

JUDGMENT SHEET

*IN THE PESHAWAR HIGH COURT
ABBOTTABAD BENCH
(Judicial Department)*

C. R No. 16-A/2014

Muhammad Suleman etc.(Petitioners)
Versus

Mst. Tasneem Akhtar (widow) & others(Respondents)

Present: Syed Asif Shah, Advocate, for the petitioners.

Mr. Muhammad Shafique Awan & Mr. Asad Tanveer Qureshi, Advocate, for respondents.

Date of hearing: 18.11.2025

JUDGMENT

SYED MUDASSER AMEER, J.- Through the instant civil revision, the petitioners seek the following relief:

“On acceptance of revision petition, the judgment and decree of both the courts below may graciously be set-aside and the suit of the respondents/plaintiffs may be dismissed with cast throughout.”

2. The facts may be stated shortly. Nisar Ahmed, predecessor of respondents Nos. 1 to 5, and Waqar Ahmed, sons of Noor Elahi, filed Suit No. 142/1 of 1998 against Muhammad Zaman,

predecessor of the petitioners. They sought a declaration. A year later, Saleem Akhtar Farooq and others filed Suit No. 143/1 of 1999, also seeking a declaration. Each plaint carries its own detail in the headnote. The learned trial court summoned the defendants. Petitioners Nos. 1 and 2, along with their father Muhammad Zaman, filed written statements. They denied the claims and raised several legal and factual objections.

3. Both suits were consolidated on 22.04.2004. Proceedings continued under Suit No. 142/1 titled “Mst. Tasneem Akhtar etc. v. Muhammad Zaman etc.” Sixteen issues were framed. Evidence was recorded on both sides. Arguments followed. Through judgment dated 09.07.2009, the learned trial court dismissed Suit No. 143/1, and partly decreed Suit No. 142/1 to the extent of 81½ marlas purchased through Mutation No. 1952.

4. Both parties went up in appeal. The learned appellate court, through judgment dated 10.03.2011, accepted both the appeal and the cross-objection, and remanded the matters for further evidence. The trial court then recorded additional evidence. Arguments were heard afresh. On

18.05.2011, both suits were decreed as prayed for.

Civil Appeal No. 49/13 of 2011 was filed by the present petitioners. The learned appellate court dismissed the appeal on 29.06.2013 and maintained the decrees of the trial court. The petitioners have now invoked the revisional jurisdiction of this Court.

5. The revenue record must be examined with care, for in these cases the truth often lies there. The Fard Jamabandi for 1948-49 (Ex. PW-1/1) records Fazal Ahmed and Noor Ahmed, sons of Imam Din, as owners of Khasra Nos. 469 and 477. Mst. Janay and others were occupancy tenants only in Khasra No. 477. No dispute concerns that Khasra. They paid compensation. Mutation No. 826 dated 18.02.1956 was attested in their favour.

6. In the Jamabandi of 1958-59, however, a mistake crept in. They were wrongly recorded as owners of Khasra No. 469. The names of Fazal Ahmed and Noor Ahmed vanished from the record without lawful reason. That wrong entry became the foundation. Its shadow fell on every subsequent Jamabandi, including the settlement of 1981-82. The Khasra was re-numbered as 799 and 800.

7. The principle of law on this point is clear and settled. In *Misri v. Muhammad Sharif (1997 SCMR 338)*, the Supreme Court held that once an entry is proved illegal, the previous lawful entry stands restored. An illegal entry has no life of its own. It cannot displace a valid one. In *Muhammad Munir v. Muhammad Saleem (2004 SCMR 1530)*, it was further held that mutations are fiscal in nature and do not confer title. A mutation built on a wrong entry cannot defeat ownership.

8. It follows that Mutation No. 3178, attested in 1970, could not transfer ownership of Khasra No. 469 to Muhammad Zaman because the executant held no title. If the basic structure is illegal, the super structure raised upon it is also illegal. The principle was stated with clarity in *Muhammad Ayub v. Barakat Ali Shah (2011 CLC 349)*. Thus, all subsequent mutations, including Mutation No. 36 dated 31.08.1982, Mutation No. 3941 dated 17.02.1997, and Mutations Nos. 2962, 2963, and 2970 dated 06.03.1998, must fall to the extent of Khasra No. 469. They rested on a defective foundation.

