

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:

Raja Saeed Akram Khan, J.
Ghulam Mustafa Mughal, J.

Civil Appeal No.129 of 2018
(PLA filed on 14.04.2018)

Muhammad Aslam son of Jabbar Mir, r/o
Authmuqam, District Neelum.

....APPELLANT

VERSUS

1. Muhammad Farooq,
2. Shafqat Hussain,
3. Muhammad Shabir, sons,
4. Mst. Ayesha Bibi daughter of Abdul
Jabbar Mir, r/o Authmuqam, District
Neelum.

....RESPONDENTS

(On appeal from the judgment and decree of
the High Court dated 20.02.2018 in civil
appeal No.10 of 2009)

FOR THE APPELLANT: Mir Sharafat Hussain,
Advocate.

FOR THE RESPONDENTS: Mr. Sakhawat
Hussain Awan,
Advocate.

Date of hearing: 09.04.2019

JUDGMENT:

Raja Saeed Akram Khan, J.— This appeal by leave of the Court has been directed against the judgment and decree of the High Court dated 20.02.2018, whereby the appeal filed by the respondents, herein, has been accepted.

2. The facts necessary for disposal of this appeal are that the appellant, herein, filed a suit in the Court of Senior Civil Judge, Authmuqam for declaration-cum-possession and cancellation of gift-deed dated 18.04.1995, in respect of the land comprising *khewat* No.15, measuring 10 *kanal* 6 *marla*, situate at village Authmuqam. The trial Court after necessary proceedings dismissed the suit for want of proof, whereas, on appeal the first

appellate Court set aside the judgment passed by the trial Court and decreed the suit in favour of the appellant, herein. Feeling dissatisfied the respondents, herein, filed an appeal before the High Court. The learned High Court vide impugned judgment dated 20.02.2018 while accepting the appeal set aside the judgment and decree passed by the first appellate Court and restored the judgment and decree passed by the trial Court, hence, this appeal by leave of the Court.

3. Mir Sharafat Hussain, Advocate, the learned counsel for the appellant argued that the impugned judgment is against law and the facts of the case which is not sustainable in the eye of law. He contended that the learned High Court failed to appreciate the evidence brought on record by the parties in a legal manner. He added that in the case in hand the

inherited property of the appellant has been transferred to the respondents through gift-deed dated 18.04.1995. The appellant took a specific stance that the gift-deed is forged and fabricated and the respondents failed to prove the genuineness of the same by producing reliable evidence. The learned counsel forcefully submitted that the respondents even did not bring on record the original gift-deed and only place reliance on a photocopy of the gift-deed which was not duly exhibited. The learned counsel contended that the statements of the alleged marginal witnesses are also contradictory but this aspect of the case escaped the notice of the trial Court as well as the learned High Court. The learned counsel maintained that a specific point was raised before the High Court that in respect of the disputed land the matter was subjudice before Member Board of Revenue when the alleged

gift-deed was got registered, therefore the principle of lis-pendens is attracted but the learned High Court failed to resolve this point according to law. The learned counsel lastly submitted that the learned High Court disturbed the well reasoned judgment recorded by the first appellate Court without assigning any valid reason and interference by this Court is warranted under law. He referred to and relied upon the case law reported as *Inayat Ali Shah v. Anwar Hussain* [1995 CLC 1906], *Abdul Aziz v. Mst. Janaty Bibi* [1999 CLC 1505], *Sardar Bakhsh v. Maqsood Bibi and others* [2003 SCMR 1194] and *Liaqat Ali v. Province of Punjab through D.C.O. Gujrat and 6 others* [2005 YLR 2529].

4. On the other hand, Mr. Sakhawat Hussain Awan, Advocate, the learned counsel for the respondents strongly controverted the arguments advanced by the learned counsel

for the appellant. He submitted that the impugned judgment is perfect and legal which is not open for interference by this Court. The learned counsel contended that the house of the respondents was burnt due to Indian firing and everything was lost, therefore, they could not produce the original gift-deed, however, they placed on record the available photocopy of the same and also got recorded the statements of the marginal witnesses to prove the authenticity of the gift-deed. He submitted that the appellant failed to bring on record an iota of evidence to prove his claim, therefore, the trial Court rightly dismissed the suit and the learned High Court has not committed any illegality while restoring the judgment of the trial Court. The learned counsel prayed for dismissal of appeal.

5. We have heard the arguments of the learned counsel for the parties and gone

through the record made available along with the impugned judgment. The appellant, herein, by filing the suit has challenged the validity of a registered gift-deed dated 18.04.1995. The claim of the appellant is that he is owner of the suit land and the gift-deed dated 18.04.1995, through which the suit land has been transferred to the respondents, is forged and fabricated as he never got executed any such gift-deed. Before scrutinizing the record to ascertain the truth, we deem it proper to mention here that admittedly the gift-deed is a registered document and under law presumption of truth is attached with it and for cancellation of the same strong evidence is required. In the matter in hand, the appellant himself produced the certified copy of the disputed gift-deed in evidence. The perusal of the contents of gift-deed shows that the appellant appeared in the

Court of Sub-Judge/Registrar on 18.04.1995 and voluntarily transferred the land in dispute to the respondents by executing the gift-deed. The certified copy of the gift-deed shows that in the Court concerned the donor-appellant was identified by one Kh. Abdul Samad and the other marginal witnesses of the gift-deed were Ahsan Sheikh and Afsar Meer. Except Afsar Meer (deceased) the other two witnesses, Kh. Abdul Samad and Ahsan Sheikh appeared before the trial Court and verified the execution of the gift-deed by the appellant. The learned counsel for the appellant during the course of arguments stated that there are many contradictions in the statements of the alleged marginal witnesses; however, we failed to find out any such contradiction in the same which may be helpful to the case of the appellant. We are conscious about the fact that when the

contents of a registered document are challenged then the onus of proof is shifted on the beneficiary. In the instant case, the beneficiaries, i.e. respondents, herein, produced the marginal witnesses of the gift-deed in the Court and they fully supported their version, therefore, it can be said that they have proved the authenticity of the gift-deed in view of the provisions of Qanun-e-Shahadat, 1984.

