

35/26

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Justice Jamal Khan Mandokhail
Justice Naeem Akhter Afghan

C.P.L.A.4211/2023

(Against judgment dated 26.09.2023 passed by Lahore High Court, Rawalpindi Bench Rawalpindi in CR No.331-D/2012)

Khurram Rasheed

...Petitioner(s)

Versus

Ch. Haider Zaman and others

...Respondent(s)

For the Petitioner(s) : Mr. Sajid Ilyas Bhatti, ASC

For the Respondent(s) : Mr. Tahir Malik ASC

Date of Hearing : 26.03.2026

JUDGMENT

Naeem Akhter Afghan, J: Ch. Muhammad Anwar had 04 sons namely Haider Zaman, Shoukat Nawaz, Maqsood Anwar, Abdur Rasheed and 03 daughters namely Mst. Shahnaz Anwar, Mst. Shaheena Anwar and Mst. Fareeda Yousaf. The son Abdur Rasheed had died during the lifetime of his father Ch. Muhammad Anwar and he was survived by widow Mst. Nazakat, 03 sons namely Khurram Rasheed (**the petitioner/defendant No.1**), Yasir Rasheed, Nasir Rasheed and one daughter Mst. Sadaf Rasheed.

2. In May 2001 Ch. Muhammad Anwar filed a suit for declaration and permanent injunction against the petitioner/defendant No.1 with the contention that he is owner with possession of House No.K-617 falling under Khasra No.10058/9764/4387, 4869/2 and 4919 measuring 10 marlas (**the disputed house**); he is an old and sick man; he is living with his son Haider Zaman and his daughter in law Mst. Nazakat (widow of Abdur Rasheed) in the disputed house; his son Maqsood Anwar is settled in France with his family and the petitioner/defendant No.1 is also living with them in France; his daughter-in-law Mst. Nazakat, his grandson (**the petitioner/defendant No.1**) and his son Maqsood Anwar alongwith his wife Mst. Nasira Rasheed

Khan hatched a conspiracy to wrongfully deprive him of his property in collusion with each other; they firstly executed a sale deed about property measuring 2-marlas situated in Waris Khan Street No.1 and then on the pretext that his signatures are required for the sale deed regarding plot measuring 2-marlas, he was taken secretly to the Registrar Office where they, in collusion with each other and with the collusion of the witnesses of the sale deed, got his signatures on a sale deed regarding the disputed house by taking advantage of his old age and weakness of his eyesight as he had got operated his eyes during those days; that the sale deed dated 21.08.2000 in favour of the petitioner/defendant No.1 in respect of the disputed house is illegal, unauthorized and same is result of fraud and forgery; not a single penny was paid to him by the petitioner/defendant No.1; he did not intentionally execute sale deed for the disputed house nor any such sale deed was presented for registration; the said sale deed being result of fraud and forgery and being without consideration is void ab-initio; if the sale deed dated 21.08.2000 is left outstanding, same is likely to adversely affect his interest; about 02 months ago his daughter in law Mst. Nazakat (mother of the petitioner/defendant No.1) announced the above sham transaction whereafter he made probe and came to know about the fraudulent, illegal and unauthorized transaction. The following prayer was made by Ch. Muhammad Anwar in his suit:

"It is, therefore, respectfully prayed that a declaratory decree to the effect that plaintiff is lawful owner of the suit land fully described in para 1 of the plaint and sale deed registered at No. 4231 dated 21-8-2000 of the suit property in favour of defendant is illegal, fraudulent and being without consideration is absolutely null and void and of no legal effect on the rights of the plaintiff and as a consequential relief sale deed is liable to be delivered up and cancelled.

A decree for permanent injunction restraining the defendant from alienating or encumbering the suit property in any manner what-so-ever may also be passed in favour of the plaintiff and against the defendant. Costs of the suit & such other relief which may be deemed

just & proper in the circumstances of the case may also be awarded to the plaintiff.

3. Instead of filing written statement, the petitioner/defendant No.1 filed an application under Order VII Rule 11 CPC for rejection of the plaint on the ground that similar nature of civil suit with same contention has been filed by the plaintiff Ch. Muhammad Anwar against his daughter in law Mst. Nasira Rasheed Khan in respect of plot measuring 2-marlas situated in Waris Khan Mohallah on the same grounds of his old age and weakness of his eyes with further contention that he was not paid any consideration for the said transaction. It was contended by the petitioner/defendant No.1 that the plaintiff Ch. Muhammad Anwar has filed the suit against him with *malafide* and to deprive him of the disputed house which has lawfully been purchased by him. It was contended that the suit has been filed without any cause of action and as such the plaint be rejected.

