

2003 Y L R 2064

[Peshawar]

Before Shah Jehan Khan, J

Mst, ATTA JAN alias TAJ BEGUM and 6 others---Petitioner

Versus

ABDUR RAHIM and 22 others---Respondents

Civil Revision No. 168 of 1996, decided on 29th October, 2002.

Specific Relief Act (I of 1877)---

---Ss.8 & 42---Suit for declaration and possession---Defendant claimed to be purchaser of suit-land from plaintiffs predecessor for consideration of Rs. 99-1/2 through unregistered sale-deed dated 19-5-1967---Such sale-deed was not acted upon in Revenue Record, but after death of plaintiffs' predecessor in year 1973, his inheritance mutation was attested in their favour---Defendant got sale mutation attested in his favour on basis of such sale-deed in year 1975 and then sold away suit-land--Plaintiffs challenged validity of unregistered sale-deed and sale mutations based thereon in favour of defendant and subsequent vendees in a suit---Trial Court decreed suit, which was upheld by Appellate Court ---Validity--Several suits regarding same subject-matter between same parties had been decreed in favour of plaintiffs, which had attained finality---Courts below through concurrent findings of fact had declared sale-deed in favour of defendant and subsequent vendees to be illegal, fraudulent, without consideration and ineffective upon: rights of plaintiffs---Such findings did not suffer froth any illegality, irregularity; misreading or non-reading of evidence or jurisdictional defect---Appellate Court through its judgment had protected rights of subsequent vendees by directing Executing Court to assess market value of sites purchased by theta and recover same from defendant for its onward payment to them--High Court dismissed revision petition in circumstances.

Khalid Rehman Qureshi for Petitioners.

Saleh Mehmood Awan for Respondents Nos.6 to 12.

Date of hearing: 29th October, 2002.

JUDGMENT

Civil Revision No. 168 of 1996 (Mst. Atta Jan and others v. Abdur Rahim and others), Civil Revision No.169 of 1996 (Mst. Atta Jan and others v. Mst. Shah Sultan etc.), Civil Revision No. 14 of 1996 (Mir Dad etc. v. Mst. Shah Sultan and others), Civil Revision No. 15 of 1997 (Gulzaman and others v. Muhammad Ashraf and others) and Civil Revision No. 16 of 1996

(Mst. Aziz Khanum etc. v. Mst. Shah Sultan etc.) are arising from the common judgment in Civil Appeals Nos.43/13, 54/13 and 55/13 of 1990, therefore, disposed of by this common judgment drafted in Civil Revision No. 168 of 1996.

2. Muhammad Zarahat and others filed two separate suits bearing Nos. 432/1 and 293/1 of 1974 (8-11-1974) and 1981 (29-3-1981) respectively regarding the same subject-matter. In Suit No.432/1 Muhammad Zarahat and the successors of Mst. Hussan Jan plaintiffs-respondents 1 to 12 filed a declaratory suit in respect of Khasra Nos.1876/1877/979, 1875/977 anti 973 measuring 37 Kanals, 1 Marla situated in Mauza Pandak; Tehsil Haripur regarding the share of Zardad i.e. 1374/651560 and superstructure thereon is owned and possessed by them and the Sale Mutation No.3981 attested on 12-11-1974 in favour of Shahzada Khan the predecessor of present petitioners is wrong, illegal, fraudulent, without any consideration and ineffective upon the rights of plaintiffs. All the subsequent sale mutations by Shahzada Khan bearing numbers 4488, 4764, 5298, 5013, 5273, 5270 and 5165 attested on 31-1-1976, 27-5-1977, 11-10-1979, 10-8-1978, 7-7-1979, 4-6-1979 and 28-3-1975 respectively in favour of the remaining respondents were also challenged being illegal and ineffective upon the plaintiff's rights. Perpetual injunction was also sought against defendants. In alternative prayer for possession was also made.

3. Muhammad Zarahat plaintiff is the son of Gulab while Mst. Hussan Jan the predecessor-in-interest of rest of the plaintiffs was the daughter of Gulab. Zardad the real brother of Muhammad Zarahat and Mst. Hussan Jan who died in the year 1973 was recorded owner of the disputed property in the successive Jamabandies till his death. Shahzada Khan predecessor of present petitioners allegedly purchased the entire share of Zardad against sale consideration of Rs.99-1/2 through unregistered deed dated 19-5-1967. The said deed was neither produced before authorities nor acted upon in the Revenue Record and the entry in favour of Zardad as owner was continued till his death in 1973. On his death his Inheritance Mutation No.3576 was attested on 17-5-1973 in favour of Muhammad Zarahat and Mst. Hussain Jan being heirs as Zardad had died issueless. Shahzada Khan succeeded in entering and attestation of Sale Mutation No.3981 attested on 13-11-1975 in his favour on the strength of unregistered sale-deed dated 19-5-1967. After getting entered as owner in the Revenue Record Shahzada Khan mutated by way of sale in favour of defendants/respondents 13 to 23 and during the pendency of the suit. Zardad in his life-time had also alienated certain properties by way of sale through Mutations No.2959 attested on 12-8-1969, 3277 attested on 30-10-1970 and 3404 attested on 30-7-1971. These sale mutations are in respect of the property which is claimed by Shahzada Khan to be its owner through unregistered deed dated 19-5-1967. The suit of the plaintiffs was contested by Shahzada Khan and the trial Court framed issues arising from pleadings of the parties. Since the defendants/respondents 13 to 23 purchased some of the property through different sale mutations noted in para.2, applied for impleadment as defendants in the suit from time to time, they were allowed to be impleaded as defendants and amended pleadings were filed and additional issues were framed by the trial Court. Parties to the proceedings led their evidence as they wished to produce and finally the suit of the plaintiffs-respondents was decreed by the trial Court. Three separate appeals mentioned in the beginning of this judgment were filed, which were dismissed by impugned common judgment dated 12-9-1996. However, the following additions were made in the decree passed by the trial Court:--

