

2023 S C M R 1339

[Supreme Court of Pakistan]

Present: Ijaz ul Ahsan and Shahid Waheed, JJ

MUHAMMAD MUNIR and others---Appellants

Versus

UMAR HAYAT and others---Respondents

Civil Appeals Nos. 1731, 1732 and C.M.As. Nos.13433, 13475 of 2021, decided on 24th May, 2023.

(On appeal against the judgment dated 22.10.2021 passed by the Lahore High Court, Lahore in Civil Revisions Nos. 3332 and 3333 of 2010)

(a) Contract Act (IX of 1872)---

---Ss. 11 & 12---Unsoundness of mind---Proof---Registered sale deed and exchange deed executed by plaintiffs father challenged on the plea that their father had been suffering from paralysis for a long time; his hands and other limbs were affected with tremors and trembles; he could not relieve himself of his natural urges, and even to talk he used to express himself in gestures; and because of his illness he was very weak and could not walk around---Validity---Crucial point of determination in case a plea of insanity or unsoundness of mind is taken is the time of execution of the contract---In the present case, the disputed documents were registered in 1996 while plaintiffs father (executant) died in 1998 and thus the plaintiffs were to clearly state when their father had an attack of paralysis; did this occur before the documents were executed or after it?---This was a material fact that ought to have been disclosed in the plaint, but was conspicuously omitted, and since the plaintiffs could not go beyond the scope of their pleadings, they could not even be allowed to put in any statement or material to rectify the omission during the course of evidence, and as such, it would be fair to hold that the plaintiffs had failed to discharge their burden of pleadings, and tumbled at the first stage of the trial of their claim---Best evidence of the father s mental disorder could have been the medical attendant (hakeem) who treated him at the relevant time---However said physician (hakeem) was not examined, nor was any explanation furnished why he was not presented---One of the plaintiffs, who was also son of the executant, stated in his examination-in-chief that his father was ill and suffering from paralysis; but he did not say that his father was mentally challenged---However, during cross-examinations he said that his father had tremor in his body before his death, and that in the year 1995-1996, his father had sold his other land to another person---Such statement proved that the father (executant), though ill, was of sound mind and able to look after his own affairs at the time of registration of the disputed sale deed and exchange deed---Burden of proving their father s unsoundness in the first place was on the plaintiffs and when they failed to do so, the Court could not cure that infirmity by reading the statement of the defendants witness, such as the lambardar who had verified the father s thumb impression on the disputed documents---In the ordinary course of life, the said witness (lambardar) was not supposed to have any information about the father s health and the details of his medication---Contents of the disputed documents and of the statement of the witnesses, particularly of the Sub-Registrar did not support the inference, drawn by

the High Court, that the father did not understand the value of the property he was selling or of which he was exchanging---Even if it was accepted that the father had paralysis and tremors, it cannot be said that the father did not comprehend the nature and effect of the disputed documents at the time of their writing and registration---Suits for declaration filed by the plaintiffs were rightly dismissed by the Trial Court and the First Appellate Court---Appeals were allowed and impugned judgments and decrees of High Court were set-aside.

Muhammad Yaqoob v. Mst. Sardaran Bibi and others PLD 2020 SC 338 ref.

(b) Contract Act (IX of 1872)---

---Ss. 11 & 12---Unsoundness of mind---Scope---Permanent paralytic affection, though it somewhat saps the physical energy of the sufferer, does not necessarily impairs his mental power to such an extent to render him incapable of transacting business.

Sajid Ali v. Ibad Ali (23 Cal. 1) ref.

