

**JUDGMENT SHEET.**  
**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD.**

**Civil Revision No. 245 of 2015**

Muhammad Sabir, etc

**Versus**

Muhammad Qayyum, etc

**Civil Revision No. 246 of 2015**

Nazir Ahmed

**Versus**

Muhammad Qayyum, etc

Petitioners By : Mr. Waqar Hanif Abbasi, Advocate.  
(In Both Cases)

Respondents By : Mr. Muhammad Izzat Khan,  
Advocate.  
(In Both Cases)

Date of Decision : 09.03.2020.

**LUBNA SALEEM PERVEZ, J. -** Through this judgment, I intend to dispose of both the titled civil revision petitions as both the petitions are regarding the ownership of the same suit land and are directed against judgments and decrees dated 14.04.2015, passed by learned Additional District Judge (East), Islamabad, and judgments and decrees dated 30.01.2015, passed by learned Civil Judge 1<sup>st</sup> Class, (East) Islamabad, whereby appeals and suits of the petitioners have been dismissed, respectively.

2. The facts in brief are that Petitioners/Plaintiffs filed their respective suits before the Senior Civil Judge-East Islamabad, for declaration, correction of revenue record, permanent and mandatory injunction contending that

according to Jamabandi for the year 2001-02, they along with Respondent Nos. 7 to 15 in the suit are owners in possession of land measuring 19 Kanals 07 Marlas, bearing Khasra Nos. 4876, 4877, 4885, 4887, 4897, 4903, 4911, 4889, 7035/4899 and 7036/4899, Khatooni Nos. 482 to 485, Khewat No. 299/289, situated at Village Kirpa, Islamabad, in equal shares, whereas, Respondent No. 1 to 6 who are the successors of one Dhero s/o Ahmad, have no right over the said land as Dhero s/o Ahmad in connivance with the revenue officials got entered his name in the jamanbandi for the year 1932-33 and since then till to-date his as well as names of his successors exists in the revenue record. Therefore, in the suit petitioners/plaintiffs contended that the defendants No. 1 to 6, being illegal occupants, be ejected from the suit land and the revenue record be corrected from 1932-33 till date. From the divergent pleadings of the parties, several issues were framed and after recording of evidence suit was dismissed on 30.01.2015, by the learned Civil Judge 1<sup>st</sup> Class, (East) Islamabad. Out of the issues framed, Issue No.1 related to determination of entitlement of decree of declaration, correction of revenue record, permanent and mandatory injunction, which was decided in the following manner:-

***Issue No. 1: Whether the plaintiff is entitled to decree of declaration, correction of revenue record, permanent and mandatory injunction as prayed for? OPP***

*...Dhero, after connivance with the Revenue Officer got entered his name in Jamabandi for the year 1932-33 as one of co-sharer and owners of 7 share. As the plaintiff asserted this fact hence, he was under legal obligation to prove this fact through cogent and plausible evidence. Moreover, the plaintiff is challenging the revenue record from the year 1932-33 which is almost eighty two (82) years old record while under law presumption of truth is attached with thirty years old record and entries hence strong and unimpeachable evidence was required to challenge the eighty two year old revenue record. But in support of plaintiff's version there is sole witness i.e. Muhammad Yaqub, who appeared as PW-1 and deposed on oath that Qaim Khan and Gama both sons of Mehr were owners of suit land and plaintiff and defendant No. 7 to 15 are successors of Qaim Khan and Gama, neither the plaintiff and defendant No.7 to 15 nor their predecessors in interest have sold the suit land. He further deposed that defendants No. 1 to 6 have no concern*

*with the suit land and revenue record regarding the suit land is not correct hence, plaintiff wants correction in the same. Perusal of plaint reveals that plaintiff has alleged that Dhero, predecessor No. 1 to 6, after connivance with Revenue Officials, got entered his name in Jamandi for the year 1932-33 as one of co-sharer and owners of 7 share but the plaintiff has not deposed even a single word in his testimony as to when wrong entries were made in the revenue record and who made the said entries. He has not even specified the record in which wrong entries have been made. The PW-1 has not deposed even a single word as to connivance of Dhero with the revenue officials, therefore, the alleged connivance also remained un-proved. Hence, the testimony of PW-1 is full of lacunas and is not sufficient to challenge eighty two years old entries in the revenue record. Further, even if any wrong entry was made, as alleged by the plaintiff, the plaintiff his father and grandfather kept sleeping upon their rights for 82 years.*

