

2016 C L C Note 43

[Peshawar (Abbottabad Bench)]

Before Waqar Ahmad Seth, J

GULZAR----Petitioner

Versus

Mst. GHULAM FATIMA----Respondent

C.R.No.118 of 2010, decided on 15th April, 2013.

Specific Relief Act (I of 1877)---

---S. 42---Qanun-e-Shahadat (10 of 1984), Arts.79, 80 & 129(g)---Suit for declaration---Registered sale deed by Plaintiff/ pardanasheen lady in favour of defendant/petitioner---Pardanasheen lady/plaintiff denied appearance before any Revenue Officer or recording statement and denied putting her thumb impression on the disputed mutation---Burden of proof---Trial Court obtained fresh thumb impression of plaintiff and sent the same to fingerprint expert---Thumb impression borne on mutation had been found different from the one obtained by the Trial Court, in the light of opinion of fingerprint expert, passed the judgment and decree in favour of the plaintiff---Defendant had failed to produce the patwari halqa, revenue officer---Effect---Beneficiary of transaction was supposed to bring on record all available evidence in order to show that onus of proof was discharged, as required under the law because special protection, in this respect was given to the pardanashin lady---Whenever the transaction was accomplished with the pardanashin lady, extra ordinary care and caution is legally required to be taken in execution of the sale deed, as after the sale transaction, whenever it would be challenged by the lady, the vendee was to prove the facts relating to the sale deed by producing overwhelming evidence free from any doubt---Suit was rightly decreed in circumstances---Revision petition was dismissed. [paras. 7, 8 & 9 of the judgment]

PLD 2011 Pesh. 23 rel.

Shazada Khan Jadoon for Petitioner.

Khalid Rehman Qureshi for Respondent.

Date of hearing: 15th April, 2013.

JUDGMENT

WAQAR AHMAD SETH, J.---This revision petition under section 115, C.P.C. is directed against the judgment and decree dated 17.12.2009, whereby Additional District Judge-V, Haripur dismissed the appeal of petitioner and maintained the judgment and decree

of trial Court dated 7.9.1999.

2. Respondent filed a Suit for declaration regarding property fully described in the heading of plaint against the petitioner. Petitioner appeared and contested the suits by filing written statement and learned trial Court after recording evidence and hearing the parties decreed the suit of respondent vide judgment and decree dated 29.11.2008. Feeling aggrieved the petitioner preferred appeal and learned appellate court vide impugned judgment and decree dismissed the same. Hence, this revision petition.

3. Learned counsel for petitioner argued that respondent has instituted the declaratory suit with a considerable delay and no application for condonation of delay was moved by the respondent but the trial court has wrongly decreed the suit of respondent, which was maintained by the appellate court. It was argued that the courts below have misread and non-read the material evidence on record and on the basis of conjectures and surmises passed the impugned judgments and decrees, which are liable to be set aside.

4. On the other hand, learned counsel for the respondents opposed the contentions of petitioner and supported the impugned judgments and decrees of the Courts below.

5. Arguments heard and record perused.

6. A perusal of record would show that plaintiff Mst. Ghulam Fatima denied the sale in favour of Mst. Barkat Jan and in order to resolve the controversy once for all and for comparison purposes as to whether thumb impression of plaintiff Mst. Ghulam Fatima borne on the mutation was actual one or not, the trial Court obtained fresh thumb impression of her and sent the same to finger expert and learned trial Court in the light of opinion of finger expert passed the judgment and decree in her favour, as she has denied to have appeared before any revenue officer or has recorded any statement and she had denied putting her thumb impression on the disputed mutation. The petitioner could not substantiate the genuineness of mutation to the extent of respondent as they failed to produce the patwari halqa, who entered the mutation, and the revenue officer, who attested the same and mutation also does not bear the ID number of the vendor. The alleged thumb impression borne on mutation has been found different from the one obtained by the trial Court. In the circumstances, both the courts below have rightly held that the disputed mutation was collusively and fraudulently got attested whereby plaintiff has been deprived of her property fraudulently.

7. Even otherwise, the beneficiary of transaction is supposed to bring on record all available evidence in order to show that onus of proof is discharged, as required under the law because special protection, in this respect is given to the parda nashin lady. Whenever, the transaction is accomplished with the parda nashin lady, extra ordinary care and caution is legally required to be taken in execution of the sale deed, as after the sale transaction, whenever it would be challenged by the lady, the vendee may be able to prove the facts

relating to the sale deed by producing overwhelming evidence free from any doubt. Reliance in this respect is placed on PLD 2011 Peshawar 23.

8. In the wake of what has been discussed above, it is held that the learned Courts below on appraisal of legal and factual aspects of the case have rightly passed the impugned judgments and decrees, which in the facts and circumstances of the case need no interference and are hereby maintained.

9. Consequently, the revisions petition being bereft of merit is hereby dismissed.

JJK/249/P

Petition dismissed.