

IN THE HIGH COURT OF SINDH AT KARACHI

High Court Appeal 120 of 2013

Present: **Muhammad Ali Mazhar** and **Agha Faisal, JJ.**

Rashk-e-Jehan & Others

vs.

Allauddin & Others

For the Appellant : Syed Ansar Hussain Zaidi, Advocate
For Respondent No.3 : Mr. Nazar Hussain Dhoon, Advocate
For Respondent No.4 : Mr. Badar Alam, Advocate
Date of Hearing : 23.10.2018, 02.11.2018 & 27.11.2018
Date of Announcement: 15.02.2019

JUDGMENT

Agha Faisal, J: The present appeal was filed in respect of the judgment dated 13.08.2013 ("**Impugned Judgment**") in Suit 1636 of 2001 ("**Suit**") delivered by a learned Single Judge of this Court and the decree dated 31.08.2013 made in pursuance thereof.

2. Mr. S. Ansar Hussain Zaidi, Advocate set forth case of the appellant and submitted that the appellants are the children and legal heirs of deceased Falaq Sher Khan Niazi ("**Deceased**") who passed away in Faisalabad on 21.08.1987. The subject matter of the Suit was immovable property, being plot No.9, Street 11, Phase IV, DHA, Karachi ("**Property**"), which was claimed by the appellants by way of inheritance. It was argued that the Property was unlawfully transferred to the respondent No.1 on the basis of forged documents, whereafter the Suit property changed hands numerous times and at the time of filing of the Suit vested with the present respondent No. 4. Per learned counsel, the Deceased was cancer patient and died soon after the purported

transfer of the Property to the respondent No.1. It was also contended that the execution of the conveyance documentation was not executed in the manner prescribed by the respondent No. 3. It was further contended that the report of a handwriting expert was obtained to cast doubt upon veracity of the Deceased's signature upon the conveyance documentation and the same had resulted in the conviction of the respondent No.1. It was thus concluded that since the initial transfer of the property to the respondent No.1 was illegal, hence, no subsequent title could be acquired by any other person in respect thereof. The appellants assailed the Impugned Order, whereby the Suit was dismissed, and sought for the same to be set aside.

3. Mr. Badar Alam, appeared on behalf of the respondent No. 4 and had submitted that his client was the bona fide purchaser for value and that his rights could not be whittled away in the manner sought by the appellants. Per learned counsel the respondent No. 4 acquired the Property as the seventh transferee from the initial conveyance of the property to the respondent No.1. The learned counsel challenged the authority of the very institution of the Suit as it had been filed by a person purporting to be the guardian of the appellants, that were minors at the material time, and in respect thereof no guardianship certificate was produced. Learned counsel also controverted the issue of the handwriting expert report and submitted that the conviction of the respondent No.1 was duly set aside in appeal, in respect whereof a Criminal Acquittal Appeal had been filed; the same having abated upon the death of the respondent No.1 was subsequently dismissed. It was argued that notwithstanding the forgoing the respondent No. 4 was never a party to the said criminal proceedings. Learned counsel argued that upon the death of the respondent No.1 the entire Suit should have

abated as no cause of action survived thereafter. The learned counsel relied upon the judgment of *Padmaram and Others vs. Surja and Others* reported as *AIR 1961 Rajistan 72* in such regard.

4. Mr. Nazar Hussain Dhoon argued on behalf of the respondent No. 3, DHA, and supported the Impugned Judgment. It was demonstrated from the record that for the transfer of the Property all the requisite documents were lodged there before and after a thorough scrutiny the transfer was processed. Learned counsel forcefully argued that upon institution of the Suit the respondent No.3 had reviewed the original property file and no irregularity was apparent therefrom. It was further stated that since the Deceased was unwell and could not appear before the DHA at the material time therefore his signature were obtained as per standard practice before a medical officer of the armed forces, which in the instant case happened to be at the Military Hospital at Sargodha whereat the document was attested by the officer in-charge of that station. It was submitted that there is no illegality or culpability on the part of the respondent No.3 in such regard and that no illegality could be proven against any of the respondents herein. Learned counsel also emphasized that the Property was acquired by the Deceased sometime in late 1986 and thereafter was conveyed on 03.12.1986. The necessary implication was that if the Deceased was well enough to execute the documentation for acquisition of the Property he would have remained capacitated to execute the relevant documents in respect of its sale. Therefore, it was argued that the present appeal merited dismissal forthwith.

5. We have considered the arguments of the respect learned counsel and have also appreciated the documentation arrayed before us. The quintessential point for determination before us is as follows:

“Whether the conclusion of the learned Single Judge validating the initial conveyance of the Property was sustainable in view of the evidence on record.”

