JUDGEMENT SHEET
IN THE ISLAMABADHIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

CIVIL REVISION NO. 260 of 2014

Khalid Iqbal and others.

Vs.

Shahid Iqbal and others.

PETITIONERS BY:	M/s Attique ur Rehman Kiani and Imran Haider, Advocates.
RESPONDENTS BY:	M/s Tahir Afzal Abbasi and Shahzad Kiyani, Advocates.
DATE OF HEARING**:**	04.03.2021.

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BABAR SATTAR, J.- This Civil Revision has been filed impugning the order of the learned Additional District Judge, Islamabad dated 27.05.2014.

2. The essential facts of the case are that respondents filed a civil suit on 15.07.1987 seeking declaration against the petitioners to the effect that the respondents were owners in Hissadari possession of village common land measuring 416 kanals bearing khewat No.4, khatooni No.5, khasra No. 199 and 174 to the effect of 1/24th share. In the suit, respondents had averred that a predecessor-in-interest of the petitioners Qaim Khan father of Gustasab Khan (who was the father of petitioner No.1) fraudulently got a statement recorded purportedly being that of one Khan Zaman (Predecessor-in-interest of respondents, being the father of one Ihtabar who was the grandfather of the respondents) in Jammabandi of village Hoter-be-Charagh in the year 1904-05 to the effect that said Khan Zaman had no interest in such property. The crux of the averments in the suit were that

a predecessor-in-interest of the petitioners and the respondents namely Buk owned property in village Hoter-be-Charagh and Chhattar. That the said Buk had a son Kala who died issueless and consequently the property of Buk ought to have been devolved on Buk's brother Hussain who was alive at the time of Buk's death but the said property instead devolved on Khan Zaman, and Qaim through the aforementioned fraudulent statement recorded in the name of Khan Zaman assumed the control of the property that belonged to Buk. The case in the suit is, therefore, built on two limbs (i) Buk's property could not have been devolved on Khan Zaman at the time of death of Buk and Kala probably in 1898 as Khan Zaman's father and Buk's brother Hussain was alive at that time and consequently Khan Zaman did not possess the legal character to acquire such property and subsequently alienate such property in favour of Qaim in 1904-05, and (ii) such property originally belonged to Buk legally devolved on Hussain in 1898 and subsequently on Khan Zaman in 1908 when Hussain died and consequently mutation No. 12 sanctioned on 29.03.1908 in relation to property in village Hoter-be-Charagh and mutation No.8 dated 29.03.1908 in relation to property in village Chhattar, which did not include the afore described suit property as that belonging to Khan Zaman ought to be corrected as such exclusion in the aforementioned mutations was a consequence of fraud committed by Qaim, the processor-in-interest of the petitioners, against Khan Zaman the predecessor-in-interest of the respondents.

3. Learned counsels for the parties stated at the outset that they have submitted written arguments and as this is an old

matter and the questions before the Court in this revision petition are questions of law, they would be satisfied if the petition can be decided on the basis of their written arguments. It is settled law that hearing oral arguments is not a mandatory requirement under the Code of Civil Procedure, 1908 **("CPC")**. In view of the principles of natural justice and provisions of CPC, it is for the court to provide the parties with an opportunity of being heard and to assist the court. In the event that the parties elect not to avail themselves of the opportunity to present oral arguments, it is the duty of the court to adjudicate the matter in view of the pleadings and the record on file. In the instant case this Court has the benefit of written arguments and consequently this petition is being decided in view of the pleadings, the record on file and the written arguments submitted on behalf of the parties.

