JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(*Judicial Department*)

C.R No. 307-M/2024 with C.M No. 1156-M/2024

Rahmat Karim & others Vs. Ghulam Muhammad & others

Present: Syed Ahmad Chitrali, Advocate for petitioners.

M/S. Saif Ullah Mongol & Khalil Ahmad Baig
Advocates for Respondents.

Date of hearing: **23.10.2025**

JUDGMENT

SABIT ULLAH KHAN, J.- Through this petition, the petitioners have invoked the revisional jurisdiction of this Court under Section 115 of the Code of Civil Procedure, 1908, (**C.P.C**) to assail the consolidated judgment dated 21.05.2024, rendered by the learned District Judge/ Zilla Qazi, Chitral Upper, in Civil Appeal No. 26/13 of 2022, whereby the Civil Appeal No.28/13 of 2022 preferred by the petitioners stood dismissed while the cross appeal (No.26/13 of 2022) filed the respondents was partly allowed, and rest of the judgment and decree dated 02.11.2022, passed by learned trial Court (Senior Civil Judge, Chitral Upper), was maintained.

2. Arguments heard and record perused.

3. The litigation traces its origin to a suit for declaration instituted by the respondents/plaintiffs who claimed that upon the demise of one Khatirman Shah,

their predecessor in interest, in the year 1969, his entire estate devolved upon his legal heirs: his son Momin Karim Khan and daughters Mst. Nani Gul and Mst. Haroon Bibi, and that, save to the extent of purchase of one and a half chakoram of land made by the propositus during his lifetime to his son-in-law namely Pir Alam Khan, the remainder constituted legacy liable to partition inter-se the heirs in accordance with their *shari* shares. The plaintiffs alleged that the defendants, representing the branch of Momin Karim Khan, were withholding recognition of the estate and clouding the title particularly in respect of land described, inter- alia, as qitta No. 3 (Nehra-e-Sumaragh).

4. The petitioners/ defendants traversed the claim through their detailed written statement, asserting therein that portions, most notably *qitta* No.3, never formed part of the inheritance of Khatirmin Shah but the same were the exclusive property of their predecessor, acquired on account of service connected to construction of a water channel completed around 1926; that by long possession and conduct of parties, the plaintiffs were estopped to sue; that the suit was hopelessly barred by limitation; and that material adduced by the plaintiffs comprised uncorroborated statements, hearsay and weak

secondary evidence incapable of displacing the defendants' title.

5. The learned trial Court, upon divergent pleadings, framed issues covering, among other matters, the precise character of the suit land, the legal efficacy of the admitted gift of 1 ½ *chakoram* to Pir Alam Khan, the claim of exclusive ownership set up by the defendants in *qitta* No. 3, the pleas of estoppel and limitation, and the relief. The parties then produced oral as well as documentary evidence in support of their respective contentions. The record reveals that, owing to the antiquity of events, stretching nearly a century, contemporaneous primary documents were sparse, yet certain features stood out with clarity. Both sides unequivocally admitted that Khatirman Shah had sold out one and a half *chakoram* to Pir Alam Khan. Conversely, there was no mutation or authoritative revenue entry proving that the reminder, including *qitta* No. 3, had been alienated by propositus as self-acquired property of the defendants' predecessor or otherwise detached from the estate. Upon appraisal of the material, the learned Senior Civil Judge partly decreed the suit vide judgment dated 02.11.2022, declaring that, save for admitted gift to Nani Gul, the suit property was the legacy of late Khatirman Shah and hence it shall be

partitioned among his heirs as per Shari shares. It was held that the defense of exclusive title of *qitta* No.3 failed. The pleas of estoppel and limitation were repelled, the Court noting absence of an open and hostile ouster and finding that the parties' possession remained referable to the common source of title. Both the parties challenged the said decision of the learned trial Court by filing their respective civil appeals.

6. In appeal, the learned appellate Court consolidated both appeals of the parties, heard them, and by judgment dated 21.05.2024 dismissed the petitioners' appeal while partly accepting the respondents' cross-appeal through impugned judgment dated 21.05.2024, thus affirming the trial Court decree, in essence. The learned appellate Court treated the gift as proved upon admission and maintained the conclusion that the residue is hereditary property. It was also recorded that the matter was ancient; that the record lacked decisive revenue proof of exclusive ownership set up by the defendants; and that, in circumstances, the safer course to hold the residue divisible among all heirs.

