

Stereo.HCJDA 38.
JUDGMENT SHEET.

LAHORE HIGH COURT, LAHORE.
JUDICIAL DEPARTMENT

C.R.NO.1038 OF 2014

GULZAR HUSSAIN, ETC.

Versus.

ABDUR RASOOL, ETC.

JUDGMENT.

Date of hearing: **16.01.2023 & 23.01.2023.**

Petitioners by: Sh. Naveed Shahryar, Zubaira Bashir &
Unaiza Siddique, Advocates.

Respondents by: Rai Ikram Ullah Bhatti, Advocate.

Mirza Viqas Rauf, J. This petition under Section 115 of the Code of Civil Procedure (V of 1908) (hereinafter referred to as "CPC") is directed against the judgment and decree dated 10th February, 2014, whereby the learned Additional District Judge, Khushab (Camp at Noorpur Thal), while dismissing the appeal preferred by the petitioners affirmed the judgment and decree dated 10th February, 2011 passed by the learned Civil Judge Class-I, Noorpur Thal, District Khushab.

2. Facts in brevity necessary for adjudication of instant petition are that property in dispute was originally owned by one Janan Khan, who was survived by two sons namely Muhammad Sadiq and Bhai Khan and one daughter Walayat Khatoon. The petitioners are the legal heirs of Muhammad Sadiq while the respondents are claiming themselves successors-in-interest of Mst. Walayat Khatoon. On the demise of Janan Khan, inheritance mutation was sanctioned in favour of his two sons. One of his sons namely Bhai Khan later on died in the year 1927 as issueless, whose legacy devolved upon the petitioners only. Respondent No.1

(hereinafter referred to as "respondent"), being legal heir of Walayat Khatoon instituted a suit for declaration claiming therein that inheritance mutations No.435, 457 and 3695 relating to the legacy of Janan Khan have been sanctioned illegally by depriving Walayat Khatoon. Suit was resisted by the petitioners, who submitted their written statement wherein they asserted that Janan Khan was survived by Muhammad Sadiq and Bhai Khan only and he was having no daughter. From the divergent pleadings of the parties, learned trial Court framed multiple issues and then proceeded to record evidence of both the sides. On conclusion of proceedings, suit was decreed with costs vide judgment dated 10th February, 2011. The petitioners feeling aggrieved though preferred an appeal before the learned Additional District Judge but they remained unsuccessful as their appeal was dismissed through impugned judgment and decree.

3. Learned counsel for the petitioners, at the very outset, submitted that though it was the claim of the petitioners during the trial that Walayat Khatoon was not daughter of Janan Khan but he feels no hesitation to concede that the respondents have duly established the relationship. He, however, contended that mutations in question were sanctioned under the custom and the same are duly protected under section 2-A of the West Pakistan Muslim Personal Law (Shariat) Act (Amendment) Ordinance, (XIII of 1983). Learned counsel emphasized that concurrent findings of the Courts below are the outcome of gross misreading and non-reading of evidence. It is argued with vehemence that suit was hopelessly barred by time but the question of limitation was not attended properly by any of the Courts below.

4. Conversely, learned counsel representing the respondents resisted this petition. He submitted that concurrent findings are based on proper appraisal of evidence and impugned judgments are unexceptionable.

5. Heard. Record perused.

6. It would not be out of context to observe at the very outset that though multiple issues were framed by the learned trial Court to set the controversy at rest but to my mind, issues No.8 and 9 were pivotal and go to the root of the cause, which are reproduced below: -

8. *Whether the suit is within time? OPP*

9. *Whether the inheritance mutation No.3695 dated 14.11.2001 inheritance mutation No.457 and inheritance mutation No.435 are against the law and facts, based on fraud, in operative upon the rights of the plaintiffs and are liable to be set aside? OPP*

Note.(Though in the above-referred reproduced portion, mutation No.3699 was mentioned in the judgment of trial Court but it is corrected accordingly.)

7. Adverting to the question of limitation first, it is observed with all clarity that validity of mutations was called in question on the ground of fraud and misrepresentation. It is emphatic stance of the "respondent" that he was having no knowledge about the mutations and on attaining the knowledge, he though contacted the petitioners to admit his claim but on their denial he instituted the suit immediately. The averments in the plaint were not seriously refuted by the petitioners in their written statement. Law is well-settled that no one can be deprived of his/her ancestral property on the basis of fraud merely on account of limitation. Even otherwise, statement of one of the petitioners namely Ashfaq

C.R.No.1038 of 2014

Hussain, who appeared as DW-3 is very important. The relevant extract from the same is reproduced below: -

بھائی خان اور محمد صادق کی دونوں وراثتوں کا مدعی کو شروع سے علم نہ تھا۔

In view of above, limitation cannot be pleaded as hurdle in the way of “respondent” and the question of limitation was rightly decided by both the Courts below.

