

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Mushir Alam

Mr. Justice Qazi Muhammad Amin Ahmed

**Civil Appeal Nos 1520, 1521 & 1522 of 2016**

(Against judgment dated 20.10.2015 passed by Lahore High Court Lahore passed in C. R. No.2704 of 2004 and connected C.Rs.)

***Shabla & others***

*(in C.A. No.1520 of 2016)*

***Roshan Khan & others***

*(in C.A. No.1521 of 2016)*

***Muhammad Sher & others***

*(in C.A. No.1522 of 2016)*

...Appellant(s)

**Versus**

***Mst. Jahan Afroz Khilat & others***

*(in C.A. No.1520 to 1522 of 2016)*

...Respondent(s)

For the Appellant(s):

Malik Ejaz Hussain Gorchha, ASC

*(in C.A. No.1520 & 1521 of 2016)*

Malik Ghulam Mustafa Kandwal, ASC

*(in C.A. No.1522 of 2016)*

Syed Rifaqat Hussain Shah, AOR

For Respondent No.1:

Maulvi Anwar-ul-Haq, ASC

Ch. Ali Muhammad, ASC

Mr. M. Ozair Chughtai, AOR

Date of hearing:

13.11.2019

**JUDGMENT**

**Qazi Muhammad Amin Ahmed, J.** Ms. Jahan Afroz Khilat, respondent, inherited from her father's estate, as a minor, land measuring 2722-Kanal 12 Marla; after her marriage, she settled in the United States, where she continued to receive her share of produce; she returned in the year 1989 to learn that her entire share stood mutated in favour of his nephew Meesam Mehdi Raza Khan, way back on 10.8.1968, through the good offices of his father Ameer Ali Raza Hayat Khan, her real brother. It is in evidence that the transferee was aged about 1 ½ year at the time of mutation. Through various transactions, the land passed on different hands, each arrayed as defendant in the suit, dismissed by the learned trial Judge vide judgment and decree dated 24.11.2011. The Appellate Court reversed the findings vide judgment and decree dated

14.09.2004, upheld by a learned Judge-in-Chamber of Lahore High Court vide consolidated judgment dated 20.10.2015, *vires* whereof are being assailed through the captioned appeals by leave of the Court; bound by a common thread, these are being decided through this single judgment.

2. Learned counsel for the appellants, in a unison, contend that the appellants are bonafide purchasers with consideration and, thus, the learned trial Court had rightly dismissed the suit and there was no occasion for the learned Appellate Court as well the learned Judge-in-Chamber to take a contra view; that the suit was not maintainable, as according to them, admittedly the plaintiff/respondent was not in possession of the suit land, otherwise doomed for being hopelessly barred by time. The bottom line is that the land was consciously alienated by the family, respondent's being on board in each transaction. Reference to the entire estate by the High Court is lastly pressed into service to argue that the findings returned by the High Court, transcend far beyond the original decree and, thus, intervention by this Court would be most called for. Learned counsel for the respondents has defended the impugned judgment on the ground that the impugned transaction was nothing but a farce inasmuch as the respondent was minor at the time when impugned mutation was purportedly transacted; he has relied upon the doctrine of *caveat emptor* to argue that the appellants could not defend their title in the face of a transaction, void *ab initio*. Period of limitation could not stand in impediment to respondents' claim, concluded the learned counsel.

3. Heard. Record perused.

4. Competing claims, notwithstanding, respondent's title in her father's estate to the extent of 2722-Kanal 12-Marla, as a minor daughter is a common ground; being a female, in a Muslim household, it was her due, conferred by Divine Law, recognized by the law of the land; it is so ordained in *Sura Al-Nisa*(4/10), reproduced below

