

THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Bench:

Mr. Justice Athar Minallah

Ms. Justice Musarrat Hilali

Mr. Justice Irfan Saadat Khan

Civil Petition No.3210-L of 2023

and Civil Petition No.5181 of 2023

(Against judgment dated 28.09.2023 of the Lahore High Court, Lahore passed in R.S.As. No.68/2017 and 92/2017)

Faqir Syed Anwar ud Din decd. thr. LRs
Muhammad Azeem Sheikh

(in CP-3210-L/2023)

(in CP-5181/2023)

... *Petitioners*

Versus

Syed Raza Haider and others

... *Respondents*

(in both cases)

For the petitioner(s): Hafiz Muhammad Yousuf, ASC
(In CP-3210-L/2023)

Raja Imran Aziz, ASC
(In CP-5181/2023)

For the respondents: Mr. Navid Ashiq Alvi, ASC (in both cases)

Date of hearing: 22.04.2024

ORDER

Athar Minallah, J.- The petitioners have filed separate petitions and they have sought leave against the consolidated judgment of the High Court, dated 28.09.2023, whereby concurrent findings rendered by two competent courts were affirmed and, consequently, regular second appeals filed under section 100 of the Civil Procedure Code, 1908 ('CPC') were dismissed.

2. A suit was filed in the name of Mst.Yasmin Begum ("**plaintiff**") by her son, Syed Raza Haider as next friend in accordance with the provisions of Order XXXII of the CPC. The defendants no. 1 to 6 arrayed in the plaint and the plaintiff are siblings. Their father, Faqir Syed Siraj ud Din ('**predecessor in interest**') had left behind valuable properties, including agricultural land, in Tehsil Chichawatni, District Sahiwal and a residential house in Muslim Town, Lahore. The plaintiff

was married to Syed Mohammad Haider in 1969 but the latter divorced her in 1973. It was asserted that the plaintiff was not of sound mind and could not manage her own affairs let alone managing properties owned by her. After her divorce she lived with her mother and, upon her death, one of her sisters, Ms Nasira Begum ('**defendant no.2**'), took the responsibility of her care. The record shows that the plaintiff remained under medical treatment and was also hospitalized from time to time on account of mental ailment. The plaintiff had inherited 204 kanals of agricultural land in District Sahiwal and a share in the house situated in Muslim Town Lahore. One of the siblings, Faqir Syed Anwar ud Din ('**defendant no.1**') enjoyed the status of a civil servant and had held various public offices at the relevant time, including that of a Deputy Commissioner. He also remained posted as a Magistrate in Chichawatni, District Sahiwal. The share of the plaintiff in the house was transferred by the defendant no.1 in favour of Mohammad Asghar Chaudhry ('**defendant no.7**') on the basis of a general power of attorney, dated 14-08-1988. The agricultural property was transferred in the name of the plaintiff's mother on 09.10.1974 purportedly on the basis of oral sale, as per the assertion of the defendant no.1. The land was later transferred in the name of defendant no.1, said to have been gifted by the mother. Respondent no. 1 had taken the stance that the sale consideration in case of both the transactions was paid to one of the sibling i.e defendant no.2. The son of the plaintiff filed the suit on 06.06.1996 as next friend and it was asserted therein that he had gained knowledge regarding the fraudulent transactions on 25.05.1996. An application was also filed under the provisions of the Lunacy Act, 1912 ("**Lunacy Act**") by the son but it became infructuous because the plaintiff passed away in 1997. The suit had been filed during her lifetime

seeking a declaration, partition, possession and consequential relief. It was asserted in the plaint that the plaintiff was suffering from chronic mental ailments and that she was of unsound mind. At an early stage of her life she was also diagnosed with epilepsy. It was asserted that the plaintiff was deprived of her share on the basis of fraudulent acts committed on the part of the defendant no.1 in collusion with the other siblings. The suit was contested by the defendants and out of the divergent pleadings fourteen issues were framed. The parties were afforded an opportunity to produce their respective evidences and, upon conclusion of the trial, the suit was decreed vide judgment and decree dated 20.9.2014 by the Civil Judge, 1st Class, Lahore. The appeals preferred by the defendants were dismissed by the Additional District & Sessions Judge, Lahore vide judgment and decree dated 30.1.2017. The fate of the regular second appeals was the same since they were also dismissed by the High Court vide consolidated judgment dated 28.9.2023 which has now been impugned before us.

