

Stereo.HCJDA-38
JUDGMENT SHEET
IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

R.F.A. No.80638 of 2021

Umar Farooq
v.
Province of Punjab and others

JUDGMENT

Date of Hearing	23.10.2023
Appellant by	Ch. Muhammad Gulnawaz Goraya, Advocate
Respondent Nos. 1 to 3, 11 and 12 by	Mr. Tahrim Iqbal Butt, Asst. Advocate General with Naveed Haider, Asst. Commissioner, Muhammad Safdar Rana, Naib Tehsildar and Khurshid Ahmad Patwari Halqa, Gujranwala
Respondent Nos.4 to 8 and 10	Syed Muhammad Usman Tirmazi, Advocate
Respondent Nos.9 and 13 to 16	Ex parte.

Rasaal Hasan Syed, J. This appeal is directed against judgment and decree dated 03.12.2021 of the learned Civil Judge, Gujranwala whereby appellants' suit for declaration, cancellation, possession and injunctive relief was dismissed.

2. Facts giving rise to this appeal are that the appellants instituted a suit for declaration to challenge mutation No. 257 and subsequent mutation Nos. 693, 734, 748, 1717, 5134, 5135, 6256 and 6258 as illegal and for incorporation of their names as owners of 06 kanals 15

marlas in khasra No. 581 in implementation of the exchange between the predecessors of appellants and the school and decree for possession in respect of khasra No. 581 measuring 06 kanals 15 marlas. Claim set up in the plaint was that the predecessor of appellants/plaintiffs owned land measuring 30 kanals, 01 marla in Mauza Ghari, Tehsil Nowshera Virkan, District Gujranwala which during consolidation was left by them for public welfare; land measuring 12 kanals, 18 marlas in khasra No. 581 was left for the Girls Primary School from the said land that got incorrectly reflected in the revenue record i.e. register haqdaran for the year 1962-63 and 1967-68 as school ground. The Education Department instead of constructing a school in the land given for school, constructed school in the land measuring 06 kanals, 15 marlas in khasra No. 1167/654; and land measuring 06 kanals, 15 marlas in khasra No. 581 i.e. land of the school was agreed to be given to the predecessor of the appellants in exchange of land measuring 06 kanals, 15 marlas from khasra No. 1167/654; further alleged that it was given to understand to the predecessors of appellants that the exchange was implemented in the revenue record but four months before the filing of suit, it transpired on verification of revenue record that the Education Department had not implemented the exchange in the revenue record. Instead through mutation No.693 dated 02.9.1983 the land measuring

06 kanals, 15 marlas was transferred in the name of school but in exchange no land was given to the appellants' predecessor and instead from khasra No. 1167/654 land measuring 01 kanal, 03 marlas owned by the appellants was exchanged with land measuring 01 kanal, 03 marlas in khasra No. 1062/605 which was later transferred in the name of respondent No.10. It was asserted that mutation No. 257 was sanctioned wherein land measuring 01 kanal, 3 marlas in khasra No. 1062/605 was exchanged with land measuring 02 kanal, 18 marlas in khasra No. 581. It was added that in the year 1971 Hassan Muhammad, a temporary allottee, got executed mutation Nos. 254, 255, 256 and 257 on the basis of decision dated 26.4.1971 in connivance with respondent Nos. 1 to 3 and land of school in khasra No. 581 was further divided into two khasra numbers i.e. khasra No. 1056/581 measuring 02 kanals, 18 marlas and khasra No. 1057/581 measuring 10 kanals. It was asserted that on the basis of decision dated 26.4.1971 through mutation No.257 out of land measuring 12 kanals, 8 marlas of school land in khasra No. 581, land measuring 02 kanals, 18 marlas was exchanged with 01 kanal, 03 marlas. It was added that on the basis of mutation No. 257 further mutation Nos. 693, 734, 748, 1717, 5134, 5135, 6256 and 6258 were also attested in the revenue record. The appellants/plaintiffs alleged that from time to time they requested the concerned authorities to

correct the record and cancel the illegal mutations but it was refused and, therefore, the suit was instituted for redressal of the grievance through decree of court.

