

Stereo. HCJDA 38  
JUDGMENT SHEET  
**LAHORE HIGH COURT,**  
**BAHAWALPUR BENCH, BAHAWALPUR**  
JUDICIAL DEPARTMENT

**Civil Revision No.295-D/2013**

**Khushi Muhammad**

Vs.

**Raj Bibi**

**JUDGMENT**

<b>Date of hearing:</b>	<b>25.10.2023</b>
<b>For the Petitioner:</b>	Mr. A.R. Aurangzeb, Advocate, assisted by Ms. Asma Nawaz, Advocate.
<b>For the Respondent:</b>	Mr. Muhammad Khalid Shahid Buttar, Advocate.

**Tariq Saleem Sheikh, J.** – This revision petition is directed against the judgment and decree dated 11.04.2013 passed by the Additional District Judge, Minchinabad, whereby he set aside the civil court's judgment and decree dated 18.07.2012 through which it had dismissed the declaratory suit of the Respondent/Plaintiff (Raj Bibi).

2. On 02.10.2007, the Respondent instituted a declaratory suit against the Petitioner/Defendant, Khushi Muhammad, her real brother, in the civil court at Minchinabad. She stated that she inherited agricultural land measuring 29 kanals 05 marlas in Mauza Bhagwanpura, Tehsil Minchinabad (the "Suit Property") from her father, Ramzan, vide Mutation No.94 dated 11.04.1977. This property was part of a joint *Khata* and remained undivided. According to the Respondent, the Petitioner was a co-sharer in the *Khata*, cultivated the Suit Property from the beginning, and shared the produce with her. In 2007, when she approached the Halqa Patwari for the partition of the joint *Khata* to secure exclusive possession of her share, she discovered that the Suit Property had been transferred to the Petitioner by way of *Tamleek* through Mutation No.141 on 11.03.1987 (Exh. P-2 and Exh.D-16) (the "Impugned Mutation"). The Respondent alleged that this mutation was fraudulent because she had never gifted him

the Suit Property. She professed ignorance regarding the entire process, adding that she had not appeared before any revenue authority for the transfer, had not affixed her thumb-mark on any document, and had not handed over possession of the Suit Property to the Petitioner. She contended that Mutation No. 141 was *ab initio* void and inoperative against her rights. Finally, the Respondent asserted that the Petitioner had concealed the Impugned Mutation, and she only became aware of it on 24.09.2007. Thus, her suit was timely.

3. The Petitioner contested the suit, raising preliminary objections that it was time-barred and not maintainable in the present form. On the merits, he submitted that the Respondent remained in possession of the Suit Property for ten years after inheriting it and then sold it to him for Rs.12,000/- On 04.02.1987, she appeared before the Halqa Patwari and got the transaction recorded in *Roznamcha Waqiat* vide Rapt No.163 (Exh. D-13), which was verified by the Girdawar on 09.02.1987. Thereafter, she appeared before the Revenue Officer and had her statement recorded, reaffirming the transaction and acknowledging the receipt of the sale consideration. She also delivered possession of the Suit Property to him in the presence of witnesses. Consequently, the Revenue Officer attested Mutation No.141 on 11.03.1987. The Petitioner asserted that the Suit Property was recorded in his name in the *Jamabandi* (Record-of-Rights) from 1987 onwards. He has been in possession since the date of its purchase and enjoying it to the exclusion of the Respondent.

4. The Civil Judge framed issues from the divergent pleadings of the parties, after which they produced evidence in support of their respective claims. The Respondent/Plaintiff, Raj Bibi, personally appeared in the witness box as PW-1, while Muhammad Abbas son of Muhammad Hussain testified as PW-2, Muhammad Ashraf son of Shabbir Ahmad as PW-3, Haji Qadir Bakhsh son of Bahadur as PW-4. The Respondent again appeared as PW-5 in rebuttal and submitted documentary evidence comprising certified copies of Inheritance Mutation No.94, and the Impugned Mutation No. 141 (Exh.P-1 & Exh.P-2). In defence, Rana Mushtaq Ahmad Patwari took the witness stand as DW-1, while Petitioner/Defendant Khushi Muhammad testified as DW-2, Muhammad Ali son of Muhammad Hanif as DW-3, and Abdul Jabbar son of Charagh

Din as DW-4. The Petitioner tendered documents Exh.D-1 to Exh.D-17 in documentary evidence.

