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Judgment Sheet

IN THE LAHORE HIGH COURT
MULTAN BENCH MULTAN
(JUDICIAL DEPARTMENT)
Civil Revision No. 1047 of 2021

Allah Ditta (deceased) through his L.Rs. etc.

Versus

Mst. Sabran Bibi etc.

JUDGMENT

Date of Hearing	01.10.2025
Petitioners by:	Mr. Qaiser Ameer Khan, Advocate.
Respondents by:	<i>Ex parte</i> vide order dated 13.12.2022.

SYED AHSAN RAZA KAZMI, J. Through this Civil Revision, the petitioners have challenged the judgment dated 03.07.2021 and decree dated 07.09.2021 passed by the learned Addl. District Judge, Multan whereby appeal of the respondents was accepted by setting aside the judgment and decree dated 04.11.2009 passed by the learned Civil Judge Ist Class, Multan and the case was remanded to the learned trial Court with a direction to implead Mst. Sabran Bibi in the suit.

2. Brief facts relevant for the disposal of this civil revision are that Allah Ditta, predecessor-in-interest of the petitioners filed suit for possession against Jan Masih, respondent No.2 by asserting that he and Sharif-u-Hassan are joint owners of land and after partition of the suit property, khasra No.2921/1 property measuring one kanal 18 marlas vide record of rights for the year 1991-92 falls in the share of Sharif-ul-Hassan, while other khasra No. 2921/2 property measuring

one kanal 18 marlas falls in the share of Allah Ditta; that the petitioner filed an application for demarcation of property of khasra No.2921/2; that Revenue Officer alongwith field staff reached at the spot and the proceedings of demarcation were conducted on 28.03.1994 and Roznamcha No. 1389 of demarcation was entered; that Sharif-ul-Hassan was found as encroacher over 05 marlas 11 yard and all the proceedings were in the knowledge of the Jan Masih respondent; that he was asked time and again to vacate the property immediately upon which he flatly refused to do so. The respondent No.2 resisted the suit by filing written statement, and raising certain preliminary as well as factual objections. Issues were framed. The petitioners' side produced oral as well as documentary evidence and respondent No.2 did not produce any evidence, so he was proceeded against ex-parte. After appreciating the same, the learned Trial Court decreed the suit of the petitioners. Being aggrieved, respondent No.1/wife of respondent No.2 filed an appeal before the learned appellate court, which was accepted and the matter was remanded to the learned Trial Court with direction to implead respondent No.1 as defendant in the suit and after inviting written statement from her, proceed with the suit as per law and procedure. Hence this civil revision.

3. The learned counsel for the petitioners advanced multiple arguments, contending that: the appeal preferred by respondent No.1 was palpably time-barred being filed eight years after the decree, without seeking condonation of delay under Section 5 of the Limitation Act, 1908; that the appellate court exceeded its jurisdiction by reviving a decree that had already attained finality; the sale deed related to a distinct Khewat number, rendering it inapplicable to the suit property; and that respondent No.1, being the wife of respondent No.2, was fully aware of all the proceedings and could not credibly claim ignorance of the litigation, thereby rendering her plea suspicious. The counsel urged the Court to set aside the appellate court's judgment and restore the trial court's decree.

4. Arguments heard and record perused.

5. The core issue before this Court is whether the learned Appellate Court exercised its jurisdiction lawfully in admitting and deciding a grossly time-barred appeal and remanding the matter to trial court despite the decree having attained finality after due process.

6. This Court shall address the ground of limitation first, as it is an undisputed fact that the appeal was filed over eight years after passing of the original decree dated 04.11.2009. Article 156 of the First Schedule to the Limitation Act, 1908, prescribes a 30-day limitation period for filing a civil appeal from the date of the decree. Notably, no application under Section 5 of the Limitation Act was filed by respondent No. 1, nor was any sufficient cause shown for condoning the delay. In the absence of such an application or explanation, the appeal was clearly not maintainable. It is a well-settled principle that limitation bars the remedy, not the right itself. Given the gross delay and lack of diligence, the learned Appellate Court's decision to entertain the appeal appears to be jurisdictionally flawed. The Appellate Court's jurisdiction and discretion to condone delay is not unfettered and requires a strict adherence to the statutory provisions. By entertaining the time-barred appeal without a valid application or sufficient cause, the Appellate Court acted in excess of its jurisdiction. The Hon'ble Supreme Court of Pakistan in the case of *Khushi Muhammad through L.Rs. and others vs. Mst. Fazal Bibi and others* (PLD 2016 SC 872) held as under:-