6. The argument of the learned counsel for the appellant that the respondents completely failed to prove the genuineness of the gift-deed, even they did not bring on record the original gift-deed; is not of worth consideration in view of the peculiar facts of the instant case as the registration of the gift-deed is amply proved from the certified copy, issued by the office of the concerned Registrar, brought on record by the appellant; therefore,

mere on the ground that the respondents has not brought on record the original gift-deed, the execution of the gift-deed cannot be denied. It is not case of the appellant that no gift-deed was ever executed rather he only claimed that he never got executed the gift-deed and the same has been procured by way of fraud, however, he failed to substantiate this claim. The witness of the appellant, Ali Akbar, stated in his statement that at the relevant time when the gift-deed was executed, he was on duty in army and the respondents not prepared any forged gift-deed in his presence. The relevant portion of the statement reads as under:-

"مظہر کو فوج میں 16 سال ہو گئے ہیں۔ سال 1995 میں مظہر چھٹی پر نہ آیا تھا۔ حاضر ڈیوٹی رہا۔ مظہر کے سامنے مدعا علیہم نے کوئی جعلی ہبہ نامہ نہ بنایا ہے۔"

The statement of the other appellant's witness, Muhammad Younas, also shows that he is not

aware of the actual facts and the circumstances. For better appreciation the statement is reproduced which reads as under:-

"اراضی متدعوئیہ مظہر کی یادداشت سے قبل سے مدعا علیہم کے زیر قبضہ ہے۔ اراضی متدعوئیہ کی نسبت فریقین کے مابین جرگہ داری ہوتی رہی ہے۔ ایک جرگہ میں کونسل مدعا علیہم بھی تھے۔ اس کے علاوہ مفتی منصور صاحب، ریشم میر، ظفر میر بھی ہوتے رہے ہیں۔ مظہر بھی جرگہ میں موجود تھا۔ البتہ کونسل مدعا علیہم والے (میر گوہر الرحمن) والے جرگہ میں مظہر موجود نہ تھا مظفر آباد تھا۔ مظہر کو علم نہ ہے کہ جرگہ داران نے تحریری فیصلہ دیا ہے یا نہیں۔ از خود کہا کہ مدعا علیہم نہ مانتے ہیں۔ جسوقت مفتی منصور اور ریشم میر نے جرگہ داری کی اسوقت اراضی کے متعلق مقدمہ مظفر آباد تھا۔ مظہر کو علم نہ ہے کہ ان جرگہ داران نے یہ فیصلہ کیا تھا کہ اسلم مدعی کو اٹھٹی اٹھمقام سے ایک کنال زمین اور 12 ہزار روپے نقد دینے کا فیصلہ کیا تھا اور یہ بھی کہا تھا کہ وہ مظفر آباد والے مقدمہ سے دستبردار ہو جائے۔ مظہر کو علم نہ ہے کہ وہ ایک کنال اراضی مدعی نے اشرف میر کے ہاتھ فروخت کر دی ہے۔ مظہر کو علم نہ ہے کہ مدعی نے بمطابق فیصلہ جرگہ مظفر آباد والا مقدمہ چھوڑ دیا تھا۔"

Except the statements of the above cited witnesses, the appellant has not brought on record any cogent evidence in support of his version. One of the arguments of the learned

counsel for the appellant is that the gift-deed has been executed during the pendency of a revision petition before Member Board of Revenue, therefore, the principle of lis-pendens is attracted. It may be observed here that when it is proved that the appellant himself transferred the land by executing the gift-deed to the respondents then he is estopped by his own conduct to raise such objection. The possession of the respondents over the suit land since 1974, as well as huge improvements made by them, in shape of construction of houses etc., is also admitted. In this regard, the appellant's witness, Muhammad Younis stated in his statement as under:-

"یہ درست ہے کہ مدعا علیہم نے اراضی متدعوئیہ میں مکانات تعمیر کرنے کے علاوہ درختان نصب کر رکھے ہیں۔ دیوار بندی بھی کر رکھی ہے۔"

In such state of affairs, the condition precedent to a valid gift, i.e., transfer of

possession is also not questionable in the present case and in view of the overall circumstances of the case no legal ground for cancellation of the gift-deed was available. Thus, we are satisfied that the learned High Court has not committed any such illegality while passing the impugned judgment which may call for interference by this Court. The case law referred to by the appellant's counsel having different facts and circumstances is not applicable in the case in hand.

For the reasons given above, we do not find any merit in this appeal, which is hereby dismissed with no order as to costs.

Muzaffarabad,
___ .04.2019

JUDGE

JUDGE

