

Judgment Sheet

**IN THE PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT**

Civil Revision No. 59-P/2018

JUDGMENT

Date of hearing.....**09.10.2025**.....

Petitioners (Aziz Khan through his legal heirs & 06 others) By Mr. Khalid Mehmood, Advocate.

Respondents. (Mst. Shamim Akhtar & 72 others) By Mr. Muhammad Rustam Khan, Advocate.

MUHAMMAD FAHEEM WALI, J.- This revision petition is directed against the judgment and decree dated 23.10.2017 passed by learned Additional District Judge-VIII, Peshawar, whereby the respondents' appeal against the judgment and decree dated 19.03.2016 passed by learned Civil Judge-XXII, Peshawar, has been allowed.

2. Brief facts of the case are that the petitioners/plaintiffs instituted a suit against the respondents/defendants for declaration, permanent injunction and possession, as detailed in the heading of the plaint. Upon issuance of summons, the predecessor-in-interest of respondent No.1/defendant, namely Mst. Shamim Akhtar, appeared and contested the suit by filing her written statement, whereas the remaining defendants were proceeded against ex-parte after

completion of the requisite formalities. Out of the divergent pleadings of the parties, ten (10) issues, including that of relief, were framed, and the parties were directed to adduce their respective evidence. The learned trial court, after recording evidence from both sides and hearing the arguments of learned counsel, decreed the suit in favour of the petitioners/plaintiffs vide judgment and decree dated 19.03.2016. Feeling aggrieved, respondent No.1/defendant preferred an appeal before the learned District Judge, Peshawar, which was entrusted to the court of learned Additional District Judge-VIII, Peshawar. The learned appellate court, after reappraising the evidence and hearing learned counsel for the parties, accepted the appeal, set aside the judgment and decree of the learned trial court vide impugned judgment and decree dated 23.10.2017 and consequently the suit was dismissed, hence, the instant civil revision has been filed by the petitioners/plaintiffs.

3. I have heard arguments of learned counsel for the parties and gone through the record with their able assistance.

4. The main thrust of arguments advanced by learned counsel for the petitioners/plaintiffs is that the learned appellate court committed a legal

error in holding that the suit was not specific with regard to their claim and that the relief sought was uncertain, despite the fact that the sale deeds (Qibalajaat), thirty-two (32) in number, had been duly exhibited without any objection from the respondent/defendant. He further contends that the learned appellate court also fell in error while applying the principle of *res judicata*, which, in no manner of law, was attracted to the present case, as the instant suit pertained to correction of an erroneous entry in the revenue record and ownership based on valid sale deeds, whereas the previous litigation related to a distinct property measuring only 08 Marlas, instituted on different grounds, having no nexus with the present dispute. It is further argued that the issue of *res judicata* stood finally settled by both the courts below in earlier proceedings and could not be reopened, hence, learned counsel urges reversal of the impugned judgment and decree passed by the learned appellate court.

5. To the contrary, learned counsel for the respondent/defendant, while opposing the arguments advanced by learned counsel for the petitioners/plaintiffs, contended that the sale deeds dated 02.08.1956 and 29.09.1961 were

unregistered, and even the mutation No. 2716, relied upon by the petitioners / plaintiffs, was not an official mutation as it was never incorporated into the revenue record. Regarding the plea of *res judicata*, learned counsel argued that although the learned trial court had specifically discussed this aspect while decreeing the suit in favour of the petitioners/plaintiffs, but the learned appellate court did not dwell upon that question and instead decided the appeal purely on merits after reappraising the evidence adduced at trial. He, therefore, prayed for dismissal of the instant civil revision, being devoid of merit.

6. Perusal of the record reveals that the petitioners/plaintiffs asserted that their predecessor-in-interest namely, Abdul Ghafoor, who was also the predecessor of defendants No.34 to 75, had purchased the suit property (*as detailed in the heading of the plaint*) through deeds dated 02.08.1956 and 29.09.1961 as well as mutation No.2716. It was further claimed that defendants No.1 to 33 had no concern or connection with the said property. The petitioners/plaintiffs also sought a decree for permanent injunction restraining defendants No.1 to 33 from interfering with the suit property or denying their ownership

and possession. Both parties produced their respective evidence, and after recording the same and hearing learned counsel for the parties, the learned trial court decreed the suit in favour of the petitioners/plaintiffs, which findings were reversed by the learned appellate court vide accepting the appeal as stated above.