5. The Civil Judge dismissed the Respondent's suit through judgment and decree dated 18.07.2012. He held that her claim was time-barred and legally incompetent, being technically defective. On merits, the Civil Judge ruled that Mutation No.141 was valid and that the Petitioner had not committed any fraud against the Respondent.

6. The Respondent appealed. The Additional District Judge determined that the Respondent's suit was not barred by limitation. She approached the court within the time specified in Article 120 of the Limitation Act, 1908 (the "Limitation Act"). On the factual aspect, he concluded that the Respondent had proved that Mutation No.141 was a result of fraud. Besides, it was not sustainable because it was approved without following the mandatory procedure prescribed by Section 42(7) of the Punjab Land Revenue Act, 1967 (the "1967 Act"). The Respondent's appearance before the Revenue Officer at the relevant time, as required by law, was also not established. As a result, the Additional District Judge overturned the civil court's ruling through his judgment and decree dated 11.04.2013.

7. In support of this revision petition, Mr. A.R. Aurangzeb, Advocate, contended that the Respondent's suit was not maintainable because she sought a declaration that Mutation No.141 was a nullity without simultaneously praying for possession of the Suit Property, which was admittedly with the Petitioner. He further contended that the Respondent's suit was barred by time. The Impugned Mutation No.141 was attested on 11.03.1987, while she filed the suit on 02.10.2007, i.e., after 20½ years. On the factual aspect, Mr. Aurangzeb argued that the Respondent had failed to prove that the Petitioner had committed fraud with her and usurped the Suit Property. According to him, Mutation No.141 was sanctioned after due process, and the Additional District Judge had erred in reaching a different conclusion.

8. Mr. Muhammad Khalid Shahid Buttar, Advocate, vehemently opposed this petition. He contended that Mr. Aurangzeb's objection regarding the maintainability of the Respondent's suit on the alleged legal defect was based on a misconception of the law. He also refuted the plea

that the Respondent's suit was barred by limitation. He argued that Mutation No.141 was void as it was processed in violation of section 42(7) of the 1967 Act. No limitation period runs against a void mutation entry. On facts, Mr. Buttar argued that the Petitioner was a *pardanashin* woman, and the law provided her with special protection. A heavy burden lies on the Petitioner to prove any alienation of the Suit Property to him, which he failed to discharge. The Petitioner claimed that he had purchased the Suit Property from the Respondent but had not proved it, while the Respondent established through reliable evidence that she had been defrauded. She never appeared before the Revenue Officer to confirm any transaction with the Petitioner regarding the Suit Property. In this regard, Mr. Buttar particularly referred to the testimony of Rana Mushtaq Ahmad Patwari (DW-1), who conceded that the Respondent's attendance was not recorded in the Revenue Officer's orders dated 08.02.1987 and 11.03.1987. He submitted that the Additional District Judge's judgment and decree were based on the correct appreciation of law and facts and prayed that the same may be affirmed.

9. Arguments heard. Record perused.

10. The Petitioner and the Respondent are real brother and sister. Their father, Ramzan, passed away in 1977, upon which the Respondent inherited the Suit Property as per Inheritance Mutation No.94 dated 11.04.1977 (Exh.P-1). The Petitioner claims to have acquired it from her vide Sale Mutation No.141 dated 04.02.1987, which is impugned in these proceedings. Both parties presented certified copies of Mutation No.141 as evidence during the trial. The Respondent's document is Exh.P-2, while that of the Petitioner is Exh.D-16.

