

2014 M L D 962

[Peshawar]

Before Muhammad Daud Khan, J

Mst. MAHAR ANGIZA and 5 others---Petitioners

Versus

Mst. BAKHTI RAJA---Respondent

Civil Revision No.238 with C.M. No.362 of 2013, decided on 19th August, 2013.

Specific Relief Act (I of 1877)---

---S. 42---Suit for declaration---Inheritance---Plaintiff filed suit to the effect that she was legal sharer of the suit property---Contention of defendants was that she had received her share in the shape of cash amount---Suit was decreed concurrently---Validity---Sale of share was not proved through cogent and reliable evidence which was requirement of law---Payment of alleged money by the defendants could not deprive the plaintiff from her inheritance right---Courts below concurrently decided the case in accordance with law and exercised their jurisdiction to protect the rights of women-folk---Defendants had failed to point out any illegality or irregularity in the concurrent findings of both the courts below---Judgments of both the courts below neither suffered from miscarriage of justice nor were the result of misreading or non-reading of evidence on the record---Concurrent findings of courts below could not be set at naught by the High Court unless it was established that same were perverse, fanciful or erroneous---Revision was dismissed.

Ghulam Ali and 2 others v. Mst. Ghulam Sarwar Naqvi PLD 1990 SC 1; Abdur Rahim and another v. Mst. Jantay Bibi and others 2000 SCMR 346; Haji Muhammad Din v. Malik Muhammad Abdullah PLD 1994 SC 291 and Muhammad Rashid Ahmad v. Muhammad Siddique PLD 2002 SC 293 rel.

Umar Ali Akhundzada, Advocate for Petitioners.

ORDER

MUHAMMAD DAUD KHAN, J.---Through this revision petition, the petitioners have assailed the judgment and decree of Additional District Judge-VI/Izafi Zilla Qazi, Swat dated 23-2-2013, whereby appeal of the petitioners against the judgment and decree of Civil Judge-IV/Illaqa Qazi, Swat dated 20-9-2012, was dismissed.

2. Precise but necessary facts giving rise to the instant revision petition are that respondent/plaintiff instituted a suit against the petitioners/defendants for the declaration to the effect that she is the legal sharer of the suit land mentioned in the head-note of the plaint being

legal heir of her father Sahibzada and petitioners/defendants have no right to deny or interfere in the property and they are to be restrained to alienate/transfer the same. The respondent/plaintiff also sought the possession of the said property to the extent of her share.

3. The petitioners/defendants contested the suit through submission of their written statement, wherein they denied the claim of the respondent/plaintiff and took a defence that the respondent had already received her hereditary share in the shape of cash amount Rs.650,000 from respondent/defendant No.3.

4. Necessary issues were framed out of divergent pleadings of the parties by the learned trial Court and the parties were afforded full opportunity to produce their evidence as they wished. On conclusion of the trial, the trial Court decreed the suit of the respondent/plaintiff and appeal filed by the petitioners/defendants was dismissed by the appellate Court and upheld the judgment and decree of the trial Court. Hence, instant revision petition.

5. Mr. Umar Ali Akhundzada, learned counsel for petitioners contended that concurrent judgments/decrees of both the Courts below are against the Shariah, Law, justice, facts and material available on the record and based on surmises and conjectures. He also contended that both the Courts below have committed illegality by misreading and non-reading of evidence.

6. Arguments heard and available record perused with the valuable assistance of learned counsel for the petitioners.

7. Admittedly, the parties are legal heirs of the deceased Sahibzada and suit property is the legacy of said Sahibzada. There is no dispute over the legal share of respondent Mst. Bakht Raja. The dispute is that whether Mst. Bakht Raja has received her inherited share by receiving Rs.650,000 as sale amount from her brother Bakht Zada respondent No.3. Respondents recorded their statements by themselves as DW-1 to DW-4, but their controversial statements cannot be relied upon. DW-1 and 2 stated that the amount paid to her by Bakht Zada was drawn from the Bank, whereas Bakht Zada as DW-4, when cross-examined, stated that he did not draw or brought the amount from the Bank. Moreover, DW-1 stated that their sisters were not paid money collectively, whereas DW-2 stated that Bakht Zada paid money to both her sisters collectively at the same time. Similarly, DW-3 Mst. Bakht Qaim, stated that her sister was paid Rs.650,000 after one month of payment of the similar amount to her. The alleged sale was not proved through cogent and reliable evidence, which is requirement of law in such like cases.

8. As the alleged payment of money by petitioners-defendants, for the sake of argument, considered to be proved, cannot deprive a person, especially illiterate, rustic villager woman folk from her inheritance right. It is not a stray case of its nature, particularly in the rural area the inheritance rights of females are not protected as given in the law. Their inheritance rights are captured by given so-called colour of relinquishment in favour of brothers or marriage spent money.

9. In my opinion, the alleged sale claimed by the petitioners is motive to grab the hereditary property of respondent. Both the learned Courts below concurrently decided the case in accordance with law and exercised their jurisdiction to protect the rights of women-folk and

followed the well settled principle of law. Reliance can be placed on case of Ghulam Ali and 2 others v. Mst. Ghulam Sarwar Naqvi (PLD 1990 Supreme Court-1).

10. Learned counsel for the petitioners has failed to point out any illegality or irregularity in the concurrent findings of both the learned Courts below. The judgments of both the Courts below neither suffer from miscarriage of justice, nor are the result of misreading or non-reading of evidence on the record.

11. Furthermore, the concurrent findings of the Courts below based on facts and sound appreciation of evidence and data available on record in favour of the respondents cannot be set-at-naught by this Court unless it is established by cogent and convincing evidence that the same are perverse, fanciful or erroneous in view of the dicta handed down by the apex Court in the cases reported as Abdur Rahim and another v. Mst. Jantay Bibi and others (2000 SCMR 346), Haji Muhammad Din v. Malik Muhammad Abdullah (PLD 1994 Supreme Court 291) and Muhammad Rashid Ahmad v. Muhammad Siddique (PLD 2002 Supreme Court 293).

For the afore-stated reasons, the revision petition in hand, being devoid of force, is dismissed in 'limine' along with C.M. No.362 of 2013.

AG/517/P

Revision dismissed.