IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Civil Revision No. S – 40 of 2010

(Atta Muhammad & others Vs. Abdul Qadir & others)

Date of hearing: 14-02-2022
Date of judgment: 14-02-2022

Mr. Sarfraz A. Akhund, Advocate for the Applicants
Mr. Ahmed Ali Shahani, Assistant Advocate General

JUDGMENT

Muhammad Junaid Ghaffar, J. – Through this Civil Revision, the Applicants have impugned judgment dated 28-01-2010 passed by the 2nd. Additional District Judge, Khairpur in Civil Appeals No.129 and 130 of 2009 through which both the Appeals stand dismissed and judgment dated 22-10-2009 passed by 2nd Senior Civil Judge, Khairpur through which the Suit of the Applicants was dismissed and that of the Respondents was decreed, has been maintained.

2. Learned Counsel for the Applicants submits that though both the Courts below have given concurrent findings of facts against the Applicants; however, it has not been appreciated by the Courts below that the mother of Respondents had relinquished / surrendered her share in suit property in favour of his brother i.e. father of the Applicants against consideration; hence the said instrument was protected under Article 100 of the Qanoon-e-Shahadat Order, 1984 and was not required to go through the test and rigors of Articles 78 and 79 of the Qanoon-e-Shahadat ibid. According to him the only consideration, which has prevailed upon the two courts below is that the two witnesses were not produced to prove the said relinquishment / sale of the property by the sister in favour of his brother, whereas, as per Article 100 of the Qanoon-e-Shahadat a presumption of correctness was attached to the said instrument which was a registered document, and therefore, both the Courts below have failed to take into consideration this aspect of the matter. In support of his contentions, he has relied upon *Ghulam Sarwar v Habib Bukhsh (PLJ 2016 Lahore 124), Muhammad Azam v Abullah &*

Others (1999 CLC 200) and Muhammad Iqbal v Muhammad Boota 2009 CLC 250).

3. Insofar as the Respondents are concerned, despite being served and engaging a counsel, nobody has turned up to assist the Court, whereas, this matter is pending since 2010, hence the same is being decided on the basis of the available record and with the assistance of the Applicants' Counsel.

4. It appears that the Applicants filed Suit No.83 of 2004 for declaration and injunction on the ground that the Suit land in question was fully owned by their father, whereas, Mst. Emna the sister of their father had surrendered her share in the Suit property against consideration of Rs.30000.00 which was paid in cash in presence of witnesses; and thereafter, the property was mutated in his name and now in the name of the Applicants. It is their case that during lifetime of their father and his sister no claim was lodged by the Respondents and, therefore, after the death of their mother they cannot challenge the sale transaction carried out by her in favour of her brother against consideration. Similarly, the Respondents had filed a Suit bearing No.162 of 2004 for declaration, partition, separate possession, mense profits and injunction, on the ground that suddenly, the Applicants had claimed ownership of the suit property, whereas, since long they had been paying batai share and had accepted the that the property was owned by the Respondents. The learned trial court had decreed the suit of the Respondents and dismissed the Suit of the Applicants.

5. As to the instrument being relied upon by the Applicants is concerned, admittedly they failed to bring on record any such witnesses which could prove that the consideration was paid and in lieu of such consideration the sister had surrendered her share in favour of his brother and had signed and executed the said document. In fact, a plea was taken that she in her lifetime never came forward to challenge the same and, therefore, now her legal-heirs cannot agitate the controversy. However, it is on record that in her lifetime there was some dispute in respect of the property in question and Mst. Emna was joined as a defendant in Suit No.177 of 2001 and relevant finding is at para 19 of the judgment of the Appellate Court, which reads as under;-

> "19. At the time of argument the learned advocate for appellants contended that during her life time Mst.Emna never raised any objection on the transfer of her share in favour of Late Ghulam Hyder, the father of appellants. I do not agree with such argument because the copy of order dated 20-11-2001 passed by then learned Senior Civil Judge-II, Khairpur in Civil Suit No.177/2001 shows that Mst. Emna was joined as defendant No.5 and suit was withdrawn on the statement filed by the present private respondents and so also Mst. Emna that the appellants shall not be dispossessed except due course of law. The filing of civil suit against Mst: Emna admits that she had not accepted the transfer of her share in favour of Late Ghulam Hyder, the father of appellants."

6. Perusal of the aforesaid findings clearly reflects that an order was passed on 20-11-2001 in Civil Suit No.177 of 2001, whereby, Mst. Emna was joined as a defendant and that Suit was only withdrawn on the statement filed by the private Respondents and so also Mst. Emna that the Applicants will not be dispossessed except in accordance with law. The very filing of the said Suit against Mst. Emna clearly shows an admission that at least in her lifetime she was opposing and was not consenting; nor had accepted the transfer of her share in favour of the predecessor-in-interest of the Applicants Ghulam Hyder and, therefore, this objection also appears to be misconceived.

7. As to the argument that Article 100 of the Ordinance protects the said document purportedly executed by Mst Emna, and Article 78 and 79 would not apply, it would suffice to observe that by and large, it is now settled that in cases of inheritance where the share of sisters and daughters is excluded to the benefit of male family members by way of some deed or compromise; or as in this case purportedly against some consideration, the same has to be looked into with utmost care and with suspicion, as and when the same is under challenge by the female members of the family, unless proved otherwise to the fullest extent. The reason is that it is nowadays a common feature in our society. The onus in such cases is always upon the parties who seek support from any such document when the matter is before the Court in respect of shares of the female legal heirs of a family. Vulnerable women are also sometimes compelled to relinquish their entitlement to inheritance

in favour of their male relations[1]. Moreover, in such cases even limitation cannot be pressed upon so strictly so as to non-suit the parties, who are deprived of their share by any means. Similarly, the Hon'ble Supreme Court in the case reported as GHULAM ALI v Mst. GHULAM SARWAR NAQVI **(PLD 1990 SC 1)** has been pleased to hold as under;

> Here in the light of the foregoing discussion on the Islamic point of view, the so-called "relinquishment" by a female of her inheritance as has taken place in this case, is undoubtedly opposed to "public policy' as understood in the Islamic sense with reference to Islamic jurisprudence. In addition, it may be mentioned that Islam visualized many modes of circulation of wealth of certain types tinder certain strict conditions. And when commenting on one of the many methods of achieving this object, almost all commentators on Islamic System agree with variance of degree only, that the strict enforcement of laws of inheritance is an important accepted method in Islam for achieving circulation of wealth. That being so, it is an additional object of public policy. In other words, the disputed relinquishment of right of inheritance, relied upon from the petitioner's side, even if proved against respondent, has to be found against public policy. Accordingly, the respondent's action in agreeing to the relinquishment (though denied by her) being against public policy the very act of agreement and contract constituting the relinquishment, was void.

8. Therefore, in view of the above and in the given facts and circumstances it appears that the finding of the two courts below is correct and in accordance with law being based on the evidence of the parties; hence, no case for interference in the concurrent findings of the said courts is made out; accordingly, this Civil Revision merits dismissal and it is so ordered.

Judge

ARBROHI

[1] Mirza ABID BAIG V. ZAHID SABIR (DECEASED) (2020 SCMR 601)