SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
Mr. Justice Ijaz ul Ahsan
Mr. Justice Amin-ud-Din Khan

Civil Appeal No.154-L of 2018
(Against the judgment dated 13.9.2018, passed by the Lahore High Court, Lahore, in Civil Revision No.38 of 2017)

Anjuman-e-Khuddam-ul-Qur'an, Faisalabad through Dr. Abdul Sami, President Qur'an Academy, Saeed Colony No.2, Faisalabad *...Appellant*

Versus

Lt. Col (R) Najam Hameed and 3 others *...Respondents*

For the Appellant	:	Sh. Naveed Shehryar, ASC
Respondent No.1:	:	In Person
Other Respondents	:	N.R.
Date of Hearing	:	14.05.2020

JUDGMENT

AMIN-UD-DIN KHAN, J.- This Civil Appeal has been filed under Article 185(2) of the Constitution of the Islamic Republic of Pakistan, 1973, to assail the judgment dated 13.09.2018, passed by the learned Single Judge of the Lahore High Court whereby Civil Revision bearing No.38 of 2017, filed by the Respondents, was allowed.

2. Brief facts of the case are that Plaintiff/Respondent No.1 on 02.04.2007 filed a Suit for Cancellation of Document i.e. registered *waqfnama* dated 18.10.2003. As per the pleadings, the Defendants with the connivance of each other on 18.10.2003 prepared a fictitious and forged *waqfnama* (Ex.P-1) on behalf of Plaintiff's and Defendants No.2 to 4's mother but another lady was produced before the Sub-Registrar and *waqfnama* was got registered in favour of Defendant No.1 i.e. the Appellant. Defendants No.2 to 4 were the other legal heirs of the deceased Mst. Hameeda Bano, the lady on whose behalf the *waqfnama* was made. Written statements were filed by Defendants No.1 & 2 as well as 3 & 4. The Suit was contested. The learned Trial Court framed the issues and recorded the evidence. Both the parties led their oral as well as documentary evidence. The learned Trial Court was pleased to dismiss the Suit vide judgment and decree dated 22.12.2012. The Plaintiff being aggrieved by the judgment and decree of the learned Trial Court preferred an appeal before the learned Appellate Court, which was dismissed vide judgment and decree dated 08.11.2016. There-against, the present Respondent No.1/Plaintiff filed a Civil Revision bearing No.38 of 2017 before the learned Lahore High Court, which was allowed vide impugned judgment and decree dated 13.09.2018. Hence, this Civil Appeal.

3. The learned counsel for the Appellant argued that Mst. Hameeda Bano through duly registered *waqfnama* had given her property to the Appellant/Defendant No.1 for religious purposes. She remained alive for two years after the transfer of property through registered *waqfnama* and possession was also ordained, and she never disputed the *waqfnama* in question during her lifetime. The Plaintiff/Respondent No.1 is her son who filed the Suit after two years of death of his mother on 02.04.2007. The Suit was clearly barred by time as per the learned counsel. Defendants No.2 and 3 are also the sons of the Mst. Hameeda Bano (*waqif* lady) whereas Defendant No.4 is her daughter. They supported the impugned *waqfnama* which would have the effect of taking away their rights of inheritance, if held to be valid.

4. On the other hand, Respondent No.1/Plaintiff appeared in person. He was heard at some length and the documents were also perused with him in accordance with his desire. As he is not an advocate, he was given the choice of engaging a counsel for which purpose, further opportunity may be granted to him. But he stated that he is not willing to engage a counsel and argued his case himself. Respondent No.1 in person argued that the judgment passed by the learned Lahore High Court was well reasoned and highlighted the discrepancies in the two registered

documents in detail, i.e. the certified copy produced by him as Ex.P-1 and the original documents produced in evidence by the Appellant as Ex.D-1. The Suit was rightly decreed by the learned High Court. Further stated that the Registrar has not given proper certificate in accordance with Section 60 of the Registration Act, 1908 upon the impugned document. He further argued that the document does not contain the CNIC number of his mother; therefore, *waqfnama* is a defective one.

5. We have heard the learned counsel for the Appellant as well as Respondent No.1 who appeared in person, and have gone through the record with their able assistance and the case law cited by the learned counsel for the Appellant and judgments of the three learned Courts below.