8. So far entitlement of Walayat Khatoon in the estate of Janan Khan is concerned, it is noticed that in the mutations of inheritance relating to the legacy of Janan Khan, she was clearly excluded. The petitioners resisted the claim of the “respondent” and justified the inheritance mutations till date on the ground that Walayat Khatoon was not daughter of Janan Khan. It was never their case that the impugned mutations were sanctioned in the light of prevailing customs. The petitioners are now thus estopped to take somersault and turn around to say that though Walayat Khatoon was daughter of Janan Khan but she was not entitled to get any share from the estate as the mutations are protected under section 2-A of the West Pakistan Muslim Personal Law (Shariat) Act (Amendment) Ordinance, (XIII of 1983). Such a plea was never raised before the Courts below. It is only an attempt to defend the impugned mutations at any cost. Walayat Khatoon being daughter of Janan Khan, thus, cannot be deprived of her share in his legacy. Guidance in this respect can be sought from Mst. JANNTAN and others v. Mst. TAGGI through L.Rs. and others (PLD 2006 Supreme Court 322). The relevant extract from the same is reproduced below: -

4. It is submitted by the learned counsel for the petitioners that Ghulam Hassan was governed by custom and under the custom the daughter stood excluded, hence mutation of his inheritance was correctly recorded in the year 1909 (Exh.P3), it was assailed for the first time by the plaintiff through the present suit for declaration on 25-3-1981, she remained silent for more than 70 years, therefore, the suit was hopelessly barred by time as there are several circumstances on the record indicating that the plaintiff was aware of the said mutation particularly when she had inherited from the state of Haider, as his sister (he died without any male issue) in the year 1951. Learned counsel has also referred to the provisions of Muslim Personal Law (Shariat) Act (Amendment) Ordinance, No.XIII of 1983 to contend that Haider upon acquisition of the agricultural land in the year 1909, before the commencement of the Punjab Muslim Personal Law (Shariat) Application Act, 1948, became an absolute owner of the said land, it had become past and closed transaction, the possession has throughout remained with the petitioners and it shall be deemed as if the land in dispute had devolved on Haider under Muslim Personal Law (Shariat) and on this ground also the plaintiff's suit was liable to be dismissed. The contentions have been opposed by the learned counsel for the respondents. It is submitted that Ghulam Hassan, was not governed by the custom, the parties were governed by Shariat, the plaintiff was illegally excluded, the mutation of inheritance of Ghulam Hassan (Exh.P3) was procured by concealing the fact that he had left behind a daughter as well i.e. plaintiff, Ordinance, No.XIII of 1983 has no applicability to the facts of the present case because in the instant case Haider had not-acquired the land in dispute under custom and was able to secure it to the exclusion of the plaintiff, because of concealment of the fact that Ghulam Hassan had left behind a daughter (plaintiff) as well. He has also argued that parties are governed by Shariat, the plaintiff became co-owner in the land in dispute, the moment Ghulam Hassan died and therefore, there is no question of limitation. He relies on the case of Shahro and others v. Mst. Fatima and others PLD 1998 SC 1512 affirming the dictum of this Court in the case of Ghulam Ali and 2 others v. Mst. Ghulam Sarwar Naqvi PLD 1990 SC 1.

5. The findings recorded by all the Courts below that the plaintiff was proved rather admitted to be the daughter of Ghulam Hassan, has not been questioned before us. Similarly it was not questioned in the First appeal or in the Civil Revision, before the High Court. As regards custom, the parties are Sonharas by caste. Prior to the remand, as noted above, Ahmad Bakhsh, Allah Bakhsh and Zafar Iqbal as D.W.1 to D.W.3, stated that Ghulam Hassan was governed by Shariat and the last mentioned witness specifically stated that Sonharas followed Shariat in the matters of inheritance. These very witnesses, after the remand, stated that Ghulam Hassan was governed by custom. Their assertion after remand is not believable. They contradicted themselves. It seems that after remand, they were ready to give false statement, just to make sure that plaintiff remains excluded from the inheritance of her father Ghulam Hassan. The statement of D.W.4 Allah Dawaya is irrelevant. He is not a Sonhara. He has no relationship in the said tribe. It is not explained that how he knew that Sonharas were governed by custom. As against the said evidence, the P.Ws. unanimously stated that Ghulam Hassan was governed by Shariat. It has been recorded by the learned Judge of the High Court in the impugned judgment that the petitioners did not produce Riwayat-e-Aam and the Riwayat-e-Aam produced by the respondents did not show that Sonharas were governed by custom in the matters of inheritance.