"-----that the entire foul-play has been played by Shahzada Khan, therefore for the sake of justice, equity and conscience I direct and order that during the execution of the decree the learned Executing Court will assess the present market value of the sites purchased by the subsequent vendees and will also assess the market value of the entire construction and will obtain through execution the market value of the sites and buildings from Shahzada Khan and will be paid to all the subsequent vendees. If Shahzada Khan is, dead then his heirs are responsible for the said payment

It is pertinent to mention here that the petitioners applied for amendment in the written statement at the appellate stage which relief was declined to them through the impugned judgment.

4. I heard the learned counsel for the petitioners who mainly argued that Shahzada Khan had purchased the entire share of Zardad against sale consideration of Rs.99-1/2 through unregistered deed dated 19-5-1967 and its possession was also delivered to him as vendee and he has subsequently sold the different sites as part of the said purchased land to different persons who were pleaded as parties to the suit on their applications. The sale-deed in favour of Shahzada Khan was not legally required to be registered as the subject-matter was valued Rs.99-1/2 and less than 100. The unregistered deed coupled with possession is sufficient to hold genuineness of the unregistered sale-deed. Since Zardad has remained no more owner of the suit-land in view of the unregistered sale-deed dated 19-5-1967 his inheritance Mutation No.3576 respecting the suit-land was illegally entered and attested on 17-5-1973 in favour of Zarahat Khan plaintiff and Mst. Hussan Jan predecessor of the rest of the plaintiffs. He pressed into service the provisions contained in section 53 of the Transfer of Property Act and prayed for setting aside the impugned judgment and decree of the Appellate Court dated 12-9-1996 whereby the appeal of the petitioners was dismissed and the decree and judgment of the trial Court dated 8-4-1990 was upheld with certain additions.

5. The learned counsel for the plaintiff/respondent forcefully rebutted the submissions made by the learned counsel for the appellant and contended that Zardad had never sold the disputed property to Shahzada Khan. Zardad was recorded owner in the Revenue Record till his death in 1973 whereafter it was devolved upon the plaintiffs as his legal heirs through Inheritance Mutation No.3756 attested on 17-5-1973 being issueless. Had Shahzada Khan been purchased the suit-land through unregistered document genuinely he should have produced the said unregistered deed for acting upon in the Revenue Record in the lifetime of Zardad but the said unregistered deed was produced for entering an mutation after his death and it was collusively attested on 12-11-1975 till that date the name of Shahzada Khan is neither recorded as vendee in the column of ownership nor in the column of cultivation, therefore, the submissions of the opposite side that the possession was delivered to Shahzada Khan in 1967 after the execution of unregistered sale-deed has got no support from the Revenue Record. Further contended that had Zardad sold away suit-land to Shahzada Khan he should not have entered the subsequent Mutations Nos.2959, 3277 and 3404 attested on 12-8-1969, 30-11-1970 and 30-7-1971 respectively. Shahzada Khan had filed Suit No.218/1 in the year 1981 respecting the suit-land against the plaintiff/respondents which was later on dismissed in default on 28-2-1983. Mst. Hussan Jan also filed a suit against her brother Zarahat plaintiff No. 1 bearing No.334 in the year 1973 wherein Shahzada Khan was also impleaded as defendant on his application and the suit was decreed on 1-4-1990 and Shahzada Khan did not prefer any appeal against that decree.

Further submitted that all the vendees through mutations executed by Shahzada Khan in favour of various defendants-respondents during pendency of the suit by the plaintiffs-respondents and after the stay order issued by the trial Court on 26-6-1975 transfer no title to the vendees being executed during lis pendens. Shahzada Khan has failed to establish a genuine sale in his favour by Zardad through unregistered deed dated 19-5-1967 and even he has not challenged the inheritance mutation of Zardad bearing No.3756 attested on 17-5-1973 in favour of plaintiffs-respondents. The two Courts below have considered the evidence of contesting parties and have concurrently held the unregistered sale-deed dated 19-5-1967 in favour of Shahzada Khan and the subsequent mutations based on the said unregistered deed as illegal, fraudulent, without any consideration and ineffective upon the rights of plaintiffs-respondents and thus prayed dismissal of all the revisions.

