

IN THE HIGH COURT OF SINDH, SUKKUR BENCH AT SUKKUR

Civil Revision Application No.S-88 of 2021

Applicant : Gul Hassan through Mr. Muhammad Aslam Roshan, Advocate

Respondent No.1 : Wazir Ahmed through Mr. Sajjad Muhammad Zangejo, Advocate

Province of Sindh & Ors: Mr. Ahmed Ali Shahani, AAG

ORDER

Date of hearing : 15th April 2024

Date of decision : 24th May 2024

>>>>>>>>> <<<<<<<<<<<

ARBAB ALI HAKRO, J: Through this Civil Revision Application under Section 115, the Civil Procedure Code 1908 ("**C.P.C**"), the applicant has impugned judgment dated 23.6.2021 and decree dated 30.6.2021, passed by learned Additional District Judge-II/MCAC, Sukkur ("**the appellate Court**")in Civil Appeal No.145 of 2019, whereby; the judgment and decree dated 07.11.2019, passed by learned III-Senior Civil Judge, Sukkur ("**the trial Court**") in F.C Suit No.37 of 2018 (old F.C Suit Nos.41/1996, 08/2017 & 88/2017, through which the suit of plaintiff/respondent No.1 was decreed has been maintained by dismissing the appeal.

2. The succinct facts leading to the captioned Civil Revision Application are that respondent No.1 instituted a suit for Declaration, Possession, Cancellation, Partition, and Permanent Injunction against the applicant and respondents No.2 & 3, who are his brother and sisters, respectively. Respondents No.4 to 6 were arrayed as official defendants. The applicant stated that Mst. Khairan, their sister, died, leaving behind property bearing Survey No.250 measuring (02-20) Acres situated in Deh Mando Dero Tapo and Taluka Rohri District Sukkur ("**the suit land**"). She was issueless; therefore, plaintiff/respondent

No.1, the applicant, and respondents No.2 & 3 became her legal heirs. It was claimed that plaintiff/ respondent No.1 learned that the applicant had played fraud with them by changing the record of rights in his favour in respect of the suit land. The applicant, in collusion with the official defendants/respondents, prepared a forged and managed false Sale Deed No.331 dated 28.3.2014 in his favour and, on the basis of it, got the mutated record of rights/entry in his favour. It was also claimed that the deceased, Mst. Khairan was not alive at the time of execution of the alleged Sale Deed pertaining to the year 2014, as she had died in the year 2012, much before the execution of the above-registered Sale Deed. It was also averred that the witnesses shown in the alleged Sale Deed were strangers to the deceased Mst. Khairan because she was a Parda Nasheen and an illiterate lady. Thus, the alleged Sale Deed was managed and manipulated by the applicant/defendant No.1. Hence, the suit was filed.

3. The applicant contested the suit and filed his written statement, denying the claim of the plaintiff/respondent. He asserted that the deceased Mst. Khairan obtained her smart CNIC on 25.11.2013 from NADRA Authorities and died on 27.7.2015 at the village Allah Warayo Rind, Taluka Pano Akil, District Sukkur and not in the year 2012, as alleged by the plaintiff/respondent No.1. He also claimed that Mst. Khairan, after the death of her husband, was living with him. He denied that about six years back, Mst. Khairan was of unsound mind, but she was well-conscious and of an entirely sound mind. However, she was only a patient of kidney disease and remained under treatment at Hira Medical Center, Sukkur. He also claimed that the witness, namely Imdad Ali Bullo, is their caste fellow as well as a relative of the deceased Mst.Khairan. The deceased, Mst. Khairan appeared before the concerned Sub-Registrar Rohri, where she recorded her statement, affixed her thumb impression and photograph on the relevant papers, and executed a registered Sale Deed regarding the suit land in favour of the applicant.

4. The learned trial Court, after framing the issues and recording the pro and contra evidence of the parties, passed a judgment and decree on 07.11.2019, decreeing the suit filed by respondent No.1. Dissatisfied with the judgment and decree of the trial Court, the applicant appealed to the appellate Court. After hearing the parties, the appellate Court remanded the suit back to the trial Court with instructions to provide its findings on the material issue of fact vide judgment and decree dated 27.02.2020. In response, the plaintiff/respondent No.1 filed Civil Revision Application No.S-113/2020. After hearing the Revision Application, this Court remanded the matter back to the appellate Court with instructions to decide the appeal on its merits per the law vide an Order dated 14.12.2020.

