

Stereo.HCJDA 38.
Judgment Sheet
LAHORE HIGH COURT
RAWALPINDI BENCH RAWALPINDI
JUDICIAL DEPARTMENT

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CIVIL REVISION NO.573-D of 2014

MUHAMMAD AZRAM

Versus

MUHAMMAD ALTAF and another

JUDGMENT

Date of hearing: 29.02.2024

Petitioner by: Mr. Shahryar Tariq, Advocate.

Respondent No.1 by: Mr. Muhammad Masroof Ch,
Advocate.

Respondent No.2 by: Nemo.

MIRZA VIQAS RAUF, J. The petitioner herein namely Muhammad Azram claiming himself the son of Mst. Zar Begum instituted a suit for declaration seeking cancellation of mutations No.1946 dated 24th June, 1996 and 2394 dated 21st March, 2006 with the averments that Mst. Zar Begum his mother was owner in possession of land measuring 02 Kanal 08 Marla situated within the revenue estate of Samote Tehsil Kallar Syedan District Rawalpindi (hereinafter referred to as “suit land”). It is asserted that respondent No.1 (hereinafter referred to as “respondent”) being the resident of same vicinity having influence upon the revenue officials succeeded in attestation of mutation No.1946 dated 24th June, 1996 in his favour showing that he purchased the “suit land” from the mother of the petitioner with sale consideration of Rs.1,00,000/-. It is averred that the transaction of mutation was kept concealed and after the

afflux of time, “respondent” further alienated the “suit land” through gift mutation No.2394 in favour of respondent No.2, which are ineffective upon his rights. It is further averred that on raising the claim *qua* the “suit land” by respondent No.2, the petitioner became acquainted with the impugned mutations and thus instituted the suit. Suit was resisted by “respondent”, who submitted his written statement and defended the mutations in question. On the other hand, respondent No.2 was proceeded against ex-parte, on his failure to appear before the court. From the pleadings of the contesting parties multiple issues were framed by the trial court whereafter evidence of both the sides was recorded and suit was ultimately decreed with costs *vide* judgment dated 03rd December, 2010. Feeling dissatisfied the “respondent” preferred an appeal before the learned Additional District Judge, Rawalpindi, which was allowed by way of judgment and decree dated 05th December, 2013, which is now impugned in this petition under Section 115 of the Code of Civil Procedure (V of 1908) (hereinafter referred to as “C.P.C.”).

2. Learned counsel for the petitioner contended that mother of the petitioner was a “*Pardahnasheen*” lady. He added that “respondent” being clever person succeeded in obtaining the sale mutation in his favour depriving the petitioner from the legacy of his mother. Learned counsel contended that on attaining the knowledge about the impugned mutations, the petitioner immediately instituted the suit, which was initially decreed through a well-reasoned judgment passed by the learned Civil Judge. Emphasized that the appellate court while setting at naught the judgment of the trial court has grossly misread the evidence. It is contended with vehemence that the appellate jurisdiction has been exercised illegally and the impugned judgment and decree is not tenable under the law. Learned counsel submitted that question of limitation has wrongly been dealt with by the learned Additional District Judge. In order to supplement his contentions, learned counsel placed reliance on FAQIR ALI and others versus SAKINA BIBI and others (PLD 2022 Supreme Court 85), GHULAM FARID and another versus SHER REHMAN through LRs. (2016

SCMR 862) and REHMATULLAH and others versus SALEH KHAN and others (2007 SCMR 729).

3. Conversely, learned counsel for “respondent” submitted that sale mutation was validly sanctioned. He added that suit was barred by time as the possession of the “suit land” was delivered to the “respondent” at the time of attestation of sale mutation which was in knowledge of the petitioner. Learned counsel contended that while decreeing the suit, learned Civil Judge has completely misread the evidence. He added that the appellate court has rightly interfered with the judgment of the trial court and the impugned judgment is unexceptionable. Placed reliance on Mst. FAHEEMAN BEGUM (DECEASED) through L.Rs and others versus ISLAM-UD-DIN (DECEASED) through L.Rs and others (2023 SCMR 1402).

