

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mrs. Justice Ayesha A. Malik
Mr. Justice Shahid Waheed

CA NOS.231-L AND 232-L OF 2015

[On appeal against the judgment dated 22.06.2015 passed by the Lahore High Court, Lahore in C.R.No.1921 and 1922 of 2006]

Shaman (decd) through his L.Rs. etc *(in CA 231-L/15)*
Shaukat Mahmood, etc *(in CA 232-L/15)* ...Appellant(s)

Versus

Syed Kamran Haider Gillani, etc *(in both cases)* ...Respondent(s)

For the Appellant(s) : Mr. Muhammad Shahzad Shaukat, ASC
with Barrister Taha Shaukat, AHC.
(Through Video Link Lahore)

For the Respondent(s) : Malik Noor Muhammad Awan, ASC
(Through Video Link Lahore)

Date of Hearing : 20.10.2026

JUDGMENT

Shahid Waheed, J.- These two appeals, by leave of the Court, call into question the judgment of the High Court dated 22.06.2015, by which, in the exercise of its revisional jurisdiction, it maintained the judgment and decree of the First Appellate Court dated 23.08.2006. The First Appellate Court had reversed the judgment and decree of the Trial Court dated 23.12.2005, which had dismissed the suit of Mst. Nasreen Zohra, the predecessor-in-interest of the respondents, and had instead decreed that suit in her favour.

2. The facts lie in a narrow compass. The dispute concerns land measuring 64 kanals and 1 marla, fully described in the plaint. Mst. Nasreen Zohra instituted a suit for a declaration that registered sale deed No. 807 dated 10.05.1976, executed in favour of the appellants, was void, having been procured by fraud, and that she remained the lawful owner of the land. Her case was this: on the death of her father, she inherited her share in the property through inheritance mutation No.2 dated 10.07.1971 and was in possession of

it. A few days before filing the suit, she visited the Patwari Halqa and learnt, for the first time, that the land had been transferred to the appellants through mutation No.17 dated 09.10.1977, on the strength of the impugned sale deed. She therefore challenged the sale deed and the consequential revenue entries as illegal.

3. The appellants contested the suit. Their written statement asserted that Mst. Nasreen Zahra had sold the land of her own free will and had received the agreed consideration. They denied every allegation of fraud.

4. The Trial Court framed eight issues. The principal issue was whether the plaintiff- Mst. Nasreen Zahra was entitled to a declaration that registered sale deed No. 807 dated 10.05.1976, and the revenue entries founded on it, were void. Mst. Nasreen Zahra appeared as PW-1, produced the sale deed (Exh.P-1), and closed her evidence. For the appellants, Shaukat Mehmood, one of the appellants, appeared as DW-1, and Muzaffar Ali Shah (DW-2), Malik Saleem Lateef, Advocate (DW-3) and Rauf Ahmad Sheikh (DW-4) were also examined. They produced, among other documents, the original sale deed (Exh. D-1), a copy of mutation No. 17 (Exh. D-3), the record of rights for 1995-96 (Exh. D-4) and a copy of the khasra girdawari (Exh.D-5).

5. By its judgment dated 23.12.2005, the Trial Court dismissed the suit. It reasoned that the transaction took place in 1976-77 while Mst. Nasreen Zahra came to court only in 1997. Throughout those twenty years, including the years when her husband was alive, she never called the transaction fictitious or fraudulent, though she was out of possession. Nor did she produce any evidence to corroborate her allegation of fraud.

6. Mst. Nasreen Zohra died while the suit was pending, and her legal heirs were brought on record. They appealed to the District Judge, Nankana Sahib. The First Appellate Court held that, as the sale deed was said to have been executed by a pardanashin lady, the burden of proving its validity lay upon its beneficiaries. Assessing the evidence on that footing, it found that the appellants had proved neither the due execution of the deed nor the genuineness of the sale. It reversed the findings returned by the Trial Court and decreed the suit.

7. The appellants then invoked Section 115 of the Code of Civil Procedure, 1908. The High Court held that the appellants had not proved the due execution of the sale deed (Exh.P-1) as Articles 17 and 79 of the Qanun-e-Shahadat, 1984 require. It added that, because the deed bore neither the signatures nor the thumb impressions of the vendees, it could not be treated as a valid contract of sale. The revision petition was dismissed on 22.06.2015. Hence this appeal.