6. The controversy agitated before this Court by the learned counsel for the parties is summarised in Issues 6, 10, 11 and additional Issues 1 and 2. All are of one and the same consequences. Perusal of the record reveals that in the year 1973 Mst. Hussan Jan the predecessor of respondents 1 to 5 being aggrieved from the attestation of inheritance mutation of the property left by Nawab Khan and Zardad their brother filed Suit No.408/1 on 8-10-1973. Muhammad Zarahat real brother of Mst. Hussan Jan and predecessor of respondents 6 to 12 and the predecessor of petitioners namely, Shahzada Khan were defendants in that suit. The suit was decreed in favour of Mst. Hussan Jan on 1-4-1990. This decree has attained finality as no appeal or revision was preferred in the next higher forum.

7. The contesting respondents are the successors of Muhammad Zarahat and Mst. Hussan Jan brother and sister inter se. Muhammad Zarahat and the heirs of Mst. Hussan Jan filed Suit No.501/1 in the year 1971. Muhammad Zarahat died during the proceedings and his legal heirs were brought on record on 29-4-1981. The dispute was regarding Khasra No. 978/1 measuring 25 Kanals, 19 Marlas as per Jamabandi 1967-68 respecting the share of their deceased brother Zardad. Shahzada Khan the alleged vendee from Zardad through unregistered sale-deed dated 21-3-1975 which was subsequently after the death of Zardad was acted upon in the Revenue Record by attesting Mutation No.3981 dated 12-11-1975 and the sale mutations executed by Shahzada Khan in favour of Aziz Khanum, Haji Atta Muhammad, Ghulam Muhammad, Abdur Rahim all added parties to the suit on 26-10-1980 were defendants in the suit. This suit was decreed on 8-4-1990 and also got finality.

8. Muhammad Zarahat and the heirs of Mst. Hussan Jan also filed Suit No.432/1 for declaration against Shahzada Khan respecting the suit property bearing Khasra Numbers 1876, 1877/977, 1875/977 and 973 measuring 37 Kanals, 1 Marla to the extent of 1374/65160 share left by Zardad. The suit was filed when Mutation No.3981 in favour of Shahzada Khan was entered but not yet registered and the same was registered during the pendency of the suit. After getting himself entered as owner through the aforesaid sale mutation Shahzada Khan transferred the ownership rights through different sale mutations in favour of respondents 13 to 23 herein. All the subsequent vendees were impleaded as defendants on their applications. The suit was decreed after contest on 8-4-1990.

9. Muhammad Zarahat also tiled Suit No. 125/1 on 29-3-1981 against Shahzada Khan challenging the validity of unregistered sale-deed dated 21-3-1975 in favour of Shahzada Khan

whereby Khasras Nos.978/1, 973, 1875 to 1877/977 and 1481/409 were the subject-matter of dispute, the land left by his brother Zardad. The sale mutation based on unregistered sale-deed dated 21-3-1975 bearing No.5618 attested on 27-11-1980 was also challenged. The Sale Mutations Nos.5658, 5664, 5666, 5680, 5681, 5682, 5683, 5685 and 5691 all attested on 6-1-1981 and Sale Mutation 5742 and 5744 both attested on 17-2-1981 executed by Shahzada Khan in favour of different vendees proforma-respondents herein were also challenged. This suit was subsequently allotted No.23/1 of 1981-89 and decreed in plaintiff's favour vide judgment dated 3-4-1990. Two appeals were filed by the respondents bearing Nos.58/13 and 72/13 against the decree and judgment passed in this suit which were ultimately dismissed through consolidated impugned judgment.

10. The facts collected from the record noted above reveal that regarding same subject-matter and between the same parties Suit No.408/1 instituted in 1973 was decreed in favour of plaintiffs-respondents on 1-4-1990 which was not questioned in appeal or revision and thus has attained finality. The subsequent Suit No.501/1 of 1974 which was later on granted No.335/1 of 1974-81 was also decreed in plaintiffs favour and one of the Khasra 978/1 was the subject-matter of that suit. The suit was decrees on 8-4-1990 and the same has also admittedly attained finality. The unregistered sale-deed and the sale mutations based thereon in favour of Shahzada Khan and the subsequent sale mutations and unregistered sale-deeds in favour of different vendees arrayed as proforma respondents herein were also challenged through Suit No.432/1 in the year 1974. Subsequently this suit was granted No.577/1 of 1987 and it was again entered as 122/1 of 1974-91. This suit was, decreed on 8-4-1990 which has also attained finality.

11. From the concurrent findings of the two Courts below in respect of un-registered sale-deed in favour of Shahzada Khan the predecessor of petitioners and the mutations based on the said unregistered sale-deed was declared illegal, fraudulent without any consideration and ineffective upon the rights of the plaintiffs, suffers from no illegality irregularity, misreading or non-reading o evidence or any jurisdictional defect and need no interference by this Court. The rights of subsequent purchasers arrayed as proforma respondents herein have been protected in para. 14 of the impugned judgment of the Appellate Court dated 12-9-1990 which is also found correct and based on established principle of law.

12. For what has been referred above I find all these revision petitions liable to dismissal which are hereby dismissed with no order as to costs.

S.A.K./811/P

Petitions dismissed.