10. *During the course of cross examination upon PW-1, he as confronted with a certified copy of civil suit titled as "Faiz Muhammad etc. Vs Muhammad Qayyum etc." bearing civil suit No. 116 of 2009, which is available on file as Exh.D/2 and the PW-1 admitted the institution of said suit and withdrawal of the same, in which he was plaintiff No. 10. A certified copy of said suit which is available on file as Exh.D/2 reveals that it was filed on 27.01.2009 and in that very suit the plaintiffs took the plea that defendant No. 1 to 6 are beneamidar and there was a benami transaction between their predecessors. The said suit was withdraw by plaintiff on 07.02.2011 and thereafter they instituted the instant suit on 12.05.2012 with an all together different plea, therefore, the present suit is also hit by the principle of estoppel.*

11. *One Faiz Muhammad appeared as DW-2, who is defendant No. 7 in the instant suit and was special attorney of defendant No. 8 to 14, he also deposed in favour of the plaintiff but as the onus to prove the issue was upon the plaintiff hence, it was he who was required to prove his case and the defendants No. 7 to 15 cannot come to aid him in discharging his burden.*

12. *For the foregoing reasons, this issue stands answered as negative."*

3. It appears that the appeal, against the above judgment, was filed by the legal heirs of Muhammad Sabir (since deceased), before the Additional District Judge (East), Islamabad, and the contentions made before the learned Civil Judge during the trial of the suit were reiterated and the learned Appellate Court, confirmed the above said findings vide judgment and decree dated 14.04.2015, by observing as follows:-

*Perusal of the record and the evidence of both the parties reveals that the plaintiff/appellant along with others earlier filed suit titled "Fiaz Muhammad etc...Vs....Abdul Qayyum etc" whereby they mentioned/described the present respondents/defendants No. 1 to 6 as "benamidar" and the said suit was dismissed as withdrawn on 07.02.2011. the perusal or record further reveals that the appellants/plaintiffs and respondents No. 7 to 15 were granted title of the suit land after payment of the dues in the light of land reforms in the year 1990, whereas they paid the dues in the year 1970, therefore, they*

*being not the owners of the suit land prior to the land reforms were not entitled for the relief claimed, however, after becoming owner in 1990 they are entitled to claim the rights accrued to them under the titled awarded to them however, they have neither brought any evidence on record in this regard nor their claim is based on the right accrued to them in 1990, hence, in the light of existing documents on record, the learned trial court has rightly observed that the suit is hit by the principle of estoppel and is time barred. The plaintiffs/appellants also badly failed to prove their version through evidence.*

Hence, the petitioners have challenged both the judgments and decrees passed by learned Courts below through filing titled civil revisions.

4. Learned counsel for the petitioners repeated the same arguments as made before the learned courts below and submitted that in the year 1932-33, the suit land was owned, in equal shares, by Qaim Din and Gama, both sons of Mehar and now legal heirs of late Muhammad Sabir and Nazir Ahmad, petitioners along with defendants/respondent Nos. 7 to 15 (out of whom Respondent Nos. 7 to 14 are successors of Gama and 15 is the successor of Qaim Din) are the lawful owners of the suit property. Learned counsel further submitted that the entries made in the revenue record are made with the connivance of Dhero and Revenue Officials thus, transfer of suit land is illegal and requires correction from 1932-33 by entering the name of the petitioners being the lawful owners. Learned counsel further submitted that the judgments and decrees dated 30.01.2015 & 14.04.2015, passed by learned courts below are unlawful being based on misreading and non-reading of evidence and have been passed on the basis of conjectures and surmises; that not a single document have been produced by the defendants/respondents so as to establish their title over the suit land and that the suits filed before the Civil Court were not hit by limitation and principle of estoppel. Learned counsel prayed for setting aside both the judgments and decrees passed by the lower courts below.