8. Leave was sought and granted on three grounds. First, the High Court misapplied Hafiz Tassaduq Hussain¹. That case concerned an agreement to sell, an instrument creating executory obligations, and the attestation and proof it demands under Articles 17(2) and 79 of the Qanun-e-Shahadat, 1984. The High Court did not separate such an agreement from a registered sale deed, which is a completed conveyance. Second, the High Court misread Farzand Ali², which dealt with the enforceability of an agreement to sell not signed by the vendees. An agreement, being a contract, must ordinarily reflect mutual assent. A registered sale deed is not an agreement, and no law requires the vendee to sign it. Third, the suit was barred by time. The deed was executed on 10.05.1976, the mutation was sanctioned on 09.10.1977, and the suit was filed on 08.05.1997. The plea of discovery a few days before the suit was neither particularised nor proved. And though the plaintiff claimed possession, the plaintiff conceded as PW-1 that the appellants were in possession, which undercut her account of recent discovery.

9. For the respondents, it was urged that the appellants, as beneficiaries of the instrument, had to prove its validity; that they had proved neither payment of consideration nor due execution; that the plaintiff sued as soon as she discovered the transaction; and that, the executant being a pardanashin lady, the First Appellate Court rightly cast the burden upon the appellants. No interference with the concurrent findings, they contended, was called for.

10. The arguments at the Bar raise five interrelated questions:(a) What must a plaintiff plead, and prove, before the Court

¹ Hafiz Tassaduq Hussain v. Muhammad Din through legal heirs and others (PLD 2011 SC 241).

² Farzand Ali and another v. Khuda Bakhsh and others (PLD 2015 SC 187).

will hear her say that a registered instrument was procured by fraud? (b) What weight does registration carry, and what does it take to displace the presumption it raises? (c) How far does the executant's status as a pardanashin lady shift the burden of proof onto the beneficiary? (d) Does the absence of the vendees' signatures or thumb impressions invalidate a registered sale deed? (e) Was the suit, filed some twenty-one years after registration, within time? The first three questions concern the burden of proof and are best taken together, in that order; the fourth concerns the nature of the instrument; the fifth concerns the remedy itself. We take them in turn.

11. We begin with first principles. Under Articles 117 and 118 of the Qanun-e-Shahadat, 1984, whoever asks the Court to give judgment on a legal right that depends on the existence of facts must prove those facts, and the burden lies on the person who would fail if no evidence were given on either side. Applied to a suit of the present kind, the rule yields a simple proposition: a registered instrument stands until the person who attacks it brings it down. The mere allegation of fraud does not do so. The presumption that attaches to a registered instrument is rebuttable, but rebuttal is work that the challenger must first perform.

12. That work has three distinct parts, which this Court identified in Muhammad Munir³. There is, first, the burden of pleading: the plaintiff must set out in the plaint the material facts that constitute the fraud or illegality alleged. There is, second, the burden of producing evidence in support of those pleaded facts. And there is, third, the burden of persuasion: the evidence, taken as a whole, must satisfy the Court that the challenge is made out. The three are cumulative and sequential. A plaintiff who fails at the first stage cannot be rescued at the third, for evidence cannot be led on a case that was never pleaded, and the Court cannot be persuaded of a fraud whose particulars were never disclosed.

13. The burden of pleading is sharpest where fraud is alleged. Order VI, Rule 4 of the Code of Civil Procedure, 1908 requires that, in every case where a party relies on misrepresentation, fraud, breach of

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

trust, willful default or undue influence, particulars, with dates and items if necessary, shall be stated in the pleading. The rule is not a technicality. It reflects a principle the common law settled long ago. Fraud, in the classic formulation of Derry⁴, is a false representation made knowingly, or without belief in its truth, or recklessly, careless whether it be true or false. A charge of that gravity is not to be made, or inferred, lightly. In John Wallingford⁵, the House of Lords held that general allegations of fraud, however strong the language in which they are couched, do not amount to an averment of fraud of which a court ought to take notice. In Davy⁶, the Court of Appeal declined to let fraud be inferred from facts pleaded without a distinct allegation of it. Our own Order VI, Rule 4 codifies exactly this discipline. Its object is fairness: the defendant must know the case he is to meet, and the Court must know the issue it is to try.

