

2009 C L C 1276

[Peshawar]

Before Ghulam Mohyuddin Malik, J

TAJ MUHAMMAD KHAN through L.Rs.----Petitioners

Versus

Mst. MUNAWAR JAN and 2 others----Respondents

Civil Revision No.415 of 2006(sic), decided on 18th December, 2008.

Specific Relief Act (I of 1877)---

---Ss. 8 & 42---Suit for declaration and possession---Original owner of immovable property in dispute, had transferred said property through gift or sale mutation in favour of his two daughters/defendants---Third daughter of original owner and his nephew, through their separate civil suits challenged correctness of both the transactions of gift and sale; and claimed that they being Shari heirs of original owner, were entitled to get their share out of their ancestral property---Trial Court decreed the suit, but Appellate Court dismissed both the suits---Both the gift and sale mutations were attested during the life time of the original owner by the Revenue Officer in "Jalsa Aam" in the presence of the notables of the area including Chairman Zakat Committee, Lamberdar and landowners of the area---Neither the transferor/original owner in his life time himself nor the plaintiffs during life time of the original owner filed suits for declaration or cancellation of said gift and sale mutations in favour of two daughters of the owner---Title deeds in favour of daughters of the original owner, were acted upon in the subsequent Jamabandi and the plaintiff filed the suits after the death of the original owner on the grounds of fraud and misrepresentation etc.---Revenue record had shown that mutations in dispute were properly entered and attested at the instance of original owner---Suits were filed by the plaintiff after many years of attestation of deeds and even much later than the date of death of executant/original owner, but neither in their plaint nor in evidence disclosure of particulars of alleged frauds, was made nor those could be proved at the trial---Plaintiffs had no cause of action to challenge the transaction made by the owner of the property in his life time with his free consent---Plaintiffs could get no more than what the original owner had left behind for his other legal representatives at the time of opening of his succession, of course, by excluding the property transferred by him in favour of defendants/two daughter.

Khalid Rehman Qureshi for Petitioners.

Shah Sultan Tahir Kheli for Respondents.

Date of hearing: 4th December, 2008.

JUDGMENT

GHULAM MOHYUDDIN MALIK, J.---This Civil Revision Petition No.415 of 2008(sic) titled "Mst. Zaiwar Jan and others v. Mst. Munawar Jan and others" and Civil Revision Petition No.416 of 2008(sic) titled Mst. Zaiwar Jan and others v. Mst. Ashraf Jan and others" are being disposed of through this single judgment because the only question for determination in both the revision petitions is whether Amir Bostan erstwhile owner of suit Haveli and agricultural land had in his life time transferred the said property in favour of his daughters Mst. Ashraf Jan and Mst. Munawar Jan by way of Hiba and sale vide Mutation No.1666 dated 9-7-1986 and Mutation No.1746 dated 14-2-1987.

2. The relevant facts are that Amir Bostan owner of immovable property fully described in the plaint transferred the Haveli through a gift Mutation No.1666 dated 9-7-1986 and further transferred a portion out of agricultural land vide sale Mutation No.1749 dated 14-2-1987, referred to above, in favour of his daughters Mst. Ashraf Jan and Mst. Munawar Jan. On his death Mst. Zaiwar Jan his third daughter and nephew Taj Muhammad through separate civil suits challenged the correctness of both the transactions and claimed that they being legal Shari heirs of late Amir Bostan were entitled to get their share out of their ancestral property and that gift and sale mutations purportedly executed by their predecessor Amir Bostan in favour of his daughters were false, fake, fraudulent, fictitious and thus ineffective on their rights.

3. Learned trial Court after holding the trial, recording parties' evidence and hearing their arguments, decreed the suits. The respondents aggrieved by the judgments and decrees of the trial Court filed appeals before the Appellate Court which were accepted and consequently both the above said suits were dismissed. The petitioners aggrieved by the judgment of Appellate Court have filed the above said two revision petitions.

4. I have heard the learned counsel for the parties and have gone through the record.

5. Admittedly, both the gift and sale mutations were attested during the life time of Amir Bostan by the Revenue Officer in "Jalsa Aam" in the presence of the notables of the area who included Chairman Zakat Committee, Lambardar and land owners. Neither the transferor in his life time himself nor the plaintiffs-petitioners during his life time filed suits for declaration and cancellation of said mutations. The title deeds were acted upon in the subsequent Jamabandi and admittedly the petitioners filed the instant suits after the death of Amir Bostan on the ground of fraud and misrepresentation etc. The revenue record produced at the trial and duly exhibited would show that the disputed mutations were properly entered and attested at the instance of owner late Amir Bostan. If these have been challenged by him in his life time then the onus would have been on the beneficiaries to prove the correctness of the deeds but as the declaratory suits have been filed after his death and by third party for declaration and cancellation of the mutations on the ground of fraud and misrepresentation etc, the heavy burden of proof lay on them to prove the elements of fraud, coercion or exercise of undue influence by the daughters on their old and sick father. The suits were filed after many years of attestation of deeds and even much later than the date of death of executant but still neither in their plaint nor in the evidence disclosure of particulars of frauds as required by Order VI rule 4, C.P.C. were given nor these

could be proved at the trial.

6. Apart from the above, as the gift Mutation No.1666 was attested on 9-7-1986 while Sale Mutation No.1749 is dated 14-2-1987, late, Amir Bostan, the executant died in 1990 the suit for declaration and cancellation of deeds were filed after about 7/8 years of their attestation and 4 years of the death of Amir Bostan. The period of limitation also started running against them from the date of attestation of mutations entitling them to file the suits but they kept mum for a long time and could not dare to challenge the same in the life time of transferor or at least immediately after his death.

7. At the trial, the petitioners have produced no evidence worth the name to believe that the, sale or gift agreement/mutation were not executed by the original owner Amir Bostan or that these were the result of fraud, under duress or misrepresentation. The making of entries and attestation of mutations have been proved through the revenue officials by producing relevant revenue record. The marginal witnesses who were alive at the time of trial also appeared and proved the transactions. Actually, as observed above, in the instant cases the executant himself did not question the execution or validity of the transactions nor ever denied execution of these deeds. It is an admitted position that late Amir Bostan in last days of his life was living with the respondents. He was looked after by them and they were bearing all his daily and medical expenses etc. So the possibility that to satisfy the liability/obligations he might have in his wisdom/experience and having regard to exigencies of future and the expenses which were being incurred on him by the respondents and some more on him at some later date, had delivered his property by way of gift and sale in favour of his daughters. It means that the petitioners have no cause of action to challenge the transactions made by the owner of the property in his life time with his free consent. The expression "cause of action" has all along been held to mean every fact which it is material to be proved by the plaintiff to get the case decided in his favour. The contents of petitioners' plaint and evidence led at the trial by them show that they have not proved the facts necessary to succeed and support their claim or title to the suit property.

8. On that view of the matter, the petitioners can get no more than what Amir Bostan had left behind for his other L.Rs. at the time of opening of his succession, of course, by excluding the property transferred by him in favour of respondents.

9. For these reasons both the revision petitions being meritless stand dismissed. No order as to costs.

H.B. T. / 104/P

Petitions dismissed.