(c) Specific Relief Act (I of 1877)---

---S. 42---Suit for declaration---Registered sale deed and exchange deed---Plea of fraud---Not established---Sale deed and exchange deed executed by plaintiffs father was challenged on the plea that their father was unable to walk due to illness, so the defendants produced another person before the Sub-Registrar and got the disputed documents registered fraudulently, and that the Sub-Registrar did not mention their father s identity card number on the disputed documents---Validity---Neither the plaintiffs in their plaint nor any of their witnesses had alleged that the Sub-Registrar was in cahoots with the defendants---Disputed documents were registered by the Sub-Registrar/Naib Tehsildar, and he was produced as a witness by the defendants; he clearly stated in his examination-in-chief that the disputed documents were presented before him by the father himself, and he was identified by the lambardar, the statements of witnesses were recorded, and the father admitted that consideration amount had been received, and also acknowledged the exchange of land---During cross-examination, the Sub-Registrar/Naib Tehsildar admitted that the father s identity card number was not mentioned on the disputed documents, but stated that if there was no identity card number, the document was registered on the identification of a proper person, which included lambardar, councillors etc.---Plaintiffs father was identified by the lambardar, who appeared in Court and confirmed it---Even without so, the father s identification would not have been difficult to ascertain as he was a lambardar himself, and generally the Sub-Registrar/Naib Tehsildar knows the lambardar of his area---Thus, in the given circumstances, merely on the basis of non-recording of the father s identity card number, it could not be said that any other person had appeared instead of the father at the time of registration of the disputed documents, and any fraud was committed---Since the plaintiffs, had failed to discharge their initial burden, it did not shift to the defendants to prove the transactions---Defendants not only produced all the witnesses to the disputed documents, the identifier, and the Sub-Registrar, but also produced all their records from the custody of the Record-Keeper before the Trial Court and from the statements of all of them, the transactions recorded in the disputed documents were proved---Suits for declaration filed by the plaintiffs were rightly dismissed by the Trial Court and the First Appellate Court---Appeals

were allowed and impugned judgments and decrees of High Court were set-aside.

Khalil Ahmad v. Abdul Jabbar Khan and others 2005 SCMR 911; Messrs SAZCO (Pvt.) Ltd. v. Askari Commercial Bank Limited 2021 SCMR 558 and Haji Muhammad Yunis (deceased) through Legal heirs and another v. Mst. Farukh Sultan and others 2022 SCMR 1282 ref.

Agha Muhammad Ali Khan, Advocate Supreme Court and Syed Rifaqat Hussain Shah, Advocate-on-Record for Appellants (in both cases).

Malik Matee Ullah, Advocate Supreme Court (via video link from Lahore) for Respondents Nos. 1 - 3 (in both cases).

Ex-parte for Respondent No. 4 (in both cases).

Date of hearing: 24th May, 2023.

JUDGMENT

SHAHID WAHEED, J.---These two appeals are by the defendants and arise out of two declaratory suits and the relief claimed therein was first dismissed by the trial Court, and then on appeal by the first appellate Court, but on revision, this was accepted and the High Court issued decrees in favour of the plaintiffs, and we wish to consider them together in this judgment for not only the matter in issue in both of them are directly and substantially the same, but it is also between the same parties, who are litigating under the same title.

2. The cause for brining both the suits is related to two parcels of land situated in Mouza Ramdiana, Tehsil Bhalwal, District Sargodha. The subject matter of Civil Appeal No.1731 of 2021 is 162 1/2 kanals of land whereas Civil Appeal No.1732 of 2021 covers 98 kanals and 4 marlas. These two parcels of land were owned by Noora. He was lambardar of the village and had a brother Nazira. On 12th of September 1996, Noora sold his 162-1/2 kanals of land to Nazir s four sons vide registered sale-deed No.206, while the other land was exchanged with Nazir s 49 kanals and 3 marlas vide registered exchange-deed No.207 dated 15th of September 1996. Both these transactions were brought to the notice of the Revenue Officer who entered them in the record on 13th of October 1996 under mutation Nos.379 and 383 respectively.

3. Noora died on 15th of December 1998 and thereafter his legal heirs (respondents Nos.1 to 3 herein) instituted two suits for declaration of rights, title and for cancellation of the above- mentioned two registered deeds as illegal. The suit challenging the sale-deed was against Nazira s four sons, while the suit questioning the exchange-deed was against Nazira. In both the suits, the Province of Punjab through the Collector was also made a defendant (herein respondent No.4). It is a matter of record that Nazira also passed away while the litigation was going on and as such his legal heirs joined the proceedings. They are now the appellants before us. Hereinafter, for the sake of convenience, both the aforesaid documents will be referred to as the disputed documents, the present appellants as defendants, and the present respondents Nos.1 to 3 as plaintiffs.