6. It is noted that the appellants were purportedly minors when Suit was filed through their guardian Ramzan Bibi, who was also a witness in the Suit. Learned counsel for the appellant drew our attention to page 105 of the evidence file, in respect of the Suit, claiming that the document present thereat was relied upon as the Guardianship Certificate issued by the competent authority in favour of Ramzan Bibi. A bare perusal of the said document demonstrates that the said document is merely an application in such regard and not the certificate itself. Pages 107 and 109 of the evidence file, in respect of the Suit, lend further credence in this regard as it is demonstrated therefrom that a guardian petition in fact was filed by Ramzan Bibi and that the same was ordered upon on 02.05.1992 wherein the petition was granted subject to furnishing of surety bond in the sum stipulated therein. It was expressly stated in the said order that unless the surety bond is furnished within fifteen days from the said date the said petition would automatically stand dismissed. There is no evidence of the said surety having been deposited and the learned counsel for the appellant could not demonstrate if the said surety was submitted or if the actual certificate was ever issued. Notwithstanding the forgoing it was an undeniable fact that no Guardianship Certificate was ever filed in respect of the Suit as none is apparent from the record thereof and it is

further manifest that no such document was produced during the course of the hearing of this appeal, despite our queries to such regard.

7. It was demonstrated before us that a Judicial Magistrate had convicted the respondent No.1 upon the basis of a report of a handwriting expert. It is also admitted fact that the said conviction was reversed and the respondent No.1 was acquitted in such regard by the learned appellate Court. The Criminal Acquittal Appeal 460 of 2004 was filed challenging the acquittal of the respondent No.1, however, upon the death of the said respondent the said appeal abated and was subsequently dismissed. Notwithstanding the fact that the respondent No. 4, or any of the numerous intervening transferees, were not party to the criminal proceedings, it is a fact that the conviction stood reversed and overturned and thereafter no adverse interference can be drawn against the respondent No.1 in such regard. The learned Single Judge considered this aspect at considerable length and observed that even if the aforesaid Criminal Acquittal Appeal had been allowed it would have had no impact upon the outcome of the Suit. The relevant findings, with which we duly concur, are recorded herein below:

“It will be recalled that in the criminal case, the learned trial Court held that the offence of forgery had been established, i.e., proved beyond reasonable doubt. Although the conviction of the accused was set aside on appeal, a further appeal is pending in this Court. The possibility cannot be discounted that this appeal is allowed, which would result in the judgment of the trial court being restored. That would thus mean that the forgery has been established beyond reasonable doubt. On the other hand, I have just concluded, on a balance of probabilities, that the case of forgery has not been made out. This situation, if it ever does come about may seem anomalous for the reason just stated. (Of course, the situation may never come about; after all, the criminal acquittal appeal pending in this Court may be dismissed.) However, even if the situation does arise, it would not be anomalous. The reason is that a crucial piece of evidence in the criminal case, the evidence of the handwriting expert is inadmissible in the present suit. The plaintiffs could have summoned the expert as a witness in the

present suit and the defendants would then have had an opportunity to cross examine him on whatever he had to opine. His evidence would then have become admissible in the suit and been considered accordingly. This, however, did not happen. The evidence produced in the present suit is in this sense materially different from the evidence that was produced in the criminal case. As a result, the conclusions in the two sets of proceedings may well be different.”

8. The issue of the veracity of the signature upon the original instrument of conveyance was deliberated upon by the learned Single Judge at meticulous length and it was concluded that the issue that lay at the heart of the dispute was whether the signatures of the Deceased were forged on the documents on the basis of which the Property was transferred to the name of the respondent No.1. It was observed that unless the appellants were able to establish this issue in their favour, the Suit must necessarily fail. After conducting an appraisal of the evidence the learned Single Judge concluded that the appellants had been unable to discharge the evidential burden. We have appreciated the lines of reasoning employed by the learned Single Judge and find ourselves to be in concurrence with the conclusion arrived at as a consequence thereof, after having considered the evidence led in the Suit.

9. We are cognizant of the fact that the respondent No.4 claims to be a bona fide purchaser of value with numerous transfers / conveyances of the Property having taken place from the time that it was the initially conveyed by the Deceased till the time that it was acquired by the respondent No.4. It is also apparent that there is no allegation of fraud or manipulation leveled by the appellants against the respondent No.4. The appellants have been unable to dispel the respondent No.4 contention of being bona fide purchaser of value, however, the appellants entire contention is crystalized to connote that if the initial conveyance of the property by the Deceased is found to be invalid then

all subsequent transfers in respect hereof would cease to be of any legal effect. In such regard we have observed that the learned Single Judge has painstakingly considered the conveyance and has deliberated upon each aspect of the plaintiffs' claim in detail. Consequent upon such detailed deliberation, it was found by the learned Single Judge that no case for forgery had been made out and that the present appellants had not been able to establish that the conveyance of the Property by the Deceased was colorable exercise.

10. In view of the reasoning and rational contained hereinabove we are of the considered view that the learned Single Judge had adequately detailed and deliberated upon the issues involved in the Suit; that his findings in such regard are inconformity with the evidence led there before; and that the edict validating the initial conveyance of the Property was duly substantiated by the evidence on record. Therefore, we find no occasion to interfere with the Impugned Judgment, which is hereby maintained and upheld and the present appeal, along with pending application/s, is hereby dismissed with no orders as to costs.

J U D G E

J U D G E