4. To adjudicate the suit, the learned Civil Court framed seven issues, which are as follows:

1. *Whether the suit is not maintainable? OPD.*
2. *Whether the plaintiff has no cause of action? OPD.*
3. *Whether the suit is frivolous? OPD.*
4. *Whether this Court has no jurisdiction? OPD.*
5. *Whether the suit is time barred? OPD.*
6. *Whether the suit is bad for non-joinder of necessary parties? OPD.*
7. *Whether the plaintiffs and defendants No.2 to 6 are owners in possession to the extent of ½ share and they are entitled to permanent injunction as prayed in the plaint? OPD.*

5. The learned Civil Court by judgment dated 27.09.2010 dismissed the suit. The findings of the learned Civil Court in relation to the relevant issues are as follows: -

> *Issue No.1.*
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> *It is also evident from the record of plaint that the plaintiffs have claimed that their predecessor Hussain Baksh and Fattah had lands in village, Hotar Be Charagh Chattar and Phulgran, but the plaintiffs have controverted the dispute of distribution of inheritance to the extent of Hotar Be Charagh, so it is difficult to ascertain that whether the plaintiffs' side have got excessive land in other villages or actually they were deprived of from the inheritance of their predecessors back in 1908. The plaintiffs did not even mention that who acquired the land and how much compensation was given to defendants No.1-A to 1-H or to their ascendant, however the fact of acquisition of disputed property confirms that the plaintiffs are out of possession and they cannot sue for possession of their share in Shamilat.*
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> *Issue No.2.*
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> *The plaintiffs are demanding ½ share out of the share of defendants No.1-A to 1-H in the Shamilat land of Chattar, on the basis of said fraud as was committed in Mauza Hotar Be Charagh, but the plaintiffs did not mention any owned land in Mauza Chattar through which they become entitled to get share in Shamilat of Chattar. The plaintiffs cannot claim/sue on the same cause of action which has already been satisfied/ceased to be exist between the parties vide judgment dated 01.06.1995.*
>
> *The plaintiffs cannot be allowed to bring disputes of their inheritance and matters connected thereto, in piece meal. The plaintiffs have mentioned in plaint that their predecessor had properties in Hotar Be Charagh, Chattar and Phulgran and they have brought the whole dispute before the Court of Murree and have got the dispute of inheritance decided from the Court. Now they have no cause of action left against the defendants regarding ownership of inherited properties, so far as the right to possession of common land is concerned, the Revenue Authorities have jurisdiction to resolve the issue*

through partition of the same/Shamilat. Calculation of expected share in Shamilat on the basis of owned land and handing over possession to the owners as per "Wajibul Arz is the vested responsibility of Revenue Authorities U/S 145 & 146, Land Revenue Act, 1967. The plaintiffs have no cause of action against the contesting defendants i.e. No.1-A to 1-H, hence the issue is decided in affirmation.

Issue No.5.

On the other hand, counsel for the plaintiffs argued that in case of inheritance suits wrong entries gives new cause of action and Article 120 of Limitation Act applies in the case, in this regard he placed reliance on 2000 SCMR 1574, 1993 CLC 625 and 1999 MLD 2146. Since limitation in the case is common question of law and fact, therefore, needed evidence, but the defendants No.1-A to 1-H did not adduce and confidence inspiring evidence in this regard, hence the issue is decided in negative.

Issue No.6.

Arguments of the counsel for the defendants proves the fact that the Revenue Authorities and concerned Collector are necessary parties to the suit and without knowing their contention the dispute cannot be justly adjudicated upon, hence the issue is decided in affirmative.

Issue No.7.

The disputed land is 415 Kanals and 16 Marlas of Shamilat land, as per plaint the land has already been acquired in 1972, but the plaintiffs have not impleaded the necessary parties in the suit, so actual position regarding possession of the disputed land and status could not come before the Court. Moreover, the plaintiffs did not produce in their evidence the main document which shows the right in Shamilat land i.e. the statement of customs/Wajib-ul-Arz of the defendants. It is admitted fact that Shamilat land could have consist of pastures, well, mosque etc. which could not be partitioned, in the present case the plaintiffs did not provide any such details. The onus to prove the issue was on plaintiffs but they could not discharge the same and failed to prove their ownership on the disputed property to the extent of their share and entitlement to possess the respective

shares in Shamilat especially when the land has already been acquired.

6. The learned Additional District Judge set-aside the judgment of the learned trial court and his findings on the relevant issues are as follows: -

Issues No.1 & 2.

