

HIGH COURT OF AZAD JAMMU AND KASHMIR

Civil Appeal No.102/2015:
Date of institution 14.07.2015;
Date of hearing. 08.06.2022.
Date of decision. 09.06.2022.

Javaid Iqbal S/o Khadim Hussain, caste Sheikh R/o village
Chakar Tehsil Chakar District Hattian Bala, A.K.

.....Appellant

VERSUS

1. Mohammad Shabbir S/o Noor Din;
2. Abdul Qadir;
3. Abdul Aziz S/o Faqeer Sheikh;
4. Faizullah S/o Hadayatullah;
5. Bashir son;
6. Mst. Afsar Jan;
7. Dil Jan daughters of Noor Din R/o village Dhanni
Shahdara Tehsil and District Hattian Bala, AJ&K.

.... Respondents

Civil appeal No. 106/2015;
Date of institution. 28.07.2015;

1. Abdul Qadir;
2. Abdul Aziz sons of Faqeer Sheikh, caste Sheikh R/o
Mauza Dhani Shahdara Tehsil and District Hattian Bala.

..... Appellants.

VERSUS

1. Faiz Ullah S/o Haday Ullah from the wedlock of Mst.
Noor Jahan, caste Bhatti R/o Mauza Dhani Shahdara
Tehsil and District Hattian Bala.
2. Javed Iqbal S/o Khadim Hussain caste Sheikh R/o
Mauza Chakar Tehsil and District Hattian Bala.

.... Real Respondents

3. Bashir (son);
4. Mst. Afsar Jan;

5. Dil Jan sisters of Noor Din from the wedlock of Mst. Akbar Jan, caste Sheikh R/o Mauza Dhani Shahdara Tehsil and District Hattian Bala.

.... Pro forma Respondents

CIVIL APPEALS

Before:- Justice Chaudhary Khalid Rasheed, J.

PRESENT:

Khawaja Atta Ullah Chak, Advocate, for Javed Iqbal, appellant in appeal No.102/2015.

Shahzad Shafi Awan, Advocate for Abdul Qadir and another appellants in appeal No.106/2015.

Raja Gul Majeed Khan, Advocate, for respondents.

JUDGMENT:

The captioned appeals, filed against the judgment and decrees recorded by learned District Judge Hattian Bala dated 18.06.2015 raise common questions of facts and law, arise out of common judgment and can conveniently be decided simultaneously hence, were heard together and are decided as such through this judgment.

Detailed facts of the captioned appeals are, Abdul Qadir and others appellants, in appeal No.106/2015 filed a suit for declaration and perpetual injunction against Faiz Ullah and others, respondents in the Court of Senior Civil Judge Hattian Bala on 26.01.2004, in which it was stated that the land comprising Khewat No.101/90, khasra No. 291 measuring 8 kanal 9 marlas situated in village Dhani

Shahdara Tehsil and District Hattian Bala was in the ownership and possession of Mst. Noor Jahan and Mst. Kalu as a result of private partition. Mst. Kalu and Noor Jahan transferred the said land to the father of plaintiffs for the consideration of Rs.160/- which she had already received from time to time, the possession of the land was handed over to the father of the plaintiffs in 1950 and thereafter, the father of the plaintiff and after his death the plaintiffs are in possession of the land as vendees and have made improvements over the land in shape of residential house etc. It was averred that in recent settlement the plaintiffs have illegally been entered in the revenue record as Ghair Moroosi. It was stated that defendants No.2 to 4 have sold their whole share thus, the agreement dated 26.01.2004 executed by defendant No.5 is illegal as defendant No.2 to 5 have no concern with the suit land. The defendants contested the suit by filing written statement wherein it is submitted that the suit is time barred. It was further stated that agreement dated 02.12.1950 is fake and fictitious.

Faiz Ullah, respondent also filed a suit for possession of the said land on the ground that being the sole legal heir of Mst. Noor Jahan he is entitled to the possession of the land from defendants which was given to the defendants

for cultivation purposes. This suit was also contested by defendants Abdul Qadir and another and submitted that the land was purchased by their father in 1950.