4. Before proceedings further in the matter we would like to pause here to state that in the given circumstances the plaintiffs were faced with two presumptions. The first was that while executing the disputed documents, the executant i.e. their

father Noora was in sound disposing mind. And the second was that the Registrar had registered the disputed documents by completing the procedure according to the law. Both these presumptions were rebuttable and to do so the plaintiffs had to discharge a threefold burden. One, the pleading burden whereby plaintiffs had to set forth all material facts and particulars of illegality in their pleadings in order for them to be in issue. Two, the burden of producing evidence and, three, the burden of persuasion. Let us now see how each of the above two types of presumptions is rebutted by the plaintiffs.

5. First of all, we look at what the plaintiffs have stated in their plaint about their father's sanity, what evidence they have presented about it and how they have been able to persuade that their plea is accepted. The plaintiffs pleaded that their father, Noora, had been suffering from paralysis for a long time, his hands and other limbs were affected with tremors and trembles, he could not relieve himself of his natural urges, even to talk, he also used to express himself in gestures, and because of his illness he was very weak and could not walk around. These assertions indicate that the plaintiffs had purportedly taken the plea of insanity or unsoundness of mind to rebut the first presumption. Be it noted that plea of insanity or unsoundness of mind is an exception and the standard of proof for such a plea is somewhat higher than that of normal proof in civil cases. In the light of this legal position, it is to be seen whether the aforesaid assertions, even if admitted to be true, meet the requirements of law, and are sufficient to hold that the plaintiffs have successfully discharged their burden of pleadings. So far as the legal provisions taking care of such a situation is concerned, section 12 of the Contract Act, 1872 may be referred to, which is extracted herein below:-

What is a sound mind for the purposes of contracting:---A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.

A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

Illustrations

- (a) A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.
- (b) A sane man, who is delirious from fever or who is so drunk that he cannot understand the terms of a contract or form a rational judgment as to its effect on his interest, cannot contract whilst such delirium or drunkenness lasts.

6. A bare perusal of the said provision of law would bring us to a conclusion that the crucial point of determination in case a plea of insanity or unsoundness of mind is taken is the time of execution of the contract. In the present case, the disputed documents were registered in 1996 while Noora (executant) died in 1998 and thus the plaintiffs were to clearly state when their father (Noora) had an attack of paralysis. Did this occur before the documents were executed or after it? This was a

material fact that ought to have been disclosed in the plaint, but was conspicuously omitted, and since the plaintiffs could not go beyond the scope of their pleadings, they could not even be allowed to put in any statement or material to rectify the omission during the course of evidence¹, and as such, it would be fair to hold that the plaintiffs had failed to discharge their burden of pleadings, and tumbled at the first stage of the trial of their claim.

7. Notwithstanding the foregoing, to meet the ends of justice, we proceed to consider what evidence the plaintiffs had adduced in support of their position and to what extent they had been able to prove it. Before going into this, it seems appropriate to point out that the best evidence of Noora's mental disorder could have been the medical attendant who treated him at the relevant time. Evidence of layman especially relatives like son, daughter, wife etc, may be relevant, but being biased and exaggerated it cannot be conclusive². In the present case, it was stated by the plaintiffs in their plaint and Umar Hayat (PW1), son of Noora, also admitted that Noora was under the treatment of Hakeem, but he was not examined, nor was any explanation furnished why he was not presented? We consider this to be a serious flaw in the plaintiffs case.