6. It must be noted first and foremost that the value for the purpose of Court Fee was mentioned in the plaint as rupees two crore (Rs.20,000,000/-) but Plaintiff/Respondent No.1 did not pay a single penny upon the plaint as Court Fee. Further that originally the Regular First Appeal was filed before the learned High Court but after the pecuniary jurisdiction of the learned District Judge/Additional District Judge was enhanced up to rupees five crore (Rs.50,000,000/-), the Appeal was transmitted to the learned District Judge. In the proforma of appeal, the

value for the purpose of Court Fee and jurisdiction was mentioned as rupees two crore. After its dismissal, a Civil Revision was filed before the learned Lahore High Court. The decree sheet of the learned Trial Court shows that not a single penny was paid as Court Fee; as per the decree sheet of the learned Additional District & Sessions Judge, Faisalabad only rupees fifteen were paid as the Court Fee on appeal; and whereas in the Civil Revision before the learned High Court the record also shows that the Court Fee of rupees fifteen only was paid. It is clear, however, that in the light of the value of the Suit mentioned in the plaint and the memo of appeal, the Plaintiff/Respondent No.1 was bound to pay the maximum Court Fee of Rs.15,000/- (rupees fifteen thousand) before every fora below. His act of non-payment of Court Fee was contumacious therefore his Civil Revision was liable to be dismissed on this score alone.

7. It must also be noted that originally the Regular First Appeal was filed on 29.01.2013 (Diary No.8520). The office raised an objection with respect to deficiency of Court Fee as a response to which the Plaintiff/Respondent No.1 requested the office to place the file before the Court. The record does not show that the hearing was fixed to address the objection before the learned High Court. But subsequently, an appeal was numbered as Regular First Appeal No.97 of 2013. However, because the pecuniary

jurisdiction of the learned District Court was enhanced, the case was transferred to the learned District Court for hearing and the appeal was decided by latter. The matter of Court Fee remained ignored. This shows the knowledge of the Plaintiff/Respondent No.1 with respect to deficiency of Court Fee and his wilful default to pay the same in full.

8. The learned Trial Court also gave its findings on Issue No.4 with regard to the objection of the Court Fee where it was held that since it was not pressed therefore it was decided against the particular Defendants/Appellant. We find these observations of the learned Trial Court to be erroneous. It has been observed by this Court in the case reported as Allah Yar v. Muhammad Riaz and others (PLD 1981 SC 489) wherein it has been held as under:

> "6. ... The mere fact that at the trial the defendant had not pressed the question of deficiency in the court-fee, does not relieve the Court of the obligation of looking into the matter, determining the correct amount of the court-fee and seeing that the deficiency is made up. In any case, the petitioner had the knowledge that he had grossly undervalued his plaint for purpose of court-fee and yet he did not make up the deficiency within time or even upto the date of final decision of the case, nor did he ever apply for extension of time under section 149, C. P. C. As such it is evident that he was not only negligent but also contumacious and his omission to make up the deficiency in the court-fee was deliberate and *mala fide*. ..."

In the instant case, the value for the purpose of Court Fee was fixed by the Plaintiff/Respondent No.1 himself as rupees

two crore in Paragraph No.13 of the plaint where it was mentioned that the Court Fee will be paid; which he was also bound to pay under Section 7 (*iv*)(*c*) of the Court Fees Act, 1870. But contumaciously the Plaintiff/Respondent No.1 never paid the Court Fee before the learned Trial Court; before the First Appellate Court he paid Rs.15/- only; and in the learned Lahore High Court he also paid Rs.15/- only. Instead of paying Rs.15,000/- before the First Appellate Court as well as before the learned High Court, he cleverly managed to avoid the payment of Court Fee while wrongly relying upon the decision of the learned Trial Court on Issue No.4. However, we are conscious of the fact that for dismissal of the Suit on the basis of non-payment or deficiency of Court Fee, Plaintiff/Respondent No.1 was entitled to be granted at least one opportunity by the Trial Court as well as the First Appellate Court and the High Court, which opportunity was never extended. Plaintiff/Respondent No.1 was bound to pay Rs.15,000/- Court Fee before each Court, therefore, he is directed to pay the Court Fee of Rs.15,000/- before the Trial Court and make up the deficiency of Court Fee before the First Appellate Court and the High Court within two months from today, otherwise, if the Court Fee is not paid or deficiency is not made good within stipulated time his Suit, Appeal and

Revision will be deemed to have been dismissed for non-payment of Court Fee.

9. So far as the next objection of the learned counsel is pertaining to competency of the Civil Revision as to whether a second appeal was competent or not is concerned, we have noticed that in the plaint the Plaintiff has mentioned the valuation for the purpose of Court Fee i.e. rupees two crore he has not mentioned the valuation of Suit for the purpose of jurisdiction, therefore, this objection has a little value.