Javed Iqbal appellant in appeal No.102/2015 also filed a suit for declaration and possession against Mohammad Shabbir and others in the same Court on 10.05.2004 and claimed that the suit land was in the ownership of Mohammad Shabbir defendant and Mohammad Shabbir has transferred the land to the plaintiff vide agreement to sell dated 26.04.2004 for the consideration of Rs. 80,000/-. The suit was resisted by defendants No.2 and 3 through written statement wherein it was submitted that defendant No.1 had already sold in excess of his share thus he has no right to sell the land. The learned trial Court consolidated all the suits, framed issues in the light of pleadings of the parties, provided them opportunity to lead evidence and at the conclusion of the proceedings decreed the suit filed by Abdul Qadir and another on the basis of agreement dated 02.12.1950 and dismissed the suits filed by Faiz Ullah and Javed Iqbal for want of proof vide its impugned judgment and decrees dated 29.09.2012. Feeling dissatisfied from the said judgment, Javed Iqbal and Faiz Ullah filed two separate appeals before District Judge Hattian Bala. The learned District Judge after hearing

arguments pro and contra, vide its impugned judgment and decrees dated 18.06.2015 decreed the suit filed by Faiz Ullah and dismissed the counter suits, hence, the captioned appeals.

Shahzad Shafi Awan, the learned Advocate appeared for appellant Abdul Qadir and another contended that the plaintiffs/ appellants were owners and in possession of the land as a result of agreement to sell dated 02.12.1950 which is supported by entries of the revenue record appended with the file of the trial Court, therefore, the learned trial Court was justified to decree the suit of the plaintiffs/appellants on the basis of said agreement but the learned District Judge failed to appreciate the in hand controversy and failed to ponder the relevant law on the subject and declared that the suit filed by plaintiffs as time barred which is ipso facto in flagrant violation of law and record. The learned Advocate further solicited that every entry into the revenue record creates fresh cause of action in favor of plaintiffs/ appellants thus, the suit was well within time and stance of the refusal of the defendants to execute sale deed has specifically mentioned in the contents of the plaint. The learned Advocate further contended that as Mst. Noor Jahan has alienated her whole share to the plaintiffs/ appellants therefore, Faiz Ullah has got no valid right to file

the said suit which has been decreed anomalously by the learned 1st Appellate Court and prayed for acceptance of appeal, setting aside the judgment and decree recorded by the first Appellate Court by restoring the judgment of the trial Court which has been passed in consonance with law and record.

Khawaja Atta Ullah Chak, the learned Advocate for plaintiff/ appellant, Javed Iqbal attacked the impugned judgment and decrees of the Courts below on the ground that defendant Mohammad Shabbir who was the owner of the land as per revenue record has executed agreement to sell in favour of plaintiff/ appellant regarding the suit land for the consideration of Rs. 80,000/- and the defendants No.2 to 3 were entered in the revenue record as Gair Moroosi therefore, the suit of the appellant entails to be decreed in accordance with its prayer clause.

Raja Gul Majeed Khan, learned Advocate for the plaintiff/ respondent, Faiz Ullah vehemently argued that the agreement dated 02.12.1950 relied upon by plaintiffs/ appellants Abdul Qadir and another has been written on a plain paper sine mentioning khasra number and other specification of the land thus, the same could not be considered for grant of a Court decree. The learned Advocate

further claimed that an agreement to sell does not create any right in favour of vender except to obtain another document therefore, the suit filed by Javed Iqbal, appellant was rightly dismissed by both the Courts below. The learned Advocate also stated that the suit filed by Abdul Qadir and another was also hopelessly time barred so, the judgment of the 1st Appellate Court with regard to the dismissal of the suit filed by Abdul Qadir and another is in accordance with law, he further added that appellant failed to prove the execution of document dated 02.12.1950 and claimed to be fake and forged paper with no legal efficacy, hence, defended the judgment of the first appellate Court with vehemence.

I have heard the learned counsels for the parties and perused the record with utmost care and caution.

As far the appeal filed by Javed Iqbal is concerned, a perusal of the record reveals that the plaintiff/ appellant Javed Iqbal filed suit for declaration and possession on the basis of an agreement to sell dated 26.04.2004. An agreement to sell does not create any right in favour of vendee/plaintiff except to obtain another document i.e. sale deed so, the suit filed by Javed Iqbal for declaration and possession was solely liable to be dismissed on this ground with no further deliberations. Reliance can be placed on 2016 SCR 1723.

Moreover, it is evident from the statement of Mohammad Khurshid Khan Patwari that predecessor of the defendant No.1, namely Mst. Akbar Jan and Dil Jan had already sold 12 kanal and 5 ½ marla in excess of their share from khewat No.101, therefore, the defendant was not competent to execute agreement to sell dated 26.04.2004, so, the Courts below have rightly sent away the suit filed by Javed Iqbal, through impugned judgments, which requires no indulgence by this Court.

