

HIGH COURT OF AZAD JAMMU & KASHMIR

Civil Appeal No.15/2014;
Date of institution 24.01.2014;
Date of decision 09.11.2022.

Mst. Attar Jan widow of Mohammad Akbar Khan daughter of
Gohar Khan r/o Langarpura Tehsil & District Muzaffarabad.

Appellant

VERSUS

1. Mohammad Hamid Abbasi;
2. Mohammad Qasim Abbasi sons;
3. Mst. Rukhsana Bibi;
4. Mst. Sahira Bibi;
5. Mst. Saira Bibi daughters;
6. Nafraj Begum w/o Haji Mohammad Ashraf Abbasi;
7. Ghalib Hussain Khan;
8. Mohammad Zardar Khan;
9. Alim Dad Khan sons;
10. Mst. Pervaiz Bibi;
11. Mst. Bibi Jan daughters (respondents Nos. 7 to 11 are
legal heirs of Mst. Kali Begum Respondent No.12);
12. Mohammad Sheraz;
13. Mohammad Siaf;
14. Rustam Khan;
15. Sohrab Khan;
16. Nisar Khan sons of Mohammad Akbar Khan
(deceased) r/o Langarpura Tehsil & District
Muzaffarabad.

Respondents

CIVIL APPEAL

Before:-Justice Syed Shahid Bahar, J.

PRESENT:

Abdul Hameed Shahid, advocate for the Appellant.

Ch. Mohammad Ismail, Advocate for the Respondents Nos. 1,
6, 10, 11.

Raja Tariq Mehmood, Advocate for the Respondents Nos. 13 to
17.

JUDGMENT:

The captioned appeal has been directed against the

judgment and decree passed by the learned Additional District

Judge Muzaffarabad dated 31.10.2013, whereby the judgment and decree passed by the learned Civil Judge/Traffic Magistrate Muzaffarabad dated 18.05.2005 was upheld.

2. Succinct facts for disposal of the captioned appeal are that appellant, herein, filed a suit for declaration cum perpetual injunction and possession against the defendants/respondents in respect of the land measuring 8 kanal 15 marla comprising survey No.101 situated at Village Langarpura before Civil Judge/Traffic Magistrate Muzaffarabad. It is averred that the suit land was given to the plaintiff by defendant No.1 as a dower amount Rs.1000/- and the plaintiff was owner of the said land and the plaintiff's husband in consultation with her, exchanged the suit land comprising survey No.101 with land bearing survey No.760/381 measuring 15 kanal 5 marla but later on defendant No.1 without knowledge of plaintiff/appellant, herein, transferred the land measuring 10 kanal in favour of father of defendant No.2 to 8 through a sale deed dated 08.01.1981 but no entry about the sale deed was made in the revenue record, hence, prayed for a decree of declaration cum perpetual injunction and possession in favour of plaintiff.

3. On institution of the suit, defendants were summoned by the trial Court and defendant No.1 appeared

before the Court and admitted the claim of the plaintiff, however, the suit was resisted by defendant No.2, wherein, it has been stated that the suit filed by the plaintiff is hit by the principle of Res-judicata and is not maintainable. The learned trial Court in the light of pleadings of the parties framed 9 issues and directed the parties to lead their evidence. After completion of the proceedings, the learned trial Court dismissed the suit for want of proof through the impugned judgment and decree dated 18.05.2002. Feeling aggrieved from the said judgment and decree, the plaintiff/appellant, herein, filed an appeal before the learned Additional District Judge Muzaffarabad which also met the same fate, hence, this 2nd appeal.

4. The learned counsel for appellant vehemently argued that while accepting the appeal the impugned judgments and decrees passed by both the Courts below may be set aside. The learned counsel virtually reiterated the averments raised in the memo of appeal and submitted that while passing the impugned judgments and decrees, the Courts below misread and non-read the evidence of the parties. The learned counsel next argued that the plaintiff/appellant was an ill reader and when she got the knowledge of the sale of the land which was given to her by her husband as dower, she filed

a suit for declaration and cancellation of the sale deed dated 08.01.1981 before Sub Judge Muzaffarabad with the version that the suit land has been given to the plaintiff/appellant as dower amount, so, the husband has no authority to sale or transfer the land. Finally, prayed for setting aside the judgments and decrees of the Courts below.