14. Measured against these principles, the plaint fails at the threshold. It contains one bare assertion: that the plaintiff never appeared before any competent officer. It does not deny her thumb impression on the deed. It does not deny receipt of the sale consideration. It does not say who practised the fraud, when, by what means, or to what end. It makes no allegation that the Sub-Registrar acted in collusion with the appellants or registered the deed in breach of the statutory procedure. In short, the plaint names the conclusion, fraud, but pleads none of the facts from which that conclusion could be drawn. The plaintiff therefore did not discharge the burden of pleading, and the burden of proof did not, and could not, shift to the appellants.

15. The deed (Exh.P-1) bears the certificate of the Sub-Registrar under the Registration Act, 1908. Registration is no clerical formality. Under Section 34, the registering officer must enquire whether the document was executed by the person by whom it purports to have been executed and satisfy himself as to the identity of those appearing before him. Under Section 35, he registers the document only where execution is admitted. Section 58 requires him to endorse the particulars of the

⁴ William Derry, J.C. Wakefield, M. M. Moore, J. Pethick, and S.J. Wilde v. Sir Henry William Peck, Baronet (1889) 14 App Cas 337.

⁵ John Wallingford v. The Directors, & C., of the Mutual Society, and the Official Liquidator thereof (1880) 5 App Cas 685.

⁶ Davy v. Garrett (1878) 7 Ch D 473.

admission, and Section 60 requires his certificate of registration, which is admissible to prove that the document was duly registered and that the facts endorsed on it occurred.

16. These are official acts of a public officer. Article 129(e) of the Qanun-e-Shahadat, 1984 permits the Court to presume that judicial and official acts have been regularly performed. The rule gives statutory form to the ancient maxim *omnia praesumuntur rite et solemniter esse acta*: all things are presumed to have been done rightly and with due formality until the contrary is shown. The presumption is not conclusive. But it is not displaced by a bare denial either. It yields only to cogent evidence, and its force grows where, as here, the instrument has been acted upon for two decades through mutation, entries in the record of rights and possession.

17. The appellants nonetheless examined an attesting witness. Muzaffar Ali Shah (DW-2), the plaintiff's (Nasreen Zahra's) own brother, stated categorically that she executed the deed in his presence. It was never her case that she was on bad terms with him or that he had reason to depose falsely against her. Against this stood her solitary statement, uncorroborated by any other oral or documentary evidence. That statement could not displace the presumption attaching to a registered instrument. The plaintiff (Nasreen Zahra) thus failed to discharge her initial burden.

18. The First Appellate Court and the High Court approached the matter from the wrong end. They examined whether the appellants had proved the transaction before asking whether the plaintiff had made out a case that called for such proof. The order of enquiry matters. The burden does not shift to the beneficiary merely because he is the beneficiary, and a suit cannot be decreed simply because the defendant's evidence is thought thin, without first deciding whether the plaintiff discharged her own burden.

19. The First Appellate Court rested its decree on the plaintiff's (Nasreen Zahra's) status as a pardanashin lady. The doctrine it invoked has a long and honourable history in this region, and it is right that we explain both its reach and its limits. The doctrine was shaped by the

Privy Council. In *Kali Bakhsh Singh*⁷, the Board held that a person who relies on a deed executed by a pardanashin lady must show affirmatively that it was explained to her and understood by her; execution, it observed in substance, must be her mental act as well as her physical act. In *Farid-un-Nisa*⁸, the Board clarified that the real question is whether the deed was the free and intelligent act of the lady. Independent advice is not an indispensable condition; it is one means, among others, of showing that she knew what she was doing. This Court, too, has insisted on vigilance where women are said to have parted with property; in *Ghulam Ali*⁹, it scrutinised with particular care a female heir's alleged relinquishment of her inheritance.

20. Three features of the doctrine must be kept in view. First, its premise is a want of understanding or of free consent. It protects a woman who, because of seclusion, illiteracy or dependence, may not have grasped what she signed or may not have signed freely. Second, the weight of the burden is variable. The simpler the transaction, and the plainer its terms, the lighter the burden on the beneficiary; the more complex the transaction, or the closer the relationship of trust, the heavier it becomes. Third, status as a pardanashin lady is itself a question of fact, which must be pleaded and proved like any other.