The plaintiff have crossed all the DW1 focusing on the fact that the instant suit is similar in nature to the suit filed for Hoter Be Charagh which fall within territorial jurisdiction of Murree. Since the plaintiff contention that the predecessor of defendant No.1 had played fraud in revenue record and struck out the name of the predecessor of the plaintiff and due to which Civil Court Murree decision; the plaintiff succeeded to acquire their due share in Hoter Be Charagh. However, the learned Trial Court has not accepted this arguments of the appellants/plaintiffs had it non-suited the plaintiff by invoking provision U/o 2 Rule 2 CPC that the plaintiff failed to challenge the disputed property of instant suit in his earlier suit filed by the plaintiff at Murree, therefore, he was barred to file suit regarding said property at Islamabad. This observation is against the law on subject since Civil Court at Murree lack the jurisdiction on the subject matter of instant suit as it falls within Islamabad. Therefore the findings of the learned trial Court on issues No.1 & 2 is set-aside, hence the issue is decided in favour of appellants/plaintiffs.

Issue No.5.

Limitation does not run in inheritance matters. Therefore, by not challenging inheritance entries by the predecessor of the plaintiffs, does not preclude the plaintiff to file the instant suit, hence the issue is rightly answered in negative.

Issue No.6.

The revenue authorities were not necessary impleaded party in the suit by the plaintiff. However, non-joinder of necessary party does not entail dismissal of suit, therefore, even otherwise is the issue is answered in affirmative, it has no bearing on the original controversy of parties.

Issue No.7.

The plaintiffs have also produced copy of judgment dated passed by the learned Civil Judge Murree. Where the controversy to the extent that the impugned statement of Khan Zaman in Ex.P4 was declared null and void and due to which the plaintiff had got their share in the suit property at Murree, hence, it is decided by competent Court of Law that the impugned mutation in name of Ghustasab Khan while depriving the predecessor of the plaintiff in the property at Be Charah was against the facts.

Perusal of pleadings and evidence of parties there is nothing on record that there exists any custom in the village or family to devolve the property on cousin instead of real uncle (Hussain).

7. Before discussing legality and merit of the impugned judgment, let us consider the law on (i) the question of limitation, (ii) the relevance of a judgment delivered by another court in a case with overlapping facts, and (iii) the standard of proof required to establish fraud as done in the instant case to declare a transaction that purportedly took place in 1904-05 to be null and void.

8. On question of limitation, it has been held by the learned appellate court that it simply doesn't apply in inheritance cases. The law on limitation in general and more specifically on whether it applies to inheritance matters has been explained by the august Supreme Court as follows:

(i) Fatah Uddin v. Zarshad and another (1973 SCMR 248)

"*under Article 120 of the Limitation Act the time begins to run from the date the right to sue accrues and in this case the right to sue accrued from the date of discovery of the fraud which was specifically alleged to be in 1969.*"

(ii) Hakim Muhammad Buta and another v. Habib Ahmed and others (PLD 1985 SC 153)

"The words of section 3 of the Limitation Act are mandatory in nature in that every suit instituted after the period of limitation shall, subject to the provision of Section 4 to 25 of the Act, be dismissed although limitation has not been set up as a defence. If from the statement in the plaint the suit appears to be barred by limitation, the plaint shall have to be rejected also under Order VII, Rule 11, C.P.C. The law, therefore, does not leave the matter of limitation to the pleadings of the parties."

"Where the question of limitation is not a mixed question of law and fact or where limitation is apparent on the face of the record, a wavier by parties would relieve the Court of its obligation under Section 3 of the Limitation, Act."

(iii) Muhammad Raz Khan v. Government of N.W.F.P and another (PLD 1997 SC 397)

"Principle of justice and fairplay does not help those who were extraordinary negligent in asserting their rights and despite becoming aware about alleged void order adverse to their interest remain in deep slumber. Therefore, according to our considered opinion, facility regarding extension of time for challenging orders cannot be legitimately stretched to any length of unreason period at the whim's, choices or sweet will of affected party. Thus, order termed as nullity or void could at best be assailed by computing period of limitation when he factually came to know about the same. When a person presumes that adverse order is a nullity or totally devoid of lawful authority and ignores it beyond the period specified by law of limitation, then he does so at his own risk."