8. That apart, we find that three witnesses were produced on behalf of the plaintiffs. The first witness is Umer Hayat (PW.1), Noora's son, who is also one of the plaintiffs. He only said in his examination-in-chief that his father was ill and suffering from paralysis. He did not say that his father was mentally challenged. However, during cross-examinations he said that his father had tremor in his body before his death, and that in the year 1995-1996, Noora had sold his other one-and-a-half acre land to a person named Mohabbat Khan. This statement proves that Noora, though ill, was of sound mind and able to look after his own affairs at the time of registration of the disputed documents. In the light of this statement of the plaintiffs, the additional information of their other witnesses about Noora's physical and mental health was of no value and could not be taken into account³, and accordingly the District Courts rightly did, and reached a correct conclusion.

9. It is pertinent to mention here at this stage that Muhammad Khan was lambardar and he had verified Noora's thumb impression on the disputed documents. He was produced by the defendants as DW-3 before the trial Court. During cross-examination, he said that he did not know that Noora had suffered paralysis second time and that Noora was taking medication to treat tremors. On the basis of this statement, it could not be concluded that Noora was not of sound mind, for, the burden of proving Noora's unsoundness in the first place was on the plaintiffs and when they failed to do so, the Court could not cure that infirmity by reading the statement of the defendants witness, secondly, that the denial of a particular fact for want of its knowledge by a witness cannot be said to be an admission of fact, and thirdly, that in the ordinary course of life, the said witness was not supposed to have any information about Noora's health and the details of his medication. We have, therefore, no hesitation in holding that the High Court has misdirected itself in taking a view different from that which we have expressed above.

10. Looking at the matter from another angle, it is worth noting that a contract of sale, like any other contract, would be vitiated if the consent of either party is given

by a person of unsound mind as provided in section 11 of the Contract Act, 1872. Under section 12 of that Act, a person is said to be of sound mind for the purpose of making the contract, if at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interest. A person of unsound mind is thus not necessarily a lunatic or insane. It is sufficient if the person is incapable of judging the consequences of his acts. Taking into account this position of law, the question for us to consider is whether the deceased Noora was capable of appreciating that he was transferring his property to the defendants. The contents of the disputed documents and of the statement of the witnesses, particularly of the Sub-Registrar do not support the inference, drawn by the High Court, that Noora did not understand the value of the property he was selling or of which he was exchanging. We have noted above that Umar Hayat, son of the deceased Noora, has only stated in his testimony that Noora had paralysis and was suffering from tremors. He had not said that the paralysis had also affected his father's mental strength. It is now well recognized that a permanent paralytic affection, though it somewhat saps the physical energy of the sufferer, does not necessarily impair his mental power to such an extent to render him incapable of transacting business⁴. Suffice it to say in this scenario that even if it is accepted that Noora had paralysis and tremors, it cannot be said that Noora did not comprehend the nature and effect of the disputed documents at the time of their writing and registration. We would, therefore, hold that the deceased Noora did possess a sound disposing mind for the making of the disputed documents.

11. We now turn our attention to the second aspect of the case which relates to the execution, correctness, and truthfulness of the disputed documents. One of these documents is a sale-deed while the other is an exchange-deed, and in respect of both, the Sub-Registrar has issued a certificate under the Registration Act, 1908 that they have been registered by completing all the prescribed procedure. It is important to stress here that registration of a document is a solemn act to be performed in the presence of a competent officer appointed to act as Registrar, whose duty it is to attend to the parties during the registration and see that the proper persons are present, are competent to act, and are identified to his satisfaction; and all things done before him in his official capacity and verified by his signature will be presumed to be done duly and in order. Therefore, the certificate endorsed on the conveyance deed by the Registering Officer under Section 60 of the Registration Act, 1908 is a relevant piece of evidence to presume that the deed is valid in law⁵. In view thereof, in the present case, the initial onus to rebut the said presumption was on the plaintiffs, who had challenged the documents.

