Judgment Sheet
IN THE LAHORE HIGH COURT
MULTAN BENCH, MULTAN.

(JUDICIAL DEPARTMENT)

…….

Civil Revision No.479-D of 2001.

Zainab Bibi (*deceased*),
through Legal Representatives.

Versus

Abdul Aziz (*deceased*),
through Legal Representatives.

JUDGMENT

DATE OF HEARING & DECISION:	25.10.2023.
PETITIONERS BY:	M/s Pirzada Niaz Mustafa Qureshi and Maqsood Ahmad Butt, Advocates.
RESPONDENTS (*1-C & 1-D*)BY:	Ch. Muhammad Saleem Manzoor, Advocate.
RESPONDENT NO.3 BY:	Sahibzada Muhammad Saleem, Assistant Advocate General with Shakoor Ali Naib Tehsildar and Ali Asghar Patwari.

AHMAD NADEEM ARSHAD, J. This civil revision is directed against the judgments & decrees of the Courts below whereby the suit of the respondent No.1 namely Abdul Aziz (*predecessor of the respondents No.1-a to 1-m*) has been decreed concurrently.

2. Facts in brevity are that predecessor of the respondents No.1-a to 1-m namely Abdul Aziz instituted a suit for declaration and permanent injunction on 17.06.1986 and sought declaration to the

effect that he being sole legal heir of Yousaf s/o Muhammad, allottee of the suit property measuring 68 Kanals, as lessee of *Jadeed* scheme, is in possession under cultivation and the defendants (*petitioner and respondent No.2*) have no concern with it as they are not daughters and legal heirs of Yousaf; that mutation No.270 dated 22.05.1986, whereby the suit property was inherited/alienated to the parties is against the facts & law, ex-parte, without notice, without providing opportunity of hearing, based upon fraud and collusiveness between defendants and revenue officials, therefore, liable to be cancelled and having no effect upon his rights and as a consequential relief prayed for issuance of injunction that the defendants be restrained from incorporating the impugned mutation in the revenue record. He maintained in the plaint that suit property was allotted to Yousaf s/o Muhammad under *Jadeed* Scheme which is being cultivated by him during the lifetime of Yousaf; that said Yousaf was married to Maryan Bibi who was widow of Kallu; that at the time of second marriage she brought along with her two daughters namely Zainab Bibi (*petitioner*) and Aimana Bibi (*respondent No.2*) from the wedlock of her previous husband; that said defendants lived in the house of Yousaf along with Maryan; that he was the only issue out of the wedlock of Yousaf with said Maryan; that he and defendants are not real brother and sisters inter-se, therefore, defendants are not entitled to get inheritance from the legacy of Yousaf (*deceased*); that his father died in March, 1986 and after his death defendant No.1 (*petitioner*) and his son with the help and connivance of the revenue officials got mutated the suit property through inheritance mutation No.270 in favour of plaintiff and defendants; that defendants got sanctioned the impugned mutation through misrepresentation as the defendants are not legal heirs of Yousaf and prayed for decree of the suit.

3. The petitioner (*defendant No.1*) resisted the suit through filing contesting written statement by raising certain preliminary objections, that the Court has no jurisdiction; that impugned order of sanctioning

of mutation was not challenged before proper forum; that plaintiff came to the court with *mala fide*; that plaintiff is estopped from his words and conduct to institute the suit; that suit is based upon collusion and fraud and to deprive her from her legal share; that the suit was instituted due to family disputes; that the suit is not maintainable in its present form and she is entitled to get special cost u/s 35-A of C.P.C. On facts, admitted that suit property was allotted to Yousaf under *Jadeed* scheme who remained owner in possession till his death; that defendants are real daughters of Yousaf born from the wedlock of Yousaf with Maryan, therefore, the impugned mutation was rightly sanctioned in favour of all the legal heirs and prayed for dismissal of the suit.