3. In response to the suit, respondent Nos. 1 to 3, 5 to 9, 11 and 12 submitted their separate written statements wherein they contested the matter on legal and factual grounds and maintained that the appellants had no cause of action, no locus standi to file the suit, the suit was not maintainable, and that the suit was barred by time which was instituted to blackmail the defendants/respondents. It was explained that in the revenue record land measuring 12 kanals, 18 marlas was shown as school ground and that mutation Nos. 254, 255, 256 and 257 were attested on the basis of decision of appeal No. 266 titled Hassan Muhammad, Temporary Allottee v. Moeen Ud Din, etc. dated 26.4.1971 and at the back of mutation No. 256, khasra No. 561 was divided into two khasra numbers i.e. khasra No. 1056/581 measuring 02 kanals, 18 marlas and khasra No.1957/581 measuring 10 kanals; and mutation No. 257 regarding khasra No. 1056/581 of land measuring 02 kanals, 18 marlas was attested in favour of Shawala Thakur and khasra No. 1062/605 measuring 01 kanal, 03 marlas was attested as school ground and that in khasra No. 1057/581 land measuring 10 kanals was in the name of school ground and mutation No. 734 dated 20.9.1984 was attested by the

order of Assistant Administrator Trust Board vide order dated 02.5.1984 in favour of Kalay Khan son of Hassan Muhammad in which khasra No. 1056/581 - land measuring 02 kanals, 18 marlas - was also included. As regards khasra No. 1062/605, land measuring 01 kanal, 03 marlas, was exchanged with land measuring 01 kanal, 03 marlas through mutation No. 693 dated 02.8.1983; according to which khasra No. 162/605, land measuring 01 kanals, 03 marlas, was attested in favour of Muhammad Khan, etc. and from khasra No. 654/1 measuring 01 kanal, 03 marlas was attested in favour of Government Girls Primary School. Khasra No. 581 was divided into different khasra numbers by orders of AC(S) through *ishtamal* No. 266 dated 26.4.1971; details of which were mentioned on the back of *pert sarkar* of said khasra number. It was alleged that mutation Nos. 693, 734, 748, 1717, 5134, 5135, 6256 and 6258 were attested on the basis of mutation No. 257 and the same were attested by the order of AC(S) dated 26.4.1971 in appeal No. 266. It was submitted that Rehmat Bibi made waqf qua land measuring 12 kanals, 18 marlas in khasra No. 581 for the welfare of locality on the basis whereof school was constructed and that appellant had no concern whatsoever with the property of the school and that suit was mala fide. Respondent Nos. 5 to 9 denied the claim of the plaintiffs/appellant and termed the same as barred by time, barred by section 91, C.P.C. and

Order I, Rule 8, C.P.C. Respondent/defendant Nos. 1 to 3, 5 to 9, 11 and 12 accordingly sought dismissal of the suit. Respondent/defendant No.10 in the written statement not only controverted the plaint but also submitted that he had purchased land measuring 01 kanals, 03 marlas in khata No. 409, khatauni No. 494, khasra No. 1062/605 vide register of rights for the year 1991-92 vide sale deed No. 219 and thereafter he built hospital on the suit property and is in possession thereof.