4. Heard. Record perused.

5. Mst. Zar Begum, mother of the petitioner was the owner of the “suit land” which was alienated in favour of the “respondent” through mutation No.1946. Perusal whereof reveals that sale was in lieu of consideration of Rs.1,00,000/-. Mutation was sanctioned on 24th June, 1996. It is an admitted fact that Mst. Zar Begum took her last breath on 11th October, 2003. The petitioner instituted the suit on 09th March, 2007 with the averments that he is in possession of the “suit land” and was not aware of any of the mutations in question. Contrary to this the “respondent” took the stance that he purchased the “suit land” after payment of sale consideration and possession was also handed over to him in pursuance thereof.

6. In order to prove his claim, the petitioner himself appeared as PW1 and while recording his statement departed from the pleadings and stated that possession of “suit land” was though initially with him but now respondent No.2 has constructed a house upon the same. It also reflects from the statement of petitioner that he himself also sold land measuring 07 Marla to the “respondent”. In addition thereto, the petitioner also examined Muhammad Suleman as PW2. The statement of this witness is quite relevant to comprehend the matter in issue. The relevant extract from the same is reproduced below :-

”--- مدعی کی والدہ کی فوتیدگی سے 2/3 سال قبل گرداوری میرے گھر ہوئی تھی
 جسمیں اراضی متدعویہ کی بیج کا علم ہوا بوقت گرداوری مدعا علیہ نمبر 1، مختار احمد اور محمد
 اسلم موجود تھے۔۔۔ گرداوری کے وقت ہی الطاف مدعا علیہ سے پوچھا تھا کہ اراضی
 متدعویہ تم نے خرید کی ہے۔۔۔“

7. In the wake of above discussion, it becomes obligatory for the petitioner to first cross the hurdle of limitation. Suit for declaration of a right or title is to be instituted by the person seeking declaration of any right as to any property in terms of Section 42 of the Specific Relief Act, 1877. The limitation of a suit under the above mentioned provision is to be regulated and governed by Article 120 of the Limitation Act, 1908 which provides six years period for such suit, which starts when the right to sue accrues. The petitioner pleaded that he attained the knowledge about the mutation in question after incorporation of gift mutation in favour of respondent No.2 by “respondent”. It is also asserted by the petitioner in his plaint that he is in possession of the “suit land”, which fact is though seriously refuted by the “respondent” in his written statement. In the course of evidence, the petitioner himself deposed that the possession is not with him but it is with respondent No.2, who raised the construction upon the “suit land” as well. In furtherance thereof, Muhammad Suleman (PW2) admitted that at the time of incorporation of entries in *Khasra Girdawari* in the name of the “respondent”, he when asked the Halqa Patwari as to why the entries are in the name of “respondent” he told him that the “suit land” no more exists in the name of petitioner. During his cross-examination he further clarified that the entries in the *Khasra Girdawari* were recorded 2/3 years prior to the death of mother of the petitioner in his house and at that time “respondent”, Mukhtar and Muhammad Aslam were present there. He also stated that at the time of recording of entries in *Khasra Girdawari* he affirmed from “respondent” about the purchase of the “suit land”. This leaves no doubt to infer that at the time of sale the possession was delivered to the “respondent”.

8. Section 42 of the Specific Relief Act, 1877 ordains that any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled. Section 42 of the Act *ibid* is reproduced below for the purpose of convenience :-

“42. Discretion of Court as to declaration of status or right.— Any person entitled to any character or any right to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Bar to such declaration. Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief that a mere declaration of title, omits to do so.”

In the case of SALAMAT ALI and others versus MUHAMMAD DIN and others (PLD 2022 Supreme Court 353) the Supreme Court of Pakistan, while outlining the scope of Section 42 of the Specific Relief Act, 1877 held as under :-

“25. A suit for declaration of any right as to any property is filed under section 42 of the Specific Relief Act 1877 ("Specific Relief Act"). Therefore, to ascertain when the right to sue accrues to a legal heir to seek a declaration of his ownership right over the property inherited by him and of his such right not to be affected by the further transfer of such property, we need to consider section 42 of the Specific Relief Act, which reads:--

42. Discretion of Court as to declaration of status or right-- Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

(Emphasis added)

It becomes evident by reading the above provisions that the right to sue accrues to a person against the other for declaration of his right, as to any property, when the latter denies or is interested to deny his such right. It thus postulates two actions that cause the accrual of right to sue, to an aggrieved person: (i) actual denial of his right or (ii) apprehended or threatened denial of his right.