12. The stand of the plaintiffs was that their father was unable to walk due to illness, so the defendants produced another person before the Sub-Registrar and got the disputed documents registered. Based on this allegation, they argued that the registration of the disputed documents was a fraud. In support of it, they say that if Noora had appeared in person, the Sub-Registrar would have written his identity card number on the disputed documents, which was not done. We do not agree with this. It may first be noted that neither the plaintiffs in their plaint nor any of their witnesses have alleged that the Sub-Registrar was in cahoots with the defendants. In this context the statement of the Sub-Registrar, who is a public servant, becomes very important. The disputed documents were registered by Rana Ghulam Mustafa,

Sub-Registrar/Naib Tehsildar, and he was produced as a witness by the defendants. He clearly stated in his examination-in- chief that the disputed documents were presented before him by Noora himself, and he was identified by Muhammad Khan, Lambardar, the statements of witnesses were recorded, and Noora admitted that consideration amount had been received, and also acknowledged the exchange of land. During cross-examination, he admitted that Noora s identity card number was not mentioned on the disputed documents. In response to a question, he said that if there is no identity card number, the document is registered on the identification of a proper person, which includes lambardar, councillors etc. It must be noted here that it is not the case of the plaintiffs that this statement was wrong in law. Responding to another question, he said that it is incorrect that Noora did not appear before him. In the light of this statement, when we examine the disputed documents, it is revealed that Noora was identified by Muhammad Khan, lambardar, who appeared in the Court and confirmed it. Even without so, we think, Noora s identification would not have been difficult to ascertain as he was a lambardar himself, and generally the Sub-Registrar/Naib Tehsildar knows the lambardar of his area. Thus, in the given circumstances, merely on the basis of non-recording of Noora s identity card number, it cannot be said that any other person had appeared instead of Noora at the time of registration of the disputed documents, and any fraud was committed. Since the plaintiffs, had failed to discharge their initial burden, it did not shift to the defendants to prove the transactions⁶. Nevertheless, we find that the defendants not only produced all the witnesses to the disputed documents, the identifier, and the Sub-Registrar, but also produced all their records from the custody of the Record-Keeper before the trial Court and from the statements of all of them, the transactions recorded in the disputed documents are proved.

13. It is settled that the standard of proof required in a civil dispute is preponderance of probabilities and not beyond reasonable doubt. In absence of any tangible evidence produced by the plaintiffs to support the plea of fraud, it does not take the matter further. Rather, in this case the testimony of the attesting witness, identifier and other independent witnesses, such as, the Sub-Registrar and the Record-Keeper (Reader to the Sub-Registrar) plainly support the case of the defendants. That evidence dispels the doubt if any; and tilt the balance in favour of the defendants.

14. Suffice it to observe that since the plaintiffs could not establish the existence of fraud, it must follow that their suits have ex-facie no merit.

15. In view of the foregoing discussion, we hold that the trial Court and the first appellate Court had appreciated the evidence properly and that view being a possible view, the High Court ought not to have disputed the same in revision and that too on surmises and conjectures.

16. In the result, the present appeals are allowed and the impugned judgments and decrees passed by the High Court are set aside. The judgments and decrees passed by the first appellate Court are hereby restored. No order as to costs. Pending applications, if any, are disposed of.

MWA/M-31/SC Order accordingly.

¹ [Muhammad Yaqoob v. Mst. Sardaran Bibi and others \(PLD 2020 SC 338\)](#)

² [Mst. Chanan Bibi and 4 others v. Muhammad Shafi and 3 others \(PLD 1977 SC 28\)](#)

³ [Haji Muhammad Usman through his Legal Heirs v. Muhammad Paryal \(1987 CLC 552\)](#)

⁴ [Sajid Ali v. Ibad Ali \(23 Cal. 1\)](#)

[Muhammad Akbar Shah v. Muhammad Yousaf Shah and others \(PLD 1964 SC 329\)](#)

⁵ [Piara v. Fattu \(AIR 1929 Lah. 711\)](#)

⁶ [Khalil Ahmad v. Abdul Jabbar Khan and others \(2005 SCMR 911\)](#)

[Messrs SAZCO \(Pvt.\) Ltd. v. Askari Commercial Bank Limited \(2021 SCMR 558\)](#) and [Haji Muhammad Yunis \(deceased\) through Legal heirs and another v. Mst. Farukh Sultan and others \(2022 SCMR 1282\)](#)

;