1 to Exh.D6 & Mark-DA to Ex.DB.

12. Arguments heard; record perused.

13. Perusal of the record reveals that it is the contention of the plaintiffs that his mother was owner of property measuring 52 Kanal 11 Marla and same is admitted one by the defendants. The plaintiff has challenged the registered sale deed No.802 dated 03.04.1988 and subsequent mutation No.468 dated 30.05.1988 on the basis of fraud and result of connivance of the defendants with revenue staff and requested the court for the cancellation of the above

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said registered sale deed as well as mutation. The plaintiff has produced documentary evidence to establish the fraud of the defendants with his mother Safooran Bibi. First of all, the lady plaintiff Safooran Bibi challenged the registered sale deed No.802 dated 03.04.1988 and subsequent mutation No.468 dated 30.05.1988 in her lifetime. Secondly she approached the concerned police station and got registered a criminal case under Section 420, 468 & 471 PPC against the defendants/her real brothers who got sanctioned fraudulent registered sale deed. The plaintiff has also produced the copies of criminal case along with police diaries as well as affidavits submitted by the defendants during the course of investigation. Furthermore, the plaintiff has alleged that his mother never put her thumb impression on any document in her lifetime. He further contended that she was educated lady and she always put her signatures on her National Identity Card and Passport. He also produced copy of Nation Identity Card of his mother as Mark-PA, copy of Passport of his mother as Mark-PB which clearly indicates that she always put signatures in English on all the documents. It is also important to mention here that on the impugned sale deed, National Identity Card number of Safooran Bibi as well as any of the witness has not been mentioned which is compulsory requirement of law. The same fact was admitted during the cross examination by DW-4 that:

پاسپورٹ Mark-PB فولو صفوراں بیگم کو شناخت کرتا ہوں۔ پاسپورٹ Mark-PB پر صفوراں بیگم کے دستخط انگلش میں موجود ہیں۔ یہ درست ہے کہ پاسپورٹ mark-PB اور شناختی کارڈ Mark-PA پر صفوراں بیگم کے انگلش کے دستخط آپس میں مچا کرتے ہیں۔ یہ درست ہے کہ Exh.D2 کے تین صفحات پر صفوراں بیگم کے دستخط موجود نہ ہیں۔

14. From the above discussion it is crystal clear that in this suit for declaration and permanent injunction the plaintiff has challenged the veracity of impugned registered sale deed No.802

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dated 03.04.1988 and subsequent mutation No.468 dated 30.05.1988. The plaintiff Shafqaat Ahmed while appearing as PW-1 and producing the basic documents regarding the signatures as well as writing of National Identity Card number of his mother as well as witnesses has discharged the initial onus by deposing all the relevant facts.

It is an established principle of law that where existence and execution of a document had been questioned on the plea of fraud and misrepresentation then onus to prove the transaction and execution of said document with free will and volition of would rest upon its beneficiary. In this regard respectful reliance is placed upon case titled Mubashar Hussain Versus Syed Hussain Abbas and 3 others cited as 2019 CLC 1417.

15. Being purchaser of suit property, the defendants were under legal obligation to prove the sale transaction and payment of sale consideration. The defendants did not mention any time, date and place where the registered sale was entered into and sanctioned and he did not mention the names of witnesses before whom the bargain of sale was struck and sale consideration was paid to the alleged executant. DW-1 Babar Aziz who is the real son of deceased Abdul Aziz who was the alleged purchaser of the suit property from the lady plaintiff Safooran Bibi/his real sister deposed that suit property was purchased by his father Abdul Aziz from the Safooran Bibi/their real sister measuring 52 Kanal 11 Marla in lieu of Rs.15000/- in the year 1988. He did not utter even a single word regarding time, date and place where the alleged bargain of sale transaction was done and he also not mentioned the name of any person in whom presence sale consideration Rs.15000/- was paid.