4. The application filed by the petitioner/defendant No.1 under Order VII Rule 11 CPC was contested by the plaintiff Ch. Muhammad Anwar by filing rejoinder. However, before decision of application under Order VII Rule 11 CPC by learned Civil Judge, Rawalpindi (**the trial court**), the plaintiff Ch. Muhammad Anwar passed away whereafter the plaint was amended by impleading his son Haider Zaman (respondent No.1) and his daughters Mst. Shahnaz Anwar and Mst. Fareeda Yousaf (respondent Nos.4 & 5) as plaintiff Nos.1 to 3. Brothers of the petitioner/defendant No.1 namely Yasir Rasheed and Nasir Rasheed, his sister Mst. Sadaf Rasheed, his mother Mst. Nazakat and two other sons of Ch. Muhammad Anwar namely Shoukat Nawaz and Maqsood Anwar were also arrayed as defendant Nos.2 to 7 in the amended plaint. In the amended plaint, the following relief was claimed by the plaintiffs: -

"It is, therefore, respectfully prayed that a declaratory decree to the effect that plaintiffs and defendants No.6 and 7 are lawful owners of the suit land fully

described in para 1 of the plaint and sale deed registered at No.4231 dated 21.08.2000 of the suit property in favour of defendant No.1 is illegal, fraudulent and being without consideration is absolutely null and void and of no legal affect on the rights of the plaintiffs and defendants No.6 and 7 and as a consequential relief sale deed is liable to be delivered up and cancelled.

A decree for permanent injunction restraining the defendants from alienating or encumbering the suit property in any manner what-so-ever may also be passed in favour of the plaintiffs and against the defendant. Costs of the suit & such other relief which may be deemed just and proper in the circumstances of the case may also be awarded to the plaintiffs."

5. Defendant Nos.1 to 5 contested the amended suit by filing joint written statement denying the contents of the plaint and asserting the genuineness of the sale deed dated 21.08.2000 in favour of the petitioner/defendant No.1 for sale consideration of Rs.6,50,000/-. It was contended that after receiving the sale consideration in toto, Ch. Muhammad Anwar got registered the sale deed before the Sub-Registrar, Rawalpindi in favour of the petitioner/defendant No.1 in the presence of witnesses and at the time of execution/registration of the sale deed, Ch. Muhammad Anwar was in good health and he was not suffering from any infirmity/sickness; that Ch. Muhammad Anwar entered into the transaction for the disputed house with the petitioner/defendant No.1 out of his free will and without any coercion; that Ch. Muhammad Anwar got operated his eyes on 20.04.2000 (as per prescription form of the hospital) and the suit was filed by him after 13 months of his operation.

6. Defendant No.7 also contested the suit by filing a separate written statement denying the contents of the plaint.

7. On the basis of pleadings of the parties, the trial court framed the following issues: -

1. *Whether the plaintiffs are entitled to grant of a decree for declaration and permanent injunction on the grounds and reasons mentioned in the plaint? OPP*
- 1-A. *Whether the sale deed allegedly executed by the deceased plaintiff Ch. Muhammad Anwar registered*

at serial No.4231 book No.1, vol. 167 pages 22 dated 21.8.2000 is based on fraud misrepresentation, without any consideration and the same being void or voidable /liable is liable to be so adjudged delivered up and cancelled? OPP

2. *Whether the plaintiffs have no locus standi to file the instant suit? OPD*
 3. *Whether the plaintiffs have concealed the material facts? OPD*
 4. *Whether the suit is liable to be dismissed and the answering defendants are entitled to special costs, if so, to what extent? OPD*
 5. *Relief.*
8. After framing issues, respondent No.1 appeared as PW-1 and got exhibited the relevant documents.

9. The attesting witnesses of the registered sale deed No.4231 dated 21.08.2000 namely Jehandad Khan and Ahmad Khan were produced by the petitioner and other contesting defendants as DW-1 and DW-2. They also produced documentary evidence. The attorney of the petitioner and the contesting defendants i.e. Nasir Rasheed defendant No.3/proforma respondent No.9 got recorded his statement.

10. On conclusion of trial proceedings, the trial court dismissed the suit vide judgment and decree dated 29.09.2011. The respondent Nos.1,4 and 5, being plaintiffs, filed an appeal which was accepted by learned Additional District Judge, Rawalpindi (**the appellate court**) vide judgment and decree dated 12.01.2012. Feeling aggrieved of the judgment and decree passed by appellate court, the petitioner and contesting defendants filed CR No.331-D/2012 before the Lahore High Court, Rawalpindi Bench (**the High Court**) which was dismissed by the High Court vide judgment dated 26.09.2023 against which the petitioner/defendant No.1 has filed the instant petition.