11. At the very outset, it is necessary to point out that, as per Exh. P-2 and Exh. D-16, Mutation No.141 was a sale mutation (based on oral sale). However, throughout the proceedings, starting from filing the plaint, the Respondent referred to it as *Tamleek*. It appears that she was misled by a clerical mistake in *Tatima Shajra*. Considering that the Respondent has questioned the validity of Mutation No.141 essentially on the grounds that it has been attested in contravention of the law and that it is fraudulent and without consideration, this has no bearing on the fate of the case.

12. Let's begin with the legal objections. The first is that the Respondent's suit is legally flawed. According to the Petitioner, she should have filed a suit seeking a declaration of title to the Suit Property plus possession, but she applied for a declaration simpliciter. This objection deserves short shrift because the Suit Property is situated in a joint *Khata*. It is trite that no limitation runs against a co-sharer/co-owner.<sup>1</sup> Every co-sharer/co-owner is presumed to be in possession of every inch of the joint property unless it is partitioned.<sup>2</sup> The following excerpt from ***Khalid Hussain and others v. Nazir Ahmad and others*** (2021 SCMR 1986), eloquently explains the law:

“As far as not seeking possession of the disputed property is concerned, the record is clear that no reliable evidence was adduced by the respondents to prove their exclusive possession thereof. No independent evidence, worthy of credence, was produced by the respondents to prove the factum of transfer of possession of the disputed property to them under the Gift Deed. In fact, there is a clear finding of the trial court that the possession of the disputed property remained under the control of Muhammad Din till his death, and further that the same was being cultivated by the tenants, as later correctly confirmed by the appellate court. Even otherwise, the petitioners claim themselves to be the co-owners of the disputed property with the respondents, having inherited the same from their father. The possession of one co-owner is considered, in law, to be the possession for and on behalf of all the co-owners. Thus, the suit of the petitioners in its form and content was maintainable and competent under the law.”

13. In view of the above, I hold that the Respondent's civil suit is competent under the law, even though she has not prayed for possession while seeking a declaration of her title to the Suit Property.

14. The Petitioner's second objection is that the Respondent's suit is time-barred. Section 18 of the Limitation Act addresses this issue. It states that if a person entitled to institute a suit or submit an application has, by means of fraud, been kept from the knowledge of such right or the title on which it is founded, or if any document necessary to establish such right has been fraudulently concealed from them, the time limit for filing a suit or application (a) against the person guilty of the fraud or accessory thereto, or (b) against any person claiming through them otherwise than in

<sup>1</sup> *Khan Muhammad v. Mst. Khatoon Bibi* (2017 SCMR 1476), *Mahmood Shah v. Syed Khalid Hussain Shah and others* (2015 SCMR 869), *Muhammad Anwar and 2 others v. Khuda Yar and 25 others* (2008 SCMR 905), *Mst. Suban v. Allah Ditta and others* (2007 SCMR 635), *Riaz Ahmad and others v. Additional District Judge and others* (1999 SCMR 1328), and *Ghulam Ali and others v. Mst. Ghulam Samar Naqvi* (PLD 1990 SC 1).

<sup>2</sup> *Shabla v. Ms. Jahan Afroz Khilat* (2020 SCMR 352), *Ghulam Sarwar (Deceased) v. Ghulam Sakina* (2019 SCMR 567), *Ahmad Khan v. Abdur Rehman* (2009 SCMR 191), *Syed Shabbir Hussain Shah and others v. Asghar Hussain Shah* (2007 SCMR 1884) and *Mst. Reshma Bibi v. Amir* (2004 SCMR 392).

good faith and for valuable consideration, shall be computed from the time when the fraud first became known to the person injuriously affected thereby. In the case of the concealed document, the computation starts when the person first gains the means to present it or enforce its production. In ***Mst. Rabia Gula and others v. Muhammad Janan and others*** (2022 SCMR 1009), the Supreme Court ruled that section 18 of the Limitation Act delays the onset of the limitation period for filing a lawsuit when fraudulent means prevent a person from knowing their right. This provision causes the limitation period, mentioned in the Schedule, to commence from a distinct time than specified.