There is nothing on the record available with us to show that these findings of the learned Judge of the High Court are incorrect. The first appellate Court, after considering the entire evidence produced by the parties, came to the conclusion that Ghulam Hassan was not governed by custom and was governed by Shariat. This finding of fact has been affirmed by the learned Judge of the High Court. The learned counsel for the petitioners, has not been able to show any misreading or non-reading of evidence in the impugned judgment. We are of the view that two Courts below correctly concluded that Ghulam Hassan was governed by Shariat in the matters of inheritance. It may also be mentioned here that the photocopy of Mutation No.169 (Exh.P3), in regard to the inheritance of Ghulam Hassan in the year, 1909, produced by the learned counsel for the petitioners, during the course of arguments, has been perused by us. It does not show that the said mutation was decided under the customary law. It does not show that the Revenue Officer had the information that Ghulam Hassan had left behind a daughter as well namely Mst. Taggi, the plaintiff. It can, therefore, be reasonably concluded that the said mutation was procured in favour of Haider, to the exclusion of the plaintiff, by concealing the fact of existence of plaintiff. As regards issue of limitation, the plaintiff was proved to be the daughter of Ghulam Hassan who was admittedly the last owner of the land in dispute. It stood establish that he was governed by Shariat in the matters of inheritance. Under the Muslim Law of inheritance, the land automatically devolved on the plaintiff and her brother Haider, the moment Ghulam Hassan died. It is immaterial that her ownership was not recorded in the mutation of inheritance, which is not a title document. She was, therefore, a co-sharer in the land in dispute to the extent of her share since very beginning, thus there is no question of suit being barred by time. In *Shahro and others v. Mst. Fatima and others* (supra), last male owner having died in 1936, his inheritance mutation was attested in 1937, whereby his daughters and widow were deprived of their share of inheritance while his nephews got his whole property claiming that their tribe was governed by custom whereby females were excluded from inheritance. Trial Court dismissed plaintiff's claim while appellate Court and High Court decreed their suit on the ground that tribe of plaintiffs was governed by Muhammadan Law and not by custom and that two daughters and widow were entitled to succeed to their respective shares of inheritance...."

9. It appears from the record that courts below have arrived at concurrent conclusion after due appraisal of evidence and contra view in exercise of revisional jurisdiction is not permissible. There are concurrent findings of facts recorded by both the courts below, which are apparently rested upon sound reasoning. The petitioners have failed to point out any misreading and non-reading of evidence. The revisional jurisdiction is not meant to unearth another possible view from the evidence which is contra to the findings rendered by two courts of competent jurisdiction. The revisional jurisdiction is to be exercised, while keeping in view the

C.R.No.1038 of 2014

principles enshrined in Section 115 of "CPC". The Superior Courts are always reluctant to interfere with the concurrent findings, unless some patent illegality or material irregularity crept up on the record or pointed out by the petitioner(s). The exercise of revisional powers is always guided by the necessary pre-conditions laid down in the above referred provision of law. The scanning of evidence and the perusal of impugned judgments does not reflect any illegality or material irregularity, justifying interference by this Court. Reference in this respect can be made to GHULAM QADIR and others versus Sh. ABDUL WADOOD and others (PLD 2016 Supreme Court 712), Mst. ZARSHEDA versus NOBAT KHAN (PLD 2022 Supreme Court 21) and MUHAMMAD SARWAR and others versus HASHMAL KHAN and others (PLD 2022 Supreme Court 13).

10. For the foregoing reasons, instant petition being devoid of any merits, is **dismissed** with no order as to costs.

(MIRZA VIQAS RAUF)
JUDGE

Dictated:
08.02.2023

Signed

16.02.2023

Approved for reporting

(JUDGE)

Announced in open Court on 20.02.2023.

(JUDGE)