11. After hearing learned counsel for the parties, we have perused the available record. Article 117 of the Qanun-e-Shahadat Order, 1984 reads as follows:

Article 117. Burden of proof: (1) Whoever desires any court to give judgment as to any legal right or

liability dependent on the existence of facts which he asserts, must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

The above article is based on the rule ***ei incumbit probatio qui dicit, non qui negat***, which means that the burden of proving a fact rests on the party who substantially asserts the affirmative of the issue and not upon the party who denies it.

12. According to settled principles, forgery should be proved by clear and convincing evidence and whoever alleges it has the burden of proving the same.¹ When a party alleges fraud, it becomes its duty to prove the same and generalized allegations/mere bald assertions of fraud, forgery or misrepresentation without evidence cannot shift the initial burden. Mere denial by the executant of a registered sale deed is insufficient to shift the burden onto the beneficiary of the registered document.² When the plaintiff fails to discharge the initial burden of proving fraud, it does not shift to the defendant to prove the transaction.³

13. Record reveals that apart from filing suit against the petitioner/defendant No.1 in respect of the disputed house (suit No.390/2001), the predecessor of plaintiffs also filed two other suits i.e. suit No.1097/2009 (subsequently numbered as 558/2011) against his daughter in law Mst. Nasira Rasheed Khan (wife of Maqsood Anwar) challenging the registered sale deed dated 21.07.2008 in respect of plot measuring 2 marlas situated in Waris Khan Mohallah and against the subsequent purchaser Mr. Tariq Azam Chaudhary (suit No.559/2003 subsequently numbered as 1153/2009) on the same grounds of his old age and weakness of his eyes as well as non-payment of consideration for the transaction. These two suits were consolidated by the trial court. After death of their

¹ Francisco A. Veloso v Court of Appeals, Aglaloma B. Escario (260 SCRA 593)

² Mst. Nazeeran v. Ali Bux (2024 SCMR 1271)

³ Muhammad Munir v. Umar Hayat (2023 SCMR 1339)

predecessor, amended complaints were filed by impleading the respondent Nos. 1, 4 and 6 as plaintiffs. Both the suits were dismissed by the trial court vide consolidated judgment and decree dated 29.09.2011 holding therein that the plaintiffs have failed to prove the element of fraud, forgery or misrepresentation in execution of the registered sale deed dated 21.07.2000 and registered corrigendum dated 04.09.2000 by their predecessor in respect of the plot measuring 2 marlas. The said consolidated judgment was not further challenged by the plaintiffs before higher forums and as such it has attained finality and is holding the field.

14. In the instant case as well, the plaintiffs have failed to prove convincing evidence and have not produced a single witness in support of the contents of the plaint to prove any fraud, forgery or misrepresentation on the part of the petitioner/defendant No.1 in execution of registered sale deed dated 21.08.2000 in respect of the disputed house by their predecessor. The petitioner/defendant No.1 produced/got recorded statements of both the marginal witnesses of the registered sale deed dated 21.08.2000. The unshaken and confidence inspiring testimony of both the marginal witnesses and statement of the attorney of the petitioner and contesting defendants proves the genuineness of the registered sale deed dated 21.08.2000.

15. On the basis of available record, we have no hesitation to hold that the plaintiffs have failed to discharge the burden of proving fraud, forgery or misrepresentation on the part of the petitioner/defendant No.1 in execution of registered sale deed dated 21.08.2000 in his favour by the predecessor of the plaintiffs for the disputed house. It is concluded that after properly appreciating the evidence available on record as well as the settled law, while dismissing the suit of the plaintiffs, the trial court did not commit any illegality or irregularity. It is further concluded that while decreeing the suit in favour of the plaintiffs, the appellate as well as the revisional court had badly fallen into

error while appreciating the evidence available on record as well as the settled law.

16. The above are the reasons of our short order of even date which reads as follow:-

“Mr. Tahir Malik, the learned ASC waves notice on behalf of the respondents. For the reasons to be recorded later, the petition is converted into appeal and is allowed. The judgments dated 26.09.2023 and 12.02.2012 of the High Court and Appellate Court, respectively are set aside. The judgment dated 29.09.2011 of the Trial Court is upheld.”

Islamabad
26.03.2026
APPROVED FOR REPORTING
Rashid + Muhammad Zain Alam LC*/