21. The English law of *non est factum* offers an instructive parallel. In *Saunders*¹⁰, the House of Lords held that a person who signs a document is ordinarily bound by it, and may disown it only by showing that it was fundamentally different from what she believed it to be and that she was not careless in signing. Our pardanashin rule is more generous to the executant: it casts the burden on the beneficiary. But both rules rest on the same foundation, a pleaded and proved complaint that the executant's mind did not go with her hand. Neither rule invalidates an instrument merely because of who signed it.

22. That is where the First Appellate Court went astray. The doctrine is a shield for the vulnerable; it is not a sword that strikes down

⁷ *Kali Bakhsh Singh and others v. Ram Gopal Singh and others* (1913) 41 Indian Appeals 23.

⁸ *Farid-un-Nisa v. Munshi Mukhtar Ahmad and another* (1925) 52 Indian Appeals 342.

⁹ *Ghulam Ali and 2 others v. Mst. Ghulam Sarwar Naqvi* (PLD 1990 SC 1).

¹⁰ *Saunders (Executrix of the Will of Rose Maud Gallie, Decd) v. Anglia Building Society* [1971] AC 1004.

every instrument a pardanashin woman executes. It operates on a properly pleaded case of want of understanding or consent. It does not dispense with pleading altogether. The plaintiff did not plead that she was illiterate, that the deed was not read over or explained to her, that she lacked independent advice, or that she was under the domination of the appellants. Her pleaded case was different and irreconcilable: that she never appeared before the registering officer at all. She did not deny her thumb impression or the receipt of consideration. The transaction was a simple sale for a price, not a gift or a relinquishment. Her own brother attested it. Her husband was then alive. On that record, the First Appellate Court was not entitled to treat the beneficiaries' supposed failure to prove the transaction as a sufficient basis for a decree. Relief cannot be granted on a case that was never pleaded.

23. The High Court held that the absence of the vendees' signatures or thumb impressions rendered the registered sale deed incapable of being treated as a valid contract of sale. With respect, the reasoning treats a conveyance as though it were a contract, and that is the error. The law draws a clear line between the two instruments. Section 54 of the Transfer of Property Act, 1882 defines a sale as a transfer of ownership in exchange for a price paid or promised, and requires that a sale of tangible immovable property of the value of one hundred rupees or upwards be made only by a registered instrument. The same section provides that a contract for the sale of immovable property, that is, an agreement to sell, does not of itself create any interest in or charge on the property. An agreement to sell looks to the future; a sale deed speaks in the present. The first records reciprocal promises that remain to be performed. The second is the act of transfer itself. It follows that a sale deed is, in form, the instrument of the transferor. It is he who parts with title, and it is his execution that the law requires. Section 32 of the Registration Act, 1908 requires the document to be presented by the person executing it or by a person claiming under it, and the registering officer's enquiry under Sections 34 and 35 is directed to whether that person admits execution. The vendee's assent to the transaction is ordinarily manifested otherwise: by payment of the price, by acceptance of the deed, by entering into possession and by having the mutation sanctioned in his favour. The common law knew the same distinction between a deed poll, executed

by the grantor alone, and an indenture executed by both parties; a grantee under a deed poll took the benefit of it without signing it.

24. The precedents on which the High Court relied must be read in that light. A case, as Lord Halsbury LC observed in *Quinn*¹¹, is an authority only for what it actually decides; its expressions must be read with the facts to which they were addressed. In *Hafiz Tassaduq Hussain*, this Court considered the attestation and proof required of an agreement to sell under Articles 17(2) and 79 of the Qanun-e-Shahadat, 1984, an instrument embodying future obligations. In *Farzand Ali*, it held that an agreement to sell not signed by the vendees who sought its specific performance did not evidence the mutual assent that every contract requires. Both decisions concerned executory contracts. Neither laid down that a registered sale deed is invalid unless signed or thumb-marked by the purchaser, and neither could be applied mechanically to a completed conveyance whose execution was never specifically denied.

25. The right question, therefore, was not whether the vendees signed the deed, but whether the law governing this conveyance required them to. The High Court identified no such requirement, and we know of none. Nor does the absence of the vendees' signatures show that the vendor did not execute the deed, that the registration was irregular, or that the deed was procured by fraud. This does not mean that execution need not be proved where it is genuinely and specifically denied, or that a challenge founded on fraud, want of consent or breach of a mandatory statutory requirement is excluded. It means only this: the absence of the vendees' signatures, standing alone, is no ground for declaring a registered sale deed invalid.

