**2014 M L D 1602**

**[Peshawar]**

**Before Rooh-ul-Amin Khan, J**

**CHANI REHMAN---Petitioner**

**Versus**

**Mst. BIBI AISHA and others---Respondents**

Civil Revision Petition No.47-B of 2013, decided on 22nd May, 2013.

**(a) Specific Relief Act (I of 1877)---**

----S.42---Civil Procedure Code (V of 1908), O. VII, R. 11 & S.12(2)---Limitation Act (IX of 1908), Ss. 28 & 20 (2)---Suit for declaration---Maintainability---Rejection of plaint---Principles---Adverse possession---Plaintiffs brought suit to the effect that suit property was mortgaged by predecessor-in-interest of defendants with predecessor-in-interest of the plaintiffs which was not redeemed within sixty years and plaintiffs became owners of the same---Trial Court decreed the suit on the basis of prescription and that decree was challenged through application filed under S. 12(2), C.P.C. by the defendants---Trial Court accepted the said application, set aside the decree which was upheld up to the High Court and thereafter one of the defendants moved application under O.VII, R. 11, C.P.C. on the ground that S. 28 of the Limitation Act, 1908, had been declared as repugnant to the Injunctions of Islam and plaintiffs had got no cause of action which was concurrently accepted---Validity---No doubt, after omission of S. 28 of the Limitation Act, 1908, no suit for prescription could proceed prior to the target date i.e. 31-8-1991 and same would be liable to be burried at its very inception---Present suit had been filed after the target date which was barred by law---When the suit of the plaintiffs-petitioners was barred by law, remand of the same and providing opportunity to the parties to lead evidence would just be a futile exercise and wastage of time and while exercising the jurisdiction under O. VII, R. 11 C.P.C., the court was supposed to look at the grounds alleged in the plaint and if it came to the conclusion that even if all the averments of the plaint were accepted and proved at the trial, the plaintiffs would not be entitled to any relief, the plaint would be rejected---Both the courts below had rightly appreciated the law on the subject and had reached to just and right conclusion by invoking the provision of O.VII, R.11, C.P.C.---Revision was dismissed.

Maqbool Ahmad's case 1991 SCMR 2063 rel.

**(b) Specific Relief Act (I of 1877)---**

----S. 42---Limitation Act (IX of 1908), S. 20(2)---Receipt of rent or produce of the mortgaged land---Scope---Acknowledgment---Receipt of rent or produce of the mortgaged land by the mortgagee, when such was in his possession, was deemed to be the acknowledgment of the payment of debt for the purposes of subsection (1) of S. 20 of the Limitation Act, 1908, and time would be computed from the date of such acknowledgment---When mortgage property was in possession of the mortgagee and he was receiving rent or usufruct, the receipt of the produce on every harvest, was deemed as acknowledgment and time would be reckoned afresh from every harvest and mortgagor would have recurring cause of action on each harvest, regardless of what the intention of the mortgagee may be or might have been.

Abdul Haq's case 1999 SCMR 2531 rel.

**(c) Specific Relief Act (I of 1877)---**

----S. 42---Limitation Act (IX of 1908), S. 28---Extinguishment of right of property---Scope---As per S. 28 of the Limitation Act, 1908, on expiry of period prescribed by law for suit for possession of any property, the right of owner was to be extinguished---Basic concept and logic of the declaration of S. 28 of the Act, to be repugnant to the Injunction of Islam was that no lawful owner could be deprived of his right by efflux of time nor person enjoying possession for such a long period could be rewarded with premium of ownership---Mortgagee enjoying the possession of mortgaged property for 60 years or more got too much through usufruct, more than his mortgage money and could not additionally be bestowed with ownership of the property on expiry of 60 years.

Amanullah Jan Khattak for Petitioner.

**ORDER**

**ROOH-UL-AMIN KHAN, J.--**-Instant revision petition is directed against the judgment and decree dated 9-10-2012 passed by the learned Additional District Judge-I, Lakki Marwat, whereby appeal of the petitioner was dismissed and order of the learned Trial Court dated 14-10-2010, rejecting the plaint of the petitioner under Order VII, Rule 11, C.P.C., was maintained.

2. Learned counsel for the petitioner argued that impugned judgments of the two courts below are the result of technicalities which is against the norms of natural justice. He contended the justice should not be slaughtered for the sake of technicalities and the Hon'ble Superior Courts always appreciate decision of the lis on merits rather than technicalities. The learned counsel stressed that by setting aside the impugned judgments of the two Courts below an opportunity of leading evidence should be provided to the parties and the lis be decided on the basis of evidence on merits.