4. Issues were framed from the divergent pleadings and evidence was recorded. Appellants/plaintiffs produced Gulzar Ahmad son of Hayat Muhammad (plaintiff No. 37) as P.W.1. Documentary evidence comprised Ex.P-1 to Ex.P-39 which was tendered through the statement of their counsel. In defence Khurshid Ahmad, halqa patwari was produced as D.W.1, Akhtar Hussain Deputy DEO/Secondary Education Gujranwala as D.W.2, Abdul Sattar son of Muhammad Shafi as D.W.3, Mukhtar Ahmad son of Fateh Muhammad as D.W.4, Muhammad Aslam son of Ch. Ali Nawaz as D.W.5, Muhammad Rafique son of Ch. Khair Din as D.W.6, Kashif Aslam son of Muhammad Aslam as D.W.7, Muhammad Sarwar son of Qaim Din as D.W.8. Documentary evidence comprised of Ex.D-1 to Ex.D-91 was produced. After considering the evidence and points raised in arguments of both sides the learned Civil Judge, Gujranwala recorded

findings on main issues against the plaintiffs/appellants and dismissed the suit observing that plaintiffs/appellants had no locus standi to bring the suit nor had any cause of action accrued to them and that the suit was barred by time and that the plaintiffs were not entitled to any relief of declaration, cancellation and permanent injunction.

5. Heard.

6. Perusal of the plaint shows that the suit was instituted on 16.7.2020 to challenge the mutation entries in the revenue record including the sale transaction, etc. after more than 37 years and, in some instances, 40 years. Mutations, the cancellation whereof was solicited, bear Nos. 257, 693, 734, 748, 1717, 5134, 5135, 6256 and 6258. Case of the appellants was that their predecessors owned land measuring 30 kanals, 01 marla in Mauza Garhi Tehsil Nowshera Virkan, District Gujranwala which was left by them for public welfare during the consolidation. Out of this land measuring 12 kanals, 18 marlas in khasra No. 581 was left for Girls Primary School which was wrongly reflected in the register haqdaran for the year 1962-63 and 1967-68 as school ground. It was also their grievance that instead of constructing the school in the land allocated for school i.e. land measuring 06 kanal, 15 marlas in khasra No. 581, the Education Department constructed Government Girls Primary School in the land measuring 06 kanals, 15 marlas

bearing khasra No. 1167/654 owned by predecessor of responopents and allegedly agreed to give to the predecessor of appellants/plaintiffs land measuring 06 kanals, 15 marlas from khasra No. 581 i.e. school land and were also given to understand that mutation of exchange had been entered and attested accordingly. They claimed knowledge of mutations under challenge four months before the filing of suit which as appears from the evidence could not be proved. Mutation No. 257 was attested on 10.9.1971 whereby khasra No. 581 was divided into two parts vide *tattima* dated 10.9.1971 drawn on the back of the mutation. Mutation No. 693 was attested on 02.8.1983. In terms of this mutation land measuring 01 kanal, 03 marlas in khasra No. 1062/605 was exchanged with land measuring 02 kanals 18 marlas in khasra No. 581. Mutation No. 254, 255, 256 were also attested pursuant to the order dated 26.4.1971 of AC(S). The evidence shows that pursuant to letter dated 02.5.1984, mutation No. 734 was attested on 29.5.1984 in favour of respondent No. 16 who became owner of portion of land in khasra No. 581/1056 in Mauza Garhi, Tehsil Nowshera Virkan District Gujranwala vide register Haqdaran for the year 1979-80 and later respondent No. 16 sold his land vide registered sale deed No. 4415 dated 15.7.1984 in favour of Barkat Begum daughter of Noor Muhammad (mother of respondent Nos. 4 to 6) and Muhammad Aslam son of Ali

Nawaz (father of respondent Nos. 7 and 8). Later the purchaser sold land measuring 1 kanal to respondent No. 9 vide sale deed No. 873 dated 26.12.1995. Strange enough all these transactions, though duly entered in the Revenue Record from 1971 till the filing of the suit, were not timely challenged. The predecessor of the plaintiffs had been alive for number of years but they did not challenge the transactions particularly mutation No. 257 and 693 in respect of which the suit was filed by the plaintiffs/appellants on 16.7.2020. Under Article 120 of the Limitation Act a suit to challenge the mutation could be filed within six years from the date of attestation of mutation while the appellants filed the suit after more than 40 years from the date of mutation No. 257 i.e. 10.9.1971 and after more than 36 years from the date of mutation No. 693 dated 02.8.1983 which on the face of it was barred by time. Reference can be made to the case of Wahid bakhsh and another through legal heirs v. Ghulam Muhammad through Legal heirs (PLD 1990 Lah. 193), Ashiq Muhammad and others v. Mst. Sugran (2023 SCMR 1171) and Agha Syed Mushtaque Ali Shah v. Mst. Bibi Gul Jan and others (2016 SCMR 910) and Mst. Rabia Gul and others v. Muhammad Janan and others (2022 SCMR 1009).