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DW-3 who is the real son of Muhammad Latif and he also deposed the same facts as the DW-1 has deposed. He was also silent regarding time, date, place and mode of payment of sale consideration rather he denied during cross-examination that he was not present at the time of registry and no sale consideration was paid in his presence. He stated that:

جس وقت رجسٹری ہوئی میں موقع پر موجود نہ تھا۔ اور نہ ہی میرے سامنے رستم کا لین دین ہوا تھا۔

DW-3 also did not mention the name of witnesses in whom presence the sale consideration was made. Section 25 of Contract Act, 1872 provides that an agreement without consideration, unless it is in writing and registered or is a promise to compensate for something done or is a promise to pay a debt, barred by limitation law. Law provides that there is no agreement which is made without any lawful consideration. **Reliance is placed on 2004 SCMR 1102.**

It has been laid down by August Supreme Court of Pakistan in above cited esteemed judgment that an agreement without consideration is nullity in the eye of law. Furthermore, if payment of sale consideration of alleged registered sale deed has not been proved, then there would be "Sale" in the eyes of law. In the instant case the defendants have vehemently failed to establish the essential element of a valid sale and if any of the ingredients of "Sale" was missing the defendants had to suffer and face the consequences of that missing essential element. The conclusion is supported by case law titled as "Muhammad Sadiq versus Muhammad Raflque" cited as 2017 YLR Note 348.

16. Another important aspect of this case is that the defendants might have produced or got summoned the concerned

sub-registrar before whom lady plaintiff Safooran Bibi allegedly appeared for execution of registered sale deed. The most important entities in connection with the sanction of registered sale deed were the Sub-Registrar and regarding subsequent mutation were the Patwari Halqa who entered the mutation and revenue officer who attested the same. All the above said three functionaries have not been produced and examined by the defendants in the court to establish the genuineness of registered sale deed/Exh.D2. **Reliance is placed upon "Abdul Raheem etc versus Mrs. Janntay Bibi etc" cited as NLR 2000 CIVIL 120 Supreme Court.**

17. It is also important to mention here that the defendants were bound to establish the genuineness of alleged registered sale No.802 dated 03.04.1988. They were duty bound to prove the above said factum by leading cogent, sufficient and evidence of extreme credibility according to their written statement. However, they took the stance in the written statement as well as evidence produced as DW-1, DW-2, DW-3 & DW-4 that they purchased the suit property from their real sister Safooran Bibi while paying the sale consideration. But the plaintiff rebut this version of the defendants through documentary evidence and establish that during course of criminal proceedings the defendants took a contradictory view to that view as taken in their written statement. He produced Exh.P3 which is the attested copy of criminal proceedings in which Muhammad Latif, Muhammad Hanif & Muhammad Anwar submitted their affidavits and narrated the story regarding the transfer of suit property in their name from lady plaintiff Safooran Bibi. All the above three persons took stance that they transferred their own property in the name of Safooran Bibi as her husband promised to take **abroad**

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the Abdul Aziz real brother of Muhammad Latif and Muhammad Hanif all sons of Muhammad Yaqoob to London/England. The husband of Safooran Bibi failed to get visa of Abdul Aziz for UK/London and in consequence of that failure, the already transferred land in the name of Safooran Bibi was gifted back in the name of defendant Abdul Aziz. This fact was also admitted by Muhammad Hanif DW-4 who is real brother of Abdul Aziz and Safooran Begum during cross-examination that the suit property was gifted to Abdul Aziz from Safooran Begum. He further deposed that:

یہ درست ہے کہ جو اسٹامپ پولیس کو تحریر کر دیا گیا اس میں رقبہ تعدادی 52 کنال 11 سرے موضع بدو بجن عبد لعزیز ولد محمد تقی کو بہ کو بہ کر دیا گیا۔

When real brother of Abdul Aziz and witness of registered sale deed Muhammad Hanif/DW-4 has clearly admitted that suit property was gifted to Abdul Aziz from Safooran Begum then question of sale and version of defendants as taken in the written statement seems totally baseless, concocted and fabricated one. The defendants adopted two different stances/versions. But unfortunately they have vehemently failed to establish anyone of their versions. They have vehemently failed to establish the sale with payment of consideration in presence of witnesses. Furthermore, they have not tried to establish gift from their real sister Safooran Bibi/plaintiff in their names.