5. On the other hand learned Counsel for the Respondents opposed the arguments of the learned counsel for Petitioners and supported the judgments and decrees dated 30.01.2015 and 14.04.2015 of learned Trial as well as Appellate Court, respectively and submitted that the suit filed by the petitioners/plaintiffs are hopelessly time barred; that Respondents No. 1 to 6 are the lawful owners of land measuring 09 kanals and 05 marlas; that the allegation of unlawful entries in the revenue record in connivance with their forefathers Dhero is baseless, unfounded and unsubstantiated with any documentary evidence; that another suit comprising similar facts in respect of the suit land was also filed by Faiz Muhammad and others against Muhammad Qayyum and others wherein the deceased petitioner was also a party; that the petitioner in that suit filed by Faiz Muhammad and others has alleged that the defendants were *benamidars* and no consideration was paid to the predecessors/the plaintiff for the suit land; that the said suit was withdrawn unconditionally on 07.02.2011, without taking permission to file a fresh suit. Learned counsel also relied on the judgment of Hon'ble Lahore High Court titled as *Sahibzada Sharyar Khan and others vs. Additional District Judge, Bahawalpur and others (2004 CLC 1860)*, whereby, it has been held that "*plaintiff can withdraw a suit without permission of the Court but he is precluded from instituting fresh suit in respect of the same subject matter and such plaintiff cannot afterwards claim the relief, on the same cause of action or portion of such claim in the fresh suit*". The learned counsel for the Respondents further contended that thus, another suit with the same set of contents is not maintainable; that the deceased petitioner as well as his legal heirs are changing the stance regarding the ownership of suit land with malafide intentions against the Respondents No. 1 to 6; that

the Court fee affixed by the plaintiff for filing of the suit was deficient and thus, suit was liable to be dismissed on this ground. Learned counsel further submitted that the present revision petitions are not maintainable in view of the concurrent findings of facts recorded by the learned Courts below. Reliance was placed on cases reported as *Lahore Development Authority Vs. Muhammad Qasim* (2003 SCMR 1311), *Noor Muhammad and others Vs. Mst. Azmat-e-Bibi* (2012 SCMR 1373), 2003 CLC 110, *Maqsood Ahmed Vs. Ali Naqi Shah* (2002 CLC 1225), *Dr. Sadiq Hussain Vs. Mst. Maqbool Begum and 5 others* (2005 CLC 368), *Muhammad Ajaib Vs. Zahida Arshad and others* (2017 CLC 48) and *Muhammad Nawaz and others Vs. Muhammad Ramzan and others* (2003 CLC 1715). Learned counsel regarding administration of justice and the limitation for filing of suit relied on the cases titled *Zardullah Khan v. Mst. Ruqiyya Hanif Maniar* (2014 YLR 1840) and *Mst. Bibi Gula v. Naimatulla* (2014 CLC 515), respectively.

6. I have heard the arguments of the learned counsel for the parties and also perused the impugned judgments as well as record of the case with their able assistance.

7. Learned counsel for the petitioners has mainly based his claim on the contention that in the year 1932-33, the ancestors/forefather of defendant Nos. 1 to 6 namely Dhero s/o Ahmad in connivance with the officials of revenue department got illegally entered his name in the revenue record so as to become entitled for the ownership of suit land. Thus, onus to prove this allegation through evidence was on the petitioner/plaintiff, who contended that the revenue record i.e. Jamabandi of relevant years placed before the trial Court was sufficient to show that the real owners were the forefathers of the plaintiffs/petitioners, therefore, to address the argument of misreading of

evidence I have gone through the documents and evidence presented before the learned Trial Court. The statements of all the plaintiff witnesses reveal the admission that their forefathers have never filed any application of correction of the record. Moreover, neither any complaint regarding illegal entries in the revenue record concerning ownership of suit land by Dhero was filed by them nor could they specify in the record pertaining to year 1932-33 as to where and when wrong entries were made. Thus, it has been rightly held that the connivance of Dhero with revenue officials for tempering of record has not been proved. It is important to note that Faiz Muhammad s/o Jahandad Respondent No. 7, in the present civil revisions, along with others, also filed a suit before the Senior Civil Judge on 27.01.2009, whereby Muhammad Sabir (deceased) was plaintiff No. 10, by contending that his forefather namely Zaman Ali and Dher Zaman (Dhero) forefathers of Respondents No. 1 to 6 were the benamidar of the suit land. It is important to reproduce para No. 2 of the plaint:-