<p>اللہ تمہیں تمہاری اولاد (کی وراثت) کے بارے میں حکم دیتا ہے کہ لڑکے کے لیے دو لڑکیوں کے برابر حصہ ہے، پھر اگر صرف لڑکیاں ہی ہوں (دو یا) دوسے زائد تو ان کے لیے اس ترکہ کا دو تہائی حصہ ہے، اور اگر وہ اکیلی ہو تو اس کے لیے آدھا ہے</p>	<p>اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثِيَيْنِ ۚ فَإِنْ كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ذُلُّنَا مَا تَرَكَ أَبَوَانِ ۖ كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ ۚ</p>
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Given the preponderance of conferment, such a right, rooted into Personal Law, has to be jealously guarded, therefore, a heavy onus is cast upon the claimant to demonstrate that a female legatee had parted with her entitlement by choice and for considerations, consciously, without duress or uncalled for persuasions, by those placed qua her in advantageous positions. It is not merely an invasion into proprietary rights of a woman but a criminal offence punishable under section 498-A of the Pakistan Penal Code, 1860 (Act XLV of 1860) as well. In the present case, any one with ordinary prudence, would fail to find any rational, prompting a minor girl hardly of 13 years of age to alienate a considerable chunk of land in favour of her minor nephew aged less than two years; she was otherwise incompetent under the law to mutate the land; it sans solemnity as well. A momentary glance of the entry, exposes the deceit inherent in the mutation, reproduced for convenience of reference

’امیر علی رضاحیات خان نے بیان کیا ہے کہ میری ہمشیرہ نے اپنی سالم اراضی اپنے  
بھتیجے کے نام بیع منتقل کر رکھی ہے۔۔۔ اواقعہ درج رجسٹر کر کے پیش بخسور ہے‘

It is recorded in flagrant violation of procedure, provided under section 42 of the West Pakistan Land Revenue Act, 1967 (XVII of 1967). There is none except Ameer Ali Raza Hayat Khan to command transfer of land in favour of his own son to his benefit and to the detriment of the respondent, no other than his real minor sister; flux of time can neither validate the transaction nor wash away the repugnance thereof. Argument that much water has flown under the bridge is entirely beside the mark. Limitation never run against fraud, more so in the matters involving inheritance rights of a female; a view consistently taken by this Court in cases reported as Fazal Ellahi deceased through legal heirs Vs. Mst. Zainab Bi (2019 SCMR 1930), Khan Muhammad through LRs & others Vs. Mst. Khatoon Bibi & others (2017 SCMR 1476), Mahmood Khan Vs. Syed Khalid Hussain Shah (2015 SCMR 869), Mst. Gohar Khanum Vs. Mst. Jamila Jan (2014 SCMR 801), Rehmat Ullah & others Vs. Saleh Khan & others (2007 SCMR 729), Arshad Khan Vs. Resham Jan and others (2005 SCMR 1859) and Ghulam Ali & 2 other Vs. Mst. Ghulam Sarwar Naqvi (PLD 1990 SC 1).

Reference to period of limitation is otherwise misplaced; it is respondent's case, in line with the pleadings and re-affirmed in the

witness-box, that she kept on receiving her share of produce while being in the United States wherefrom she returned in the year 1989 and learnt about the impugned mutation as late as in the year 1991 soon whereafter she instituted the suit.

Similarly argument that the appellants being innocent buyers with considerations should not suffer from the consequences of a wrong done upon the respondent by her own kith and kin, though evokes sympathy, nonetheless, does not hold water in law. Doctrine of '*caveat emptor*' is a well entrenched principle in our jurisprudence; it requires the buyer to be vigilant and careful as he cannot acquire a better title; as observed above, a glance over the mutation would have inescapably exposed the flaw patent therein, putting the potential buyers at caution.

Non-maintainability of the suit on the plea of respondent's being out of possession is an argument that too carries no weight; respondent being a co-sharer in the estate is deemed to be in possession in each inch thereof till the land is partitioned according to the respective shares.

Typographical error in description of land in terms of its volume in the High Court's judgment does not carry vitiation impact inasmuch as the suit land is clearly described in the head note of the plaint as measuring 2722 Kanal 12-Marla and the suit was decreed in accordance therewith; effects of the error do not impinge beyond the suit land. View taken by the High Court being well within the remit of law calls for no interference. Appeals fail. Dismissed.

Judge

Judge

Islamabad  
13.11.2019  
Approved for reporting.  
Azmat/-