We find ourselves in complete agreement with such statements of law. In the exercise of its discretionary power the court is not empowered to act upon whim and caprice: rather the discretion of the court is circumscribed by the law, recognized norms of justice, fair play, equity, logic, rationality and reasonableness. Where the Court has passed an order in exercise of its discretion by condoning the delay, on the basis of sufficient cause which has been made out, it does not behave a superior court to interfere in the matter, however the unbridled, arbitrary and perverse exercise of discretion does not render it immune to the scrutiny and correction by the superior court, thus where no sufficient cause on record has been made out yet the discretion for the condonation of delay is exercised

subjectively and whimsically it is the duty of the superior court to rectify the defect in the exercise of discretion. Such duty is duly mandated by the provisions of Section 3 of the Act.”

7. Under the law, the doctrine of constructive notice operates on the presumption that a person is deemed to be aware of a fact when, through the exercise of reasonable diligence, he or she ought to have known it. This principle is consistently invoked in property and civil litigation to prevent parties from evading the legal consequences of judicial proceedings or transactions on the pretext of ignorance.

In the present case, where the husband had actively contested the petitioner's suit and failed, while the wife subsequently instituted a grossly time-barred appeal asserting ownership of the disputed property, yet claiming no knowledge of the decree passed against her husband, the doctrine squarely applies. Since the husband and wife/respondents No.2 & 1 respectively, are sharing common interests, and the registered sale deed—forming the very basis of the wife's ownership claim—bears the husband's signature as a marginal witness, it is legally presumed that she possessed constructive knowledge of both the litigation and the resultant decree. Her plea of ignorance is therefore untenable, as the surrounding circumstances unmistakably establish a nexus of knowledge and shared participation in the underlying transaction and proceedings. Accordingly, her appeal would be barred by limitation, for the doctrine imputes constructive knowledge through her husband's direct involvement, joint residence, and mutual interest in the disputed property.

8. A litigant who, despite having the opportunity, chooses to remain passive during the course of proceedings cannot later be permitted to assail their outcome. Unfortunately, this fundamental precept appears to have escaped the notice of the learned Appellate Court, thereby necessitating a reconsideration of its judgment. The protection of law is reserved for those who are vigilant in asserting their rights, not for those who sleep upon them.

9. A perusal of the record also reveals that the Appellate Court's finding that the property described in sale deed No.8955/1 dated 15.10.2002 forms part of the suit property is manifestly erroneous. The sale deed pertains to Khewat No.714/698, whereas the suit property is located in Khewat No.719/703, which are entirely distinct, as corroborated by the Register Haqdaran Zamin for 1999-2000. Notably, the Appellate Court itself acknowledged in paragraph 10 of the impugned judgment that the description of Respondent No.1's property differs from the suit property. This glaring misreading and non-reading of evidence constitutes a jurisdictional defect, warranting interference by this Court in revision under Section 115 CPC.

10. The finality and sanctity of judgments are fundamental to the rule of law. Once a competent court has adjudicated a matter through due process, it attains finality and binds the parties. Any attempt to reopen such a matter must adhere to lawful remedies within the prescribed limitation. The learned Appellate Court's decision to revive a long-concluded matter disregards the principle of judicial certainty and undermines the rule of law, warranting judicial intervention.

11. It is by now well-settled that where there exists a conflict between the findings of the courts below, the view taken by the appellate court ordinarily deserves preference. However, if the circumstances of the case reveal that the reasoning and appreciation of evidence by the trial court is more cogent, detailed, and in conformity with the settled principles of law, then the findings of the trial court may justifiably be accorded precedence over those of the appellate forum.

12. Accordingly, this Civil Revision is **allowed**, the impugned judgment dated 03.07.2021 and the decree dated 07.09.2021 passed by the learned lower Appellate Court are set aside, and the judgment and decree dated 04.11.2009 passed by the learned Civil Judge Ist Class, Multan is hereby restored.

(Syed Ahsan Raza Kazmi)
Judge

Approved for Reporting

Judge

Riaz Anjum