*That predecessors of the plaintiffs namely Ilam Din and Sharf Din both sons of Qaim Din, and Gama transferred land measuring 13 kanal 13 marlas in the name of Zaman Ali and Dher Zaman both sons of Ahmed predecessors of defendants as back as before 1920 as "benami". Both Zaman Ali and Dher Zaman were maternal uncle of Ilam Din and Sharf Din and were resident of Tehletar Tehsil Kahuta District Rawalpindi and not owner of any land in village Karpa. They wanted to purchase the land in this village so to facilitate them the predecessors of the plaintiffs transferred 13 kanal 13 marlas a portion in these Khewat Number to their names. It was the Benami transaction and no consideration amount was paid to predecessors of the plaintiffs. Similarly the possession of the land was also not transferred to the predecessors of the defendants.*

8. The said suit was simply withdrawn vide order dated 07.02.2011. It is pertinent to note that no permission to file fresh suit for the same suit land with any new grievance or new cause of action was sought while withdrawing the suit, therefore, it was rightly argued by the learned counsel for the Respondent Nos. 1 to 6 that the suit was withdrawn unconditionally. However, the plaintiff /petitioners filed second suit on the same set of facts

for the same suit land but on the new allegation of connivance between Dhero and revenue officials in the year 1932-33, though the change of stance has also not been proved by the petitioner/plaintiff during trial.

9. In view of the above mentioned facts and circumstances, it is crystal clear that through present civil revisions the plaintiffs/petitioners required this Court to reappraise the facts and evidence which practice is outside the scope of civil revision under section 115 of CPC. Learned counsel for the respondents relied on the following judgments of the superior courts whereby a consistent view has been taken that concurrent finding of the courts below should not be upset unless it is proved with the strong documentary evidence or statement/observation showing misreading or non-reading of evidence, by the courts below.

**i. Lahore Development Authority vs. Muhammad Qasim (2003 SCMR 1311)**

*...that as the findings of fact recorded by the trial and Appellate Court does not suffer from any illegality and irregularity because the learned counsel of the petitioners failed to point out any piece of evidence which was misread by the subordinate Courts or any principle of law has been violated, therefore, revision petition is not competent.*

**ii. Noor Muhammad vs. Mst. Azmat-e-Bibi (2012 SCMR 1373)**

*There is no cavil to the proposition that the jurisdiction of High Court under section 115, C.P.C. is narrower and that the concurrent findings of fact cannot be disturbed in revisional jurisdiction unless courts below while recording findings of fact had either misread the evidence or have ignored any material piece of evidence or those are perverse and reflect some jurisdictional error.*

**iii. Dr. Sadiq Hussain vs. Mst. Maqbool Begum (2005 CLC 368)**

*...Concurrent findings of facts recorded by the two Courts of competent jurisdiction cannot be interfered with in exercise of revisional jurisdiction of this Court as held in the case reported Azizullah Khan and others v. Gul Muhammad Khan 2000 SCMR 1647.*

**iv. Magsood Ahmed vs. Ali Naqi Shah (2002 CLC 1225)**

*...I am of the view that the findings of revisional Court can only be based to correct the error of law and not to substantiate findings of facts of two Courts below.*



**v. Muhammad Ajaib vs. Zahida Arshad (2017 CLC 48)**

*...the concurrent finding arrived after proper appraisal of evidence could not be interfered by the Revisional Court in terms of Section 115, C.P.C. when there was no error committed by the courts below and even the concurrent findings could not be interfered on the ground that appraisal of evidence would suggest another view of the matter.*

10. For what has been discussed above, I am of the considered view that the petitioner has failed to point out any misreading and non-reading of evidence, placed before the Trial as well as Appellate Courts, therefore, it is held that the concurrent findings of the courts below are in consonance with the oral as well as documentary evidence, hence, are not open to any reconsideration or interference by this Court under the provision of section 115 of CPC. Hence, both the titled revision petitions, are hereby dismissed, accordingly.

**(LUBNA SALEEM PERVEZ)  
JUDGE**