(iv) Atta Muhammad v. Maula Bakhsh (2007 SCMR 1446)

"8. The findings of the learned two Courts is that the plaintiffs were out of possession and they have not been able to establish receipt of rent and profits from the land, although the appellant claimed to the

contrary. This was the second misrepresentation which disentitled the plaintiffs to any relief in equitable jurisdiction. The learned two Courts held that the suit was barred by time but the learned High Court, by making a sweeping statement, that there is no limitation in the cases of inheritance has, in fact, rewritten the law of limitation. It was not a case of inheritance between the co-sharers because the plaintiffs case was that the appellant was a stranger. As the mutation of inheritance of the estate of Mst. Khairan in 1942 is concerned, there was absolutely no justification, factual or legal, to overlook the delay of 46 years in filing the suit. This delay of 46 years adversely reflected on the bona fides of the claim of the respondents."

"9. We may add that public interest requires that there should be an end to litigation. The law of limitation provides an element of certainty in the conduct of human affair. Statutes of limitation and prescription are, thus, statutes of peace and repose. In order to avoid the difficulty and errors that necessarily result from lapse of time, the presumption of coincidence of fact and right is rightly accepted as final after a certain number of years. Whoever wishes to dispute this presumption must do so, within that period; otherwise his rights if any, will be forfeited as a penalty for his neglect. In other words the law of limitation is a law which is designed to impose quietus on legal dissensions and conflicts. It requires that persons must come to Court and take recourse to legal remedies with due diligence."

(v) Jamila Khatoon and others v. Aish Muhammad (2011 SCMR 222).

7. In the memo of plaint no averment was made as to how and when the disputed mutation first came to the knowledge of the appellants/ plaintiffs except making a vague averment without any particular when and how the appellants came to know about the mutation of land in question in favour of the respondent and

what steps were taken by them to protect their interest nor any particular has been given if the land in question was allotted to them what would they do to take possession of the same and why they kept quiet for a period of 28 years…

9. For the foregoing reasons we are of the view that the appellants not only failed to prove that the respondents have committed fraud in mutation of the land in question in their favour in the year 1956 and that the suit filed by the appellants/plaintiffs was in time. The mutation was effected on 17-12-1956 whereas suit for cancellation was filed on 20-9-1989. The suit on the face of it was hopelessly barred by the time and learned Single Judge in Chambers of the Lahore High Court rightly dismissed the same.

(vi) Lal Khan v. Muhammad Yousaf (PLD 2011 SC 657

"19. It would be pertinent to note that under the West Pakistan Land Revenue Act, 1967, an elaborate procedure is laid down to ensure that the Revenue Record is maintained with care and any change sought to be made on account of acquiring a right by a person by way of inheritance, purchase or otherwise, is duly recorded by the Patwari and subsequently verified by the Revenue Officer. It is on account of this elaborate procedure for maintenance of record that a presumption of truth is attached to Revenue Record in terms of section 52 of the Act which of-course is rebuttable."

"20. With a view to rebut the said presumption of truth attached to mutation, the plaintiff did not lead any evidence to prove the allegation of fraud against any revenue official or that the entries were forged. In Hakim Khan v. Nazeer Ahmad Lughmani (1992 SCMR 1832), the claim made on the basis of entries made in the Revenue Record was upheld and the concurrent judgments and decrees of the courts below were set aside by the court because no evidence was led to prove that those entries were collusive or fraudulent.

(Vii) ***Blue Star Spinning Mills Limited v. Collector of Sales Tax and others (2013 SCMR 587).***

"no limitation runs against a void order and held that this is not an inflexible rule; that a party cannot sleep over to challenge such an order and that it is bound to do so within the stipulated/prescribed period of limitation from the date of knowledge before the proper forum in appropriate proceedings."

