

SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Justice Munib Akhtar
Justice Shahid Waheed
Justice Musarrat Hilali

(AFR)
CIVIL APPEAL NO.1414 OF 2013

[On appeal against the judgment dated 15.08.2013 passed by the High Court of Balochistan, Quetta, in RFA No.76 of 2007]

Malik Amanullah

...Appellant(s)

VERSUS

Haji Muhammad Essa etc

...Respondent(s)

For the Appellant(s) : Mr. M. Shahzad Shaukat, ASC
Syed Rifaqat Hussain Shah, AOR
For Respondents No.1-6 : Mr. Zahoor Ul Haq Chishti, ASC
Mr. Mehmood A. Sheikh, AOR
For Respondent No.7 : Mr. Anis M. Shahzad, AOR
For Respondents No.8-9 : Nemo
Date of Hearing : 29.11.2023

JUDGMENT

Musarrat Hilali, J.— The instant Civil Appeal by leave of the Court has arisen out of the judgment passed by the High Court of Balochistan in Regular First Appeal No.76 of 2007 filed by Amanullah, Appellant (*Defendant No.4 therein*) which was dismissed vide impugned judgment dated 15.08.2013.

2. Impeaching the judgment of the High Court, learned counsel for the Appellant contended that the Appellant is a lawful purchaser and occupier of the property-in-question as at the time of sale transaction Abdul Fateh (*Respondent No.7*) was the owner who inherited the suit property from his father Muhammad Ibrahim; that the Appellant is a *bona fide* purchaser having no knowledge of any controversy existed between Respondents No.1 to 6 and 7; that the Power of Attorney was executed on 04.04.1990 while mutation No.167 was attested on 08.09.1997 i.e. after two years of the death of Muhammad Ibrahim (*landlord*) rendering judgments of both the Courts below perverse and illegal; that the

Power of Attorney given in trust could not have been used for one's self or relatives. Learned counsel added that the Trial Court as well as the High Court had not properly appreciated the evidence available on record in its true sense and passed the judgments which are not sustainable in the eye of law.

3. Conversely, learned counsel for Respondents No.1 to 6 (*Haji Muhammad Essa etc*) while opposing the contentions of the learned counsel for the Appellant submitted that Haji Muhammad Essa (*Respondent No.1*) purchased the suit property from Muhammad Ibrahim (*landlord*) who in consideration appointed Respondent No.1 as his lawful attorney through an irrevocable General Power of Attorney (Ex.P31). It was next argued that it was only after the death of Muhammad Ibrahim (*landlord*) when his son Abdul Fateh (*Respondent No.7*) approached the revenue authorities with unclean hands and got the inheritance mutation attested in his favour being sole legal heir of deceased Muhammad Ibrahim. Learned counsel lastly argued that the revenue authorities without following the due process, cancelled entries relating to mutation No.167 and mutation No.170 and attested entry of inheritance mutation No.173 in favour of Abdul Fateh (*Respondent No.7*) which is illegal and void; hence supported the findings given by the Trial Court in its judgment dated 29.10.2007 upheld by the High Court in the impugned judgment dated 15.08.2013.

4. Heard. Record perused.

5. It is to be noted that this appeal is by the subsequent vendee and arises out of a suit initially brought by Respondent No.1. Subsequently, Respondents No.2 to 6 were added as plaintiffs. The subject matter of this suit comprised of five transactions and we may easily divide them in two categories. In the first, we may include those transactions which took place before institution of the suit whereas the second related to the transactions which came about during the trial of the suit.

6. The dispute in this case is about the property measuring 5141 sq.ft. bearing Khasra No.130, situated at Ward No.32, Tappa Urban, Tehsil and District Quetta, originally owned by Muhammad Ibrahim (*landlord*).

7. Without further ado, we review the first category of transactions. Respondent No.1 claimed that Muhammad Ibrahim orally sold the property to him on 4th of April, 1990 for