7. So far as the plea of *res judicata* raised by learned counsel for the petitioners/plaintiffs is concerned, suffice it to observe that the learned trial court, while deciding the relevant issue, held that one Faqir Hussain and others had previously instituted a suit bearing No.125/1 against the present respondent/defendant, Mst. Shamim Akhtar, wherein they had challenged the registered sale deed No.1466 dated 25.04.1987 and mutation No.9422 sanctioned in her favour. In the said suit, the present petitioners/plaintiffs had also asserted their ownership over the suit property on the basis of an unregistered deed dated 02.08.1956 and mutation No.2716. The record further reveals that although in their written statement the petitioners/plaintiffs had taken a specific plea claiming ownership of the property on the basis of those unregistered documents, yet no specific issue was framed on that score nor did the court

render any finding thereon, which clearly indicates that the matter now brought before this court was never directly and substantially adjudicated upon in the earlier proceedings. It is by now a well-settled principle that *res judicata* under Section 11 of the Code of Civil Procedure, 1908 is attracted only when the matter directly and substantially in issue has been heard and finally decided by a court of competent jurisdiction between the same parties and on the same cause of action. Mere similarity of issues or the fact that certain pleas were raised earlier, does not suffice to invoke the bar of *res judicata* unless those pleas were specifically put in issue and adjudicated upon on merits. In the present case, since the earlier court neither framed an issue nor recorded any finding with respect to the ownership claimed on the basis of the unregistered deed and mutation, the controversy cannot be deemed to have been decided previously. Consequently, the bar of *res judicata* or constructive *res judicata* does not operate in the circumstances of the case. Besides, as is evident from the contents of the instant revision petition, not only application of the respondent / defendant for rejection of plaint on the ground of *res judicata* was dismissed on 09.09.2014 but even his

application for framing of preliminary issue in respect of *res judicata* under Order II Rule 2 CPC was also dismissed vide order dated 18.10.2014 and attained finality, being not further challenged.

8. With regard to the claim of the petitioners/plaintiffs founded upon the unregistered deeds dated 02.08.1956 and 29.09.1961 as well as mutation No.2716, which admittedly was never incorporated into the revenue record, it is observed that the petitioners/plaintiffs based their ownership claim on these documents, contending that both deeds were more than thirty (30) years old and, therefore, a presumption of truth was attached to them under Article 100 of the Qanun-e-Shahadat Order, 1984. However, this contention is legally misconceived. It is a well-settled principle of law that ownership or transfer of immovable property exceeding the value of one hundred rupees can only be effected through a registered instrument in accordance with Section 54 of the Transfer of Property Act, 1882, read with Section 17 of the Registration Act, 1908. An unregistered document purporting to convey title in such property does not confer any proprietary rights nor does it create, transfer, or extinguish any legal interest in the

property. Furthermore, even if reliance is placed on entry in mutation, it is equally well settled that a mutation, by its nature, does not create or extinguish ownership rights but merely reflects a fiscal adjustment for revenue purposes. A mutation which has not been sanctioned or incorporated in the record of rights carries no evidentiary value and cannot be used as proof of title. The evidentiary presumption contemplated under Article 100 of the Qanun-e-Shahadat Order applies only to documents which are otherwise admissible and valid under substantive law; it cannot cure the inherent legal defect of non-registration. In the present case, both the relied-upon deeds being unregistered and the alleged mutation No.2716 not forming part of the verified revenue record, the petitioners/plaintiffs have failed to establish any valid, legal or enforceable title in respect of the suit property. Mere possession of unregistered documents or an unsanctioned mutation does not vest ownership nor can such defective evidence displace the presumption of correctness attached to the existing revenue entries in favour of the respondent/defendant, unless the same has been proven otherwise by producing cogent,

trustworthy, reliable and admissible evidence, which in the present case is seriously lacking and the petitioners / plaintiffs have miserably failed to prove the aforesaid documents, relied upon in support of their case, through confidence inspiring evidence. In absence thereof, there is no occasion to dislodge the lawful entries duly incorporated in favour of the respondent / defendant on the basis of such unsubstantiated documents, thus, the learned appellate court rightly concluded that the petitioners/plaintiffs could not substantiate their claim of ownership or entitlement to the relief sought. Reliance in this respect may here be placed on the judgment delivered by Hon'ble Supreme Court of Pakistan in the case titled "*Hakim Khan Vs. Nazeer Ahmad Lughmani & 10 others*" reported as **1992 SCMR 1832** where it was held that mutation by itself does not create title and the person deriving title thereunder has to prove that the transferor did part with the ownership of the property, the subject of mutation, in favour of the transferee and that the mutation was duly entered and attested.

In another judgment delivered by Hon'ble Supreme Court of Pakistan in the case of "*Muhammad Iqbal & another Vs. Mukhtar Ahmad*

through legal heirs” reported as 2008 SCMR 855

it was held that although mutation proceedings are not judicial proceedings and do not at all happen to confer title, however, whenever genuineness of any mutation is challenged, the burden squarely lies on the parties relying upon the mutation, to prove the actual transaction.

Further reliance in this respect may also be placed on the judgment delivered in the case of “*Mst. Suban Vs. Allah Ditta & others*” reported as **2007 SCMR 635.**

9. In view of the foregoing discussion, it stands established that the petitioners/plaintiffs have failed to substantiate their claim of ownership over the suit property through any legally admissible or registered document. The unregistered deeds relied upon by them neither create nor confer any title in their favour, while the mutation in question, not being duly incorporated in the revenue record, holds no evidentiary worth. Consequently, the findings of the learned appellate court appear to be well-reasoned, based on proper appraisal of evidence, and in accordance with the settled principles of law. No illegality, irregularity, or jurisdictional defect has been pointed out warranting

interference by this court in its revisional jurisdiction. Resultantly, this civil revision, being devoid of merit, is hereby dismissed.

Announced:

JUDGE

/Saif. SCS*/