3. We have heard the learned counsel for the parties.

4. It is not disputed that the plaintiff had inherited agricultural land in District Sahiwal and a share in the house situated in Muslim Town, Lahore. The evidence brought on record had established the factum that the plaintiff suffered from mental ailments and that she remained hospitalized from time to time. The question of unsoundness of mind involved questions of fact and it stood proved on the basis of preponderance of evidence and subsequently concurrently affirmed by two competent courts. The defendants had not denied the mental condition of the plaintiff but respondent no.1 had taken the stance that this medical condition did not exist when the power of attorney was executed in his favour and transactions

relating to the two properties were made. However, the defendants could not discharge the onus to this effect and, therefore, the issue was decided against them. There is no force in the argument advanced by the learned counsel at the bar that this factum could not have been decided except in accordance with the provisions of the Lunacy Act. As already noted, the plaintiff had passed away before the application filed by her son under the Lunacy Act could be decided. Moreover, no attempt was made on behalf of the defendants to raise this question before the trial court, rather it was pleaded that the plaintiff did not suffer from any mental disability when the transactions had taken place. Except for defendant no.1 no other sibling had entered the witness box. Nonetheless, the trial court was competent to adjudicate upon this question on the basis of evidence brought on the record by the parties and in the light of their pleadings. Defendant no.1 had admitted that the sale consideration was not paid to the plaintiff, rather, according to his deposition, it was received by defendant no.2. The receipt was also executed by two other siblings. Defendant no.1 himself was a beneficiary of the transfer of the agricultural property while the share in the house was transferred by him pursuant to a power of attorney. The Defendant no.1 had made contradictory statements in his deposition regarding the sale of the agricultural land in the name of her mother. The defendant no.1 also failed to bring on record reliable and confidence inspiring evidence to establish that the execution of the power of attorney by a person who suffered from chronic and serious mental ailments and the transactions made on her behalf or attributed to her were bonafide and sustainable. The defendant no.8 had taken the plea of being a bonfide purchaser against valuable consideration but he had failed to bring any evidence on record to prove this factum. This Court, in Hafiz Tassadaq

Hussain's case¹, has held that in cases involving protection under section 27(b) of the Specific Relief Act 1877 ('**Act of 1877**') the subsequent vendee who asserts that he is a bona fide purchaser i.e a transferee for value has to discharge the initial onus. The latter has to discharge the initial onus to the effect that; he had acquired the property for due consideration and thus is a transferee for value; he or she, as the case may be, has to show that the sale was for a price paid to the vendor and not otherwise; there was no dishonesty of purpose or tainted intention to enter into the transaction thereby meaning that the latter had acted in good faith or bonafidely and, lastly, that he/she had taken reasonable care to inquire i.e had acted as a person of ordinary prudence in making inquiries expected of a purchaser who intends to acquire a good title for the value being paid for. These principles have been affirmed by this Court in Gulzar Ahmed's case². Defendant no.8 had failed to discharge the initial onus in accordance with the settled principles enunciated by this Court. The defendants had assailed the concurrent findings of two courts by filing a regular second appeal before the High Court under section 100 of the CPC. It is settled law that concurrent findings are not interfered with under section 100 of the CPC unless the lower courts have misread the evidence on record, or may have ignored a material piece of evidence on record through perverse appreciation of evidence. It is also settled law that reappraisal of evidence on record by the second appellate court is not permissible while exercising jurisdiction under section 100 of the CPC³. The High Court had rightly dismissed the regular second appeals filed by the defendants on the touchstone of the aforementioned principles.

¹ Hafiz Tassaduq Hussain v. Lal Khatoon and others (PLD 2011 SC 296)

² Gulzar Ahmed and others v. Ammad Aslam and others (2022 SCMR 1433)

³ Amjad Sharif Qazi and others v. Salim Ullah Faridi and others (PLD 2006 SC 777)

Haji Sultan Ahmed through Legal Heirs v. Naeem Raza (1996 SCMR 1729)

5. We have not been able to persuade ourselves that the concurrent findings by the competent courts suffer from any legal infirmity requiring interference by this Court. No substantial question of law has been raised by the learned counsel for the defendants requiring interference by this Court. The defendant in the connected petition (CP 5181 of 2023) could not establish the factum of being a *bona fide* purchaser and the concurrent findings to this extent are also not assailable.

The above are the reasons for our short order dated 22.4.2024, which is reproduced as under:

“For reasons to be recorded later, leave to appeal is declined and these petitions are dismissed because no important question of law in terms of Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973 has arisen in these petitions for our determination.”

Judge

Judge

Judge

Islamabad the,
22nd April, 2024
'APPROVED FOR REPORTING'
(Aamir Sh.)