

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, C.J.
Ghulam Mustafa Mughal, J.

Civil Appeal No. 211 of 2018
(PLA Filed on 5.6.2018)

Kalu s/o Mangu, caste Piswal r/o village
Chakothi, Tehsil and District Hattian Bala, Azad
Kashmir.

.... APPELLANT

VERSUS

1. Mst. Sakeen Bibi, widow,
2. Zubaida Bibi,
3. Sajida Bibi,
4. Abida Bibi,
5. Rashida Bibi, daughters,
6. Faizan Ahmed,
7. Sufiyan,
8. Ehstan, sons of Molvi Muhammad
Suleman,
9. Meer Alam s/o Fazi Muhammad r/o village
Khaee Gran, Tehsil and District Hattian
Bala, Azad Kashmir.
10. Syed Altaf Hussain Hamdani, petition
writer, Hattian Bala.

..... RESPONDENTS

(On appeal from the judgment of the High Court dated
18.4.2018 in Civil Appeal No. 24 of 2017)

FOR THE APPELLANT: Ch. Shoukat Aziz, Advocate.

FOR THE RESPONDENTS: Ch. Abdul Jabbar,
Advocate.

Date of hearing: 7.11.2019

JUDGMENT:

Ghulam Mustafa Mughal, J— The captioned appeal by leave of the Court arises out of the judgment dated 18.4.2018 passed by the Azad Jammu & Kashmir High Court in civil appeal No. 24 of 2017.

2. The brief facts forming the background of the captioned appeal are that Kalu, appellant, herein, filed a suit for declaration-cum-perpetual injunction and possession against the respondents, herein, in the Court of Senior Civil Judge Hattian Bala on 13.8.2011 alleging therein that land comprising Khewt No. 112/91, Khasra No. 332 renumbered as 1079, measuring 5 marla; Khasra No. 1081 measuring 10 marla; Khasra No. 370 renumbered as 1128 measuring 1 kanal 13 marla; Khasra No. 337 renumbered as 1130 measuring 1 kanal 18 marla, total measuring 4 kanal 6 marla situated

at village Chakoti, Tehsil and District Hattian Bala was in the ownership of the plaintiff. It was averred that the said land was leased out to the defendants for 35 years for consideration of Rs.9000/-, however, the defendants by taking undue advantage of illiteracy of plaintiff have got executed sale-deed, which is illegal, arbitrary and liable to set aside. The suit was contested by the defendants by filing written statement, wherein they refuted the claim of the plaintiff. The learned trial Court framed issues in light of the pleadings of the parties and directed them to lead evidence pro and contra. At the conclusion of the proceedings, vide judgment and decree dated 16.6.2015 the learned trial Court dismissed the suit for want of proof. Feeling aggrieved from the said judgment and decree, the appellant, herein, preferred an appeal before the District Judge Jhelum Valley on 2.7.2015, which was also dismissed vide judgment and decree dated 27.12.2016. The judgment dated 27.12.2016 passed by the learned District Judge

was further assailed before the Azad Jammu & Kashmir High Court by way of an appeal on 8.2.2017. The learned High Court after hearing the parties vide impugned judgment and decree dated 18.4.2018 has dismissed the appeal.

3. Ch. Shoukat Aziz, the learned Advocate appearing for the appellant argued that the appellant, herein, filed a suit in the Court of Senior Civil Judge Hattian on 13.8.2011, claiming therein that sale-deed dated 12.7.1977 allegedly executed by the appellant, herein, is fraudulent, concocted and collusive, which has been obtained by the respondents by taking undue advantage of appellant's being illiterate. He argued that the fact of the matter is that the suit land was mortgaged with defendant in lieu of Rs.9000/- for a period of 35 years. The learned Advocate argued that the appellant after completion of mortgaged period wanted to pay back the mortgage money but before that the respondents started construction on the suit land and on being stopped, they claimed

ownership of the land from where it transpired that the respondents have obtained a sale-deed instead of mortgaged-deed collusively by practicing fraud. The learned Advocate argued that the suit of the appellant was erroneously dismissed by the trial Court vide judgment and decree dated 16.6.2015 on the ground of limitation and for want of proof. The learned Advocate argued that an appeal was filed before the District Judge Hattian against the judgment dated 16.6.2015, but the same was dismissed by the learned District Judge illegally vide judgment and decree 27.12.2016. The learned Advocate argued that second appeal was filed before the Azad Jammu & Kashmir High Court, which also met the same fate and was dismissed by the learned High Court on the ground that concurrent findings of fact cannot be assailed in second appeal. The learned Advocate argued that the learned High Court as well as the District Judge and the trial Court has failed to discuss the evidence in its true perspective. He

submitted that the onus of proof was on the beneficiary of the document, respondents, herein,, who have not led any evidence regarding execution of the document by the appellant, herein, as a sale-deed. The learned Advocate argued that entries recorded in the revenue record were also bogus and collusive, hence, were liable to be struck down. He prayed for acceptance of the appeal.

4. Conversely, Ch. Abdul Jabbar the learned Advocate appearing for the respondents argued that the suit was time barred as the sale-deed was executed on 12.7.1977 and the suit has been filed on 13.8.2011. The learned Advocate argued that on the basis of the sale-deed, the mutation as well as ownership of the respondents was recorded in the revenue record and in the recent settlement the respondents have been shown as owners but even after the settlement the appellant, herein, filed a suit after a couple of years without any explanation. The learned Advocate submitted that the facts stated

showing cause of action for filing the suit were vague and not believable. The learned Advocate argued that the Courts below have discussed the evidence and no misreading or non-reading of evidence has been pointed out by the appellant in the High Court, therefore, the learned High Court has rightly dismissed the suit.

5. We have heard the learned Advocates representing the parties and have gone through the record of the case. A perusal of the record reveals that a sale-deed in respect of the suit land was executed by the appellant, herein, in favour of the respondents, herein, on 12.7.1977. The precise stand of the appellant, herein, is that the sale-deed, in fact, was not executed rather the land was given on mortgage in lieu of Rs.9000/- for a period of 35 years. This fact has not been proved through any evidence as well as record of rights. Law is well settled that in order to declare a document as mortgage as sale or vice-versa, a sale as mortgage the document has to be considered as a whole. The contents of the

document is the best evidence regarding the nature and intention of the parties. A perusal of the sale-deed reveals that the same has been executed out and out sale and the appellant, herein, has not led any evidence to prove that instead of sale the document was executed as a mortgage. After 1977, the settlement has been carried out and on the basis of the sale-deed the mutation in favour of the respondents was also attested, which is a general notice for public regarding the ownership of the persons, so entered, but even then the appellant has not bothered to file the suit in time. The respondents, though, have not produced marginal witnesses but the available witnesses have been produced. The sale-deed is registered and has been entered in the revenue record and after the settlement, the respondents are entered as owners of the land. The sale-deed cannot be declared as a mortgage on bare statement of the appellant without there being any evidence on record. Similarly, on the basis of a registered

document, longstanding entries in the revenue record cannot be declared as illegal. The learned High Court has rightly dismissed the appeal on the ground that no second appeal is competent against the concurrent findings of fact. As the learned Advocate appearing for the appellant is unable to point out any misreading or non-reading of record, therefore, we find no force in this appeal, hence, the same is hereby dismissed with no order as to costs.

JUDGE

CHIEF JUSTICE.

Mirpur.
.11.2019.