7. Before addressing the grounds urged in the instant revision, it is apposite to restate the contours of revisional jurisdiction. Section 115 C.P.C is not an

appellate provision. It is corrective, supervisory and exceptional. The revisional Court may interfere only where the subordinate Court has (i) exercised a jurisdiction not vested by law; (ii) failed to exercise jurisdiction so vested, or (iii) acted in the exercise of jurisdiction illegally or with material irregularity. By a long and unbroken line of precedents of apex Court, the revisional forum does not re-appraise evidence as an appellate Court, nor does it supplant view is conceivable. Concurrent findings of facts recorded by the Courts below are ordinarily binding and can be disturbed only upon demonstration of patent perversity, findings based on no evidence, or an error that strikes at the very jurisdiction or occasions miscarriage of justice. Reliance is placed on the cases titled ***Mst. Zarsheda Vs. Nobat Khan*** (**PLD 2022 SC 21**), ***Shahbaz Gul and Others vs. Muhammad Younas Khari and Others*** (**2020 SCMR 867**) and ***Khudadad vs. Syed Ghazanfar Ali Shah alias Imam Hussain and Others*** (**2022 SCMR 933**).

8. The principal plank of the petitioners is misreading and non-reading of evidence by the learned Courts below. The attack, however, is general and unparticularized. No specific, decisive piece of evidence has been identified which, if read or read correctly, would inexorably lead to a different conclusion. The

learned trial Court and the learned appellate Court both adverted to the material, recorded the admitted factum of gift in favour of Pir Alam Khan, noticed the absence of any legally efficacious instrument or mutation, by which *qitta* No. 3, could be treated as exclusive acquisition of the defendants' predecessor, and evaluated oral testimonies though prison of their inherent weakness given the lapse of time. The allegation that the Courts resorted to "pick and choose" is rhetorical, the judgments exhibit a holistic appreciation of the record in revisional jurisdiction or to prefer one testimonial nuance over another must be respectfully declined especially when the petitioners could not show any the impugned findings to be the result of aerial assumption or presumption rather against the evidence brought on record by both the parties. Consider next the character of *qitta* No. 3 (Nehra-e-Sumaragh). The defendants maintain that it was earned independently by their predecessor due to the irrigation work undertaken in the year 1926. The Courts below declined to accept this assertion for want of cogent proof. The petitioners have been unable to place before this Court any title document, mutation, grant order, or any other legally admissible material establishing how, when and by whom the property was detached from estate of the propositus and vested exclusively in the defendants'

line. Given that dominion of Khatirman Shah over his property stands affirmed by admitted gift of 1½ *chakoram* during his lifetime, the ordinary presumption that the residue continued to be his until lawfully alienated holds the field. In these circumstances, the concurrent conclusion that *qitta* No. 3 forms part of the legacy is a plausible and lawful interference, certainly not perverse to warrant interference.

9. The challenge to the treatment of the gift also misfires. The parties agree that Khatirman Shah gifted one and a half chakoram to Pir Alam Khan, an admitted fact requires no further proof in consonance with Article 113 of the Qanun-e-Shahadat Order, 1984. The leaned Courts below, therefore, correctly excluded the gifted portion from the inheritance while directing that the residue be distributed among the heirs. This approach is in consonance with Islamic Jurisprudence of succession and the general principles embodied in the civil law pertaining to the transfer of landed property. On limitation, the petitioners urge that the suit was hopelessly barred. The learned appellate Court addressed the plea and rejected it on sound reasoning. Inheritance rights are of a continuing character; where possession remains referable to the common title and there is no unequivocal hostile assertion or open ouster

communicated to others co-heirs, the bar of limitation does not readily extinguish the right. Besides above, the relief to the extent of recovery of possession from the legacy of her predecessors in interest is the matter of succession/ inheritance, in which, the limitation does not run. Reliance is placed on the cases titled "***Mst. Gohar Khanum and others vs. Mst. Jamila Jan and others"*** (**2014 SCMR 801**) and "***Khan Muhammad through L.Rs and others Versus Mst. Khatoon Bibi and others" (2017 SCMR 1476),*** wherein the Hon'ble Supreme Court has held that:

> **"Similarly, in the cases of claiming right of inheritance, it is well settled that the claimant becomes co-owner/co-sharer of the property left by the predecessor along with others the moment the predecessor dies and entry of mutations of inheritance is only meant for updating the revenue record and for fiscal purposes. If a person feels himself aggrieved of such entries, he can file a suit for declaration within six years of such wrong entries or knowledge. Any such repetition of the said entries in the revenue record would again give him a fresh cause of action or when the rights of anyone in the property are denied it would also give fresh cause of action. Similarly, it is again. settled by now that no limitation would run against the co-sharer. We for instance can quote few judgments covering all these aspects like Ghulam Ali and 2 others v. Mst. Ghulam Samar Naqvi (PLD 1990 SC 1), Riaz Ahmad and 2 others v. Additional District Judge and 2 others (1999 SCMR 1328), Mst. Suban v. Allah Ditta and others (2007 SCMR 635), Muhammad Anwar and 2 others v. Khuda Yar and 25 others (2008 SCMR 905) and Mahmood Shah v. Syed Khalid Hussain Shah and others (2015 SCMR 869). In recent past certain judgments have been rendered in the cases of inheritance wherein the question of waiver, acquiescence and estoppel have been considered like in the cases of Mst. Phaphan through L.Rs. v. Muhammad Bakhsh and others (2005 SCMR 1278), Atta Muhammad v. Maula Bakhsh and others (2007 SCMR 1446), Lal Khan through Legal Heirs v. Muhammad Yousaf through Legal Heirs (PLD 2011 SC 657), Muhammad Rustam and another v. Mst. Makhan Jan and others (2013 SCMR 299), Mst. Grana through Legal Heirs and others v. Sahib Kamala Bibi and others (PLD 2014 SC 167) and Noor Din and another v. Additional District Judge, Lahore and others (2014 SCMR 513. Since the question of limitation in the instant case has not been argued in the light of above noted cases, so we would not like to discuss the questions involved in the above noted**

cases qua the question of limitation and would leave it open and consider this aspect in some other appropriate case wherein such like issues are involved. Since we have held that plaintiff Mst. Khatoon Bibi and the two widows of pre-deceased son Rajada of the propositus Ahmad are entitled to receive their due share and they being co-sharers/co-owners in the legacy of the propositus just after opening of succession have become fait accompli after the demise of the propositus and would not need the intervention of the revenue authorities to make them co-sharers/co-owners as such no limitation would run against them as possession of one co-sharer would be deemed to be the possession of all and further any wrong entry in the record of rights would also equip them with a fresh cause of action. Non-filing of any suit by the first widow namely Mst. Fatima, the mother of the plaintiff, by claiming 1/2 share out of 1/8 would also not disentitle her to claim her share."

Thus, considering the antiquity of events, absence of formal mutations changing the character of title and the family nature of possession, the conclusion that the suit is not barred cannot be termed illegal or irregular in jurisdictional sense. Similarly, the defendants could not bring any reliable and convincing evidence on record to establish any of the alleged estoppels i.e., by waiver, by acquiescence or by conduct etc. rather it has successfully been proved by the respondents through overwhelming evidence that the property was the legacy of predecessor in interest Khatirmin Shah.

10. The contention of learned counsel representing the petitioners that the appellate judgment falls foul of Order XLI Rule 31 C.P.C is equally untenable because the impugned judgment frames the controversy, marshals of facts in sequence, discusses the decisive features, admitted gift, absence of exclusive title

proof regarding *qitta* No.3, quality of evidence due to antiquity, and limitation and then records reasons for affirming the decree passed by the learned court to the above extent. The rule emphasizes substance over form, minor omissions or stylistic infelicities do not vitiate a judgment that reveals a conscious application of judicial mind to the material questions. The appellate Court judgment before me comfortably meets the legal standard of a judgment as required under order XLI rule 31 C.P.C The pleas of estoppel, waiver and acquiescence, as alleged by the petitioners, were rightly negative. The defendants could not show any unequivocal representation by the plaintiffs, or a change position by the defendants to their detriment, that would meet the classical requirements of these defenses. Family possession and management over decades, absent a demonstrated clear and hostile assertion; is legally inadequate to defeat the inchoate but enduring rights of inheritance. It must be emphasized that discipline of revision is one of restraint, a revisional Court is not a third forum of fact, where, as here, two Courts below have concurrently arrived at findings that are reasoned, possible on the evidence, and free from jurisdictional taint, interference would amount to an impermissible conversion of revisional jurisdiction into a second appeal

in disguise, a course repeatedly deprecated by the apex Court.

11. In view of the above discussion, the instant petition, being devoid of any merit, is hereby dismissed, with no order as to costs.

Announced
23.10.2025

Sd/-
JUDGE