

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
(Judicial Department)
Rev No. 110-P/2024 in C.R No. 806-P/2018
(Mumtaz Ahmad Vs. Sahib ur Rehman)

Date of hearing:	<u>10.10.2025.</u>
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For Applicant	<u>Mr. Fazal-e-Haq Kohidamani, Advocate.</u>
For Respondent	<u>Mr. Hussain-ud-din Khattak, Advocate.</u>

JUDGMENT

MUHAMMAD NAEEM ANWAR, J.- The facts giving rise to the present review application are that initially, *Sahib-ur-Rehman*, son of *Alam Khan*, instituted a suit seeking a declaration to the effect that he and *Zakaria Khan* were real brothers. It was his case that *Zakaria Khan* had alienated property from Khasra Nos. 1330 and 1340, measuring 39 Kanal and 2 Marlas out of a total of 206 Kanal situated in the revenue estate of Muslim Abad, through Mutation No. 110 attested in the year 1906. However, *Alam Khan*, the predecessor-in-interest of *Sahib-ur-Rehman*, had never alienated any portion of the said property through that mutation. Consequently, any entries in the revenue record, whether in the ownership or cultivation columns, were inconsistent and repugnant to his rights. The suit was contested, evidence was recorded, and ultimately it was decreed by the learned Civil Judge-IX, Kohat, vide judgment and decree dated 02.11.2013, against defendant No.1. The said judgment and decree were challenged by defendant No.1 through a civil appeal, which was dismissed by the learned Additional District Judge-II, Kohat, on 26.05.2014 after full hearing.

2. Thereafter, *Mumtaz Ahmad (son)* and *Shahida Bibi (widow of Nasrullah)*, being legal heirs of *Khilwat Shah*, feeling aggrieved by the judgment of the learned Additional District Judge-II, Kohat, dated 26.05.2014, filed an application under Section 12(2), C.P.C., seeking to set aside the judgments and decrees of both the courts below on the grounds of fraud and misrepresentation of facts. The said application was resisted by *Sahib-ur-Rehman* through his written reply, and after hearing the parties, without recording evidence, the learned Additional District Judge-V, Kohat, vide order dated 28.08.2018, dismissed the application on the ground that the applicants had no cause of action and had failed to establish fraud, collusion, or

misrepresentation in the judgments passed by the courts below in Civil Suit No. 211/1.

3. Being aggrieved by the dismissal of their application, *Mumtaz Ahmad* and *Shahida Bibi* filed *Civil Revision No. 806-P of 2018* before this Court, wherein after hearing *Mr. Adnan Khattak, Advocate* for the petitioners, and *Mr. Hussain Uddin Khattak, Advocate* for the respondents (decree-holder/plaintiff), the revision was dismissed vide judgment dated 02.08.2024, observing as under:

“Perusal of the record of Suit No. 211/1 of 2010 decided on 02.11.2013 reflects that respondent No.1 neither sought any relief against the petitioner causing prejudice to his rights nor any grievance was shown against him. He instituted the suit against respondent No.2, Waris Khan, merely on the ground that his predecessor-in-interest was not a signatory to Mutation No. 110 executed in the year 1907-08 and that he had not sold his share to anyone, seeking rectification in the revenue record. I, time and again, asked the learned counsel for the petitioners to show how their rights would be affected by the impugned judgment and decree, which was not passed against them, but he could not answer satisfactorily. So far as the rights and interests of the parties to the lis brought before the court are concerned, suffice it to say that after prolonged litigation, the rights of the parties to Suit No. 211/1 of 2010 were determined by the courts below. The petitioners could not show any valid ground for invoking the provisions of Section 12(2), C.P.C.; hence, in my view, the learned courts below were justified in summarily dismissing the application filed under Section 12(2), C.P.C.”

Hence, the present review application.

