

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

**Present**

*Muhammad Shafi Siddiqui, J*

Revision Application No.137 of 1993

[Kabeer Ahmed Khan through his LRs v. Qadeer Khan through his LRs & Ors]

Applicants: Kabeer Ahmed Khan through LRs.  
Through Mr. Kamaluddin, Advocate

Respondents No.1&2: Qadeer Khan and Mst. Amna through their  
LRs. Through Mr. Aqeel Ahmed Siddiqui,  
Advocate

Respondents No.3&4: The Assistant Commissioner &  
Government of Sindh through Deputy  
Commissioner Through Mr. Muhammad  
Yousuf Rahpoto, A.A.G.

Date of hearing: 11.09.2023

**JUDGMENT**

**Muhammad Shafi Siddiqui, J.**- Against the conflicting findings of two courts below, the applicant filed this revision application. Respondent No.1, Qadeer Khan, filed Suit No.59 of 1990 against the applicant and others for a declaration in respect of property, identified in the prayer clause of the plaint. The suit was contested by the applicant whereas against some of the private defendants the suit proceeded exparte. The trial court dismissed the suit whereas on an Appeal bearing No.102 of 1992, preferred by Qadeer Khan, the plaintiff, the judgment and decree of trial court were reversed, and the suit was decreed as prayed, hence, this revision application.

2. Heard counsel and perused the record.
3. According to the pleadings of the plaint, respondent No.1 claimed interest in the agricultural land, identified in the plaint, situated in Deh Ghab

Taluka Tandoallahyar, which was originally owned by one Shabbir Ahmed s/o Yaseen Khan (brother of plaintiff) who died issueless. Applicant No.1, Respondents Nos.1 and 2 are real brothers and sister whereas Applicant Nos.2 to 6 are sons of Applicant No.1, Kabeer Khan. Kabeer Khan died during the proceedings.

4. It is claimed by Respondent No.1 that the land was on rent with one Nizam. It is further claimed that after the death of Shabbir Ahmed, the suit land devolved upon Qadeer Khan s/o Yaseen Khan [respondent No.1], Mst. Amna d/o Yaseen Khan [respondent No.2] and legal heirs of Kabeer Khan, arrayed as Applicants No.2 to 6 in this revision. It is claimed that the Foti Khata Badal was made in the record of right/revenue record and the property was accordingly mutated to the extent of their respective shares on 5.9.1989.

5. Pleadings revealed that on a dispute, as to the claim of share of the agricultural produce, Qadeer Khan, the plaintiff moved an application for his share, upon which he was informed for the first time about registration of sale deed, executed by Shabbir Ahmed on 29.3.1981 whereby it came to his [plaintiff] knowledge that the property was allegedly sold to applicants/petitioners No.2 to 6 being sons of Kabeer Khan, Applicant No.1. It is claimed by respondent Qadeer Khan that it was forged and fabricated sale deed and has been dishonestly and fraudulently prepared by the petitioner/applicant.

6. The petitioner/applicant sought the following reliefs in the suit :

*(a) To declared that the plaintiff is the joint owner of the suit land to the extent of -/40/- paisas share by way of inheritance from deceased Shabbir Ahmed, the original owner of the land.*

*(b) To declare that the sale deed dated 29-3-1981 alleged to have been executed by deceased Shabbir Ahmed in favour of defendants 5 to 9 is a forged and fabricated document and is not binding upon the plaintiff.*

*(c) To permanently restrain the defendant No.5 to 9 from selling, alienating or transferring the suit land through themselves, their agents, servants or in any other manner through any other agency and further direct the defendants No.3 to 9 to give produce of the suit land to the plaintiff from the date of filing the present suit and not to remove the crop or produce without giving share of plaintiff.*

*(d) Defendant No.3 to 9 to render account to the plaintiff for a period of two years before the filing of the suit of the income*

*from suit land to the extent of -/40/- paisas share of plaintiff and also to order account and pay the same in future to the plaintiff of suit land.*

*(e) Plaintiff be put into joint possession of suit land with defendants No.3 and 4.*

*(f) Costs of the suit be borne by the defendants.*

*(g) Any other relief that this Hon`ble court may deem fit and proper under the circumstances of the case.*

7. The following issues were framed :

*(1) Whether the suit is not maintainable in law?*

*(2) Whether the suit is barred u/s 11 of Sindh Revenue Courts Jurisdiction Act?*

*(3) Whether the suit is time barred?*

*(4) Whether the Registered sale deed dated 29.3.1981 alleged to have be executed by deceased Shabbir Ahmed in favour of defendants No.5 to 9 (Petitioners No.2 to 6) is a forged and fabricated one?*

*(5) Whether the mutation of Record of suit land in favour of plaintiff and defendants No.3 and 4 is legal, valid and bonafide?*

*(6) Whether the plaintiff is entitled to have 0.40 paisas share in the suit land?*

*(7) Whether the plaintiff is entitled to mesne profits for the defendants 3 to 9? If yes, in what amount?*

*(8) What should the decree be?*

8. In consideration of evidence that was recorded, the suit was dismissed whereas the findings and conclusion drawn were reversed by the appellate court. Hence this revision application.