10. Next, we questioned Respondent No.1 as to what his stance is regarding the impugned *waqfnama* and whether the impugned document was registered with the Sub-Registrar or there was a forged and fictitious document shown as registered document. Initially, he stated that there is no registered document; but when further probed as to how he obtained a certified copy of registered *waqfnama* from the Office of the Sub-Registrar and produced the same before the learned Trial Court as Ex.P-1 when there was no registered document, he stated that he had applied for issuance of the certified copy. He went on to admit that the *waqfnama* was a registered document with the Sub-Registrar and stated that it was a defective one and lastly stated that the facts and details which were noted by the learned High Court were sufficient to declare it as such.

11. It must be noted that Ex.P-1 is a certified copy issued by the Sub-Registrar of the impugned *waqfnama* which was produced by the Plaintiff/Respondent No.1 in his own statement, therefore, it was inadmissible in evidence. The same could not have been exhibited without producing the original document before the learned Trial Court. The Plaintiff neither issued any notice to the Appellant/Defendant No.1 to produce the original document i.e. the original *waqfnama;* nor was the original record from the Sub-Registrar Office summoned for getting the certified copy duly exhibited in evidence. Therefore, the same could not have been relied upon. However, even if inadmissibility of Ex.P-1 is ignored the case of the Plaintiff/Respondent No.1 remains weak for the reasons to be discussed below.

12. As regards the objections pertaining to deficient evidence to prove Ex.D-1, the learned High Court also fell in error while holding that the Appellant/Defendant No.1 has not produced evidence in accordance with Articles 17 and 79 of the Qanun-e-Shahadat Order, 1984 (Order of 1984) in order to prove original document i.e. *waqfnama* (Ex.P-1). Not only was the plea taken by the Plaintiff self-contradictory but the learned High Court also wrongly held that the onus was not discharged by the Defendants.

13. Now, coming to the pivotal Issue No.1 on which the fate of this *lis* hinges. There were concurrent findings of

the two fora below. The learned High Court has reversed the findings on Issue No.1. We agree with the learned counsel for the Appellant that it was not a case for application of the rule of the Order of 1984 noted in Articles 17 and 79 *ibid*. Since the *waqfnama* is not a document pertaining to financial or future obligations, therefore, to prove this document, the conditions of Article 17 of the Order of 1984 were not applicable. We note that first the learned High Court was required under the law to determine whether it is a document required by law to be attested and thereafter the application of Articles 17 and 79 of the Order of 1984 were to be considered. Even otherwise, we have noticed that Tariq Munir, *Wasiqa Navees*, appeared as DW-2 whereas Malik Muhammad Saleem Advocate, who identified the *waqif* lady before the Sub-Registrar appeared as DW-1. He identified the lady on the identification of her real son Zahid Hameed, who appeared as DW-3. Malik Muhammad Saleem Advocate, DW-1, is though an identifier of the *waqif* lady at the time of registration of the document Ex.D-1 but simultaneously, he stated that the document was read over to her and she accepted it to be true. In this view of the matter, in our view, he is not only an identifier but gains the status of an attesting witness. Therefore, the findings of the learned High Court are incorrect on legal as well as factual aspect of the matter. Further, it was the Plaintiff/Respondent No.1, who

challenged the original *waqfnama*, which was produced by Defendant No.1 as Ex.D-1 to prove the case pleaded by him. He has prayed for cancellation of the *waqfnama* admitting himself that this document was registered by producing some other lady before the Sub-Registrar at the time of registration. Hence, the Plaintiff/Respondent No.1 admits the registration of impugned document and its availability in the record of the Sub-Registrar; however, he only denies the production of *waqif* lady before the Sub-Registrar. He was a third person so far as the document in question is concerned; i.e. he was not a party to the impugned *waqfnama*. The Plaintiff/Respondent No.1 failed to discharge his onus. It is a settled principle of law that a registered document has sanctity attached to it and strong and cogent evidence is required to rebut its genuineness.

14. For complete adjudication of the matter, the discrepancies noted by the learned High Court with regard to comparison of Ex.P-1 and Ex.D-1 must also be scrutinized. Keeping aside the question of admissibility of Ex.P-1 which is a certified copy of the disputed *waqfnama,* we hold that not mentioning the CNIC number of transferor or transferee in the document does not make it invalid. As per the prevalent practice, when the original document is produced before the *Patwari* or the Revenue Officer for attestation of mutation then on the basis of said document, the *Patwari* or

the Revenue Officer endorses the mutation number upon it so that the said document may not be used again for attestation of any other mutation. It seems that the son of the *waqif* lady presented the document for attestation of the mutation, therefore, his CNIC number is available at the front page of Ex.D-1 as per the Plaintiff/Respondent No.1.