(viii) ***Pir Wali Khan v. Niaz Badshah (2013 MLD 1106 Peshawar)***

"Where factum of possession of defendant was in the notice of the plaintiff since 1943, principle of accrual of cause of notice on each adverse entry would not apply to plaintiff's case"

(ix) ***Mst. Garana v. Sahib Kamala Bibi and others (PLD 2014 SC 167)***

"6. It appears that in a suit which involves some element of inheritance the Courts are generally quick to declare that the law of limitation would not be attracted. It is not in all cases of inheritance that the question of limitation becomes irrelevant. Even in Ghulam Ali's case the Court recognized that there could be exceptional circumstances wherein a suit based on inheritance issue of limitation may become relevant. This Court recently in some cases had invoked the principle of time limitation and acquiescence of the plaintiff material in suits of inheritance. In Mst. Phaphan v. Muhammad Bakhsh (2005 SCMR 1278) a suit for declaration and possession was filed in the year 1983 by the plaintiff/petitioner claiming to be the owner of the inherited property. The suit was held to be barred by time wherein mutations of the year 1959 and 1967 were challenged in the year 1983 when the plea of the defendants was that the plaintiffs had alienated the property of her own free-will. The plaintiff's plea of being pardanashin lady and reliance on the case of Ghulam Ali was not accepted as the plaintiff was found to have remained in deep slumber for 24 years despite

the fact that the physical possession of the land was passed on to the defendant. Recently in the case of Lal Khan v Muhammad Yousaf (PLD 2011 SC 657) this Court had set aside the concurrent findings of the three Courts and dismissed the suit filed on 13-5-1970, where the plaintiff had challenged inheritance mutation of 13-2-1947; the Court held it to be barred by time."

(x) Ghulam Abbas and others v. Muhammad Shafi and others (2016 SCMR 1403)

"An heir, who is directly affected by a wrongfully recorded mutation of inheritance, fails to challenge such mutation for a considerable length of time until his death, thereby deprives his heirs of locus standi to dispute such mutation on the ground of his estoppel, abandonment of claim/cause of action. Reference in this regard is made to Abdul Haq v. Surraya Begum (2002 SCMR 1330), Kala Khan v. Rab Nawaz (2004 SCMR 517) and Muhammad Rustam v. Makhan Jan (2013 SCMR 299)."

9. Most recently it was held by this Court in Civil Revision No. 297 of 2017 titled Ahmed Shah Bukhari and others v. Mst. Zulaikha Bi through legal heirs that if mutation entries are not challenged by a person during his lifetime, his successors-in-interest cannot challenge them subsequently, while relying on precedents laid down by the august Supreme Court in the following terms:

"To answer the query guidance is sought from the judgment of Hon'ble Supreme Court of Pakistan reported as "Muhammad Rustam and another v. Mst. Makhan Jan and others" (2013 SCMR 299) wherein it was held in paragraph-3 that:-

"3. Having heard petitioners' learned counsel at some length, we find that admittedly the impugned mutation of inheritance bearing No.571 dated 9-7-1927 was never challenged by Mst. Karam Jan; that she remained

alive till 1975 and no reason whatsoever is reflected either in the plaint or in the evidence led to indicate as to why she did not challenge the said mutation. It has never been the case of the petitioners that either they or their predecessor-in-interest were unaware of the said mutation. In the afore-referred circumstances, the judgment of the learned High Court is unexceptionable. So far as the precedent case-law to which reference has been made by petitioners' learned counsel is concerned, the same is distinguishable as in none of the judgments the question of locus standi was a moot point. In Abdul Haq v. Mst. Surraya Begum (2002 SCMR 1330), this Court inter alia was seized of a similar issue and while dismissing the petition, it observed as follows:-

"11. Atta Muhammad was deprived of right to inherit the property as a consequence of mutation in dispute but he did not challenge the same during his lifetime. The petitioners claimed the property through Atta Muhammad as his heirs who filed the suit as late in 1979 about nine years after the sanction of mutation which had already been given effect to in the record of rights. The petitioners, therefore, had no locus standi to challenge the mutation independently, for Atta Muhammad through whom they claimed inheritance himself had not challenged the same during his lifetime."

10. It has been held in Nawab Khan v. Said Karim Khan (1997 SMCR 1840) that *"the presumption of truth is attached to the record of rights generally but to the first ever settlement record in particular. Very strong evidence is required to rebut the presumption of correctness attached to the first settlement record of an area."* It is trite law that the presumption of truth that attaches to sanctioned mutation record can be rebutted. But in the instant case no reasons have been recorded by the learned appellate court to explain how it came to the conclusion

that entries in the record made back in 1904-05 ought to be altered.

