

P L D 1999 Supreme Court 1094

Present: Saiduzzaman Siddiqui, C.J., Munawar Ahmed Mirza and Sh. Riaz Ahmed, JJ

MUHAMMAD YAQOOB---Petitioner

versus

KHAIR MUHAMMAD and another---Respondents

Civil Appeal No. 1028 of 1999 in C.P.L.A. No. 139-Q of 1997, decided on 22nd July, 1999.

(On appeal against the judgment dated 10-7-1997 of the High Court of Balochistan, Quetta in R.F.A. No.22 of 1997).

Balochistan Civil Disputes (Shairat Application) Regulations, 1976--

----S. 5---Constitution of Pakistan (1973), Art.185(3)---Pre-emption---Suit for possession through pre -emption---Contention of petitioner was that since no sale had taken place, therefore, the suit for possession through pre-emption instituted by respondent was incompetent and the decree passed by Chairman of the Majlis-i-Shoora was void; that before the acceptance of the compromise by the Majlis-i-Shoora the petitioner had submitted application requesting that the power of attorney executed by him in favour of his attorney as well as the compromise be cancelled; that application for cancellation of power of attorney had been moved immediately on coming to know that the respondent, who was acting as attorney of the petitioner had defrauded, him by entering into compromise with the vendee, thereafter after 2/3 days of the submission of the said compromise deed; steps for cancellation of the power of attorney were initiated and that application moved for seeking the cancellation remained pending and it was not disposed of by the Chairman of the Majlis-i-Shoora till disposal of the suit---Leave to appeal was granted by Supreme Court to consider as to whether compromise deed entered into by an attorney on behalf of the principal could have been acted upon when the principal had already taken steps seeking cancellation of the power of attorney which had been brought to the notice of the Majlis-i-Shoora, but without passing any order on application seeking cancellation of the power of attorney, a decree was passed on the basis of the compromise deed between the attorney and the vendee.

Mehta W.N. Kohli, Advocate-on-Record. for Petitioner.

Nemo for Respondents.

Date of hearing: 22nd July, 1999.

ORDER

SH. RIAZ AHMED, J.--The facts giving rise to the institution of this petition seeking leave to appeal against the judgment and order dated 2-7-1997 delivered by a learned Judge of the Balochistan High Court are that respondent No. 1 Khair Muhammad instituted a suit for possession through pre-emption in the Court of Majlis-i-Shoora at Loralai praying that decree for possession through pre-emption be passed in respect of the suit property because he was owner of the land situated adjacent to the suit property. It was averred in the plaint that on 30-3-1996 petitioner Muhammad Yaqoob had sold the suit land in favour of respondent No-2 for a consideration of Rs.52,000.and a mutation was also entered into the Revenue Record; but with a view to defeating the right of pre-emption of the plaintiff, the vendor and the vendee, i.e. Muhammad Yaqoob petitioner and the respondent No.2 got recorded in the Revenue Record that the land had been transferred in favour of the respondent No.2 in lieu of a contract for consideration of the development of land undertaken by the respondent No.2.

2. The petitioner and the respondent No.2 submitted written statements controverting the claim of the plaintiff/respondent No. 1. During the pendency of the suit, on 30-10-1996 the attorney of the petitioner and the respondent No.2 submitted compromise deed before the Majlis-i-Shoora praying that the suit instituted by the respondent No. 1 be decreed in his favour. After filing of the compromise the petitioner then filed an application stating therein that the power of attorney executed by him in favour of Khair Muhammad respondent be cancelled. When the matter came up before the Majlis-i-Shoora for consideration, instead of probing into the controversy, the suit was rejected by one of the members of the Majlis-i-Shoora while the Sessions Judge, the Chairman of the Majlis-i-Shoora accepted the compromise and disposed of the suit in terms thereof. It may be mentioned here that under section 5 of the Balochistan Civil Disputes (Shariat Application) Regulation, 1976, in the event of difference of opinion between the Chairman and Members, the decision of the former prevails, as such the suit was decreed vide order dated 26-3-1977.