5. Conversely, the learned counsel for respondents submitted that learned counsel for appellants has miserably failed to point out that which evidence or part of evidence, documentary or oral, was misread or non-read by the Courts below, as such, concurrent finding of facts could not be reversed merely on the assumption of appellant without pointing out specifically which evidence was misread or non-read. He further argued that the documents produced by the plaintiff are mere photocopies which are not admissible in evidence and the suit land was never transferred to the plaintiff and defendant No.1 was a lawful owner of the suit land and was fully competent to execute the sale deed as the sale deed is thirty years old registered document which has the presumption of truth and correctness and is more reliable than the photocopies of agreements. The learned counsel defended the impugned judgments and decrees on all counts and prayed for dismissal of the appeal with exemplary costs. The learned

counsel in support of his version referred [2007 SCR 363, 1999 SCR 511].

6. I have heard the learned counsel for the parties and perused the available record cautiously.

7. A perusal of record shows that the plaintiff/appellant, herein, filed a suit for declaration cum perpetual injunction and possession in respect of suit land mentioned hereinabove against defendants/respondents, herein, in the trial Court which was resisted by the defendants by filing written statement. After framing issues, the trial Court directed the parties to produce their evidence in support of their respective claim. The claim of the plaintiff/appellant is that the suit land was given to her by her husband in lieu of dower amount and the sale deed through which the land has been transferred is illegal and ineffective against the rights of plaintiff as the same has been executed and registered without the knowledge of appellant. The record reflects that no land has been given to the plaintiff by the husband in lieu of dower, meaning thereby that the plaintiff has failed to bring on record a single document which may shows that the suit land was in the ownership and possession of the plaintiff and the same has been given to her through any registered document. To rebut the stance of plaintiff, the defendants also produced a sale

deed dated 08.01.1981 which is a registered document and the same has neither been cancelled nor declared as null and void. The plaintiff/appellant has also failed to produce any iota of documentary evidence regarding exchange of suit land comprising survey No.760/381 with khasra No.101. A perusal of record also reveals that suit for cancellation of sale deed dated 08.01.1981 was filed in year 1987 which clearly manifests that the plaintiff was well aware about the supra sale deed. All the witnesses produced on behalf of the defendants deposed that the sale deed was written and executed with the consent of plaintiff and other heirs and after completion of the sale deed, the son of plaintiff namely 'Rustam' filed a suit for prior purchase on 27.10.1981 and later on through compromise/conciliation, the same was withdrawn by the plaintiff. The plaintiff's witnesses Mohammad Maskeen, Mohammad Akbar, Maqbool Elahi, Mohammad Ayub and Haji Abdul Rasheed have not denied the writing and execution of the sale deed. As per own statement of the plaintiff, the agreement to sell was written after the sale of the land given to the plaintiff in lieu of dower, meaning thereby, that the sale deed was written and executed and the same was in the knowledge of the plaintiff. As per statement of witness Summandar Khan, the suit land is under the possession of

Khani Zaman and the trees have also been planted upon the suit land, house has also been constructed over the land. **In my opinion Trial Court after dilating upon each issue passed the impugned judgment and decree which was rightly upheld by the first appellate Court while concurring the judgment and decree passed by the trial under law.**

8. I have also scrutinized the whole evidence produced by the parties and came to the conclusion that no misreading and non-reading of evidence has been committed by the Courts below while passing the impugned judgments and decrees. However, the learned counsel for appellant has miserably failed to point out any misreading and non-reading of evidence committed by the Courts below while passing the impugned judgments and decrees, as such, same need not to be interfered with by this Court.

9. It is well settled principle of law that concurrent findings of fact could not be disturbed unless and until it is specifically pointed out by the appellants, litigant party that which part of evidence oral or documentary or which evidence as a whole was misread and non-read. Similar proposition has been resolved by the apex Court in a case titled Akhtar Hussain & others Vs. Raja Mohammad Zarin Khan [1993 SCR 114] wherein it has been observed as under:-

Evidence—

--A general allegation of misreading or non-reading of evidence would not render the concurrent findings of fact open to challenge—It is necessary for the party to specifically point out the witnesses whose statements were misread and support the contention by certified copies of the said statements.”

A Similar proposition has been resolved by the apex Court in another case titled Adalat Khan Vs. Fazal Hussain & another [1995 SCR 151] the relevant portion of which is reproduced as under:-

CONCURRENT FINDING OF FACTS.

“---Even if a different conclusion from the one reached by the Courts below is possible, the High Court is not legally competent to disturb the findings until and unless a case of non-reading or misreading of evidence is made out or a gross illegality is shown to have been committed while appreciating evidence of a witness.”

The sequel of above discussion is that finding no force in the instant appeal, as such, the same is hereby dismissed with no order as to costs.

Muzaffarabad.
09.11.2022 (M.Saleem)

-Sd-
JUDGE