5. Following the remand, after hearing the parties involved, the learned appellate Court dismissed the applicant's appeal vide impugned judgment and decree dated 23.6.2021 and 30.6.2021, respectively. Consequently, this led to the present Civil Revision.

6. At the very outset, the learned counsel representing the applicant contended that the impugned judgments and decrees of the courts below suffer from material illegalities and irregularities, hence not sustainable in law; the onus of proof rests on respondent No.2 to substantiate the fraud allegations concerning the unlawful acquisition of the registered Sale Deed, as outlined in Articles 117, 118, 119 and 126 of the Qanun-e-Shahdat Order, 1984. He further contended that the provisions of Article 79 of the Qanun-e-Shahdat Order, 1984 do not apply to the applicant, as the executant, the late Mst.Khairan did not deny its execution. However, the courts below erroneously held that the applicant failed to prove execution of the sale deed in respect of the suit land, that both the Courts failed to appreciate that admissions appearing in the cross-examination of the applicant, i.e., that his sister, the deceased Mst.Khairan was Parda Nasheen; the transaction's witnesses are neither his caste fellows nor relatives to him, and he has denied that his sister, Mst.Khairan appeared before

Sub-Registrar Rohri, a typographical error. He alleged that he had applied to correct such a mistake in the trial court. In the end, learned Counsel for the Applicant prays that instant revision application may be allowed by setting aside impugned judgments and decrees passed by the courts below. He relied upon the case law reported in **PLD 2018 SC 698**.

7. Conversely, while refuting the contention, the learned counsel representing respondent No.1 supported the impugned judgments and decrees. He maintained that the lower courts recorded concurrent findings of facts based on a proper appreciation of evidence. He argued that the applicant admitted in cross-examination that deceased Mst Kharian was a Parida Nasheen and an illiterate lady, and he failed to prove mandatory conditions of sale transactions. Furthermore, the applicant, being beneficiary of the sale transaction failed to call two attesting witnesses in evidence and violated Articles 17 and 79 of Qanun-e- Shahadat Order 1984; no case of misreading or non-reading of evidence has been made out, nor has any legal infirmity been pointed out that would warrant the interference of this Court in its revisional jurisdiction under section 115 of the Code. In support of his contention, learned counsel placed reliance on the case law reported as **2021 SCMR 19, 2016 SCMR 1225, 2011 SCMR 621, 2004 SCMR 1259, 1998 SCMR 1354, 1994 SCMR 1194, 2006 YLR 759 & 2006 MLD 796**.

8. Learned A.A.G, while adopting the arguments advanced by learned Counsel for Respondent No.2, supports the concurrent findings of courts below and submits that there is a narrow scope to interfere in concurrent decisions until gross irregularity or infirmity surfaces on record.

9. The arguments have been heard at length, and the available record has been carefully evaluated with the valuable assistance of the learned counsel for the parties. I have also scrutinized the

accuracy and thoroughness of the judgments and decrees of both the lower Courts, providing a fair opportunity for the learned counsel for the applicant to convince me about any illegal actions or material irregularities committed by the Courts below in the exercise of their jurisdiction.

10. In the case at hand, it is acknowledged that the deceased Mst. Khairan was an illiterate and Parda Nasheen woman. In circumstances where it is claimed that an illiterate woman has disposed of her property, the onus of proof rests on the beneficiary of the Sale Deed. The applicant, who is also defendant No. 1, has asserted in his written statement that his late sister, Mst. Khairan had sold the disputed land to him. It is a well-established principle of law that the beneficiary of any transaction involving a Parda Nasheen and an illiterate woman must demonstrate that the transaction was carried out with the free consent and will of the woman. The beneficiary must prove that the woman was aware of the meaning, scope, and implications of the document she was executing. It must be shown that she was made to comprehend the impact and consequences of the transaction and that she had access to independent and objective advice, either from a lawyer or a male member of her immediate family. This legal principle protects the rights and interests of Parda Nasheen and illiterate women, ensuring that they are not exploited or taken advantage of in property transactions. It places a significant responsibility on the beneficiary of the transaction to demonstrate that all due care was taken to ensure the woman's understanding and consent. Reference is made to the case of Ghulam Muhammad vs Zohran Bibi and others(2021 SCMR 19). The rights of Parda Nasheen/illiterate women concerning their property rights and the approach to be adopted by Courts are elucidated in a recent Judgment by the Supreme Court of Pakistan in the case of Pervaiz Akhtar vs. Mst. Farida Bibi and others (PLD 2023 S.C 628), the relevant Paragraphs of the said judgment are reproduced here under: -