26. What "actions" can be termed as an "actual denial of right", and what a mere "apprehended or threatened denial of right", in the context of adverse entries recorded in the

revenue record, is a question that requires consideration. Admittedly, entries in the revenue record do not create or extinguish proprietary rights. Such an entry may at most be termed as a mere "apprehended or threatened denial" of right, and not an "actual denial" of right. Accordingly, every new adverse entry in the revenue record relating to proprietary rights of a person in possession (actual or constructive) of the land regarding which the wrong entry is made, gives to such person, a fresh cause of action to institute the suit for declaration. The situation is, however, different in a case where the person in possession (actual or constructive) of the land regarding which the wrong entry is made, is ousted from such possession, besides a wrong entry in the revenue record. In such a case, the act of ousting him from the actual or constructive possession of the land, constitutes an "actual denial" of his rights, and does not remain a mere "apprehended or threatened denial". Therefore, in such a case, if the person injuriously affected by such an act of "actual denial" of his rights does not challenge the same within the prescribed limitation period, despite having knowledge thereof, then his right to do so becomes barred by law of limitation.

27. In an inheritance case, like the present one, a wrong mutation in the revenue record, as to inheritance rights does not affect the proprietary rights of a legal heir in the property, as the devolution of the ownership of the property on legal heirs takes place under the Islamic law, through inheritance immediately, without any formality including sanction of inheritance mutation. Therefore, a wrong mutation is a mere "apprehended or threatened denial" of right, not necessitating for the person aggrieved thereby to institute the suit. The position is, however, different when the co-sharer in possession of the joint property, on the basis of a wrong inheritance mutation, sells the joint property, or any part thereof exceeding his share, claiming him to be the exclusive owner thereof and transfers possession of the sold land to a third person, the purchaser. In such a circumstance, the co-sharer by his said act "actually denies" the rights of the other co-sharer, who is only in constructive possession of the same, and ousts him from such constructive possession also by transferring the possession of the sold land to a third person, the purchaser. In such circumstances, the right to sue accrues to the aggrieved co-sharer from the date of such sale, and transfer of actual possession of the sold land to the third person, the purchaser."

9. Right to sue accrues to a person against the other for declaration of his right, as to any property, when the latter denies or is interested to deny his such right. As already observed that possession of the "suit land" lies with the "respondent" since effecting of sale mutation in the year 1996, suit of the petitioner thus cannot be termed as within time. Guidance to this effect can be sought from Haji MUHAMMAD YUNIS (DECEASED) through legal heirs and another versus Mst. FARUKH SULTAN and others (2022 SCMR 1282).

The relevant extract from the same is reproduced below :-

"It has held that every new adverse entry in the revenue

record, being a mere "apprehended or threaten denial" relating to proprietary rights of a person in possession (actual or constructive) of the land regarding which the wrong entry is made, gives to such person a fresh cause of action to institute the suit for declaration. It has, however, further clarified that the situation is different in a case, where the beneficiary of an entry in the revenue record actually takes over physical possession of the land on the basis of sale or gift mutation. In such a case, the alleged wrong entry in the revenue record coupled with the very act of taking over possession of the land by the alleged buyer or *donee*, in pursuance of the purported sale or gift, is an "actual denial of the proprietary rights" of the alleged seller or *donor* and thus, the time period to challenge the said disputed transaction of sale or gift by the aggrieved seller or donor would commence from the date of such actual denial. Therefore, in such a case, if the purported seller or donor does not challenge that action of "actual denial of his right" within the prescribed limitation period, despite having knowledge thereof, his right to do so becomes barred by the law of limitation, and the repetition of the alleged wrong entry in the subsequent revenue record (*Jamabandi*) does not give rise to a fresh cause of action."

10. In the case of *Mst. RABIA GULA and others versus MUHAMMAD JANAN and others* (2022 SCMR 1009) the Supreme Court of Pakistan while dealing with similar proposition held as under :-

"8.15 The situation is, however, different in a case where the beneficiary of an entry in the revenue record also takes over the possession of the land on the basis of sale or gift transaction, as the case may be, recorded in that entry. His action of taking over possession of the land in pursuance of the purported sale or gift is certainly an "actual denial" of the proprietary rights of the purported seller or donor. Therefore, in such a case, if the purported seller or donor does not challenge that action of "actual denial" of his right, within the prescribed limitation period, despite having knowledge thereof, then his right to do so becomes barred by law of limitation."