18. It is pertinent to mention here that allegedly defendants purchased the suit property in 1988 but astonishingly, despite lapse of period of 35 years, they could not produce any proof of their possession over suit land. Even a single document has not been produced to establish their possession. Furthermore, the defendants did not approach to any competent forum or authority to get the possession of their land. The defendants filed a suit for possession of

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house which was dismissed up to Hon'ble Lahore High Court and the same has been admitted in the cross-examination by DW-1:

یہ درست ہے کہ میرے والد چچا تایا نے صفورا کے خلاف مکان کا مقدمہ دائر کیا تھا۔

مکان کا قبضہ کا دعویٰ کیا جو ہائی کورٹ تک خارج ہو گیا۔

19. In the light of all above discussion I am of the considered view that the defendants being beneficiaries have failed to establish the veracity of registered sale deed No.802 dated 03.04.1988 and subsequent mutation No.468 dated 30.05.1988 with any plausible and mind inspiring evidence. They did not produce a single witness of bargain of sale and in whose presence sale consideration was paid. The witnesses produced by the defendants to establish the factum of payment of sale consideration are admittedly at variance. Missing of necessary requirement of law regarding presence of numbers of national identity cards on registered sale deed/Exh.D2 of all the vendor and vendees as well as witnesses is also a question mark on the sanctity of impugned registered sale deed. If the truthfulness of basic document/registered sale deed has not been established by the defendants, then subsequent mutation 468 dated 30.05.1988 also stands on the same footings. Hence, the registered sale deed No.802 dated 03.4.1988 and subsequent mutation No.468 dated 30.05.1988 were executed through fraud and ineffective to the rights of plaintiffs. It is pertinent to mention here that when the registered sale deed No.802 dated 03.04.1988 and subsequent mutation No.468 dated 30.05.1988 are executed through fraud and are ineffective upon the rights of the plaintiffs, then the sale deed No.583 dated 31.05.2002 also keeps no value in the eye of law, therefore, the same is also

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liable to be cancelled, hence, these issues are decided in favour of the plaintiff and against the defendants.

ISSUE No.4:

20. Onus to prove this issue was placed on the defendants. Contention of defendants is that suit of the plaintiffs is not maintainable in its present form. Examination of file reveals that plaintiffs instituted the instant suit for declaration. Suit for declaration in term of Section 42 of the Specific Relief Act, 1877 can be filed. Consequently, there is no defect as to the form of this suit. Hence, this issue is decided in negative.

ISSUE No.5.

21. Onus to prove this issue was placed on the defendants. Contention of defendants is that plaintiffs have no cause of action to file this suit. The term "cause of action" refers to a ground on the basis of which plaintiff asks for a favour-able judgment. It is immaterial, the plaintiff succeeds in getting favour-able judgment or not. In this case the averments of the plaint revealed that plaintiffs have cause of action and in view of my detailed findings on issue No.2 to 3, the have successfully proved the same. Hence, this issue is decided in negative.

ISSUE NO.6:

22. Onus to prove this issue was placed on the defendants. In this case, the contesting defendants have prayed for compensatory cost in term of Section 35-A of CPC. In order to enable a court to award compensatory cost under Section 35-A of CPC, the following conditions have to be fulfilled:-

1. The claim or defence should be false or vexatious to the knowledge of the party asserting it,

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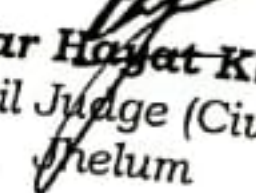
2. Objections to such claim or defence should have been taken at the earliest possible opportunity,
3. Such claim or defence should have been disallowed, withdrawn or abandoned, wholly or in part.

However, the awarding of compensatory cost is discretionary with the court and is depend upon the circumstances of each case and the court is not bound to award the same even if the above referred requirement has been fulfilled by a party praying for compensatory cost. In this case, the defendants have not submitted any evidence to prove the above referred requirement of law. Therefore, issue in hand is answered in negative

RELIEF:


23. For what has been discussed above, suit of the plaintiffs is hereby **decree** with the observation that registered sale deed No.802 dated 03.04.1988 and subsequent mutation No.468 dated 30.05.1988 as well as mutation No.583 dated 31.05.2002 are cancelled. Cost shall follow the event. Decree sheet be drawn up. File be consigned to the record room after its due completion.

Announced
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Certified that this judgment consists of 15 pages, each of which has been dictated, read, corrected and signed by me.

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