A perusal of the record reveals that Abdul Qadir and another filed suit for declaration and perpetual injunction on the basis of agreement dated 02.12.1950 and claimed that through said agreement Kalu widow of Amer Ali and Noor Jahan daughter have alienated their whole shares from khewat No.101/90. The agreement dated 02.12.1950 is a thirty years old document hence, under Article 100 of the Qanoon-e-Shahadat Order, 1984, has got presumption of truth until and unless otherwise proved. Reliance can be placed on 2013 SCR 563. Moreover, the perusal of record reveals that the father of plaintiff was entered as in possession of the land as vendee from 1950 till 1984, thus, the agreement is supported from the documentary evidence. Under law a documentary evidence can be rebutted only

through documentary evidence or through concrete, tangible and credible evidence of an extra ordinary nature but in the instant case the defendants failed to rebut the documentary evidence relied upon by the plaintiffs by producing any tangible record or evidence and even Faiz Ullah and Javed Iqbal filed two separate suits after institution of the suit filed by Abdul Qadir & another but failed to assail the validity of the agreement dated 02.12.1950 and entries in the revenue record. It is also an admitted position that the plaintiffs/ appellants are in possession of the land till date which also strengthens their claim that agreement dated 02.12.1950 was executed and as a result thereof the plaintiffs are in possession of the land, so, in my considered view the trial Court has rightly appreciated the controversy and decreed the suit filed by plaintiffs/ appellants Abdul Qadir and another.

A perusal of the impugned judgment reveals that the learned 1st Appellate Court dismissed the suit filed by plaintiffs Abdul Qadir and another on the ground of limitation. A bare reading of agreement dated 02.12.1950 depicts that the time period was not the essence of said agreement rather it was mentioned in the agreement that the vendees shall be deemed as sole owners of the land and the

possession has been handed over to the vendee. It is also mentioned in the agreement that if there is any difficulty for attestation of mutation the vendee may obtain relief from the Court. Under law when the time period for execution of an agreement to sell is not mentioned the limitation will start from the day of refusal on the part of principle to execute sale deed in pursuance of the agreement. Reliance can be placed on 1995 SCMR 284. In the case in hand, the vendors did not deny the agreement or to execute sale deed in favor of vendee at any time and the cause of action arose in favor of the plaintiffs when the defendants interfered into the possession of the plaintiffs and claimed themselves as owners of the land. The plaintiffs have also mentioned cause of non-execution of sale deed in pursuance of agreement by stating that as the record was disbursed due to which the sale deed could not be executed and the plaintiffs due to their illiteracy could not get knowledge about the entries in the revenue record and further stated that now the defendants was compelled to file the suit not only by interfering into the ownership and possession of the plaintiffs but upon an agreement to sell executed in favour of Javaid Iqbal dated 26.01.2004 with further mentioning in para No.9 of the plaint that execution was finally denied one week before the institution of suit by

Abdul Qadir and another and it is also pertinent to mention that in para No.8 of the plaint also mentioned the details regarding recent cause of action which has not been mused by the learned first appellate Court in a judicious manner, hence the suit is within limitation from the date of refusal of the defendants to get register the sale deed in favour of the plaintiffs. So the learned 1st Appellate Court has erroneously come on the conclusion that the suit is time barred.

The contention of the learned Advocate for the respondents (Faiz Ullah) that the specification and location of the sold land is not mentioned in the agreement dated 02.12.1950, hence, the agreement cannot be executed, is misconceived because sufficient whereabouts and location of the land is mentioned for execution of sale deed and for fruitful decree of the Court as eastern and western boundaries (Hadood e Arba) of the sold land are explained in the agreement. Moreover, the vendors transferred the possession of the land to the vendees in the light of said agreement and also filed a suit for the possession of the said land which is also sufficient to specify the sold land, hence, the contention of the learned counsel for the respondents is hereby repelled.

The crux and epitome of the above discussion is, the instant appeal filed by Abdul Qadir and another is hereby accepted by setting aside the impugned judgment recorded by District Judge Muzaffarabad dated 18.06.2015 and the judgment and decree passed by Senior Civil Judge Hattian Bala dated 29.09.2012 is hereby restored. The appeal filed by Javed Iqbal being sine any force is hereby dismissed.

Muzaffarabad:
09.06.2022.

-Sd-
Justice

Approved for reporting.

-Sd-
JUSTICE