15. The objection of the learned High Court that Ex.P-1 has cuttings in address of Mst. Hameeda Bano whereas Ex.D-1 does not contain any cuttings and corrections upon it which is factually incorrect. In the title of both the documents the previous writing has been corrected from 26A to 22A. However, in Ex.P-1 in the first line of the body of the document correction was made from 26A to 22A whereas in Ex.D-1 this correction was not made. It makes no difference with respect to the validity of the document as both contained similar corrections. The absence of correction in body of Ex.D-1 seems to be an oversight in light of the corrections made in title of Ex.D-1. All the other contradictions noted by the learned High Court also have a little value which would not affect the validity of the document.

16. As regards the observation of the learned High Court that the thumb impressions endorsements on the back side of the written pages of Ex.P-1 compared with Ex.D-1 are at different places, therefore, it is a forged

document. At this juncture, we note that the mechanism adopted now-a-days by the Registrar is not in the knowledge of the learned High Court. The established practice prevailing these days by the officials of the Sub-Registrar, registering document under the Registration Act, 1908 is that instead of copying the document on *Behi* (Book No.1) they keep the photo-stat copy of the original document. That photo-stat copy is prepared before affixation of signatures/thumb impressions of parties to the document or the witnesses as well as the endorsements and affixation of stamps and signatures by the Sub-Registrar Office. Thereafter, the thumb impressions are taken upon the original document as well as the photo-stat copies, one photo-stat copy is thereafter placed in series, after *jildbandi* of a specific volume of the bundle of hundred document, is kept with the Sub-Registrar Office in accordance with the Registration Act, 1908 and their certified copies are issued on the application of any of the parties. One copy is sent to the revenue officials for incorporation of the same in the Revenue Records. In this view of the matter, the thumb impressions or signatures on original and two copies of the documents can and must be in different places, as all are taken in original upon original document as well as upon copies by the Sub-Registrar Office. When the original as well as photo-stat copies which are kept with the Sub-Registrar

as a record, contained the original thumb impressions and the endorsements upon original as well as the photo-stat copy kept with the Sub-Registrar Office, both are in original definitely the thumb impression taken upon the original document as well as on the copy kept with the Sub-Registrar as well as the endorsement of the Sub-Registrar can and must be in different places when original document is compared with the document available with the Sub-Registrar Office. For keeping the record of a registered non-testamentary document in accordance with the Registration Manual and West Pakistan Registration Rules, 1929, paragraph 64 was substituted vide amendment dated 06.05.1989 the Punjab Registration Manual, 1929 (Reprint 1973), Correction Slip No.3 dated 20th March, 1989, which is reproduced herein below:

> "64 Book No. 1 is a file book, with numbered butts, of non testamentary documents which relate to immovable property registered under sections 17 and 18 of the Act and which are not Wills. In this book shall be filed duplicate copies of all documents, duly signed by the parties and the witnesses and endorsed by the Registering Officer, like the original. Each sheet of the duplicate copy thus signed by the parties and the witnesses and endorsed by the Registering Officer, shall then be pasted on a separate numbered butt in Book No. 1, immediately on receipt otherwise there is a danger of its being lost or injured and the registering officer shall write his signature with date, and shall affix the seal of his office in such a way that both the signatures and the seal are partly on each butt so used and partly on the duplicate pasted thereon. Endeavour

> should be made to return the original document to the presenter before he leaves the office. This book and the indices relating thereto are open to public inspection, and the copes of the entries therein shall be given to an applicant on payment of the prescribed fee. Maps or plans annexed to the documents should also be pasted in this book. The heading of each butt shall be in the following form:---"