15. Generally, the time limit for filing a suit for declaration is six years under Article 120 of the Limitation Act. However, in ***Khan Muhammad through L.Rs. and others v. Khatoon Bibi and others*** (2017 SCMR 1476), recognizing potential variations in certain categories of cases, the Supreme Court provided detailed guidelines on this matter. It stated:

“In the cases of simple correction of revenue record, it is settled by now that every fresh wrong entry in the record of rights would provide a fresh cause of action provided the party aggrieved is in possession of the property as owner needless to say that it can be either physical or symbolic possession. Similarly, in the cases of claiming right of inheritance, it is well settled that the claimant becomes co-owner/co-sharer of the property left by the predecessor along with others the moment the predecessor dies, and entry of mutations of inheritance is only meant for updating the revenue record and for fiscal purposes. If a person feels aggrieved by such entries, he can file a suit for declaration within six years of such wrong entries or knowledge. Any such repetition of the said entries in the revenue record would again give him a fresh cause of action, or when the rights of anyone in the property are denied it would also give a fresh cause of action. Similarly, it is again settled by now that no limitation would run against the co-sharer ... In recent past certain judgments have been rendered in the cases of inheritance wherein the question of waiver, acquiescence and estoppel have been considered ...”

16. In the present case, the Respondent testified that she learnt about Mutation No.141 on 24.09.2007 when she approached the Halqa Patwari with her son, Muhammad Ashraf (PW-3), for partition of *Khata*. The latter corroborated her. However, the Petitioner neither cross-examined the Respondent nor Muhammad Ashraf on this aspect. Under the law, a

fact is deemed to have been admitted if it is not cross-examined.<sup>3</sup> Considering that the Respondent filed the suit against the Petitioner on 02.10.2007, i.e., eight days from the date when she gained knowledge about the Impugned Mutation, her suit was on time.

17. Mr. Aurangzeb contends that the Respondent's assertion that she learnt about Mutation No.141 on 24.09.2007 is false. He submits that the Petitioner has produced certified copies of Mutation Nos. 139, 140 and 142 (Exhibits D-14, D-15 and D-17) through which Sakina Bibi and Zainab Bibi (Respondent's real sister and mother respectively) transferred their inherited properties to the Petitioner. These three mutations, along with the Impugned Mutation No. 141 Exh. P-2/D-16, were recorded by the Patwari collectively on 04.02.1987 and presented to the Revenue Officer in the common assembly on 08.02.1987. The Revenue Officer attested Mutation Nos. 139, 140 and 142 but deferred the Impugned Mutation No. 141. According to Mr. Aurangzeb, Sakina and Zainab never challenged their transactions. He argues that in this scenario, Respondent should be deemed to have knowledge of the proceedings before the revenue staff. This contention is unfounded. There is no proof that she was with Sakina and Zainab when the Patwari documented Mutation Nos. 139, 140 and 142 on 04.02.1987, whereas it is a proven fact that she did not present herself before the Revenue Officer on 08.02.1987 when he attested them. Legal cases cannot be decided on assumptions.

18. Mr. Aurangzeb submits that consolidation proceedings were conducted in Mauza Bhagwanpura in 1989-90 during which the Petitioner's ownership of the Suit Property was included in a separate *Wanda*. He argues that the Respondent admitted this fact during her cross-examination as PW-5. If she had a claim, she would have challenged the consolidation proceedings. I am afraid I cannot endorse this argument. The Respondent's aforementioned admission does not necessarily imply that she was aware that the Suit Property had been transferred to the Petitioner, and there was nothing in her name.

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<sup>3</sup> *Allah Bakhsh and others v. Mst. Irshad Begum and others* (1986 SCMR 1496), *Islamuddin and others v. Ghulam Muhammad and others* (PLD 2004 SC 633), *Khan Muhammad through L.Rs. and others v. Mst. Khatoon Bibi and others* (2017 SCMR 1476), *Muhammad Sharif and others v. MCB Bank Limited and others* (2021 SCMR 1158), *Mst. Rabia Gula and others v. Muhammad Janan and others* (2022 SCMR 1009), and *Ghulam Rasul and 4 others v. Muhammad Hanif* (1980 CLC 1611).