9. Para 13 of the impugned judgment, passed in Civil Appeal No.102 of 1992, discussed the evidence recorded and the appellate court therein ruled, on the strength of deposition of Kabeer Khan that since there was no `agreement of sale` before the sale deed and that it was registered directly without a recourse of public notice hence the sale deed was unlawful. This statement of a witness regarding no sale agreement was found contrary to the contents of sale deed which stated that there was a sale agreement. The other ground that prevailed was that although consideration was settled but was not paid and

lastly that the sale deed was registered with a Registrar/Sub Registrar who had no territorial jurisdiction over the land in question.

10. In the cross examination of Kabeer Khan s/o Yaseen Khan, it was stated that there was no agreement of sale of the suit land but registration of sale deed took place directly and that there was no bank account of Shabbir Ahmed and the amount of consideration was paid directly to him who kept the amount with him in his house.

11. It was not obligatory upon the buyer that before registering a sale deed, a written sale agreement must be executed. The deal could also be an outcome of an oral understanding of contesting parties. For a transparency it may require a public notice before registration, however, it is the concern of a buyer of the property. Interest of person in the property, if claimed later, however, is not altered or diluted by such registration without public notice. It could be a buyer's prerogative or call, to insist for a transparent procedure, hence to publish the intended transaction for public consumption, so that everyone be aware of. However, if the parties especially the buyer chooses not to issue any public notice or to execute any agreement, it is buyer's risk; and third party unless has a right in the property, cannot object to the transaction on having a notice of such deal. Public notice is thus meant for a buyer's safety and for a public awareness if someone has an objection. Transfer of Property Act does not compel a buyer to execute an agreement first and then only a sale deed could be registered. The fact that a sale deed is registered between buyer and seller (undisputedly) is an evidence that there was an oral understanding which materialized as sale deed and such oral understanding is recognized under the law as oral agreement. The registration of sale deed, "alone" without public notice will not take away any right of parties and/or having interest in the property which rights are recognized especially under the Specific Relief Act, Transfer of Property Act or any other law. A person who could show interest in the property and is being deprived of such rights by such registration may take advantage of such registration without notice and/or his knowledge. Section 27(d) of Specific Relief Act and Section 41 of Transfer of Property Act may have its beneficial implication but the interest of a person objecting sale of the property is the foremost and paramount consideration, which interest may be triggered in terms of laws recognizing rights. Buyer's intention of not entering into sale agreement and directly executing sale deed with or without public notice alone cannot be ruled as unlawful unless the

intention is to deprive someone having or could have interest in the property is apparent. Respondents, however, have not shown any interest in the property either before or after the subject registration.

12. Admittedly Shabbir Ahmed, owner of the property, sold the suit land during his lifetime for consideration in favour of Applicants No.2 to 6 [nephews] being sons of Kabeer Khan and the amount or any part thereof, even if unpaid, cannot vitiate registered transaction i.e. sale deed. Any unpaid amount could at best be recovered as a lien over the property<sup>1,2,3&4</sup> but the unpaid amount of consideration itself does not render the sale deed void nor does it constitute a valid ground for its cancellation, even by unpaid seller. Para 14 of the impugned judgment discussed about nonpayment of sale consideration and registration of the sale deed which is totally dependent on the deposition of one Khalil ur Rehman. Khalil ur Rehman never said that it was not paid. In fact he stated that it was not paid in his presence whereas he admitted to be an attesting witness of the sale deed which was presented before Registrar Hyderabad, followed and processed by headquarters Sub-Registrar Hyderabad.

13. The respondents even otherwise have not been able to establish that it was a forged and fabricated instrument as neither the Registrar / Sub Registrar nor any representative of the office of Registrar was summoned. It was admittedly presented with Registrar and registration processed accordingly, and if at all it was on account of persuasion or some influence over Shabbir Ahmed then the burden is even heavier which has not been discharged by the respondent.

14. Insofar as registration of the sale deed before a Registrar under Section 30 of Registration Act or a Sub Registrar under Section 28 of Registration Act, who does not enjoy territorial jurisdiction is concerned, even that would not vitiate the transaction reached by way of a registered instrument as it is not the absolute rule. The document admittedly presented with Registrar and in terms of Section 30 of Registration Act, it is saved. Section 30 of the Registration Act reads as under:-

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<sup>1</sup> PLD 1985 Journal 121 [Sarfraz Ahmed & 36 Ors v. Mst. Sakina Bibi & 35 Ors]

<sup>2</sup> 1971 SCMR 414 [Muhammad Hayat & 6 Ors v. Muhammad Nawaz]

<sup>3</sup> 2003 CLC 857 [Syed Sardar Shah and 2 others v. Qazi Masood Alam and 5 others]

<sup>4</sup> 1998 PLJ-Lahore 364 [Wali Muhammad v. Sardar Muhammad & Another].

