

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Review Jurisdiction]

PRESENT:

Raja Saeed Akram Khan, J.

Civil Review No.07 of 2019

(Filed on 22.02.2019)

1. Mushraf Khan, S/o Sarwar Khan,, Caste Mangral,
r/o Kharawat Tehsil Senhsa District Kotli.

.... PETITIONER

VERSUS

1. Mst. Syed Begum D/o Syed Ali, widow of Kafyat
Ali, Caste Mangral, R/o Kharawat Tehsil Sehnsa
District Kotli.

.....RESPONDENT

2. Auranzaib,
3. Azeem Khan, Lunatic through real brother Mansha
Khan,
4. Mansha Khan,
5. Kala Khan, sons,
6. Tasleem Begum,
7. Kali Begum, daughters of Kehroo Khan,
8. Faisal Khan,
9. Faizan Minor through Real Mother Robina Begum,
10. Robina Begum widow of Makhan Khan,
11. Fazilat Begum D/o Sarwar Khan,
12. Nisar Ahmed, Lunatic,

13. Sameer Ahmed, sons of Fazal Ahmed Khan,
14. Shaheen Begum,
15. Shamshad Begum, daughters of Bashir Begum,
16. Kali Begum,
17. Gulzar Begum,
18. Asma Begum, daughters of Walayat Khan, Caste Mangral, R/o Kharawat,
19. Muhammad Aslam,
20. Muhammad Afzal,
21. Muhammad Arshid,
22. Zubaida Begum,
23. Fahmida Begum, daughters of Saif Ali,
24. Raza Ahmed Khan,
25. Imran Khan, sons of Bashir Ahmed Khan,
26. Habib Rehman,
26. Zaffar Iqbal, sons of Nazir Ahmed Khan, caste Mangral, r/o Kharawat Tehsil Sehnsa District Kotli.

.... PROFORMA-RESPONDENTS

[In the matter of review from the order of this Court
dated 22.01.2019 in Civil PLA No.254/2018]

FOR THE PETITIONER: Ch. Manzoor Ahmed
Khan, Advocate.

FOR RESPONDENT No.1: Mr. Muhammad Reaz
Alam, Advocate.

Date of hearing: 25.04.2019.

ORDER:

Raja Saeed Akram Khan, J.— Through the titled petition, review has been sought against the order of this Court dated 22.01.2019, whereby the petition for leave to appeal filed by the petitioner, herein, along with another has been dismissed.

2. Necessary facts for disposal of the instant review petition are that the plaintiff/petitioner, along with proforma-respondent No.25, herein, brought a suit for declaration-cum-cancellation of gift-deed executed on 18.06.1997, before the Civil Judge Sehnsa on 06.09.2011. It was alleged in the suit that the disputed gift-deed pertains to the whole share of Pinno Khan, comprising of different khasra numbers, situated in Mozia Kharawat Tehsil Sehnsa and the mutation No.29 along with other entries made in the revenue record on the basis of gift-deed dated 18.06.1997 are liable to be set aside because donor of the gift-deed, i.e. Pinno Khan was a lunatic person. It was further stated that the said gift-deed was got

executed fraudulently by the defendant/respondent, herein, just to deprive the plaintiff/petitioners of their legal property, therefore is liable to be cancelled and prayed that decree for declaration along with the cancellation of gift-deed dated 18.06.1997 may be granted in their favour. The suit was contested by the defendant/respondent, herein, by filing written statement, stating therein that the suit is not maintainable in its present form. The gift-deed was executed according to the law. It was also claimed that the plaintiffs have got no cause of action and the suit is hit by the principles of estoppel and res-judicata. In the light of the respective pleadings of the parties, the learned trial Court framed the issues and heard the arguments on legal issues and thereafter, vide judgment & decree dated 30.01.2012 dismissed the suit on the ground of estoppel and res-judicata as well as on the ground of limitation. Feeling aggrieved from the judgment and decree passed by the trial Court, the plaintiffs filed an appeal before the learned Additional

District Judge, Sehnsa on 02.03.2012, which was dismissed vide judgment and decree dated 09.06.2012. The petitioners approached the High Court by filing second appeal, which was also dismissed vide judgment and decree dated 29.09.2018. Ultimately, the petitioner along with proforma-respondent No.25, herein, approached this Court by filing a petition for leave to appeal, which has been refused vide order dated 22.01.2019, hence this review petition.

3. Ch. Manzoor Ahmed Khan, Advocate, counsel for the petitioner, submitted that while handing down the impugned order important legal and factual points remained escaped the notice of this Court, hence review of the same is justified under law. He submitted that at the time of arguments in PLA, the specific point was raised that the petitioner and proforma-respondents, herein, are the legal heirs of Pinnu Khan and they have been deprived of their legitimate right through gift-deed but neither this point was discussed nor resolved while handing down

the impugned order. Furthermore, admittedly the petitioner, herein, and proforma respondents, herein, except Raza Ahmed Khan, were not party in the previous round of litigation and the principle of res-judicata was not applicable to their extent but in spite of this admitted fact no relief has been granted to them while handing down the impugned order. These are errors apparent on the face of the record, hence review of the impugned order is justified. He referred to and relied upon the cases reported as *Kamran Hafeez vs. Gul Zaman Khan & 7 others* [2015 SCR 1505] and *Dr. Javed Akhtar Rathore vs. Dr. Abdul Khalid & 3 others* [2016 SCR 1634].