19. As adumbrated, the Respondent alleges that she has been defrauded. It is the Supreme Court's consistent view that limitation never runs against fraud, more so in the matters involving inheritance rights of a female. Reliance is placed on *Shabla and others v. Jahan Afroz Khilat and others* (2020 SCMR 352).<sup>4</sup>

20. Now, I turn to the facts of the case. The pivotal question is whether Mutation No.141 has been attested in accordance with the law. Section 42 of the 1967 Act prescribes the procedure for preparing records relating to land owners. Its relevant part is reproduced below for ease of reference:

**42. Making of that part of periodical records which relates to land-owners.** – (1) Subject to the other provisions of this Chapter, a person acquiring by inheritance, purchase, mortgage, gift, or otherwise, any right in an estate as a land-owner, or a tenant for a fiscal term exceeding one year, shall, within three months from the date of such acquisition, report his acquisition of right to the *Patwari* of the estate, who shall—

- (a) record such report in the *Roznamacha* to be maintained in the prescribed manner;
- (b) furnish a copy of the report so recorded, free of cost, to the person making the report; and
- (c) send a copy of the report, within a week of its receipt by him, to the office of the Union Administration within which the estate is situated.

(2) If the person acquiring the right is a minor or is otherwise unable to report, his guardian or other person having charge of his property shall make the report to the *Patwari*.

(3) The *Patwari* shall enter in his register of mutations every report made to him under sub-section (1) or sub-section (2), and shall also make an entry in the *Roznamacha* and in the register of mutations respecting the acquisition of any such right as aforesaid which he has reason to believe to have taken place, and of which report should have been made to him under either of those sub-sections and has not been so made.

(4) ...

(5) ...

(6) A Revenue Officer shall, from time to time, inquire into the correctness of all entries in the register of mutations and into all such acquisitions as aforesaid coming to his knowledge of which, under the foregoing sub-sections, report should have been made to the *Patwari* and entries made in that register, and, shall in each case make such order as he thinks fit with respect to any entry in the periodical record of the right acquired.

(7) Except in cases of inheritance or where the acquisition of the right is by a registered deed or by or under an order or decree of a Court,

<sup>4</sup> The Supreme Court drew on the following decisions for this ruling: *Fazal Ellahi deceased through legal heirs v. Mst. Zainab Bi* (2019 SCMR 1930), *Khan Muhammad through L.Rs and others v. Mst. Khatoon Bibi and others* (2017 SCMR 1476), *Mahmood Khan v. Syed Khalid Hussain Shah* (2015 SCMR 869), *Mst. Gohar Khanum v. Mst. Jamila Jan* (2014 SCMR 801), *Rehmat Ullah and others v. Saleh Khan and others* (2007 SCMR 729), *Arshad Khan v. Resham Jan and others* (2005 SCMR 1859) and *Ghulam Ali and others v. Mst. Ghulam Sarwar Naqvi* (PLD 1990 SC 1).

the Revenue Officer shall make the order under subsection (6) in the presence of the person whose right has been acquired, after such person has been identified by two respectable persons, preferably from Lombardars or members of the Zila Council, Tehsil Council or Town Council concerned whose signatures or thumb impressions shall be obtained by the Revenue Officer on the register of mutations.

(8) An inquiry or an order under sub-section (6) shall be made in the common assembly in the estate to which the mutation, which is the subject matter of the inquiry, relates.

(9) to (11) ...

21. Courts have considered section 42 of the 1967 Act in several cases. In ***Gharib Shah and others v. Zarmar Gul*** (PLD 1984 SC 188), the Supreme Court emphasized the significance of sub-section (8) of section 42 of the 1967 Act, stating that an effective order must be made only in the “common assembly” of the estate to which the mutation relates. The Supreme Court rejected the contention that the vendors’ statement recorded under sub-section (6) is sufficient to close proceedings without complying with sub-section (8).