7. As to the plea of the appellants that they allegedly acquired knowledge of the mutations under challenge four

months before the filing of the suit, the same is belied by the evidence on record. The documents viz. Ex P-18, Ex. D-2 and Ex.D-62 reveal that the appellant No. 20 Muhammad Mansha son of Khan Muhammad signed mutation No. 693 dated 2.8.1983 as "pattidar" while father of appellant/plaintiff No. 3 signed and thumb marked the mutation No. 693 as a witness being "councillor" of the village. Suit was filed by 64 plaintiffs but except appellant/plaintiff No. 37 (Gulzar Ahmad – P.W.1) no one appeared in the witness-box, which raises serious adverse inference against the appellants. P.W.1, who had no power of attorney on behalf of the remaining plaintiffs/appellants only made hearsay statement, which was inadmissible. On being confronted with the documents which were signed either as "pattidar", "councillor" or as a "witness" to the transaction by the predecessor of appellants/plaintiffs, P.W.1 could not deny the fact that the mutation and transactions were based thereon; yet they did not file suit in time. Record also reveals that mutation No. 257 Ex. D-1 was attested on 10.9.1971 and on the basis thereof subsequent mutations were also attested. P.W.1 admitted in cross-examination the existence of construction at site in the form of banks, hospitals and houses which construction was never objected to at the relevant time. The facts on the record proved beyond doubt that appellants/plaintiffs and their predecessors had the

knowledge of transaction and mutations right from the beginning but filed the suit after 36 years. Having failed to file suit within six years in terms of Article 120 of the Limitation Act, 1908 the suit was hopelessly barred by time. The findings recorded by the learned Civil Judge in this regard, dismissing the suit as being barred by time are observed to be based on correct analysis of evidence and proper application law, and are affirmed.

8. Another legal aspect of the matter is that the basic transaction and mutations which were being challenged in the suit pertain to the period when the predecessors of appellants/plaintiffs were alive. As per admissions in cross-examination by P.W.1 his father died in 1993 yet he did not file the suit or agitate the matter during his lifetime. Same is the case with the other appellants/plaintiffs whose predecessors were alive for number of years but did not challenge the transactions during their lifetime. It has been consistently observed that where the real owner of the property who could have a cause of action to file the litigation or commence the proceedings or to challenge the act or document against his interest remain alive for number of years but despite having knowledge of the transactions never raised any claim qua the property or challenge the documents of sale in respect of property, or raised the objection which was being attempted to be raised by his

successors, this is not permissible as the successors will have no locus standi to question the validity of those transactions. Reference can be made to the rule in Mst. Faheeman Begum (deceased) through L.Rs. and others v. Islam-Ud-Din (deceased) through L.Rs. (2023 SCMR 1402) and Muhammad Rustam and another v. Mst. Makhan Jan and others (2013 SCMR 299).

9. In view of the facts noted supra and the consistent legal position, this Court affirms the view taken by the trial court to the effect that the suit was barred by time, principle of acquiescence, waiver and estoppel and that the appellants had no locus standi or cause of action to file the suit.

10. For the reasons supra, this appeal is without any substance and is accordingly **dismissed**.

**(SHAHID BILAL HASSAN)
JUDGE**

**(RASAAL HASAN SYED)
JUDGE**

Approved for reporting

JUDGE

JUDGE