Rs.315,000/- and in consideration appointed him as his lawful attorney of the property through an irrevocable General Power of Attorney (*Ex.P.31*) and based on this, on 8th of September, 1997 he transferred the property to his three sons (*Respondents No.2, 3 and 6*) vide mutation No.167 (*Ex.P.34*), they further transferred an area of 2000 sq.ft. to Respondents No.4 and 5 vide mutation No.170 dated 4th of October, 1997. He further said that Muhammad Ibrahim died on 20th of September, 1995. After his death, his son namely Abdul Fateh (*Respondent No.7*) applied to Respondent No.9 to cancel mutations No.167 and 170 which were accordingly cancelled. This cancellation was cited as a cause to bring a suit by which Respondents No.1 to 6 sought a declaration that the cancellation of mutations No.167 and 170 by Respondent No.9 was illegal. The suit was instituted on 10th of June, 1999. The Trial Court checked the truth of these facts under Issues No.1 to 3. Considering the evidence brought on record, the Trial Court by its judgment dated 29th of October, 2007 found the facts relating to the first category of transaction in favour of Respondents No.1 to 6. It declared Respondents No.1 to 6 as lawful owners and directed Respondent No.9 to mutate the property in their favour. This declaration was neither challenged by Respondent No.7 in the High Court nor in this Court.

8. Now, we focus on the second category of transactions that materialised during the trial of the suit. It happened that Respondent No.7 (*son of Muhammad Ibrahim*) taking advantage of the cancellation of mutations No.167 and 170 sold the property to the present Appellant by mutation No.220 dated 5th of April, 2003. Subsequently, the Appellant joined the suit as defendant No.4. He contested the claim of Respondents No.1 to 6. His transaction was examined under additional Issue No.4 and was not found valid. In light of this fact, we sked the Appellant's counsel whether the doctrine of *lis pendens* did not hit the sale in favour of the Appellant. In answer to this question, he referred us to the statement of the Appellant in which he stated that Respondent No.7 inherited the property from his father Muhammad Ibrahim and on 28th of February, 2003 he sold it to him for Rs.3,000,000/- and that this sale was incorporated in the revenue records vide mutation No.220 dated 5th of April, 2003. He then took us to the proceedings sheet of the Trial Court and submitted that on 28th of

February, 2003 the suit was dismissed and contended that since the sale was made after it, the doctrine of *lis pendens* would not attract to it. This argument sans merit. There is no denying that the suit was dismissed on 28th of February, 2003 and then restored on 11th of April, 2003 and during this interregnum, Respondent No.7 sold the property to the Appellant. It is now well settled that if a suit is dismissed and then restored, the restoration order relates back and a transfer/sale after dismissal and before restoration is subjected to the principle of *lis pendens* embodied in Section 52 of the Transfer of Property Act, 1882¹.

9. It is now clear that the suit giving rise to this appeal, was related to a specific immovable property in which the rights of the parties were directly and specifically in question and that suit was not disposed of by a final decree when the property was sold to the Appellant. We have minutely examined the memorandum of instant appeal and the documents attached to it to find out whether the Appellant, at any stage, had taken the plea that the suit was collusive or was meant to entrap him. We find that this had never been the standpoint of the Appellant. Given the circumstances, the Appellant has no standing to take up cudgels on behalf of his transferor, to wit, Respondent No.7 and seek dismissal of the suit on the ground that his transferor was the lawful owner of the property and that Respondent No.1 based on General Power of Attorney could not transfer the property to other Respondents. The Appellant, even though purchaser for value, without notice of the pendency of the suit shall be bound by the result of the first category of transaction, as his transferor (*Respondent No.7*) had accepted it by not challenging it before any higher forum. The Appellant, therefore, does not acquire any legal title free from the clog of his unsuccessful transferor, in whose shoes he steps in for all intents and purposes and has to swim and sink with his transferor.

10. Besides, the property-in-question was recorded in the names of Respondents No.3, 5 and 6 but the Tehsildar, on a request from Respondent No.7, cancelled mutations No.167 and 170 without notice and without providing them the opportunity of hearing which act is in contravention of Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 as well as

¹ *Ashutosh Roy v. Ananta Ram Bhattacharjee* [1919 IC 727] & *Muhammad Ashraf Butt and others v. Muhammad Asif Bhatti and others* [PLD 2011 SC 905]

contrary to the provisions of the Land Revenue Act, 1967. Hence, the High Court had rightly directed the revenue authorities to restore the mutations in respect of the property measuring 5141 sq.ft. bearing Khasra No.130, situated at Ward No.32, Tappa Urban, Tehsil and District Quetta, on the names of Respondents No.3, 5 and 6.

11. So viewed, we see no reason to upset the concurrent findings of the Courts below and find this appeal bereft of any merit. It is accordingly dismissed with no order as to costs.

Islamabad
Approved for reporting

ANNOUNCED IN OPEN COURT ON 3rd of October, 2024