22. In ***Hakim Khan v. Nazeer Ahmad Lughmani and others*** (1992 SCMR 1832), the Supreme Court ruled that the provisions of section 42 of the 1967 Act are mandatory. The legislature has used the word “shall,” which imposes a binding duty on the revenue staff to adhere to its provisions. The Supreme Court clarified that non-compliance by the revenue staff with these provisions does not invalidate the transactions covered by mutations. It emphasized that the attestation of mutations primarily serves the purpose of updating records for fiscal purposes and does not confer title to the transferee. If a dispute arises about transactions or related mutations, the parties involved must prove the transactions, following the provisions of the law of evidence. Consequently, whether section 42 is considered mandatory or directory, it does not directly impact the transactions themselves. The provisions are intended to prevent fraud. The Supreme Court explained:

“The departure from the above provisions is apparently made to avoid fraud and therefore the obtaining of the signatures of identifying witnesses has been made essential so that in the event of their denial the parties concerned may be in a position to prove their signatures. The provision regarding the attestation of mutations in the estate has also been made for this very purpose as normally many people of the village are present on the date of attestation of mutation for which prior publicity is made and the chances of impersonation, fraud or collusion are very rare. According to sub-section (6) of section 42, the Revenue Officer is required to inquire into the correctness of all entries in respect of mutations and under sub-section (7) he is to make his inquiries in the

presence of the person whose right has been acquired, after such person has been identified by two respectable persons, preferably from Lamberdars or members of the Union Committee, Town Committee or Union Council concerned, whose signatures or thumb-impressions shall be obtained by the Revenue Officer on the register of mutations. Under sub-section (8), an inquiry is to be made in the area of the estate in which subject-matter of the mutation is situated.”

23. In *Khalil Ahmad v. Abdul Jabbar Khan and others* (2005 SCMR 911), the Supreme Court held that the act of entering a mutation or reporting the acquisition of any right in an estate to the Patwari is a mere ministerial task, devoid of the power to confer or extinguish any right in any property. Consequently, its significance is minimal. Section 42 of the 1967 Act does not mandate any witnesses or respectable individuals to accompany the person reporting the acquisition to the Patwari or witness the entry of a mutation in this context. Therefore, it holds no consequence regarding the validity of a subsequently attested mutation, whether the witnesses or the individual whose right is acquired personally goes to the Patwari. What is crucial is the actual attestation of the mutation, a process that the Revenue Officer must undertake under section 42(7) of the 1967 Act. This attestation occurs in the presence of the individual whose right has been acquired, identified by at least two respectable persons, preferably chosen from the Lamberdar or members of the Union Council, etc.

24. In *Rehmatullah and others v. Saleh Khan and others* (2007 SCMR 729) the Supreme Court reiterated that mutation must be recorded in the presence of parties with their consent or upon notice to them.

25. The principle of law that emerges from the above precedents is that mutation does not confer any title. It primarily serves the purpose of updating records for fiscal purposes. Despite its limited role, mutation plays a crucial role in preventing fraud by protecting the owner's proprietary rights and securing the rights of the vendee/transferee once attested. Section 42(7) of the 1967 Act imposes mandatory requirements for the attestation of mutations. The failure of the revenue staff to comply with the provisions of section 42 does not invalidate the transactions covered by mutations. If a dispute arises, the parties involved must substantiate transactions according to the law of evidence.

26. In the present case, the Respondent allegedly visited the Patwari on 04.02.1987 and, in the presence of two witnesses, Muhammad

Suleman and Lal Muhammad, had Rapt No.163 (Exh.D-13) recorded in *Roznamcha Waqiat* regarding the sale of the Suit Property to the Petitioner. On the same day, the Patwari recorded Mutation No.141. According to the Petitioner, on 08.02.1987, it was presented before the Revenue Officer in a communal gathering in the presence of Muhammad Suleman and Lal Muhammad aforesaid, who affixed their signature/thumb impression on the *Tatima* Field Book. However, the matter was adjourned for the deposit of government dues and finally, on 11.03.1987, the mutation was approved. There is no record of the Respondent's presence before the Revenue Officer on 08.02.1987 and 11.03.1987. Thus, the procedural requirements outlined in section 42(7) of the 1967 Act were not complied with.