4. Mr. Fazal-e-Haq Kohidamani, Advocate for the applicants, contended that the applicants, being the legal heirs of Khilwat Khan, are the owners in possession of the suit property, as reflected from the entries in the revenue record for the year 1935-36. He argued that the decree-holder, Sahib-ur-Rehman, was never recorded as an owner in the ownership column of the revenue record and that, through misrepresentation of facts, he instituted a time-barred suit after more than a hundred years, which could not lawfully be decreed in his favour. Learned counsel further submitted that the brothers of Khilwat Khan were not impleaded as parties in the suit; hence, no effective decree could have been passed in favour of the plaintiff/respondent No.1. He also contended that, on the basis of Mutation No. 110, nine (9) other mutations were attested which were never challenged; therefore, the suit of the plaintiff/respondent No.1 was not maintainable from its

very inception. Lastly, learned counsel submitted that the applicants derive their title from Zakaria Khan, the paternal uncle of the decree-holder/plaintiff (respondent No.1).

5. Heard and record perused.

6. No doubt, the provisions of Section 12(2) of the Code of Civil Procedure were inserted by Act No. X of 1980, with the object of providing relief to an aggrieved person against a judgment, decree, or order, but only on limited grounds. Thus, an aggrieved person may invoke this provision if he feels himself aggrieved by a decree, order, or judgment obtained through ***fraud, misrepresentation of facts, collusion between the parties, or want of jurisdiction***. Admittedly, the applicants have not questioned the jurisdiction of the Civil Court where the original suit was filed; hence, their application rests only on two alleged grounds; ***fraud*** and ***misrepresentation of facts***. Undeniably, the suit was contested by defendant Waris Khan not only before the learned trial court but also in appeal after the decree, and despite the failure of his appeal, his right to contest the claim was fully exercised. It is pertinent to mention that the ***scope of a suit*** and that of an ***application under Section 12(2)*** are not identical. A suit has a broader ambit, whereas such an application has a limited scope and must be confined to fraud or misrepresentation committed *in connection with the proceedings before the court*. In the present case, the applicants claim their title through Zakaria Khan. However, it is of material significance that the plaintiff never sought a declaration regarding the alienation of property by Zakaria Khan. Rather, the plaintiff specifically pleaded that whatever shares or property were alienated vide **Mutation No. 110** were so alienated by Zakaria Khan and not by Alam Khan, the brother of Zakaria Khan and predecessor-in-interest of the plaintiff (respondent No.1). The record reflects from Mutation No. 110 that the transaction was entered only to the extent of the cultivation column, and the vendor was Zakaria Khan, not Alam Khan.

7. One of the grievances raised by the applicants at the time of hearing of the civil revision was that their application required the recording of evidence. However, the legislature has not prescribed any specific mode for the determination of an application under Section 12(2); such an application may be decided with or without framing of issues or recording of evidence, as held by the august Supreme Court in ***Amina Bibi v. Nasrullah*** (2000 SCMR 296). It is evident from the judgment passed in the civil revision that the learned counsel for the applicants had argued that the application was dismissed without recording evidence.

When questioned about the nature of their grievance, he submitted that there were other mutations which had not been challenged, and therefore, no effective decree could be passed without impleading the applicants in the original suit. However, whether the plaintiff (now respondent No.1) was required to challenge other mutations besides Mutation No. 110 is immaterial. The plaintiff had specifically sought a declaration that his father had not alienated any property through Mutation No. 110, a transaction made solely by Zakaria Khan (brother of Alam Khan). After recording of evidence, the suit was rightly decreed. Thus, there was no necessity for the plaintiff to question any other mutation. The challenge to Mutation No. 110 was limited to the extent that, if any transaction purported to alienate property belonging to the predecessor-in-interest of the plaintiff, it would be ineffective against his rights. Conversely, any alienation made by Zakaria Khan, being the exclusive owner, was of no concern to the plaintiff. It is a settled principle of law that **no one can transfer a better title than he himself possesses**, as enunciated in *Itbar Shah and others v. Ahmad Shah and others (2001 CLC 1021), Abdul Hameed through LRs and others v. Shams Uddin and others (PLD 2008 SC 140)*, and *Syed Azhar Hussain Shah v. Member Board of Revenue, Khyber Pakhtunkhwa and others (2016 YLR 1849)*. Since Zakaria Khan, being the owner, transferred his own property, a transaction never challenged by the plaintiff, there was neither collusion between the parties nor any fraud practiced during the judicial proceedings. Accordingly, the application filed by the applicants was **frivolous, unjustified, and unwarranted from its inception**, and did not warrant the framing of issues or recording of evidence, as no right of the applicants was prejudiced or rendered inconsistent with the decree passed in favour of Sahib-ur-Rehman.