4. Respondent/defendant No.2 conceded the suit while filing conceding written statement. Learned Trial Court keeping in view divergent pleadings of the parties framed necessary issues and invited the parties to produce their respective evidence. After recording evidence of the parties, pro & contra oral as well as documentary, learned Civil Judge of Trial Court decreed the suit vide judgment & decree dated 01.02.2000. Feeling aggrieved, petitioner preferred an appeal which was dismissed by the learned Appellate Court via judgment & decree dated 06.01.2001. Being dissatisfied, she approached this Court through instant Civil Revision.

5. I have heard learned counsel for the parties at length and perused the record with their able assistance.

6. Plaintiff claimed that he is the sole legal heir of Yousaf and the defendants are not daughters of Yousaf rather they were born from the earlier wedlock of Maryan with Kallu, therefore, they are not entitled to get inheritance from the legacy of Yousaf, whereas, the defendant No.1 claimed herself and defendant No.2 as daughters of Yousaf. Learned Trial Court with regard to the said controversy framed issues No.1 and 3 as follows:

ISSUE NO.1.
"Whether the plaintiff is sole legal heir of Yousaf s/o Muhammad? OPP"

ISSUE NO.3.

"Whether Zainab Bibi and Aimana are the daughters of Kallu who was previous husband of (Maryan) wife of Yousaf? OPP

Onus probendi of these issues were placed upon the plaintiff. Plaintiff produced Muhammad Siddique s/o Munshi as P.W.1, Abdullah s/o Esa as P.W.2 and he examined himself as P.W.3. In documentary evidence, he produced copy of mutation No.270 dated 22.05.1986 as Exh.P.1, copy of record of rights for the year 1982-83 as Exh.P.2, copy of *Khasra Girdawri* from *Kharif* 1984 to *Rabi* 1986 as Exh.P.3, copy of *Khasra Girdawri* from *Kharif* 1987 to *Rabi* 1991as Exh.P.4 (under objection), copy of *Khasra Girdawri Kharif* 1991 to *Kharif* 1992 as Exh.P.5 (under objection), copy of record of rights for the years 1990-91 as Exh.P.6 (*under objection*), whereas, the defendant No.1 examined herself as D.W.1 and produced Mubarik Ali as D.W.2 and in documentary evidence relied upon Exh.P.1 (copy of mutation No.270) and Exh.P.2. (Copy of record of rights for the years 1982-83).

7. Learned trial Court decided both the issues in favour of the plaintiff and the said findings were maintained by the learned Appellate Court. It is evident from the record that both the parties did not produce any documentary evidence with regard to the controversy that whether defendants are daughters of Muhammad Yousaf or Kallu, therefore, both the learned Courts below decided said issues on the basis of oral evidence produced by the parties and declared that defendants are not daughters of Yousaf rather they are daughters of Kallu.

8. There is no evidence on record to suggest that Yousaf in his lifetime did not acknowledge the defendants as his daughters. It is

settled law that where parentage of a child cannot be easily ascertained, it is generally presumed either from express acknowledgment by the father or from a course of treatment given by the father in his lifetime. Question of legitimacy/paternity must be denied by the father within the stipulated period as held by august Supreme Court of Pakistan in case titled ***"GHAZALA TEHSIN ZOHRA V. MEHR GHULAM DASTAGIR KHAN AND ANOTHER (PLD 2015 SUPREME COURT 323)"***, wherein it was held as under:

> *"It is a matter of concern that on such a vital issue we have not received much assistance at the bar as to how Article 128 ibid is to be interpreted. Redundancy is not lightly to be imputed to the legislature. For the purpose of harmonious construction of the said statutory provision, we may have resort to section 2 of the West Pakistan Muslim Personal Law (Shariat) Application Act, 1962 (Act V of 1962) which stipulates that "notwithstanding any custom or usage, in all questions regarding ... legitimacy or bastardy ... the rule of decision, subject to the provisions of any enactment for the time being in force shall be the Muslim Personal Law (Shariat) in cases where the parties are Muslims". Since both parties before us are Muslims and section 2 aforesaid specifically refers to legitimacy or bastardy, resort must be made to the Muslim Personal Law (Shariat) for the purpose of reconciling what may appear to be conflicting provisions of Article 128 of the QSO. For this purpose, it is necessary to ascertain the rules of Muslim Personal Law when a person denies that he is the natural/biological father of children born within the period stipulated in Article 128 ibid. The Muslim Personal Law (Shariat) is clear and well settled on the subject. Firstly, it provides that legitimacy/paternity must be denied by the father immediately after birth of the child as per Imam Abu Hanifa and within the post natal period (maximum of 40 days) after birth of the child as per Imam Muhammad and Imam Yousaf. There can be no lawful denial of paternity after this stipulated period. The Hedaya, Fatawa-e-Alamgiri and other texts are all agreed on this principle of Shariat."*