11. In rendering its judgment, the learned appellate court seems to have been swayed by the fact that entries in mutation record relating to village Hoter-be-Charagh (and not Chattar) also sanctioned in 1908 involving the predecessors-in-interest of the same parties were altered by a learned trial court in Murree. The extent to which the judgments of other courts are relevant and to be given effect has been explained by the august Supreme Court in the context of sections 55 and 56 of the Qanun-e-Shahdat Order, 1984 as follows:

(i) Mistri Muhammad Din v. Rawalpindi Improvement Trust, Rawalpindi (1976 SCMR 283)

"Section 43 of the Evidence Act makes judgment admissible only if it is "a fact in issue, or is relevant under some other provision of this Act". Learned counsel conceded that the judgment in the previous suit, per se was not a fact in issue in the instant case nor could he point out to any other section of the Evidence Act under which that judgment could be treated as relevant to the instant case. Rather it manifest from the first illustration appended to the section that merely because that the respondent was a defendant in the earlier suit and the controversy in the suit related to another portion of Khasra No. 2656 would hardly make the judgment relevant to the instant case."

(ii) Muhammad Shakil v. The State (PLD 1990 SC 686)

"*The Courts are bound to decide each case on the basis of its own record without reference to record of another case and pass conviction on accused in each case on its own record. There is express prohibition in the Evidence Act and even on accepted general principles, decision in every proceedings in a given case is to be made on its*

own record. Conflicting decisions given in separate trials shall not be allowed to be used against each other. In Civil Law decision would be only binding upon the parties to the suit and it shall become relevant in another suit only if they fall under sections 40 to 44 of the Evidence Act unless, of course, where the judgments contain an exposition of law, custom or usage having the force of law in which the Court shall take judicial notice of the judgment so far as they state what the law is and they need not be proved. It does not follow that all statements of facts contained in the judgment become matters of which the Court will take, judicial notice."

(iii) Muhammad Sohail v. Government of N.W.F.P (1996 SCMR 218)

4. At this stage we may refer to Articles 55 and 56 of the Order, which read as under:--

"55. Relevancy of certain judgments in probate, etc.. jurisdiction.--A final judgment, order or decree of a competent Court in the exercise of probate matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing,. not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order or decree is conclusive proof—

that any legal character which it confers accrued, at the time when such judgment, order or., decree came into operation;

that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, order or decree declares it to have accrued to that person;

that any legal character which it takes away from any such person ceased at the time which such judgment, order or decree declared that it had ceased or should

cease; and that anything to which it declares any person to be so entitled was the property of that person at the time 4bm-which such judgment, order or decree declares that it had been or should be his property.

56. Relevancy and effect of judgment orders or decrees other than those mentioned in Article 55.--Judgments, orders or decrees other than those mentioned in Article 55 are relevant if they relate to matters of a public nature relevancy the enquiry; but such judgments, orders or decrees are not conclusive proof of that which they state."

A perusal of above Articles indicates that a final judgment, order or decree of a competent Court passed in the exercise of-

(i) Probate; or
(ii) matrimonial; or .
(iii) admirality; or
(iv) Insolvency jurisdiction;

which confers upon or takes away from any person any legal character or which declares any person to be entitled to any such character or to be entitled to any specific thing not as against any specified person but absolutely is relevant to the extent of such legal character or the title of any such person to any such thing is relevant it may further be observed that it also provides that the judgment, order or decree referred to in para. 1 thereof is conclusive proof in the matters, provided in the subsequent portion of the aforesaid Article reproduced hereinabove.

It may also be pointed out that under Article 56 it has been laid down that judgments, orders or decrees other than those mentioned in Article 55 are relevant if they relate to matters of a public nature relevant to the enquiry but such judgments, orders or decrees are not conclusive proof of that which they state. In other words, if a final judgment, order or decree is passed by a competent Court in the exercise of four categories of jurisdiction mentioned in para. 1 of Article 55 and if it relates to the matters as to the character referred to

therein in the subsequent portions of the above Article, it is conclusive 'proof but any other final judgment, order or decree which is passed by a competent Court in exercise of jurisdiction other than the above four types of jurisdiction, namely, probate, matrimonial, admiralty or, insolvency, the same will be relevant but will not be conclusive "'proof of that which it states in view of Article 56 of the Order.