26. Now we turn to the limitation question. The law of limitation is a statute of repose. It rests on two old maxims: *interest reipublicae ut sit finis litium*, that it is in the public interest that litigation should end, and *vigilantibus, non dormientibus, jura subveniunt*, that the law assists the vigilant, not those who sleep on their rights. It is not a mere rule of procedure; it fixes the time within which a judicial remedy may be

¹¹ *Quinn v. Leathem* [1901] AC 495.

pursued. Section 3 of the Limitation Act, 1908 therefore obliges the Court to dismiss a suit instituted after the prescribed period, whether or not limitation has been set up as a defence. Article 91 of the First Schedule prescribes three years for a suit to cancel or set aside an instrument not otherwise provided for. Time runs not from the date of the instrument but from the date when the facts entitling the plaintiff to have it cancelled became known to her. Section 18 adds that where a person has, by means of fraud, been kept from knowledge of her right, time runs from when the fraud first became known to her. And Order VII, Rule 6 of the Code of Civil Procedure, 1908 requires that where a suit is instituted after the expiry of the period of limitation, the plaintiff shall show the ground upon which exemption is claimed. Read together, these provisions place a clear burden on a plaintiff who sues long after the event. Three dates must be kept distinct: the date of execution, the date of knowledge and the date of institution. The passage of time does not, by itself, fix the date of knowledge. But neither does a bare assertion of recent discovery postpone it. A plea of late knowledge is a plea of fact; it must be pleaded with particulars and proved with evidence. The English courts adopted the same approach to concealed fraud. In *Rolfe*¹², Lord Westbury LC treated time as running only from discovery where the wrong had been concealed by fraud. In *Bulli Coal Mining Co.*,¹³ the Privy Council confirmed that principle but tied it to conduct that actually kept the plaintiff in ignorance. Modern English law, in Section 32 of the Limitation Act 1980, postpones time until the plaintiff discovered the fraud or could with reasonable diligence have discovered it. The common thread is that postponement is earned by proof of concealment and diligence, not claimed by assertion.

27. On this record, the plea of recent discovery could not succeed. The deed was registered on 10.05.1976. Mutation No. 17 was sanctioned in the appellants' favour on 09.10.1977 and carried into the revenue record, including the record of rights for 1995-96 (Exh. D-4) and the khasra girdawari (Exh.D-5). The suit was filed on 08.05.1997, some twenty-one years after registration. The plaintiff said nothing about how the plaintiff remained unaware of the transfer for two decades, what took her to the Patwari Halqa when she went, or what the appellants

¹² *Rolfe v. Gregory* (1865) 4 De G J & S 576.

¹³ *Bulli Coal Mining Company v. Patrick Hill Osborne and another* [1899] AC 351

did to conceal the transaction from her. It did not comply with Order VII, Rule 6. And the plaintiff's assertion that she was in possession collapsed when she admitted, as PW-1, that the appellants were in possession. An owner who is out of possession of her agricultural land for twenty years cannot, without more, be heard to say that she knew nothing of the transfer under which her opponents held it.

28. The Trial Court weighed these circumstances and held the plaintiff's (Nasreen Zahra's) explanation untenable. The First Appellate Court and the High Court reversed its decree without addressing the objection at all. That was itself an error of law, for Section 3 required them to examine limitation whether or not it was pressed. We hold that the suit was barred by time, and that the plaintiff (Nasreen Zahra) established no factual foundation for postponing the commencement of limitation under Section 18. The First Appellate Court and the High Court misread and did not read material evidence, misplaced the burden of proof, applied precedents that did not govern the instrument before them, and left the plea of limitation unexamined. Their findings cannot be sustained.

29. These appeals are accordingly allowed. The judgment and decree of the High Court dated 22.06.2015, and the judgment and decree of the First Appellate Court dated 23.08.2006, are set aside. The judgment and decree of the Trial Court dated 23.12.2005, dismissing the suit, is restored. There shall be no order as to costs.

JUDGE

JUDGE

Islamabad
20.10.2026
'APPROVED FOR REPORTING'
Irfan Aslam/*