Further held that:

> *The rationale of the law set out in Article 128 of the QSO read with section 2 of Act V of 1962 is quite clear. Both statutes ensure (in specified circumstances) an unquestioned and unchallengeable legitimacy on the child born within the aforementioned period notwithstanding the existence or possibility of a fact through scientific evidence. The framers of the law or jurists in the Islamic tradition were not unaware simpletons lacking in knowledge. The conclusiveness of proof in respect of legitimacy of a child was properly thought out and quite deliberate. There is a much greater societal objective which is served by adhering to the said rules of evidence than any purpose confined to the interests of litigating individuals. There are many legal provisions in the statute book*

> *and rules of equity or public policy in our jurisprudence where the interests of individuals are subordinated to the larger public interest. In our opinion the law does not give a free license to individuals and particularly unscrupulous fathers, to make unlawful assertions and thus to cause harm to children as well as their mothers.*

9. But in the instant case Yousaf did not question the paternity of defendants during his lifetime rather treated them as his daughters. Evidence about existence of relationship is relevant only if the person has special means of knowledge on the subject. Witness testifying about relationship must led down the foundation of existence of his direct knowledge about the relationship such as being the family member or otherwise having special means of knowledge of relationship. Although PW-1 & PW-2 deposed that defendants are daughters of Kallu from the marriage with Mst. Maryan Bibi but said witnesses are neither family members nor they have special means of knowledge of relationship. Mere their oral assertions that Yousaf and Kallu both resided in their *Dera* without any corroborative evidence, cannot qualify them special means of knowledge of relationship. The plaintiff while recording his statement deposed that he acquired knowledge from his parents that defendants are not daughters of Yousaf, rather they are daughters of Kallu. It means that his deposition is also based upon hearsay evidence which has no value in the eye of law.

10. The Hon'ble Supreme Court of Pakistan, in case titled *"ABDUL HAQ AND ANOTHER V. MST. SURRYA BEGUM AND OTHERS (***2002 SCMR 1330***)* even did not accept the evidence of the mother, where found her an interested witness. The facts of the case are that one Samad Khan who was allotted evacuee land in lieu of his verified claim, died in the year 1960 leaving behind a son namely Atta Muhammad and children of Ali Muhammad, his pre-deceased son. His inheritance mutation was sanctioned on the basis of will in favour of children of his pre-deceased son. Although, Atta Muhammad appeared before the Revenue Officer at the time of sanctioning of

mutation and objected to give effect to the will but the Revenue Officer while rejecting his objections sanctioned the mutation in favour of sons and daughters of Ali Muhammad. Said mutation was challenged by sons of Ali Muhammad (*petitioners before the Supreme Court*) by instituting a suit for declaration against their sisters (*respondents before the Supreme Court*) with the allegation that they are daughters of Muhammad Bibi from her previous husband namely Nazir Muhammad and are not daughters of Ali Muhammad, therefore, they are not entitled and petitioners (*plaintiffs*) are only entitled to inherit whole property of Samad Khan. The suit was dismissed, however, appellate Court reversed the findings and decreed the suit but this Court while accepting the Revision Petition, set-aside the decree of appellate Court and restored the decree of learned appellate Court. Learned counsel for the petitioners in that case submitted that Muhammad Bibi mother of the parties, appeared as witness and stated that the respondents were her daughters but they were born from her previous wedlock with Nazir Muhammad, therefore, on the basis of this direct evidence of a person who had special means of knowledge about the relationship of respondent with Ali Muhammad, it could not be held that the respondents were the daughters of Ali Muhammad. The august Supreme Court in the said case repelled the contention of the learned counsel for the petitioners by observing as under:

> "*The argument in our considered view in the peculiar facts and circumstances of this case had no force. Muhammad Bibi was certainly interested in support the petitioners who were her sons in order to retain the property in the family so that respondents-daughters may not have any share in it so that their husbands may not get it.*"

Further observed that:

> "*It may be added here that no evidence was led by the petitioners about inheritance of Nazir Muhammad, the previous husband of Muhammad Bibi/the alleged father of the respondents in order to show that after his death, mutation of his property by way of inheritance was sanctioned in favour of Muhammad Bibi or the respondents as his widow and daughters, respectively which direct evidence having been withheld, therefore, mere statement of Muhammad Bibi to support her sons was not sufficient evidence to*

deprive the respondents of their status as daughters of Muhammad Ali."

11. In the present case, question of paternity of the defendants is involved, therefore, it should be decided with care and caution. The plaintiff should have proved his case through solid, concrete and unimpeachable evidence, beyond any shadow of doubt. The plaintiff produced PW-1 & PW-2 in support of his version. PW-1 namely Muhammad Siddique deposed that father of Abdul Aziz was Yousaf; that he did not remember the name of father of Yousaf; that Yousaf resided in their *Dera* alongwith them; that name of wife of Yousaf was Maryan; that Maryan was already married with Kallu; that Kallu also resided in their *Dera*; that Zainab is daughter of Kallu and her sister Aimana is also daughter of Kallu; that Kallu died in India. During cross examination he maintained that at present he was not having his Identity Card. He also admitted that he is not *Sardar* or elder of the *Baradri*. He claimed his age 70/75 years, but his age cannot be verified as he did not possess Identity Card. He did not know the name of grandfather of Abdul Aziz. He did not know the name of the husband of Aimana (defendant No.2). He did not know where Aimana was married. He also admitted that now he has been living separately for the last 40 years. It is not believable that a person who is living separately for the last forty years, came forward to depose that defendants are not daughters of Yousaf, rather they are daughters of Kalu. He did not know if there are any siblings apart from Kalu. P.W.1 was resident of Chak No.372/W.B, Lodhran, whereas, Yousaf was resident of Chak No.159/W.B., Vehari, where the suit property was situated. From the said testimony it appears that he did not know much about the family affairs of the parties. PW-2 namely Abdullah also deposed in the same lines. He admitted that after creation of Pakistan, he settled in Lodhran, whereas, Yousaf settled in Vehari. He was also not familiar with the family affairs of the parties. Whereas, the statement of the plaintiff as P.W.3 was based

upon hearsay evidence, as he claimed that he acquired knowledge from his parents.

12. The learned Courts below failed to consider that no one came from Chak No.159/W.B. District Vehari or Chak No.155/W.B, Vehari to support the stance of the plaintiff. Plaintiff during cross-examination deposed that after creation of Pakistan Yousaf came to Chak No.155/W.B and remained alive for 15/20 years. He also admitted it correct that so many people of *Oad Brotheri* live in the Chak No.155/W.B. Plaintiff also admitted that they three siblings live together in the Chak No.155/W.B. and they arranged the marriage of defendants No.1 & 2.

13. In order to reach a just conclusion, it is better to see the contents of the impugned mutation No.270 dated 22.05.1986 (Exh.P-1). The order of sanction of the mutation is reproduced as under in verbatim:

"آج جلسہ عام میں انتقال ہذا وراثت یوسف متوفی درج ہو کر پیش ہوا۔ بشناخت حاجی غلام محمد نمبردار، عنایت چوکیدار و دیگر معززین حاضر آکر عمل فوتیدگی، شجرہ نسب مرتبہ پٹواری حلقہ کو درست تصدیق و تسلیم کرتے ہیں۔ عبدالعزیز پسر بیانی ہے کہ شجرہ نسب درست نہ ہے۔ کیونکہ دختران متوفی جو شجرہ میں ظاہر کی گئی ہیں ان کی والدہ نے دوسری شادی متوفی کے ساتھ کی تھی جس سے صرف وہ پیدا ہوا تھا۔ دونوں لڑکیاں پچھلے خاوند سے ہیں۔ اسلئے وہ جائیداد کی حقدار نہ ہیں۔ اس مرحلہ پر عبدالعزیز کو تاکید کی گئی کہ وہ قرآن پاک پر ہاتھ رکھ کر حلفاً یہ الفاظ کہہ دے تو اسکے موقف کو درست تسلیم کیا جا سکتا ہے۔ نمبردار قرآن پاک لے کر آیا تو عبدالعزیز حاضر آمدہ اشخاص سے اُٹھ کر چلا گیا۔ زینب بی بی دختر بیانی ہے کہ اس کے بیٹے کی شادی عبدالعزیز کی لڑکی سے ہوئی تھی لیکن خانگی تنازعہ کی وجہ سے ان میں طلاق ہو گئی۔ اب اس وجہ سے وہ دونوں بہنوں کو حق وراثت سے محروم کرنا چاہتا ہے۔ موقف پسر عبدالعزیز درست تسلیم نہ کیا جاتا ہے۔ لہٰذا داخلخارج وراثت یوسف متوفی بحق عبدالعزیز پسر ش 2 حصہ، زینب بی بی، ایمنہ بی بی دختر ش بحصہ برابر 2 حصہ بصورت جدید منظور ہے۔ 22-5-86"

The said mutation was sanctioned in presence of the concerned *Lumbardar* and *Chowkidar*. Presence of the respondent No.1 namely Abdul Aziz was also shown. The *Lumbardar* and *Chowkidar* verified the pedigree-table prepared on the mutation, however, respondent No.1 raised objection upon the pedigree-table by stating that the girls

shown as daughters of Yousaf are not off-spring of Yousaf with Maryan. On his objection he was asked to say said fact on oath of Holy Quran but he failed to do so. Therefore, the revenue officer did not accept his version and sanctioned the mutation in the light of pedigree-table. Plaintiff while recording his statement as P.W.3, during cross-examination admitted that Ghulam Muhammad has been the *Lumbardar* of their village for a long time.

14. Admittedly there is a dispute between the plaintiff and defendant No.1. The son of defendant No.1 was married with the daughter of plaintiff who later on divorced her. It seems that it was the reason the plaintiff raised question about the paternity of defendants to deprive them from the inheritance of their father.

15. The learned Courts below are much impressed with the consenting written statement of Mst. Aimana Bibi and concluded that as one of the defendants admitted that she is daughter of Kallu, therefore, the stance of the plaintiff is proved. From the perusal of the written statement it appears that defendant No.2 never pleaded in her written statement that they are not daughters of Yousaf rather daughters of Kalu. She only maintained that contents of the plaint are correct. This written statement was filed in a casual manner and defendant No.2 did not express her categorical stance. The learned Courts below failed to consider that pleadings would not constitute evidence of their contents. The facts pleaded, unless admitted by the other party have to be proved. It is matter of record that defendant No.2 namely Mst. Aimana Bibi, who is stated to have filed the said written statement had not appeared in the witness box to support the contents thereof. Without cross-examination of the said lady, the written statement could not have been read in the evidence and even the written statement could be referred to as a piece of evidence it cannot be relied upon as an evidence of the facts stated in it. The Hon'ble Supreme Court of Pakistan in the case of "*ABDUL MAJID v.*

Syed MUHAMMAD ALI SHAMIM and 10 others" (**2000 SCMR 1391**) observed as under:-

> "*It is trite law that pleadings are not evidence by themselves and that statements of a defendant in written statement could not be used as evidence when amounting to admission of plaintiff's plea, without the examination of the concerned party in its support. See. Khairul Nisa v. Muhammad Ishaque and 2 others (PLD 1972 SC 25) and Muhammad Ishaq v. Erose Theatre and others (PLD 1997 SC 109)"*

In case titled *"Muhammad Akram and another v. Mst. Farida Bibi and others*" (**2007 SCMR 1719**) it was held that:

> *"It is a settled law that pleadings of the parties are not substantive piece of evidence unless and until the averments made in the pleadings proved from the evidence in Court or admitted by the other party. See Faqir Muhammad's case PLD 2003 SC 594".*