4. Conversely, Mr. Muhammad Reaz Alam, Advocate, counsel for the respondents strongly opposed the arguments advanced on behalf of the petitioner while submitting that the points agitated and argued in this petition, have already been attended to and resolved by this Court in the impugned order. In fact, the petitioner in the guise of

review petition wants to re-open the whole case, which is not permissible under law. He submitted that the scope of review is very limited and the review petition cannot be heard like an appeal. There is no error apparent on the face of the record and the petitioner has filed the frivolous review petition just to hazard the respondents which is liable to be dismissed while imposing heavy cost upon the petitioner.

5. I have heard the learned counsel for the parties and gone through the impugned order along with the other material made available on record. After perusal of the record, I am of the view that the arguments advanced on behalf of the petitioner appear to be the result of misconception of law and facts as all the points raised by the petitioner were duly considered and resolved while handing down the impugned order. The first point raised by the learned counsel for the petitioner regarding the gift-deed was attended to and resolved in paragraph No. 4 of the impugned order in the following manner:-

“4.....The controversy involved in the case is regarding the gift-deed, allegedly executed on 18.06.1997 by one Pinnu Khan (deceased) in favour of Syed Begum, respondent, herein. The petitioners herein, challenged the said gift-deed by filing a declaratory suit before the Civil Judge Sehnsa on 06.09.2011, through which they sought the cancellation of the gift-deed on various grounds including that the donor (Pinnu Khan) was lunatic and a person of unsound mind, thus, he was unable to execute the gift-deed. The learned trial Court dismissed the suit while applying the principles of res-judicata and estoppel as well as on the ground of limitation. The findings of the trial Court were upheld by the both the appellate Courts below. The contention of the learned counsel for the petitioners is that all the Courts below have fell in error of law while dismissing the suit of the petitioners on the grounds of res-judicata and estoppel, whereas the fact of the matter is that neither the issue raised in the suit has ever been resolved nor the petitioners herein, were party in the previous round of litigation. To appreciate this argument, I have perused the record. From the perusal of the record it appears that initially, Raza Ahmed, petitioner No.2, herein, filed a suit on 20.06.2000 regarding the disputed gift-deed, executed on 17.06.1999, claiming therein, that Pinnu Khan, the donor was lunatic, therefore, the gift-deed allegedly executed by him is liable to be cancelled, being against law. On filing of the said suit, Pinnu Khan, personally appeared in the Court and requested for withdrawal of the suit, stating therein, that he has executed the gift-deed with his own

free consent and the suit has been filed with mala fide intention. In view of the statement made by Pinnu Khan, the suit was dismissed by the Civil Judge. On appeal, the learned District Judge as well as the High Court upheld the order of the trial Court. The matter came up before this Court. This Court also upheld the findings recorded by all the Courts below vide its judgment dated 02.12.2005, with the observation that the parties can redress their grievances after obtaining the guardian certificate from the appropriate Court regarding the lunacy of Pinnu Khan. Thereafter, Raza Ahmed Khan, petitioner No.2, herein, moved an application for guardianship of Pinnu Khan before the District Judge Kotli empowered as Guardian Judge on 21.01.2006. The said application was dismissed on 25.02.2009. An appeal was also filed before the learned High Court which was dismissed by the learned High Court as having been withdrawn. The record further reveals that one Nazir Ahmed Khan, who is father of plaintiffs No.3 to 5 in the present suit also filed a suit for declaration along with the cancellation of the disputed gift-deed before the Senior Civil Judge Kotli on 13.08.2002 which was dismissed for non-prosecution on 30.01.2003."

Same like the other point of applicability of res-judicata was also resolved in paragraph No. 5 of the impugned order. For convenience the same is reproduced as under:-

“5. In view of the aforesaid factual position, I am of the view that the learned trial Court has rightly dismissed the suit filed by the plaintiffs/petitioners herein, while applying the principles of res-judicata and estoppel, as in the previous rounds of litigations, not only the issue raised in the suit regarding the cancellation of gift-deed has been resolved and attained finality by this Court but the issue of lunacy of Pinnu Khan (deceased donor) has also been resolved after recording his statement and attained finality. The petitioners, herein, except petitioner No.1, herein, remained party throughout in the previous round of litigations, therefore, the principles of res-judicata and estoppel are fully applicable in the case in hand. In this state of affairs, I do not find any substance in the arguments of the counsel for the petitioners. The case law referred to by him is also not applicable to the case in hand, as having its own peculiar facts.”

6. In view of the above, the argument of the counsel for the respondents that in fact, the petitioner in the guise of review petition wants to re-open the whole case, has substance. It may be observed here that the jurisdiction vested in the Court for review of judgment/order is very limited and quite different from that of appeal and a case cannot be reopened only on the ground that according to estimation of a party

another interpretation of law is possible. The petitioner has failed to point out any error apparent on the face of the record which is pre-requisite for review of the judgment/order.

Resultantly, this review petition having no substance is hereby dismissed with no order as to costs.

Mirpur.
.04.2019.

JUDGE