17. The Plaintiff/Respondent No.1 got certified copy from Sub-Registrar Office of the document Ex.P-1, it was natural that the endorsement as well as thumb impressions upon these two documents were upon different places. The learned High Court used this natural difference as a basis for cancelling the impugned *waqfnama*. If compared with the two endorsements and thumb impressions on the basis of such difference which is natural and does not contain any fraud. On this basis alone, declaring that the document is fraudulent or not registered one is absolutely wrong interpretation of the documentary evidence rather it seems the learned High Court was not conscious of this aspect and regular practice by the Sub-Registrar Office under the Registration Manual. When the certified copy of original *waqfnama* was issued on the application of Plaintiff himself and he produced it as Ex.P-1 which was certified copy of the photo-stat copy of the original endorsement and thumb impressions that signatures of the transferor, identifiers and the witnesses. The Court was misled by holding that Ex.P-1 should be the complete photo-stat copy of Ex.D-1 which

understanding of the learned High Court is incorrect. If the original record was produced for getting the Ex.P-1, exhibited in evidence before any fora below this misunderstanding would not have come for recording incorrect finding about the comparison of these documents. So far as the endorsement of the ministerial staff of the Sub-Registrar Office about Shahrah-e-Aam or the date is concerned that does not affect the rights of the parties *vis-a-vis* the impugned document. The *waqfnama* is clearly permissible under the law for the *waqf* property. Even the Plaintiff has not disputed that the original writing of Ex.P-1 and Ex.D-1 on the front side of its pages are the same and there is no difference in both the documents. In a case titled as Mst. Kaniz Begum and others v. Mst. Akbar Jan and another (1984 SCMR 1493), wherein the legal heirs of the *waqif* challenged the *waqf* of a house to the '*Rehmania Mosque'* by their predecessor-in-interest through a registered deed after the death of the *waqif,* on the ground that the same was made during *Marzul Maut* and contradictions therein, the Supreme Court ignored 'the element of contradiction in the deed' and dismissed the appeal of the Plaintiffs/Appellants by declaring the *waqfnama* as duly registered, genuine and valid. In this view of the matter, the learned High Court fell in error while recording finding on

Issue No.1. The same are reversed as the Plaintiff/Respondent No.1 miserably failed to prove his case.

18. So far as the construction over the suit property is concerned, DW-1 clearly stated that the Plaintiff/Respondent No.1 was the cashier of the *Idara* i.e. *Anjuman-e-Khuddam-ul-Qur'an* and with his consent, the construction over the suit property was raised by Appellant/Defendant No.1, which makes it clear that the *waqf* of the property was in the knowledge of the Plaintiff.

19. In our opinion, the Suit was also not maintainable. A Suit under Section 39 of the Specific Relief Act, 1877 can be filed when an instrument is *void* or *voidable*. This instrument Ex.D-1 was neither *void* nor *voidable*. The Plaintiff/Respondent No.1, being third party, alleges in the case as pleaded by him that some other lady was produced before the Sub-Registrar instead of his mother, on whose behalf the document was registered. In such circumstances, the appropriate remedy before the Plaintiff/Respondent No.1 was in the form of a Suit for Declaration. Therefore, a Suit should have been filed for Declaration and in the declaration, when possession admittedly had been transferred to the Appellant, who had also constructed multi-purposes buildings in accordance with the *waqfnama,* the Suit should have been for Possession also. The instant Suit was therefore incompetent.

However, even on merits the Plaintiff/Respondent No.1 failed to establish his claim, as discussed above.

20. So far as the objection of Plaintiff/Respondent No.1 vis-à-vis Section 60 of the Registration Act, 1908 with respect to certificate by Sub-Registrar is concerned, this objection is misconceived as both Ex-P-1 and Ex.D-1 contain certificate of the Registrar as well as his signatures, therefore, this objection has a little value.

21. With regard to the question of limitation, Issue No.3 was framed. The learned Trial Court decided the said issue in negative as the onus was placed upon Defendant No.1, since, it was a legal issue. The findings of the learned Trial Court were that from the date of knowledge, the Suit was filed within three years in accordance with Articles 91 and 92 of the Limitation Act, 1908, therefore, it was within limitation when no cross-objections were filed as per the record before the First Appellate Court or before the High Court. At this stage, we do not think that the arguments advanced by the learned counsel for the Appellant have any weight.

22. For what has been discussed above, we allow this Civil Appeal and set aside the impugned judgment passed by the learned Lahore High Court. Resultantly, the Suit filed by the Plaintiff/Respondent No.1 is dismissed in

accordance with the direction above and with cost throughout.

23. The aforesaid are the reasons of our short order of even date, which is reproduced hereunder:

> " For the reason to be recorded later the judgment of the Lahore High Court, Lahore dated 13.09.2018 is set aside and that of learned Trial Court as well as Appellate Court is restored and affirmed."

Judge

Lahore, the
14th of May, 2020 Judge
(Mahtab H. Sheikh)

Approved for Reporting