

2003 C L C 1170

[Peshawar]

Before Abdul Rauf Lughmani, J

MUHAMMAD ARIF --- Petitioner

Versus

MUHAMMAD SHAHZADA---Respondent

Civil Revision No. 118 of 1998, decided 3rd April, 2003.

North-West Frontier Province Pre-emption Act (X of 1987)---

---S. 5---Suit for pre-emption ---Sale consideration of the land in question---Burden of proof---Market value, determination of---Sale consideration of the land entered in the mutation was Rs.10,000 but the vendee contested the suit by filing written statement pleading to have purchased the suit-land for a consideration of Rs.83,000---Trial Court, on assessment of evidence decreed the suit in favour of plaintiff on payment of Rs.10,000 against the vendee ---Appellate Court enhanced the market value of the suit-land to Rs.83,000---Validity---Pre-emptor had to shoulder the responsibility of proving the payment of consideration of sale of the property---Market value was to be determined on the factors i.e. location, fertility etc. and vendor was to cross-examine the Patwari Circle about the location of land in the relevant mutation ---Vendee, in the present case, had appeared as witness and disclosed that he had paid Rs.18,000 to the vendor at the time of transaction and Rs.65,000 after the attestation of mutation through cheque in presence of a witness, who deposed that Rs.5,000 were paid after encashing the cheque---Leaving aside the apparent contradictions, the vendee had best way of proving by production of Bank record which he did not choose to do---When the best possible evidence was available and that too in the shape of documentary evidence maintained by Bank, the oral evidence which was discrepant and infirm could not be relied upon---Judgment and decree of the Appellate Court was set aside and that of the Trial Court was restored in circumstances.

Khan Bahadur Khan for Petitioner.

Khalid-ur-Rehman Qureshi for Respondent.

Date of hearing: 3rd April, 2003.

JUDGMENT

Relevant facts for the disposal of this revision are few and simple. Muhammad Arif filed a suit for possession through pre-emption of land, bearing Khasra No.2241/88, measuring 11 Kanals, 2 Marlas, to the extent of 5 Kanals purchased through Mutation No.1958, dated 18-8-1996, against

Muhammad Shahzad in the Court of Civil Judge, Haripur. Sale consideration entered in the Mutation is Rs.10,000. The defendant contested the suit by filing written statement, wherein, besides pressing other points, he pleaded to have purchased the suit-land for a consideration of Rs.83,000. On assessment of evidence of the parties, the claim was decreed in favour of the plaintiff on payment of Rs.10,000 against the vendee, vide judgment and decree dated 26-2-1998. The defendant went in appeal and the learned Additional District Judge accepted the appeal and enhanced the 'Market value of the suit-land to Rs.83,000. Now the plaintiff has filed this revision.

2. The controversy involved before me is limited. The trial Court firstly framed issue "whether the sum of Rs.10,000 has been fixed in good faith and actually paid as sale consideration of the suit property" and realizing the mistake in view of the plea of the defendant framed additional Issue No. 1 which is to the effect "whether. Rs.83,000 has been fixed and paid in good faith to the vendor as sale consideration and the sale consideration of Rs.10,000 was collusively got entered by the plaintiff and the vendor, if so, its effect?" It hardly needs to be pointed out that on the latter part of the additional issue, no evidence was led and in fact the evidence is otherwise, therefore, it cannot be held by any stretch of imagination that the plaintiff was in collusion or he was responsible for mentioning lesser, amount in the mutation. Indeed it was for the petitioner to have shoulder the responsibility of proving the payment of Rs.83,000. Reliance was placed on Exh.D.W.1/1 and Mutation No. 1926 attested on 29-6-1996 to show that the sale consideration of the suit-land was Rs.83,000 which stood paid but due to certain reasons lesser amount was entered in the mutation. About Mutation No. 1926, attested on 26-9-1996, firstly it was submitted by the learned counsel for the respondent that it pertains to the suit-land but the record clearly contradicts him for in the Jamabandi of 1991-92 there is no mention of Mutation No. 1926. Again the suit-land is Kund type whereas the nature of land in one year average of Mutation No. 1926 is Maira and again there is nothing to show that the land transferred by Mutation No.1926 is in the near vicinity of the suit-land. The market value is determined on certain factors i.e. location, fertility etc. The respondent should have cross-examined the Patwari Circle about the location of land mentioned in Mutation No. 1926. Taking EXh.D.W.1/1. I feel that this document would not promote the cause of the respondent. Firstly it contains admission of Muhammad Safdar, the vendor and all that is written in the deed is that Rs.10,000 were entered for certain consideration, presumably to avoid District Council tax and that the transaction was for a, consideration of Rs.83,000. Surely, this deed was scribed on 5-11-1996 while the suit had already been filed on 16-9-1996 It is evident from summons issued for 12-10-1996 that father of the defendant acknowledged the date of 'Peshi'. Before that the plaintiff had sent him notice of Talb-i-Ishhad through registered post A.D. The deed was scribed sensing the difficulty. None of the witnesses to the deed was produced in the witness-box. The respondent appearing as D.W.1 disclosed that he had paid Rs.18,000 to the vendor at the time of transaction and Rs.65,000 after the attestation of mutation through cheques in presence of Liaquat Khan (D.W.2), who deposed that Rs.5,000 were paid after encashing cheque in the bank. Leaving aside the apparent and material contradictions, the respondent had best way of proving by production of bank record and sadly he did not choose to do so, for the reasons besting own to him. When the best possible evidence was available and that too in the shape of documentary evidence maintained by a bank, the oral evidence which is discrepant and infirm cannot be relied upon.

3. Resultantly the revision is accepted, the judgment and decree of the learned Appellate Court is set aside and that of the trial Court is restored with no order as to costs.

M.B.A./793/P

Petition accepted.