"8. In the case of a transaction with Pardanashin woman, a principle of caution is attached to the transaction to protect her rights. It is necessary that a Pardanashin woman is fully cognizant and aware of the transaction and that she has independent advice from a reliable source to understand the nature of the transaction; there must be witnesses to the transaction and to the fact that a Pardanashin woman has received the sale consideration. Most importantly, a Pardanashin woman must know to whom she is selling her property, and the transaction must be explained to her in the language she fully understands, as is held in the cases reported as *Ghulam Farid and another v. Sher Rehman* through LRs (2016 SCMR 862) and *Ghulam Muhammad v. Zohran Bibi and others* (2021 SCMR 19). In a case where a Pardanashin woman has trusted a relative and executed a general power of attorney for her to sell the property, it is still incumbent upon the power of attorney holder to fulfil the aforementioned conditions of making the Pardanashin woman aware of the sale that is about to be executed under the power of attorney. This is because the underlying principle here is to ensure that at all times, where a woman executes a transaction with reference to her property, it is done freely and deliberately. The mere fact that a power of attorney has been executed by a Pardanashin woman does not absolve the attorney holder from ensuring that he has informed the Pardanashin woman of the sale he is to execute under that attorney and to obtain her consent in this regard. This is necessary to establish the fairness and knowledge of the transaction for the benefit of a Pardanashin woman. We have also held in the case reported as *Muhammad Naeem Khan and another v. Muqadas Khan (deceased)* through L.Rs. And another (PLD 2022 SC 99) that the objective of this Court has been to protect Pardanashin women from the risk of an unfair deal and to ensure that any transaction related to the sale of their property is effected by free will and with consent. We have also held that wherever there is a transaction with Pardanashin women, it must be established that they were given independent, impartial and objective advice, understanding all implications and ramifications of the transaction to ensure that they give their consent to the transaction because valuable rights are involved and the Pardanashin women should be able to make an informed decision with reference to their property with the help of proper advice and consultation. This Court has also held in the case reported as *Mian Allah Ditta through L.Rs v. Mst. Sakina Bibi and others* (2013 SCMR 868) **that the burden of proof lies on the person exercising the power of attorney to prove that the transaction was carried out in good faith and with full knowledge and consent of the grantor.** Hence, the mere fact that Pardanashin women execute a general power of attorney will not absolve the attorney nor the buyer of the obligation to ensure that the Pardanashin women have full knowledge of the sale and have given their consent to the sale. In the case of a Pardanashin woman, even if a power of attorney is executed, the mere execution of the power of attorney will not establish the consent and intent of the

Pardanashin woman to effectuate sale in favour of a specific buyer. For the purposes of disposal of the property of Pardanashin women, their independent consent and willingness to dispose of their property must be taken and established notwithstanding the execution of a general power of attorney.