12. The learned trial court has rendered its judgment in favor of the respondents on the basis of its findings that a predecessor-in-interest of the petitioners has committed fraud in relation to the suit property against a predecessor-in-interest of the respondents back in the year 1904-05. The law on the question of fraud is also well settled by now, for example, in Muhammad Tufail v. Muhammad Aslam Khan (1999 YLR 934) it was held that "*fraud is not only to be alleged specifically in the pleadings but also to be proved by convincing evidence beyond any shadow of doubt.*"

13. In view of the principles of law as enumerated by the august Supreme Court, the following can be concluded:

(i) No principle of general application has been laid out in the jurisprudence produced in relation to the question of limitation pursuant to which the period of limitation prescribed under the Limitation Act can be held to be not applicable to a claim asserted on the basis of right to inheritance or on the basis of fraud.

(ii) It is for the party asserting a right to establish that it falls within the prescribed period of limitation if on the face of record the claim has been asserted beyond the period of limitation from the date of the event that gives rise to the

grievance. If such party claims that it is within the prescribed limitation period when calculated from the date of such party's knowledge of the event, it must clearly declare the date when the party acquired knowledge of the event giving rise to the cause of action in its averments, such as a false entry in the mutation record or fabrication of record on the basis of fraud or forgery etc., and the limitation period would run from such date if the party can discharge the onus to prove the emergence of cause of action on such date through evidence.

(iii) In a case where a predecessor-in-interest of a party, through whom such party claims a right, did not bring a claim to establish and assert a right during the prescribed period of limitation, such person would be deemed to have acquiesced to the state of affairs as has existed and no right to assert the claim afresh would devolve onto his successors-in-interest who claims a right through him.

(iv) A presumption of correctness attaches to entries in the revenue record in view of section 52 of West Pakistan Land Revenue Act, 1967 and a party asserting rights in conflict with such record bears the onus to rebut the presumption attached to such record through convincing evidence.

(v) It is for the party alleging fraud to discharge the onus of establishing that fraud took place and resulted in loss of legal character for the party making such claim. The standard of proof required to establish fraud does not become any less stringent merely because the alleged fraud transpired a long time back and the party making the allegation and claiming rights on the basis of such allegation lacks the ability to discharge the

onus of poof due to non-availability of convincing evidence due to efflux of time.

14. Let us now apply the relevant principles of law to the facts in the instant case. Both the learned trial court and the learned appellate court erred in law on the question of limitation. The relevant events in which the respondents (i.e. plaintiffs in the suit) locate their right to property transpired in 1898, 1904-05 and 1908 i.e. when Buk died and his property ought to have devolved upon Hussain according to the respondents, when the property purportedly devolved on Qaim due to Khan Zaman's statement allegedly procured through fraud, and subsequently when Hussain died in 1908 and his property, including property that ought to have been inherited from Buk, should have devolved upon Khan Zaman. Either way the latest year when limitation period began to run for purpose of Khan Zaman's claim to suit property that he allegedly inherited from Hussain but was not reflected in the revenue record was 19.03.1908 when mutations No. 8 and 12 were sanctioned. Khan Zaman died in 1938 and for the thirty long years that he was alive after 1908 he never asserted any claim against the suit property that Qaim allegedly possessed. After his death his son Ihtibar never claimed any right against the suit property and he too reportedly died in 1972. It was not until 1987 that the respondents claim to have suddenly discovered that their great grandfather Hussain and their grandfather Khan Zaman were defrauded by Qaim, the grandfather of the petitioners, in 1904-05.

