

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

C.R.No.12/2012
Muhammad Nazir and others
Versus
Noor Ahmed and others

Date of Hearing: 01.07.2019
Petitioners by: M/s Zahid Mahmood Raja and Idrees Ali,
Advocates
Respondents by: M/s Tanveer Ahmad Malik and Zameer
Hussain Chaudhary, Advocates

MIANGUL HASSAN AURANGZEB, J:- Through the instant civil revision petition, the petitioners impugn judgment and decree dated 12.12.2011, passed by the Court of the learned Additional District Judge, Islamabad, whereby their appeal against the *ex-parte* judgment and decree dated 08.09.2010, passed by the Court of the learned Civil Judge, Islamabad, was dismissed. Vide the said *ex-parte* judgment and decree dated 08.09.2010, the learned Civil Court dismissed the suit for declaration instituted by Muhammad Nazeer, who was the predecessor of the petitioners. In the said suit, Muhammad Nazeer had challenged (i) mutation No.91, dated 29.03.1963, (ii) mutation No.120, dated 29.09.1966, and registry bearing No.880, dated 09.04.1965.

2. The record shows that on 01.06.2001, Muhammad Nazeer instituted a suit for declaration against the respondents before the learned Civil Court. The said suit was contested by defendants No.1 to 4 and 6 to 12 in the said suit by filing their written statements. From the divergent pleadings of the contesting parties, the learned Civil Court, vide order dated 15.04.2002, framed the following issues:-

- "1. Whether the plaintiff has got no cause of action? OPD
2. Whether the suit is time barred? OPD
3. Whether the plaintiff is entitled to the decree for declaration and permanent injunction? OPP
4. Relief."

3. Vide order dated 26.06.2006, the defendants were proceeded against *ex-parte*. After the recording of Muhammad Nazeer's evidence, the learned Civil Court, vide judgment and decree dated 08.09.2010, dismissed the suit primarily on the ground of limitation. In the said judgment and decree, it was observed that Muhammad Nazeer, in his suit had not even pleaded as to when he gained knowledge as to the impugned mutation No.91, dated 29.03.1963 and mutation No.120, dated 29.09.1966 and registry No.880, dated 09.04.1965.

4. The said judgment and decree was assailed by Muhammad Nazeer in an appeal before the Court of the learned Additional District Judge, Islamabad. Vide judgment and decree dated 12.12.2011, the said appeal was also dismissed. In the said judgment and decree, it was observed by the learned Appellate Court that Muhammad Nazeer had not been able to dislodge the presumption of correctness attached to the mutations which had been challenged by him. The said concurrent judgments and decrees passed by the learned Courts below have been impugned by the petitioners in the instant revision petition.

5. Learned counsel for the petitioners, after narrating the facts leading to the filing of the instant revision petition, submitted that through the impugned mutation No.91, dated 29.03.1963 and mutation No.120, dated 29.09.1966, Muhammad Nazeer's share in 42 *kanals* of land, situated in Village Jhangi Syedan, Islamabad had been transferred as the result of fraud, misrepresentation and falsification; that Muhammad Nazeer had never appeared before the revenue authorities for execution of the said mutations; that the said false mutations cannot operate to the petitioners' detriment; that the petitioners challenged the said mutations after coming to know about their existence; that the suit instituted by Muhammad Nazeer was dismissed by the learned Civil Court in a hasty manner; and that it is well settled that limitation does not run to challenge a void order or a document executed on the basis of fraud. Learned counsel for the petitioners prayed for the instant petition to be allowed and for the concurrent judgments and decrees passed by the learned

Courts below to be set-aside. In making his submissions, learned counsel for the petitioners placed on the judgments reported as 2005 SCMR 1690, 2015 SCMR 1704, PLD 1970 Lahore 614, 2015 MLD 111, 2015 YLR 2072, 2016 YLR 2575 and PLJ 2017 Peshawar 123.

6. On the other hand, learned counsel for the contesting respondents submitted that the concurrent judgments and decrees passed by the learned Courts below do not suffer from any misreading or non-reading of evidence; that even though the defendants were proceeded against *ex-parte* by the learned Civil Court, Muhammad Nazeer's suit was correctly dismissed on the ground of limitation; that it is obligatory on the Court to first determine as to whether the suit had been filed within the limitation period provided by law; that the mutations attested in the years 1963 and 1966 were challenged in a suit filed more than 30 years after the attestation of the said mutations; that in his suit, Muhammad Nazeer had not pleaded as to when he gained knowledge as to the said mutations; that although the said mutations were being challenged on the ground of fraud, no particulars of fraud had been given in the pleadings; and that Muhammad Nazeer claimed to have been dispossessed from the suit land but in the plaint he did not mention the date on which he was dispossessed. Learned counsel for the contesting respondents prayed for the revision petition to be dismissed.

7. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

8. The facts leading to the filing of the instant revision petition have been set out in sufficient detail in paragraphs 2 to 4 above, and need not be recapitulated.

9. In the suit for declaration instituted by Muhammad Nazeer on 01.06.2001, he had challenged mutation No.91, dated 29.03.1963 and mutation No.120, dated 29.09.1966, whereby land measuring 42 *kanals* in Village Jhangi Syedan, Islamabad was transferred in favour of the respondents. He had pleaded that the said mutations were made on the basis of fraud and that

the respondents were influential persons. In the suit, Muhammad Nazeer also pleaded that he had been dispossessed from the suit land.

10. Muhammad Nazeer had admitted that his brother, Muhammad Shareef had sold his share in the suit land to the predecessor-in-interest of respondents No.1(a) to 1(e) and 2 to 12 through the said mutations. Muhammad Nazeer had not specified his share in the said land.

11. Although the defendants in the suit had been proceeded against *ex-parte* on 26.06.2006, the learned Civil Court after the recording of Muhammad Nazeer's evidence, dismissed his suit on the ground of limitation. Muhammad Nazeer's appeal against the judgment and decree dated 08.09.2010, passed by the learned Civil Court was dismissed by the learned Appellate Court, vide judgment and decree dated 12.12.2011.

12. I have gone through the suit instituted by Muhammad Nazeer and have observed that the same does not contain any particulars of fraud played on him. It is essential that in a case where fraud, undue influence, or coercion is put at the forefront, the complainant party should set out the facts in full and give essential particulars instead of making general allegations. This is a legal requirement enshrined in Order VI, Rule 4 of C.P.C and reiterated by the Superior Courts in several cases, including Faizum alias Toor Vs. Nander Khan (2006 SCMR 1931), Mst. Sahib Noor Vs. Haji Ahmed (1988 SCMR 1703), and Pakistan Banking Council Vs. Ali Maohtaram Naqvi (1985 SCMR 714). Recently, in the case of Lanvin Traders, Karachi Vs. Presiding Officer, Banking Court No.2, Karachi (2013 CLD 1581), the Hon'ble Supreme Court has held that it is an elementary principle of pleadings that where allegations of fraud, misrepresentation, collusion or *malafide* are attributed, necessary particulars and the details in that context are to be unfolded in the pleadings, and that bald or vague statements to that effect are of no legal consequence.

13. Muhammad Nazeer had also omitted to mention the date on which he was dispossessed from his share in the said land. It is

my view that this omission on Muhammad Nazeer's part was intentional so as to avoid the suit to be dismissed on the ground of limitation. Since it has been pleaded in the suit that the disputed mutations were followed by Muhammad Nazeer's dispossession, it was important for him to have mentioned the date on which he was dispossessed. For the purposes of clarity, Muhammad Nazeer's pleading as to the alleged fraudulent mutations and his dispossession is as follows:-

مدعا علیہم نے قبضہ سے اپنے نام منتقل کرا لی ہیں اور بعد ازاں زبردستی سینہ زوری سے قبضہ اراضی متدعوہ پر مدعا علیہم نے کر لیا ہوا ہے۔

14. As regards the question of limitation, suit filed after the limitation provided in law is without jurisdiction and should be dismissed even if nobody has pointed out such a lacuna. The Court was supposed to check the issue of limitation. Plea with respect to limitation cannot be waived and even if it is waived it can be taken by the party waiving it or by the Court itself. Where period of limitation for an action is provided by law, equitable consideration cannot be attracted, applied or adhered to, against the express provisions of the limitation, so as to nullify, defeat and override the law. Where the limitation period for any remedy has lapsed, the doors of justice are closed and the plea of injustice and hardship cannot be set out as a ground to seek the extension of limitation.

15. The learned Courts below correctly noticed that the suit instituted by Muhammad Nazeer was barred by limitation. Muhammad Nazeer had not even filed an application for condonation of delay. By asserting that there was no limitation period provided for challenging an order passed as a result of fraud, the petitioners have impliedly conceded that the suit was barred by limitation. Fraud had to be proved through cogent evidence. Since Muhammad Nazeer had not even given particulars of fraud in his suit, his plea that the impugned mutations were attested as a result of fraud fails.

16. In view of the above, I do not find any jurisdictional irregularity in the concurrent judgments passed by the learned

Courts below. Consequently, this revision petition is dismissed with no order as to costs.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

ANNOUNCED IN AN OPEN COURT ON 26/7/2019

(JUDGE)

*Qamar Khan**