

2004 C L C 825

[Peshawar]

Before Abdul Rauf Khan Lughmani, J

Mst. RASHIDA KHATOON---Petitioner

Versus

MUHAMMAD IQBAL and 2 others---Respondents

Civil Revision No.55 of 2002, decided on 29th December, 2003.

Specific Relief Act (I of 1877)---

---S. 42---Qanun-e-Shahadat (10 of 1984); Arts.72 & 79---Execution of document
---Proof---Concurrent findings of facts by the Courts below--Plaintiff claimed to be the owner of the suit property on the basis of unregistered deeds executed in her favour---Plaintiff neither produced marginal witnesses of the deeds, nor the scribe---Deeds produced in evidence were objected to by the defendants during the trial---Trial Court dismissed the suit and judgment and decree passed by Trial Court was maintained by Appellate Court---Validity---Plaintiff was required to prove execution of documents in accordance with law by producing marginal witnesses and scribe of the deeds --- Concurrent findings of facts by the Courts below could not be set aside unless it had been shown to be the result of non-reading or misreading of evidence.

Syed Mahboob Ahmad Shah for petitioner.

Khalid-ur-Rehman Qureshi for Respondents.

Date of hearing: 9th December, 2003.

JUDGMENT

Mst. Rashida Khatoon filed suit No. 240/1 against Muhammad Iqbal and others for declaration that she is owner in possession of the suit house, details and description of which are fully given in the plaint, to the extent of 37/159 share, transfer of the entire house in lieu of dower to Mst. Zohra Bibi, defendant No.2 by her (plaintiff) father is wrong, and illegal and void of the rights. She also sought permanent injunction restraining the defendants Nos.1 and 2 from interfering with the suit property and also claims possession through pre-emption against the defendant No.1 to the extent of 122/159 share against the defendant No.1 on the payment of Rs.18,000 or price determined by the Court. The plaintiff alleged that suit property was initially owned by one Ayub Khan son of Mir Muhammad Khan who later on through unregistered deeds, dated 26-12-1995 transferred the suit house to Mst. Nur Khanum, Shad Muhammad Khan, Ahmed Nawaz and Mst. Yousaf Sultan. She also purchased 1/13 share through unregistered deed, dated 26-12-1975. Mst. Nur Khanum died and her share devolved on her son Shad Muhammad Khan and on the death of

Shad Muhammad Khan his wife Mst. Yousaf Sultan, was survived. Mst. Yousaf Sultan also died and her share devolved on her husband Shad Muhammad Khan and Ahmed Nawaz Khan and the plaintiff being son and daughter, respectively. Ahmed Nawaz Khan also died and his share was inherited by Shad Muhammad Khan. Defendant No.2 Mst. Zohra Bibi married Ahmed Nawaz Khan son of Shad Muhammad Khan and Shad Muhammad Khan transferred the entire house by way of dower. Defendant No. 2 sold the suit house through registered deed, dated 18-1-1995 to defendant No. 1 Plaintiff being owner of 37/159 share and the sale of house to the extent of 37/159 is wrong, illegal. The plaintiff came to know of the sale dated 16-3-1995 and she exercised her right of pre-emption. The suit was resisted by the defendants Nos. 1 and 2 who in their joint written statement stated that the suit house was owned by the Shad Muhammad Khan who through registered deed No. 747, dated 7-8-1980 transferred it to the defendant No.2 in lieu of dower and also gave possession and later on transferred the same by way of sale to defendant No.1 for consideration of Rs.55,000 and the possession was also handed over. Both the parties led their evidence and the trial Judge through judgment and decree, dated 27-2-2001 dismissed the suit of the plaintiff. Feeling aggrieved the plaintiff filed appeal but with no success as the learned District Judge dismissed her appeal vide judgment and decree, dated 15-4-2002, hence this revision petition by the plaintiff.

2. Syed Mahboob Shah, learned counsel for the petitioner, contended that the suit house was owned by Ayub Khan who transferred it through unregistered deeds Exh.P.W.3/1 to 3/23 to various persons as alleged in the plaint, including the plaintiff who got 1/3 share. These 23 deeds each for consideration of Rs.55,000 appear to be in favour of Ahmed Nawaz, Shad Muhammad Khan, Mst. Yousaf Sultan, Mst. Nur Khanum and the plaintiff. In fact, plaintiff claims to have got 1/13 share through Exh.P.W.3/23. According to learned counsel for the petitioner, these documents were exhibited without any objection and as such the effect of these documents cannot be over looked. When the plaintiff produced original of these documents and the photo copies, learned counsel for defendants raised an objection that these documents could not be exhibited. So there was objection by the defendants. None of the marginal witnesses of these documents was produced in witness box to prove the execution of these documents. Indeed, learned counsel for the petitioner was unable to explain as to why marginal witnesses were not produced. There is nothing on the record to suggest that either the witnesses are dead and their presence could not be procured for one reason or the other. Even plaintiff is not in possession of the house because she observed complete silence with respect to her possession in examination in chief. She was married according to her own admission long ago with Akram Khan and she is residing with her husband across the road. Then she changed her mind and stated that she was living with her husband in the suit house. She expressed ignorance as to whether Shad Muhammad Khan gave the house through registered deed to defendants Nos. 1 and 2. Then she admitted that Shad Muhammad Khan gave her share to defendant No.2. Chan Parvez son of the petitioner, was examined as P.W.4 and he also observed complete silence about possession of the suit house. Shaukat Zaman P.W.5 stated in the cross examination that the suit house was in possession of Mushtaq brother of P.W. Chan Parvez then he stated that Mushtaq keeps cattle in the suit house. He was unable to give the details description of suit house. Qazi Mushtaq P.W.6 gave different version by saying that the suit house was in possession of Chan Parvez who in his statement was unable to claim so. Even otherwise, P.W.6 admitted the transfer of entire house by Shad Muhammad Khan to Mst. Zohra Bibi in lieu of dower who sold the same to defendant No.1. Analysis of the evidence would show that the plaintiff has not been able to prove her

possession and when all these conformities and evidence of the petitioner, witnesses were pointed out learned counsel for the petitioner conceded that the plaintiff is not in possession of the suit house. Muhammad Iqbal respondent in his statement spoke of his possession did not admit that the plaintiff was residing in the suit house and he also stated that the local commission if appointed would confirm his possession over the suit property. The main claim of the petitioner's case is unregistered deeds which were objected to by the respondents when brought on record and the petitioner was required to prove the execution of these documents in accordance with law i.e. by producing the marginal witnesses. Sadly, none of the marginal witnesses was examined and similarly scribe of the same was also not examined. Petitioner was to shoulder the responsibility of proving issue No.4 regarding ownership of Ayub Khan who transferred it through deed, dated 24-12-1965, to various persons. May it be further pointed out that the concurrent findings by the learned lower Courts below cannot be set aside unless it has been shown to be the result of non reading and misreading of the A evidence. Finding no substance revision petition is dismissed, leaving the parties to bear their own costs.

M.H./48/P

Petition dismissed.