

HIGH COURT OF AZAD JAMMU AND KASHMIR

Civil Appeal No.03/2020;
Date of institution 04.01.2020;
Date of hearing. 21.02.2024;
Date of decision. 23.02.2024.

Sardar Muhammad Saleem Khan Chughtai S/o Sardar Ghulam Khan R/o Upper Chatter Housing Scheme Muzaffarabad.

....Appellant

VERSUS

Iffat Ara Saleem D/o Chaudhary Muhammad Shafi R/o Plate, presently at Madina Market Near Seeta Ram Mandir Tehsil & District Muzaffarabad.

.... Respondent

CIVIL APPEAL

Before:- Justice Chaudhary Khalid Rasheed, J.

PRESENT:

Mr. Muhammad Yaqoob Khan Mughal, Advocate for the appellant.

Raja Amjad Ali Khan, Advocate for the respondent.

JUDGMENT:

The captioned appeal has been filed against the judgment and decree recorded by the learned Additional District Judge Muzaffarabad dated 19.10.2019, whereby, judgment and decree passed by learned Civil Judge Court No.IV Muzaffarabad dated 30.04.2019 has been maintained.

Brief facts forming background of the instant appeal are, appellant herein filed a suit for declaration cum perpetual injunction and prayed for cancellation of sale deed dated

10.10.2002 against respondent herein in the Court of Civil Judge Court No.IV Muzaffarabad, wherein it was pleaded that defendant was married to plaintiff in 1987. It was contended that on the demand of defendant to protect her marital rights, sale deed dated 10.10.2002 was executed by plaintiff regarding second floor of house constructed at plot No.D-88. It was further contended that now defendant is not wife of plaintiff and her suit filed for dissolution of marriage has been decreed on the basis of Khula, therefore, the sale deed dated 10.10.2002 which was executed without consideration is liable to be cancelled.

Defendant contested the suit by filing written statement, wherein claim of plaintiff/appellant was refuted. The learned trial Court framed issues in the light of pleadings of the parties provided them opportunity to lead evidence and at conclusion of proceedings, dismissed the suit for want of proof and barred by law vide its impugned judgment and decree dated 30.04.2019. Appeal preferred before Additional District Judge Muzaffarabad remained unsuccessful vide its impugned judgment and decree dated 19.10.2019, hence the captioned appeal.

The learned counsel for the appellant raised sole argument that the impugned sale deed was executed by the

plaintiff merely on the ground that defendant was his wife and as the marriage of the spouses has dissolved, therefore the sale deed which was executed without consideration was liable to be cancelled but both the Courts below failed to understand the real controversy and miserably failed to appreciate evidence in its true perspective.

The learned counsel for the respondent supported the impugned judgment and decree on all counts and prayed for the dismissal of the instant appeal.

I have heard the learned counsel for the parties, gone through the record of the case with utmost care and caution.

A perusal of impugned sale deed dated 10.10.2002 reveals that house was sold to the defendant for the consideration of Rs.2,00,000/- and possession was handed over to the defendant. It is also mentioned in the sale deed that consideration amount has been received by vendee/plaintiff. The sale deed is a registered document and has got a valid presumption of truth, thus it is liable to be presumed that the sale deed was executed subject to payment of consideration amount as has been mentioned in the impugned sale deed until proved otherwise by cogent and convincing evidence. It is also

relevant to mark that documentary evidence particularly a registered document cannot be rebutted through oral evidence rather a documentary evidence can be rebutted only through cogent and reliable written proof. The plaintiff failed to rebut the payment of consideration amount by producing any convincing and persuasive documentary evidence, thus both the Courts below were justified to dismiss the suit for want of proof.

It is also relevant to observe that the sole question raised by the learned counsel for the appellant during the course of arguments that the sale deed was executed without consideration amount is a pure question of facts and both the Courts below have concurrently decided that the payment of consideration amount has been substantiated in a legal fashion, thus the concurrent findings of facts cannot be disturbed in second appeal as no misreading, non-reading of evidence or violation of any settled precept of law has been found. Reliance in this regard may be placed on 2022 SCR 416, wherein the Supreme Court of Azad Jammu & Kashmir at page 428 observed as under:-

“The principle is that ordinarily the second appellate Court, such as this Court, would not interfere with the findings of fact recorded by the trial Court and confirmed by the first appellate Court. Second appellate Court under section 100, C.P.C., would overturn such findings and conclusions only in exceptional cases. The

circumstances under which such intervention may legally be permissible or justifiable if it was established with absolute clearness that some oversight or error resulting in a miscarriage of justice was apparent in the way in which the Courts below had dealt with the facts, it must be established that Courts below clearly erred in the presence of a crucial documentary evidence or the principle of evidence had not properly been applied or the findings was so based on erroneous proposition of law that if that proposition be corrected, the finding will become meaningless and finally, it must be demonstrated that the judgments of both the Courts below were clearly wrong.”

It is also relevant to note that the impugned sale deed dated 10.10.2002 was not conditional, therefore, if it is admitted that the sale deed was executed merely on humanitarian grounds for satisfaction of defendant being wife of plaintiff even then the sale deed cannot be cancelled on the ground that said relation has been terminated

The sum and substance of the above discussion is, finding no essence the instant appeal is hereby sacked.

Muzaffarabad;
23.02.2024.

JUSTICE

Approved for reporting.

JUSTICE