11. So far judgment in the case of *Faqir Ali's* heavily relied by learned counsel for the petitioner is concerned, it is noticed that in the said case by way of gift mutation female members of the family were deprived from their share in inheritance of their predecessor. They instituted a suit for declaration alleging fraud and were ultimately succeeded to establish that the gift mutations were the product of fraud. In this background, Supreme Court of Pakistan observed that fraud vitiates even the most solemn transactions and any transaction that is based upon fraud is void and notwithstanding the bar of limitation. Courts would not act as helpless by stands and allow a fraud to perpetuate. Needless to observe that facts in the

cases of GHULAM FARID and another versus SHER REHMAN through LRs. (2016 SCMR 862) and REHMATULLAH and others versus SALEH KHAN and others (2007 SCMR 729) runs on altogether different premises and as such the principles laid therein are not attracted to the case at hand.

12. There is yet another important aspect that sale was made in favour of the “respondent” by mother of the petitioner namely Mst. Zar Begum and she remained alive till 11th October, 2003 but never challenged the sale transaction in her lifetime. It is nowhere pleaded by the petitioner that his mother was not aware of the sale mutation in question and thus she could not challenge during her lifetime. The petitioner remained mum for a considerable period even after the death of her mother. On the contrary ample evidence is available to show that the petitioner was well in knowledge of the sale mutation from its inspection but waited for a long time to institute the suit, which is clearly hit by limitation. Reference to this effect can also be made to Mst. FAHEEMAN BEGUM (DECEASED) through L.Rs and others versus ISLAM-UD-DIN (DECEASED) through L.Rs and others (2023 SCMR 1402).

13. Moving further it is noticed that though the petitioner asserted that he is in possession of the “suit land” but in his statement he conceded that the possession of the “suit land” lies with respondent No.2 as such he is precluded to claim a decree of declaration as owner of the “suit land” unless relief of possession is sought. The relief of declaration is an equitable and discretionary relief. It appears that the petitioner twisted some material facts and produced only anecdotal evidence in support thereof which made him ineligible to claim the relief of declaration. Reliance in this respect can be placed on MUHAMMAD AKRAM through L.Rs. versus Mst. NOOR BEGUM through L.Rs. and others (PLD 2019 Supreme Court 599).

14. This petition is though arising out of divergent views of the courts below as the conclusion are contrary to each other but this Court, while exercising revisional jurisdiction is supposed to make comparative analysis of both the judgments in order to determine their validity on the touchstones of Section 115 of “C.P.C.”. It is cardinal principle of law that in the matter of giving preference to the

judgments of lower courts, while analyzing the same in exercise of revisional jurisdiction, the preference and regard is always given to the findings of the appellate court, unless those are suffering with any legal infirmity or material irregularity. Reference in this respect, if needed can safely be made to the case of MUHAMMAD NAWAZ through L.Rs versus Haji MUHAMMAD BARAN KHAN through L.Rs. and others (2013 SCMR 1300). Relevant extract from the same is reproduced herein below:-

“12.....We have also taken into consideration the judgment of the Appellate Court which is based on proper appraisal of evidence on record and the findings of the Appellate Court are to be preferred as it has been held by this Court in the cases of Madan Gopal and others vs Maran Bepari and others (PLD 1969 SC 617) that if the findings of fact reached by the first appellate Court is at variance with that of the trial Court, the former will ordinarily prevail, although it would not possess the same value or sanctity as a concurrent finding.” This view also finds support from the cases of Muhammad Shafi and others vs. Sultan Mahmood and others (2010 SCMR 827).....”

The above view also finds support from the cases of AMJAD IKRAM versus Mst. ASIYA KAUSAR and 2 others (2015 SCMR 1), MUHAMMAD HAFEEZ and another versus DISTRICT JUDGE, KARACHI EAST and another (2008 SCMR 398) and Mst. SAEEDA through her son Muhammad Abid versus MUHAMMAD NAEEM and 3 others (PLD 2013 Sindh 39).

15. After having a comparative analysis of both the judgments, I am of the firm view that the learned Additional District Judge, Rawalpindi has rightly interfered with the judgment passed by the learned Civil Judge, Kallar Syedan. The petitioner has failed to point out any illegality or material irregularity in the impugned judgment, warranting interference by this Court in exercise of revisional jurisdiction so as to set at naught the impugned judgment. The instant petition thus fails and is **dismissed** with no order as to costs.

(MIRZA VIQAS RAUF)
JUDGE

APPROVED FOR REPORTING

JUDGE