9. On the question of possession, the revenue record speaks with one voice. The 1948-49 Jamabandi shows possession with the predecessors of respondents Nos. 7 to 44 through Haider son of Daulat Baig. This continued until 1981-82. The 1997-98 Jamabandi and the Khasra Girdawari (Ex. PW-1/4) show respondent No. 6, Waqar Ahmed, in possession. That finding stands supported by the evidence.

10. Learned counsel for the petitioners argued that the agreement dated 16.02.1999 was an agreement to sell, not a sale agreement, and therefore no declaratory relief could be sought. The contention does not withstand examination. The document has been admitted by its executants. Its contents show that it was a completed sale agreement. Both courts below rightly held so. No legal flaw has been shown in that finding.

11. This brings us to limitation. The law on this subject has been refined through a consistent line of authorities. In *Shad Muhammad Khan v. Government of NWFP* (PLD 2011 Pesh. 172), it was held that ‘period of limitation would stand arrested in case of a person in possession of land

and preparation of each and every Jamabandi reflecting an adverse entry would confer upon him a fresh cause of action'. The Supreme Court in *Khan Muhammad v. Mst. Khatoon Bibi (2017 SCMR 1476)* settled the rule in simple terms. Every fresh wrong entry creates a fresh cause of action for a person in possession. Possession may be actual or symbolic. The law was then stated with absolute clarity in *Haji Muhammad Yunis v. Mst. Farukh Sultan (2022 SCMR 1282)*, as follows:

"Every new adverse entry in the revenue record, being a mere "apprehended or threatened denial" relating to proprietary rights of a person in possession (actual or constructive) of the land regarding which the wrong entry is made, gives to such person a fresh cause of action to institute the suit for declaration. The situation is different in a case, where the beneficiary of an entry in the revenue record actually takes over physical possession of the land on the basis of sale or gift mutation. In such a case, the alleged wrong entry in the revenue record coupled with the very act of taking over possession of the land by the alleged buyer or donee, in pursuance of the purported sale or gift, is an "actual denial of the proprietary rights" of the alleged seller or donor and thus, the time period to challenge the said disputed transaction of sale or gift by the aggrieved seller or donor would commence from the date of such actual denial. Therefore, in such a case, if the purported seller or donor does not challenge that action of "actual denial of his right" within the prescribed limitation

period, despite having knowledge thereof, his right to do so becomes barred by the law of limitation, and the repetition of the alleged wrong entry in the subsequent revenue record (Jamabandi) does not give rise to a fresh cause of action.”

12. The same view was followed by this Court in *Ghulam Rabbani v. Abdul Aziz* (2023 YLR 2422), where a suit filed within six years of the latest Jamabandi was held within time. Then also stated in *Allah Bakhah v. Muhammad Hanif* (2025 CLC 572), where it was held that every fresh wrong entry rekindles the right to sue.

13. In the present case, the respondents remained in possession. There was no dispossession. Each Jamabandi therefore revived their right to sue. Both courts below were correct in holding that the suits were within time.

14. Two courts below have concurrently held against the petitioners. Their findings rest on proper appreciation of the record and the law. No illegality, material irregularity, or jurisdictional defect has been demonstrated. Revisional jurisdiction does not permit this Court to reappraise evidence. The Supreme Court has repeatedly reaffirmed this in *Nasir Ali v. Muhammad Asghar*

(2022 SCMR 1054), *Salamat Ali v. Muhammad Din* (PLD 2022 SC 353), *Muhammad Sarwar v. Hashmal Khan* (PLD 2022 SC 13), *Mst. Zarsheda v. Nobat Khan* (PLD 2022 SC 21), *Shahbaz Gul v. Muhammad Younas Khan* (2020 SCMR 867), and *Khudadad v. Syed Ghazanfar Ali Shah* (2022 SCMR 933).

15. In view of the above, this civil revision petition is devoid of merit and is dismissed

Announced

18.11.2025

(Muhammad Tariq)

JUDGE