15. *Nemo dat quod non habet* ("no one gives what they do not have") is a well-known maxim in common law jurisprudence. Khan Zaman did not assert any right during his life to claim the suit property in question that devolved on Qaim and after him to his successors-in-interest all the way to the petitioners. If he had brought a claim against the suit property, he would have been required to do so within the period prescribed under the Limitation Act. Once he did not do so within his life time during the prescribed period of limitation, he left no lingering right to his successors-in-interest two generations down, to bring a claim for correction of revenue record and assert ownership on suit property allegedly appropriated in 1904-05 by the predecessor-in-interest of the petitioners on the basis of fraud. If Khan Zaman were alive in 1987, he could not have brought such a suit against the petitioners, being barred by time, and neither could his successors-in-interest.

16. Further, with all due respect to the learned appellate court, the impugned judgment is not a judgment for purpose of Order XLI Rule 31 of CPC in view of the law laid down by the august Supreme Court in Pakistan Refinery Ltd., Karachi Vs Barrett Hodgson Pakistan (Pvt.) Ltd. (2019 SCMR 1726). It is completely devoid of reasoning and while decreeing the suit of the respondents it does not explain at all how it reached certain conclusions on questions of fact without appreciating or discussing the evidence produced before it. It has not determined, for example, the date of demise of Buk or Kala or Hussain, or whether the suit property devolved from Buk to

Khan Zaman and Qaim or how it came to the conclusion that the suit property rightly belonged to Hussain. It has not determined how old Khan Zaman was in 1898 at the time of the alleged demise of Buk or in 1904-05 when he was allegedly the object of fraud committed by Qaim. It has not determined how it came to the conclusion that Khan Zaman was defrauded by Qaim in 1904-05 and what evidence backed such finding. It has not discussed the entries in the revenue record and has further concluded that there was no legal requirement to implead the concerned authorities whose record would need to be corrected to uphold the claim of the respondents in the suit, against clear dicta laid by the august Supreme Court that revenue authorities must be impleaded to present their version in a case where a claim is made on the basis that the record is incorrect. One of the purposes for creating an obligation for a court to give reasons is that a superior court exercising appellate or supervisory jurisdiction is able to appreciate the arguments backed by evidence that prevailed with the court. Devoid of reasoning the impugned judgment falls foul of the requirement to give reasons prescribed under section 24A of the General Clauses Act, 1897.

17. The learned appellate court also erred when instead of appreciating the evidence adduced before the learned civil court, it acted under the influence of a judgment rendered by a learned court in Murree in relation to a claim of the respondents re property in Hoter-be-Charagh. In doing so it acted in breach of section 56 of the Qanun-e-shahadat Order and the law on the relevance and effects of judgments of other courts as

enumerated by the august Supreme Court in Mistri Muhammad Din (1976 SCMR 283) and Muhammad Sohail (1996 SCMR 218). The learned appellate court could not use the judgment and findings of another court that did not fall within the scope of section 55 of the Qanun-e-Shahadat Order, 1984, as a substitute for its own findings of fact backed by the evidence adduced before it.

18. The instant case is a text book example of why the law of limitation exists. The fraud that the respondents allege supposedly transpired in 1904-05. All characters involved in the episode i.e. Khan Zaman, Qaim, Hussain, Kala and Buk and the revenue authorities who would have created and sanctioned the record at the time are long gone. The children of the main characters i.e. Khan Zaman and Qaim, have also passed away from this world. Even if one were to assume that Khan Zaman was the victim of some fraud back in 1904-05, there is no way to substantiate such fact with convincing evidence after the passage of 115 years. It is not for courts of law to decide matters on the basis of assumptions and conjecture instead of facts as established through admissible evidence. In the present case there exists no evidence on the basis of which this Court can uphold the declaration of rights made by the learned appellate court in favor of the respondents who admittedly have never been in possession of this suit-property.

19. For the reasons stated above, the instant petition is ***allowed*** and the impugned judgment and decree dated 27.05.2014 is set aside for suffering from illegality and material

irregularities and the judgment and decree of the learned Civil Judge is set aside as the suit was barred by limitation. As it has been determined that the suit was time barred and liable to be dismissed for having been filed beyond the period of limitation by some seventy-three odd years, the question of remand for determination of facts afresh does not arise.

(BABAR SATTAR)
JUDGE

Announced in the open Court on 16.04.2021.

JUDGE

Approved for reporting.

Saeed.