3. Arguments of the learned counsel for the petitioner heard and record perused.

4. Record divulges that the case has a chequered history. Petitioner Ghani ur Rehman and others filed a declaratory suit against Mst. Bibi Aisha and others to the effect that property fully described in the plaint was mortgaged by predecessor-in-interest of defendants with predecessor-in-interest of the plaintiffs prior to settlement of 1905-06. As per averments in the plaint, the real defendants did not redeem the suit land within sixty years, as a consequence whereof; the plaintiffs became owners of the suit-land in the year 1970. The suit was decreed on 7-11-1996, in favour of the plaintiffs and performa defendants on the basis of prescription. Hamdullah Jan, one of the legal heirs of defendant No.87 Nasrullah Khan, challenged the judgment and decree by filing application under section 12(2), C.P.C., which application was allowed vide order dated 30-5-2005. Consequently, the judgment and decree dated 7-11-1996, was set aside. Being dissatisfied with the above order dated 30-5-2005, petitioner Ghani Rehman filed an appeal, but the same was dismissed on 13-7-2007. Thereafter, he challenged the judgment and decree of the trial Court dated 30-5-2005 and that of the learned Appellate Court dated 13-7-2007, by filing appeal before D.I. Khan Bench of this Court, but it met the same fate vide judgment dated 11-9-2008.

5. After dismissal of the appeal of the petitioner from this Court dated 11-9-2008, one of the defendants namely Khamdullah Jan, on 4-10-2010, filed an application under Order-VII, Rule 11, C.P.C., for rejection of the plaint on the ground that section 28 of the Limitation Act, has been declared as repugnant to the injunction of Islam, therefore, plaintiff has got no cause of action. The application was contested by the plaintiffs and the learned trial Court, after hearing both the sides, on 14-10-2000, allowed the application and rejected the plaint of the petitioner. Against which, appeal before the learned Appellate Court was filed, but the same was also dismissed on 9-10-2012 and consequently, the judgment and decree of the trial Court was upheld.

6. Plaintiffs allege the suit land was mortgaged by the predecessor-in-interest of the defendants with their predecessor, prior to settlement of 1905-06, as such the mortgagors by not redeeming the suit land for a period of sixty years, since inception of the mortgage, the petitioner has become owner of the same on the basis of adverse possession for more than sixty years. The basic order in contest is with regard to dismissal of suit, which practically is the rejection of plaint, on the ground that section 28 of the Limitation Act, 1908, has been omitted from the Statute, so the suit for prescription cannot proceed. No doubt, after omission of section 28 of the ibid Act, no suit for prescription can proceed prior to the target date i.e. 31-8-1991, as held in Maqbool Ahmad's case (1991 SCMR 2063), and the same would be liable to be buried on its very inception.

7. By virtue of section 20(2) of the Limitation Act, 1908, the receipt of rent or produce of the mortgaged land by the mortgagee, when it is in his possession, is deemed to be the acknowledgement of the payment of debt for the purposes of sub-clause (1) of the Ibid section and the time would be computed from the date of such acknowledgement. It clearly suggests that when a mortgaged property is in possession of the mortgagee and he is receiving its rent or usufruct, the receipt of the produce on every harvest, is deemed as an acknowledgement. In view of this provision of law, the time would be reckoned afresh from every harvets and the mortgagor would have recurring cause of action on each harvest, regardless of what the intention of the mortgagee may be or might have been. In this regard guidance may be derived from princile laid down in Abdul Haq's case (1999 SCMR 2531).

8. Admittedly, section 28 of the Limitation Act, 1908, has been declared as repugnant to injunctions of Islam by the Shariat Appellate Bench of the Hon'ble Supreme Court in Maqbool Ahmad's case (1999 SCMR 2063). As per section 28 of the Act ibid, on expiry of period prescribed by law for a suit for possession of any property, the right of owner was to be extinguished. The basic concept and logic of the declaration of section 28 of the ibid Act, to be repugnant to the injunctions of Islam is that no lawful owner can be deprived of his right, merely by efflux of time nor a person enjoying possession for such a long period can be rewarded with premium of ownership. The mortgagee enjoying the possession of mortgaged property for 60 years or more get too much through its usufruct, more than his mortgage money and cannot additionally be bestowed with the ownership of the property, as well, on expiry of 60 years. Whereas, the suit in hand has been filed on 18-4-1993, i.e. after the target date i.e. 31-8-1991, thus, is barred by law.

9. As regards the argument of the learned counsel for the petitioner that technicalities should be avoided and that the lis be decided on merits, after affording opportunity to the parties for leading their evidence, no doubt, in all proceedings, by whomsoever held, whether judicial or administrative, the principles of natural justice are to be observed, which are most imperative, and violation thereof, is always considered sufficient to vitiate even most solemn proceedings and it is also well settled principle of law that justice should not be slaughtered for the sake of technicalities, but at the same time, the provisions of law, to burry the frivolous, meaningless litigations, since its very inception has been enacted with an aim to safeguard the people from the agonies of the meaningless proceedings, on one hand, and to save the precious time of the courts, on the other. Thus, in the circumstances, when the suit of the petitioner is hopelessly barred by law, remand of the same and providing opportunity to the parties to lead evidence would just be a futile exercise and wastage of time. While exercising the jurisdiction under Order VII, Rule 11, C.P.C., the Court is supposed to look at the grounds alleged in the plaint and if it comes to the conclusion that even if all the averments of the plaint, are accepted and proved at the trial, the plaintiff would not be entitled to any relief, the plaint would be rejected.

10. Both the Courts below have rightly appreciated the law on the subject and have reached to a just and right conclusion by invoking the provision of Order VII, Rule 11, C.P.C. Consequently, this revision petition being without merits stands dismissed.

AG/277/P Petition dismissed.