The august Supreme Court of Pakistan in another case titled "*Mrs. Anis Haider and others vs. S.Amir Haider and others*" (**2008 SCMR 236**) held that:

> *"The pleadings of parties could never be taken as an evidence particularly when the arbitrator was not even examined in Court in support of his written statement much less his cross examination by the party desiring so to do."*

16. Defendant No.1 in his written statement took a specific stance that due to marriage of the sister of Muhammad Shafi (*husband of defendant No.2*) with plaintiff, defendant No.2 is collusive with plaintiff. Defendant No.1 while recording her statement as D.W.1 also maintained that Aimana Bibi (*defendant No.2*) is collusive with plaintiff as her marriage was performed in exchange of Abdul Aziz plaintiff. She further clarified that Aimana (*defendant No.2*) married with Muhammad Shafi and Muhammad Shafi's sister was married with Abdul Aziz plaintiff. Plaintiff while recording his statement as

P.W.3 also admitted this factum. This is the reason why defendant No.1 filed conceding written statement.

17. Even otherwise, negative declaration cannot be given. A Court can make a declaration in a suit in favour of a person who is entitled to any legal character or to any right, as to any property, which another is denying. Plaintiff claimed that he is sole legal heir of Yousaf and the defendants are not daughters of Yousaf, hence, not his heirs, rather they were born from the earlier wedlock of Marian with Kallu, therefore, they are not entitled to get inheritance from the legacy of Yousaf. Plaintiff seeks a negative declaration and one which has nothing to do with plaintiff's own legal character. To consider whether such declaration can be sought under Section 42 of the Specific Relief Act, 1877, it would be appropriate to see the judgments rendered by this Court as well as august Supreme Court of Pakistan.

In the case of *"DAW PONE V. MA HNIN* ***(AIR1941 RANGOON 220-221)***, whereby a declaration was sought that defendant was not the *keittima* daughter (*a particular kind of adopting*) of her and her late husband. The Court observed that to challenge another's adoption or legitimacy of birth does not assert the plaintiff's own legal character and held as under:

> *"Looking at S. 42, Specific Relief Act, it applies only in cases in which a person entitled to some legal character or to any right as to any property brings a suit against a person denying or interested to deny his title to such character or right, and the relief to be given there-under is purely discretionary. Nobody has never denied that Daw Pone is entitled to any legal character or right as to property that I can see. But she is bringing a suit for a declaration to establish a negative case, for, some time or other, I suppose, the defendant has claimed to be her keittima daughter. The learned District Judge dismissed that suit, apparently upon the merits and taking the view that the defendant was the keittima daughter of the plaintiff."*

However, a person can bring a suit to assert that he/she is someone's child if his/her legal character is denied. In Daw Pone's case the Court had preserved the adoptee's right to claim such legal

character:

> *"If at any time she desires to make a claim that she is the keittima daughter of Daw Pone, that is a matter for her and her legal advisers, and we desire to say nothing which may be put forward in defence of it. Ma Hnin May has been brought here to appear in answer to this appeal and we think she ought to have her costs, two gold mohurs, for her appearance; and the appeal is dismissed."*

A Full Bench of this Court while identifying the type of declaration which could be sought with regard to one's legal character and those which could not be in a case titled "*ABDUR RAHMAN MOBASHIR AND 3 OTHERS V. SYED AMIR ALI SHAH BOKHARI AND 4 OTHERS (**PLD 1978 LAHORE 113**)"*, held as under:

> *"Section 42 of the Specific Relief Act applies only to a case where person files a suit claiming entitlement to any legal character or to any right to property which entitlement is denied by the defendants or in denying which the defendants are interested. It cannot apply to a case where the plaintiffs do not allege their entitlement to any legal character or any right to property or its denial by the defendants. As a necessary corollary it cannot apply to a case where only the entitlement to legal character or the property of the defendant is denied by the plaintiffs."*

It was further held as under:

> *"It is clear from these authorities that section 42 would be attracted to a case in which the plaintiff approaches the Court for the safeguard of his right to legal character or property but where right to his own legal character or property is not involved, the suit is not maintainable. The suit must be one which must bring benefit to him in regard to these two rights. No suit involving any other right, hypothetical or abstract would be competent under that section. The Court will not therefore entertain suits in which no benefit accrues to the plaintiff or where the plaintiff sets up merely an abstract right to satisfy his ego or satisfy his grudge against another person. Section 42 cannot be invoked in matters of mere sentiments which have no concern with the vendication of the plaintiffs' title to status and property."*

It was also held in the said case that:

> *"Section 42 of the Specific Relief Act deals with legal right as well as the threat or invasion to it by a person having corresponding duty not to invade it but to respect it. It would, therefore, apply only to a case where a plaintiff sues for declaration of his own legal right whether to property or legal character provided it invaded or threatened with invasion by the defendant. It does not deal with the negation of the defendant's rights. Consequently, a declaration that the defendant has*

> *no right to do something which does not infringe upon any legal right to property or legal character of a plaintiff cannot be given under section 42. The cause of action under this section should, therefore, be a threat of Injury to the plaintiff's own right or removal of cloud cast on his own title. It does not allow the plaintiff to come to the Court to show his hostility only to what the defendant considers his own right and which action does not cast any cloud upon the plaintiff's own title."*

18. The Hon'ble Supreme Court of Pakistan, while discussing above referred case laws in a case titled as "*MST. LAILA QAYYUM V. FAWAD QAYYUM AND OTHERS (**PLD 2019 SUPREME COURT 449***), wherein Fawad (*respondent/plaintiff*) alleged that Laila (*petitioner/defendant*) is not Abdul Qayyum's daughter and therefore not his heir and not entitled to inherit the properties left behind by him, observed that Fawad seeks a negative declaration and one which has nothing to do with Fawad's own legal character and dismissed his suit while observed as under:

> *"Fawad sought to deprive Laila of her identity and of her inheritance. The Court cannot legally make the declarations the plaintiff seeks nor can it order the cancellation of the documents. The suit filed by Fawad cannot be decreed. To keep such a suit pending only harasses the petitioner further and may deprive her of her inheritance. Already a lot of court time has been taken up to attend to this frivolous suit. Therefore, we invoke our ancillary powers, granted to us under Article 187 of the Constitution, as it is necessary for doing complete justice, and exercising such powers dismiss the suit pending before the Senior Civil Judge Gulkada, Swat. We also award costs throughout, to be paid by the respondent No. 1 to the petitioner. Copy of this judgment be sent to the Trial Court. Copy be also sent to the Registrar, Peshawar High Court, for placing it before the learned Judge who had passed the impugned Judgment."*

19. Both the learned Courts below on the basis of mere oral assertion declared that defendants are not daughters of Yousaf, rather they are daughters of Kallu. In the light of above discussed facts and circumstances it is clearly established on the record that the learned Courts below mis-read and non-read the evidence produced by the parties while passing the impugned judgments and decrees. Learned Courts below have acted arbitrarily and passed the impugned judgments and decrees in a slipshod manner, which are not sustainable in the eye of law.

20. Although, the scope of revisional jurisdiction of this court is limited and the concurrent findings of facts of the Courts below could not be reversed. But where the concurrent findings are not in accordance with law, there is glaring illegality, non-reading or misreading of evidence, then this court can interfere in the concurrent findings of the courts. If the concurrent findings are perverse, arbitrary or fanciful the same cannot be termed as '*sacrosanct'* and can be interfered with. Reliance is made to the case of *"SAMAR GUL V. MOHABAT KHAN"* **(2000 SCMR 974)** and "*NAZIM-UD-DIN and others versus Sheikh ZIA-UL-QAMAR and others*" (**2016 SCMR 24**).

21. The crux of the above discussion is that the revision petition in hand succeeds and the same is ***allowed***. Consequently, impugned judgments & decrees of the Courts below are ***set-aside*** and suit instituted by the respondent No.1 is ***dismissed*** with cost throughout.

(AHMAD NADEEM ARSHAD)
JUDGE.

APPROVED FOR REPORTING.

JUDGE.

ANNOUNCED IN OPEN COURT ON _____

JUDGE.

*M. Arsalan**