

Judgment Sheet
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Civil Revision. No.192 of 2014

Muhammad Shareef deceased through LRs, etc.

Versus

Muhammad Ramzan deceased through LRs, etc

J U D G M E N T

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|---------------------------------|---------------------------------|
| Date of Hearing | 13.02.2023 |
| For the petitioner | Barrister Haris Azmat, Advocate |
| For Respondents No.11 to 15. | Mr. Umer Hameed Khan, Advocate. |

Raheel Kamran J:- Through this petition under Section 115 of the Code of Civil procedure, 1908 ('CPC') the petitioners have assailed the judgment and decree dated 21.10.2013 passed by the learned District Judge, Kasur allowing appeal of the respondents against dismissal of their suit for declaration vide judgment and decree dated 06.11.2010, passed by the learned Civil Judge, Kasur, for being not maintainable.

2. Learned counsel for the petitioners contends that the suit instituted by the respondents was filed after 25 years of alleged accrual of cause of action, therefore, the same was time barred, hence the trial court had taken the correct view in rejecting the plaint and the learned appellate court has clearly erred in law in remanding the matter to the trial court with direction to frame issues, record evidence and decide the case afresh on merits. He maintains that suit instituted by the respondents was clearly barred by law and conversion of the same into application under Section 12(2) of CPC was out of question. Even otherwise, he adds, it was not mandatory for the court adjudicating upon an application under Section 12(2) of the CPC to frame issues and record evidence in every case and in the instant case application

of the respondents was liable to be dismissed outrightly as was done by the court of first instance. In support of his contentions, he has relied upon judgment of the Hon'ble Supreme Court of Pakistan in the case of Bashir Ahmed through Legal Representatives and others v. Muhammad Hussain and others (**PLD 2019 SC 504**).

3. Conversely, learned counsel for the represented respondents has supported the impugned judgment and decree for the reasons stated therein. He maintains that the suit of the respondents has rightly been treated as an application under Section 12(2) of the CPC in view of law enunciated by the Hon'ble Supreme Court of Pakistan in the case of Noorul Amin and another v. Muhammad Hashim and 27 others (**1992 SCMR 1744**). He adds that the pleas of fraud and limitation in this case could not be determined without framing any issue and recording evidence whereas in the instant case no such exercise was carried out by the civil court which proceeded to dismiss their claim in a slipshod manner which has been rightly reversed by the appellate court.

4. Heard. Record perused.

5. The operative part of the impugned judgment and decree reads as follows:-

"8. The perusal of the record shows that the suit for pre-emption was decreed in favour of respondents No.4 and 5 on 08.09.1979 and the mutation No.1770 was sanctioned in furtherance of the decree on 03.12.1981. The learned trial Court held that as the mutation was sanctioned on 03.12.1981 so the plaintiffs' act of challenging the decree by way of independent suit is barred by section 12(2) of the CPC. This Court does not agree with the learned trial Court. The reason is that plaintiffs have challenged the validity of decree dated 08.9.1979. The decree was passed before the insertion of section 12(2) of the CPC. This amendment was made in the year 1980. However, it at all it is taken to be granted that the period shall be counted from the date of attestation of the mutation (which is not lawful in any manner) even then the independent suit is competent and the learned trial Court was not justified to dismiss the suit. The plaintiffs/appellants specifically mentioned that the decree was obtained by fraud so the learned trial Court should have decided the matter on merits instead of dismissing the suit on technicalities. It would have been more appropriate for the learned trial Court to frame the issues and decide the case instead of dismissing the suit on this sole ground. As the appellants/plaintiffs challenged the validity of decree on the

grounds of fraud so the learned trial Court should have treated the suit as an application under Section 12(2) of the CPC.....”

6. It is well settled, that all procedural laws are meant for advancing the cause of justice and they cannot be made a vehicle of oppression to suppress the remedies. It is also well-accepted principle of law that Courts always lean in favour of adjudication on merit rather than stifling proceedings on technicalities. A cursory reading of the plaint in the instant case, instituted by the plaintiffs-respondents specially alleged in their plaint shows that the decree impugned therein was obtained by fraud and the same could not deprive of the Court to its jurisdiction to decide it as an application under Section 12(2) of the CPC if otherwise such jurisdiction was available to the court under the law, therefore, the learned appellate court was justified in converting into/treating the suit to be an application under Section 12(2) of the CPC and no prejudice was caused to the petitioners-defendants. Reliance in this regard is placed on judgment of the Hon’ble Supreme Court of Pakistan in the case of Noorul Amin and another v. Muhammad Hashim and 27 others (1992 SCMR 1744).