8. Adverting to the review application, the literal meaning of “review” is re-examination of something for the sake of correction or improvement. In legal proceedings, the term review implies reconsideration or re-adjudication of an already decided case by the same court. The purpose behind investing a court with review jurisdiction is rectification of errors. The courts tend to stand by the judgments rendered by them, as a general principle, in line with the doctrine of stare decises. However, in interest of justice, courts across the globe can reconsider their earlier decisions. The concept of review is premised upon the fallibility of human beings that is to say that humans can never be immune to committing errors and mistakes. The doctrine of review therefore permits the courts to rectify such mistakes in order to avoid serious miscarriage of justice. The ultimate object of the court is to uphold

justice therefore when injustice and illegality is bound to perpetuate due to a patent error, a court may not hesitate in reviewing its order. When confronted in Court, learned counsel for the applicants candidly stated that if the application were to be dismissed on the basis of the above observations, the applicants would be satisfied. In civil proceedings, the review is admissible for correction of mistakes, accidental slips or any other sufficient ground provided under the Law. Section 114 and 152 of Civil Procedures Code along with the Rules made thereunder govern the review procedures. The procedures adopted for the review are similar to those observed for exercise of original jurisdiction. However, the review is to be invoked in exceptional circumstances only for the reason that the court hearing the review is not supposed to hear the review application as a court of appeal against its own judgement. The Civil Procedure Code, 1908 (CPC), offers a structured procedure for an aggrieved party desiring to seek a review of a decree or order. Initially, the process commences with the submission of an application for review. The very notion of a review embedded in the Civil Procedure Code, 1908, is rooted in principles that prioritize the rectification of glaring errors and uphold the sanctity of justice. The CPC crystallizes the distinction between an appeal and a review, emphasizing that the latter is not an avenue to simply express dissatisfaction with a judgment or to re-litigate. Instead, the review is an exceptional tool, invoked only to correct substantial oversights or palpable errors. A cornerstone of this principle is that the error in question should be manifest and patent. It should not demand exhaustive scrutiny or extensive argumentation. The error should be glaring enough to be discernible without delving deep into elaborate debates. Essentially, any mistake that requires long-drawn discussions to identify isn't a valid ground for review, as the process isn't intended to serve as a re-hearing of the case. The CPC establishes that for a judgment or order to be eligible for review, the error in question must be clear, obvious, and apparent. Such errors should essentially leap out of the page and shouldn't require a thorough digging into intricate debates or long-drawn argumentation to be identified. The fundamental reason behind this principle is that a review shouldn't turn into a second hearing. It's about correction, not re-litigation. Thus, any mistake which demands extensive discussions or reexamination of evidence for identification goes beyond the purview of a review. Learned counsel for applicant could not substantiate his contentions for review of the judgement.

9. It has been held by the august Supreme Court in the case of ***Raja Ali Shan v. Messrs. ESSA's Hotel (2007 SCMR 741)***

that, even in the absence of an objection from the opposing side, it is the duty of the Court to examine the maintainability of the lis and the locus standi of the person before it, without necessarily putting the other side on notice. Similarly, this Court, in **Muhammad Zaman v. Shah Wazir (PLD 2002 Peshawar 451)**, has held that an incompetent lis deserves burial at its inception. In the present case, the application under Section 12(2), as well as the subsequent review petition, were wholly unjustified and frivolous, thereby causing unnecessary burden upon Sahib-ur-Rehman, the decree-holder in Suit No. 211/1. Upon a query from the Court, the decree-holder stated at the bar that he had paid Rs. 60,000/- to his counsel in connection with the present review application. Accordingly, this application is dismissed with costs of **Rs. 60,000/-**, payable by the petitioner to the respondent. The respondent may file an application for recovery of the said costs before the learned trial court, which shall ensure its execution in letter and spirit.

Announced.
Dt:10.10.2025.

JUDGE

Sanaullah (S.B.) Hon'ble Mr. Justice Muhammad Naeem Anwar, J