27. Mr. Aurangzeb vehemently contended that the entry in Rapt No. 163 (Exh. D-13) in *Roznamcha Waqiat* adequately fulfilled the requirements of section 42 of the 1967 Act. Regrettably, it does not. The Supreme Court considered this issue in **Muhammad Akram and another v. Altaf Ahmad** (PLD 2003 SC 688) and held:

“Learned trial court has categorically determined with reference to every detail provided in section 42 of the Land Revenue Act that the two mutations of exchange in Villages Bhaini (District Multan) and Karor (District Layyah) were attested in utter violation of provisions of section 42 of the Land Revenue Act ... Entry in Roznamcha Waqiat alone is not the only requirement of section 42 of the Land Revenue Act. Numerous other steps were also to be necessarily taken ...”

28. In **Bashir Ahmad Khan and others v. Ghulam Sadar-ud-Din and others** (2012 CLC 699), the High Court analyzed the consequences of an entry made in violation of section 42 of the 1967 Act, determining it to be void and nullity in the eyes of the law.

29. When a mutation is challenged, the party relying on it must prove the original transaction and establish its legitimacy. In **Muhammad Akram and another v. Altaf Ahmad** (PLD 2003 SC 688), the Supreme Court stated that “this oft-repeated principle of law is quite logical because a mutation is merely an evidence of some original transaction between the parties that had been struck somewhere prior to entry of a mutation.”

30. In **Phul Peer Shah v. Hafeez Fatima** (2016 SCMR 1225), the Supreme Court reaffirmed that mutation alone cannot prove the transaction. It must be independently substantiated through cogent, reliable, and

convincing evidence. Specifically, in cases involving an elderly, illiterate, and *pardanashin* lady, the onus of proving its legitimacy lies on the party asserting it. This burden can only be discharged if, *inter alia*, the following are established:

- “(i) That the lady was fully cognizant and was aware of the nature of the transaction and its probable consequences;
- (ii) That she was having independent advice from a reliable source/person of trust to fully understand the nature of the transaction;
- (iii) That witnesses to the transaction are such, who are close relatives or fully acquainted with the lady and were having no conflict of interest with her;
- (iv) That the sale consideration was duly paid and received by the lady in the same manner; and
- (v) That the very nature of transaction is explained to her in the language she understands fully and she was apprised of the contents of the deed/receipt, as the case may be.”<sup>5</sup>

31. Similarly, in *Abdul Aziz v. Mst. Zaib-un-Nissa and others* (PLD 2022 SC 504), the Supreme Court ruled that determining whether a lady is *pardanashin* or illiterate is fundamentally a question of fact. The burden of proof rests upon the person asserting any right under any deed or document signed or affixed with a thumb impression by a *pardanashin* or illiterate lady, voluntarily and consciously. The court must be meticulous in such matters. It should be satisfied with clear evidence that the said document was executed by her or by a duly constituted attorney appointed by her with a complete understanding and intelligence regarding the nature of the document. The Supreme Court underscored that *pardanashin* ladies have historically been granted protection, rooted in social conditions that have kept them virtually isolated from the broader world, leading to an imperfect understanding of it. The underlying rationale of this rule is to shield these women from potential deception, duress, and misrepresentation. The Supreme Court also cited with approval the following excerpt from an Indian case reported as *Mst. Kharbuja Kuer v. Jang-Bahadur Rai and others* (AIR 1963 SC 1203):

“The rule evolved for the protection of *pardanashin* ladies shall not be confused with other doctrines, such as fraud, duress and actual undue influence, which apply to all persons whether they be *pardanashin* ladies or not.”

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<sup>5</sup>The above view was reaffirmed in *Abdul Aziz v. Mst. Zaib-un-Nissa and others* (PLD 2022 SC 504). Also see: *Sultan Ahmad (deceased) through L.Rs. v. Muhammad Yousuf* (2011 SCMR 621), *Rehmatullah and others v. Saleh Khan and others* (2007 SCMR 729), *Fazal Ellahi (deceased) through his legal heirs v. Mst. Zainab Bi* (2019 SCMR 1930), and *Ghulam Muhammad v. Zohran Bibi and others* (2021 SCMR 19).