7. As regards direction of the appellate court to the Civil Court to frame issues, record evidence and thereafter decide the case afresh on merits, suffice it to say that it is not mandatory in every case to frame issue and record evidence for disposal of an application under Section 12(2) of the CPC. Sub-section (3) of Section 12 of the CPC governs the procedure to be adopted by the Court while disposing of an application under Section 12(2) of the CPC and without first allowing an opportunity to the civil court in that regard, the direction issued by the appellate court is unwarranted by law, thus, liable to be interference with. In the case of Sheikh Haroon-u-Rehman v. Muhammad Rafique and others (2022 CLC 167), it has been held by this Court that:-

“7. Prior to insertion of sub-section (3) in Section 12 of the Code through Punjab Act No. XIV of 2018 dated 20.03.2018, no procedure was prescribed for the disposal of an application under Section 12(2) of

the Code, however, in cases where the determination of allegations of fraud and misrepresentation involved investigation into the question of fact, inquiry was ordinarily held to adjudicate upon the matter by framing an issue and recording evidence while invoking the provision of Section 141 of the Code. It was, however, held in various judgments of the apex Court to be not mandatory to frame issues and record evidence for the disposal of an application under Section 12(2) of the Code as the court had to regulate its proceedings keeping in view nature of the allegations made in the application and adopt such mode as was in consonance with justice in the facts and circumstances of the case. It was further held that framing of issues in every case to examine merits of such application would frustrate the object of Section 12(2) of the Code which is to avoid protracted and time consuming litigation and to save the genuine decree holders from grave hardships, ordeal of further litigation, extra burden on their exchequer and simultaneously to reduce unnecessary burden on the courts. Reliance in this regard is placed on the cases of Ghulam Muhammad v. Ahmed Khan (1993 SCMR 662); Amiran Bibi and others v. Muhammad Ramzan and others (1999 SCMR 1334); Ms. Amina Bibi v. Nasrullah and others (2000 SCMR 296); Mst. Nasira Khatoon and another v. Mst. Aisha Bai and 12 others (2003 SCMR 1050) and Warriach Zarai Corporation v. F.M.C. United (Pvt.) Ltd. (2006 SCMR 531).

8. A perusal of Section 12(3) of the Code clearly indicates that: firstly, an application under Section 12(2) of the Code has been required by law to be disposed of expeditiously; secondly, for expeditious disposal of such an application, a discretion has been conferred upon the court to adopt such procedure as the circumstance of the case warrant; thirdly, the procedure to be adopted by the court must be fair in the circumstances of the case; fourthly, if proof etc. of any fact is required, it shall be proved or disproved by affidavit unless directed otherwise by the court; and lastly, reasons must be recorded in the order where the court directs any fact to be proved or disproved otherwise than by way of affidavit. It is thus manifest that the requirements of a regular trial vis-à-vis framing of issues and recording of evidence have been generally dispensed with by the legislature in adjudication of applications under Section 12(2) of the Code and the court has been burdened with the responsibility to record reasons for resorting to such procedure in exceptional cases."

8. As regards plea of the petitioners that claim of the respondents is barred by limitation, suffice it to say that the period of limitation to file an application under Section 12(2) of the CPC is governed by Article 181 of the Limitation Act, 1908. While interpreting the Article 181 *ibid*, it has been held by the Hon'ble Supreme of Pakistan in the case of Bashir Ahmed through LRs and others v. Muhammad Hussain and others (PLD 2019 SC 504):-

"A careful reading of the above provision clearly reveals that the period of limitation to file an application under Section 12(2) of the CPC would be three years, and the crucial starting point for the period of limitation would be when the right to apply accrues to the aggrieved applicant, which in case of an application under Section 12(2) of the CPC would be the date when the impugned decision based on fraud and concealment was passed. In case the aggrieved person has, by means of fraud, been kept from the knowledge of decision of the Court, he may then seek the extension of the commencing point of the period of limitation of three years from the date of the decision under Article 181 of the Act, to the date of knowledge of the said decision under Section 18 (supra)."

9. From perusal of the pleadings in the instant case, it is manifest that claim of the respondents is based on alleged fraud and it has been averred in their plaint (to be treated as application under Section 12(2) of the CPC) the date of knowledge to be one month prior to institution of the suit. In his decision dated 06.11.2010, while dismissing suit of the respondents, the learned Civil Judge, Kasur did not at all consider application of Section 18 of the Limitation Act, 1908. The civil court manifestly proceeded to dismiss claim of the respondents in a cursory and slipshod manner which rendered the same unsustainable in law. Since the matter has already been remanded by the Appellate Court for decision afresh on claim of the respondents while treating their plaint to be an application under Section 12(2) of the CPC, therefore, this Court would refrain from making any further comment on the subject of limitation lest the same may prejudice case of the either side.

10. For the foregoing reasons, this civil revision is partly allowed and the impugned judgment and decree dated 21.10.2013 passed by the learned District Judge, Kasur is hereby set aside and the learned civil court shall proceed with the application of the respondents in accordance with sub-section (3) of Section 12 of the CPC. This being an old matter, the learned Civil Judge is directed to proceed with adjudication of the application expeditiously without granting unnecessary adjournments to either side. There shall be no order as to costs.

**(RAHEEL KAMRAN)
JUDGE**

Asim Shahzad