9. *The concept of protecting the rights of Pardanashin women finds its root in the cultural practice of women staying within the protection of their home, having limited access to affairs outside their home. Consequently, such women have limited interaction with society and do not participate in matters outside their home. This suggests that their knowledge and information about matters outside their home is limited and insufficient to take informed decisions. Accordingly, the courts have protected the rights of such women in order to protect them from betrayal, exploitation and fraud especially where valuable property rights are concerned. The concept of an illiterate woman is similar to that of a Pardanashin woman as both lack education and basic knowledge of worldly affairs, and both interact essentially at a limited level with society. This limited participation hampers her ability to take informed decisions. Such women are perceived as being unskilled, uneducated and incompetent so far as the business matters are concerned. They lack experience and are easily susceptible to deceit, even by their relatives. The courts endeavour to protect Pardanashin or illiterate women due to their social standing and vulnerability not only from society at large but also from relatives. Women are often the targets of fraud and deceit when it comes to property matters, which is why the courts have invoked the principle of caution in protecting the rights of such women so that they are not wrongfully deprived of their property. The limitations of Pardanashin or illiterate women have been duly considered by the courts against which the courts have held that such women must be given independent advice from a reliable and trustworthy source so as to ensure that they fully understand the transaction and the consequences of that transaction. **In Muhammad Naeem Khan's case (supra), we have categorically stated that whenever the authenticity or genuineness of a transaction entered into by a Pardanashin woman is disputed or claimed to have been secured on the basis of fraud or misrepresentation, the burden will lie on the beneficiary of that transaction to prove good faith and more importantly, the Court will consider whether the transaction was entered into with free will or under duress.** It goes without saying that the effort to protect rights of Pardanashin and illiterate women is necessary so as to give such women the ability to make independent decisions with reference to their property or belongings so as to ensure that they are not deprived of the ability to take a good decision based on their social standing in society. This is a step towards ensuring that there is an element of financial and economical independence given to women, who have been deprived of education and have limited interaction within the home and the family. While this may be the customary or traditional role of*

women as seen by society in general, the endeavour of the Court has always been to protect the vulnerability and susceptibility of women."

11. In the present case, it is evident that none of the aforementioned legal parameters have been satisfied. In his testimony, the applicant conceded that the witnesses to the Sale Deed were neither acquainted with Mst. Khairan nor was she familiar with them. This admission raises serious questions about the validity of the Sale Deed, as it is a fundamental requirement that the witnesses be known to the parties involved in the transaction. Further, during cross-examination, the applicant clarified that Imadad Ali and Zaheer Shah, the witnesses to the Sale Deed, are neither his relatives nor members of his caste. This further weakens the applicant's claim, as it is generally expected that the witnesses to such transactions would be relatives of a Parda Nasheen lady. Moreover, the applicant also admitted that Mst. Khairan never appeared before the Mukhtiarkar Rohri to sell the suit land. This is a significant admission, as it implies that Mst. Khairan may not have been fully aware of the transaction or its implications. Given these admissions, it appears that the Sale Deed may not have been executed with the free consent and complete understanding of Mst.Khairan. This renders the alleged Sale Deed invalid, as it does not meet the legal requirements for transactions involving Parda Nasheen and illiterate women.

12. The learned counsel for the applicant argued that the onus of proof rests on respondent No.2 to substantiate the fraud allegations concerning the unlawful acquisition of the registered Sale Deed, as outlined in Articles 117, 118, 119 and 126 of the Qanun-e-Shahdat Order, 1984. He further contended that the provisions of Article 79 of the Qanun-e-Shahdat Order, 1984 do not apply to the applicant, as the executant, the late Mst.Khairan did not deny its execution in person. However, these arguments from the applicant's counsel are unavailing, as the applicant himself admitted in his testimony that the late Mst.Khairan was an illiterate woman and a Parda Nasheen. The

applicant did not specifically deny in his written statement that the late Mst.Khairan was not a Parda Nasheen lady. In cases involving transactions with a Parda Nasheen, the burden of proof regarding the authenticity of a transaction with an ignorant/illiterate/parda observing woman and a document purportedly executed by such a woman would rest on the person claiming the transaction or under the document. The beneficiary of such a document is obligated to prove and convince the Court that the document was executed by an ignorant/illiterate/parda observing lady; that she had comprehensive knowledge and complete understanding of the contents of such documents; that such document/deed was read over to her and the terms of the same were adequately explained to her; and that she had independent and disinterested advice in the matter before entering into such a transaction and executing the document. In the case of Wali Muhammad Khan and another vs. Mst. Amina and others (2018 SCMR 2080), the Supreme Court of Pakistan decisively held in Para No.8 and 10 as follows:

*“8. **Chapter IX of the Qanun-e-Shahadat is titled "Of the Burden of Proof" and attends to the burden of proof, on whom the burden of proof lies and other evidentiary matters pertaining thereto. The burden of proof to establish the gift lay on the appellants (Articles 117 and 118, Qanun-e-Shahadat), but they failed to discharge such burden.** The appellants had alleged that the gift was made in the presence of Ghulam Muhammad, but he did not testify. Both sides maintained that Mst. Pari was an old, illiterate, parda observing lady. The paper on which her purported statement was recorded by Said Rehman (DST-3) bears a thumb impression. The appellants had to establish that Mst. Pari had impressed her thumb impression on it but made no effort to prove it, which they could have done by having it forensically examined and having it compared with some document on which she had admittedly impressed her thumb, such as her identity card and or her passport. The appellants' case was that after gifting them her property Mst. Pari proceeded to perform Hajj therefore she must have been issued a passport, which is only issued to those possessing an identity card.*

*“10. The learned Civil Judge-XII, Mardan, **without appreciating that Mst. Pari was not alive and that the burden to prove the gift lay on the defendants (the appellants herein), observed,** "There is nothing available on*

*file which could prove that Mst. Pari has denied the disputed mutations which means that mutations are attested in according to well [sic] of Mst. Pari" (pages 5-6 of the judgment). On the basis of this reasoning and without appreciating that the appellants had to prove the alleged gift the learned Civil Judge assumed that Mst. Pari had gifted her property to the defendants and that the mutations subsequently made on the basis thereof were valid. The Appellate Court perpetuated the error and assumed that Mst. Pari had gifted her property without this having been established through evidence. **The Subordinate Courts failed to appreciate that the burden of proving the gift lay on the appellants who had completely failed to discharge it.** Under such circumstances the High Court had rightly exercised its revisional jurisdiction to correct the material irregularity committed by the Subordinate Courts. Since the gift was not proved mutation Nos. 507 and 507/1 dated 27th February, 1998 could not be sustained."*

[Emphasis is supplied]

13. The counsel for the applicant has taken the plea that admissions appearing in the cross-examination of the applicant, i.e., that his sister, the deceased Mst.Khairan was Parda Nasheen; both the witnesses of the transaction are neither his caste fellows nor relatives to him, and he has denied that his sister Mst.Khairan appeared before Sub-Registrar Rohri, a typographical error. He alleged that he had made an application for correction of such mistake, but the applicant neither produced such application nor order of the trial court, nor is it available in the court file. Therefore, such a ground is not admissible under the law to set aside the concurrent findings of the facts recorded by both the Courts below.

14. Upon careful review of the impugned judgments, I conclude that the factual findings rendered by the trial Court and subsequently affirmed by the Appellate Court are grounded in a thorough and fair evaluation of the evidence presented. In this particular case, the trial Court and the Appellate Court have meticulously examined every facet of the case, providing comprehensive and detailed discussions, leave no room for further debate.

15. In the above-given circumstances, the concurrent findings of the facts recorded by the Courts below do not appear to suffer from jurisdictional defect. In the case of Haji Wajdad v. Provincial Government Through Secretary Board of Revenue Government of Balochistan, Quetta and others (2020 SCMR 2046), it was held by the Supreme Court of Pakistan that: -

“There is no cavil to the principle that the Revisional Court while exercising its jurisdiction under section 115 of the Civil Procedure Code, 1908 ("C.P.C."), as a rule is not to upset the concurrent findings of fact recorded by the two courts below. This principle is essentially premised on the touchstone that the appellate Court is the last Court of deciding disputed questions of facts. However, the above principle is not absolute, and there may be circumstances warranting exception to the above rule, as provided under section 115, C.P.C. gross misreading or non-reading of evidence on the record; or when the courts below had acted in exercise of its jurisdiction illegally or with material irregularity”.

16. The above discussion leads me to the irresistible conclusion that the lower courts have correctly appreciated the evidence and the law applicable to the case. Neither any misinterpretation or neglect of evidence nor any significant irregularity or jurisdictional defect could be identified to justify interference. The Civil Revision, having been found devoid of substance, is **dismissed** with no order as to costs.

Faisal Mumtaz/PS

JUDGE