32. In the present case, the Respondent is an illiterate *pardahnashin* lady. The Petitioner has failed to establish that the parameters outlined by the Supreme Court in *Phul Peer Shah*, supra, were met. Specifically, there is a lack of evidence proving that the Respondent willingly entered into the alleged sale transaction with him, obtained independent advice from a reliable person and that the sale consideration was duly paid to her and she received it.

33. Notably, the Petitioner claims that he purchased the Suit Property from the Respondent for Rs.12,000/- but has not stated when and where the deal was finalized. He did not give these details in his written statement or during his testimony before the trial court as DW-2. In ***Muhammad Nawaz and others v. Sakina Bibi and others*** (2020 SCMR 1021), the Supreme Court held:

“We note that the defendants in the suit neither mentioned the date, time, place or names of the witnesses in whose presence the oral gift was made in their written statement nor in the evidence produced by them before the trial Court. Even otherwise, they could not have improved up on their case set up in the written statement in their evidence on the principle of ‘*secundum allegata et probata*’, meaning, a fact must be alleged by a party before it is allowed to be proved.

34. The Petitioner relies on Rapt No.163 (Exh. D-13) to establish the transaction with the Respondent. According to the Rapt, the Respondent purportedly made an oral statement before the Patwari in the presence of two witnesses, Lal Muhammad and Suleman, her cousins, that she had sold the Suit Property to the Petitioner, received the sale consideration of Rs.12,000/- and delivered him the possession. The Rapt records that the witnesses confirmed these facts and identified the Respondent.

35. *Roznamcha Waqiat* does not form a part of the record of rights. Consequently, in ***Sattar Muhammad and others v. Hussain and others*** (PLD 1988 Peshawar 48), the High Court emphasized that no presumption of correctness attaches to the entry made in it. “Such an entry is, therefore, to be proved, especially when the same is to be used against the subsequent purchaser, in the same manner as any other fact is proved.” The Supreme Court approved this view in ***Zulfiqar and others v. Shahdat Khan*** (PLD 2007 SC 582).

36. The Petitioner has failed to prove even the authenticity of Rapt Exh. D-13. During the trial, he did not produce Lal Muhammad and Suleman in court or seek permission to present secondary evidence if they were unavailable. Instead, he only presented Rana Mushtaq Ahmad Patwari (DW-1), who stated that he recorded Rapt No.163 on 04.02.1987. However, during cross-examination, he admitted that he was giving testimony without the original records before him. He deposed that he was testifying on the basis of an attested copy of the mutation supplied by the Petitioner's counsel. Additionally, the said copy was not issued or certified by him but by the Patwari then in office. He confirmed that neither the Petitioner paid money to Respondent nor the latter received it in his presence. In *Rehmatullah and others v. Saleh Khan and others* (2007 SCMR 729), the petitioners failed to substantiate that they had paid the sale price to the original owner. Consequently, the Supreme Court held that no valid sale had taken place in the eyes of the law.

37. The Petitioner claims that the Respondent affixed her thumb impression on Rapt No.163 Exh. D-13 in token of its correctness. Mr. Aurangzeb has highlighted out that while appearing as PW-5, the Respondent stated during her cross-examination that it could be possible that her thumb impression was affixed when she was sleeping in the house. I have thoroughly considered this matter. The Respondent's aforesaid statement does not constitute an admission on her part that she thumb-marked Rapt No.163.

38. Having reappraised the evidence, I have reached an ineluctable conclusion that the Additional District Judge has rightly decreed the Respondent's suit. This petition has no merit and is, therefore, **dismissed** with costs.

**(Tariq Saleem Sheikh)**  
**Judge**

Announced in open court on \_\_\_\_\_

Judge

*Naeem*

Approved for reporting

Judge