[30. Registration by registrars in certain cases.--- (1) Any Registrar may in his discretion receive and register any document which might be registered by any sub-Registrar subordinate to him.

. . . . . Section 30, sub-section (2) shall be omitted.\*<sup>5</sup>

15. If the Registrar processed the registration which might be required by a sub-Registrar to be registered directly, subordinate to him, it is not necessary for him (Registrar) to state in the registration endorsement that he is doing so in the exercise of his discretion. <sup>6</sup> & <sup>7</sup> Procedural defect is saved in terms of Section 87 of Registration Act.

16. The essence and spirit of Section 28 of Registration Act which necessitate registration of property with a Sub Registrar is to tender a valid notice for those who may have interest over the property so that they may not be running over to all Sub Registrars. A person may conveniently find the registration of an instrument in relation to a property, they are interested in, if registered with the Sub Registrar having jurisdiction, to enable them to initiate proceedings or may in advance served his notice prior to such intended registration. Thus the essence and ratio of Section 28 for registration with a particular Sub Registrar is to form and tender valid notice. Now if the respondent is unable to establish interest, he cannot take advantage of such restriction even if it was directly processed under Section 28, for documents identified in Section 28. Registration with other sub-Registrar alone is not enough. Had it been mandatory in terms of Section 28(1) sub-clause (2), would not have been made to rescue those who got it registered bonafidely. Sub-section (2) however, omitted via Sindh amendment and a part of 28(1). This subject was discussed by Hon`ble Supreme Court in the case of Abdul Majeed<sup>8</sup> .

*5. The learned counsel for the appellant when began his arguments and attempted to criticize the finding of the High Court to the effect that the disputed sale-deed could not be registered in the office of the Registrar at Lahore as it related to the land located in a village of District Bahawalnagar and on this count the sale-deed was invalid and void, then at that time Mr. Gulzarin Kiam, Advocate appearing for the respondent stood up and conceded that the sale-deed could be registered at Lahore and that the finding of the High Court on this point is not correct. He, however, stressed that the copy of the sale-deed should have been sent to the Registrar of the District where the property was situated as in absence of that it could not satisfy the*

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<sup>5</sup> Omitted: PLD 2014 Sindh St.(Supp) 457.

<sup>6</sup> Nilabjabarani v. Nandarani (1930) 58 Cal.133.

<sup>7</sup> Daulat Ram v. Jai Dal, 1965 A. Punj. 378

<sup>8</sup> 1999 SCMR 1245 Abdul Majeed & Ors v. Muhammad Subhan & 2 Ors.

*requirement of a valid notice which is basic purpose of registration of document. We have noted that the learned Judge in the High Court made sufficient efforts to resolve this controversy as they have referred extensively to the case-law on this point and have elaborately discussed it at sufficient length. This labour could have been avoided if they had been properly assisted and this point had been conceded before them, if it could not be legally disputed. In any case, we are not required to go into the validity of this argument as it was not disputed before us from the respondent's side. However, we agreed with Mr. Kiani, that it could not form valid notice to the public as it had not been sent to the office of the Registrar/Sub-Registrar of the District where the property covered by the sale deed, was situated.*

17. Section 28 of the Registration Act deals with the place of registration. Subsection 1 of Section 28 provides that every document mentioned in Section 17 [as identified] (present document includes) and Section 18, insofar as such document affects immovable property, shall be presented for registration in the office of a sub-Registrar within whose sub-district [the words “whole or some portion of the”] [omitted through Sindh Act, VI of 2014]<sup>9</sup> property to which such document relates is situate. Both sections does not even provide the consequences.

18. Nonetheless the reasons have also been disclosed by the witness Kabeer Khan s/o Yaseen Khan that the execution of the registered sale deed of the suit land took placed at Hyderabad as there was apprehension of his murder at the hands of plaintiff, Qadeer Khan.

19. The respondents have not disclosed interest in the property either before the registration of sale deed or thereafter. A brother, as could be seen from the record, has willfully executed sale deed for consideration in favour of his nephews whereas the other siblings of Shabbir Ahmed, cannot claim any interest in the property as he sold it during his lifetime. It is not even a case of Benami being held by seller Shabbir Ahmed.

20. The minor discrepancy as to the disclosure of agreement in the sale deed would not take away the substantive right of parties when there was no compelling legal requirement of entering into a written sale agreement first. It is rather a risk that a buyer may take. The deposition which goes on to say that no agreement was executed before registration of the sale deed found contrary of text of sale deed would not be of any benefit to the respondents. The property having been rented out to one Nizam Khan already claimed to have

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<sup>9</sup> PLD 2014 Sindh St. (Supp) 457.

abandoned it who even otherwise cannot object to the transaction as he was only a tenant. He even otherwise has never objected to such transaction.

21. It is clearly the case of mis-reading and non-reading of evidence and misapplication of law.

These are the reasons for short order announced on 11.9.2023 whereby this revision was allowed.

JUDGE

A.