

**JUDGMENT SHEET**  
**ISLAMABAD HIGH COURT, ISLAMABAD,**  
**(JUDICIAL DEPARTMENT)**

**Civil Revision No.325/2014**

Naseer Ahmad deceased through legal heirs

*versus*

Muhammad Javed and others

*and*

**Writ Petition No.700/2013**

Naseer Ahmad deceased through legal heirs

*versus*

Chief Commissioner, ICT, Islamabad and others

Petitioners by: Raja Faisal Younas, Advocate.

Respondents by: Mr. Khalid Mudassar Abbasi, Advocate for  
Respondents No.1 to 6.

Respondents No.7 & 8 *ex-parte*.

Date of Decision: 15.02.2021.

**MOHSIN AKHTAR KAYANI, J:** Through this single judgment, I intend to decide the captioned civil revision petition as well as the writ petition having similar questions of law and involving similar parties.

2. Through the captioned civil revision petition, Naseer Ahmad, represented through legal heirs, as well as Tanveer Ahmad (*hereinafter referred to as "petitioners"*) have called in question judgment of the learned Additional District Judge (East), Islamabad, dated 31.10.2014, whereby appeal filed by Respondents No.1 to 6 against judgment and decree, dated 18.04.2013, has been accepted.

3. Likewise, through the captioned writ petition, Naseer Ahmad through legal heirs have assailed order of the Chief Commissioner, ICT, Islamabad, dated

10.10.2012, whereby revision petition filed by Muhammad Javed (Respondent No.1) has been accepted.

4. Succinctly, facts referred in captioned civil revision petition are that, Muhammad Javed, Razeef Akhtar, Muhammad Mukhtar, Muhammad Tariq, Muhammad Farid and Nazakat Hussain (*hereinafter referred to as "Respondents"*) filed suit for declaration, permanent injunction against present petitioners, Muhammad Amin and Muhammad Yasin through legal heirs with the contentions that one Jang Khan, predecessor of said respondents, transferred land through Mutation No.433 in the year 1982 to his son Raja Khan, who died issueless and his share/property devolved upon his legal heirs, as such, 1/5<sup>th</sup> share of said predecessor in shamlat land, vide Mutation No.435, was attested in favour of Respondents No.7 & 8, however said respondents allegedly incorporated 1/3<sup>rd</sup> share and transferred the same in favour of one Murad Bakhsh i.e. predecessor-in-interest of present petitioners. The suit was contested by both the sides and ultimately same was dismissed vide judgment and decree dated 30.03.2013, however appeal filed thereto has been accepted by the learned appellate Court, vide impugned judgment and decree dated 31.10.2014. Hence, instant civil revision petition.

5. Similarly, brief facts referred in captioned writ petition are that Muhammad Javed/Respondent No.4 filed an application before the Collector, Islamabad for correction of Khasra Girdawari of land falling in Khasra No.636, measuring 25 Kanals & 2 Marlas, Mouza Athal, Tehsil and District, Islamabad, who sought reports from Halqa Patwari as well as Girdawar, whereby the latter confirmed that said Khasra was entered in the name of petitioner's father in the year 1990/91, on the basis of which the Collector, Islamabad dismissed the application filed by Muhammad Javed/Respondent No.4. Feeling aggrieved thereby, the said respondent challenged the said order before Deputy

Commissioner/Commissioner Revenue, ICT, Islamabad, who dismissed the appeal, which led to filing of revision petition before Chief Commissioner, ICT, Islamabad, which was accepted with direction to Muhammad Javed/Respondent No.4 to approach the revenue authorities for correction of record. Hence, instant writ petition.

6. Learned counsel for petitioners contended that the learned appellate Court while passing the impugned judgment and decree, dated 31.10.2014, has not taken into account the evidence adduced by the petitioners, as such, suit filed by respondents was hopelessly time barred having been filed after 70 years, even otherwise, findings of the learned appellate Court are based on misreading and non-reading of the evidence, which are not sustainable in the eyes of law, therefore, impugned judgment and decree may kindly be set-aside and that of learned Civil Court may be upheld; that order passed by the Chief Commissioner, ICT, Islamabad, dated 10.10.2012, is result of misreading and non-reading of the documents available on record, as such, the Collector, Islamabad as well as Deputy Commissioner/Commissioner Revenue, Islamabad have rightly appreciated the evidence while passing their orders, even otherwise, during pendency of civil litigation, the revenue authorities have no power to decide such like claims, therefore, impugned order dated 10.10.2012 is liable to be set-aside.

7. Conversely, learned counsel for respondents No.1 to 6 opposed the filing of captioned civil revision petition on the grounds that learned Civil Court had failed to appreciate that the respondents have challenged the entries of jamabandi incorporated in the revenue record against Mutations No.433 & 435, as such, Respondents No.7 & 8 never remained in possession of the excessive share, even otherwise, the learned Civil Court had wrongly held that respondents were in possession of excessive share of the suit land for more than

70 years, per se, the learned appellate Court has rightly rectified the oversight of the learned Civil Court vide the impugned judgment and decree, which are liable to be maintained. Similarly, learned counsel for respondents No.1 to 6 opposed the filing of captioned writ petition by contending that their forefathers owned and possessed the suit land since 1909/10 to 1986/87, however same was unlawfully changed in the year 1991 without any transfer through registered deed, mutation or any decree of a Court, which fact has rightly been appreciated by the Chief Commissioner, ICT, Islamabad while passing the impugned order, dated 10.10.2012, which is liable to be maintained.

8. Arguments heard, record perused.

9. Perusal of record reveals that notices to respondents have been issued at the time of admission of captioned civil revision petition, but no one put in appearance on behalf of respondents No.3, 7(a)(b) and 8(a) to (g) despite publication of notice in daily "Pakistan" on 04.10.2020, therefore, said respondents have been proceeded against *ex-parte* vide order dated 15.10.2020.

10. Record further reveals that suit titled Muhammad Javed and others Vs. Muhammad Ameen and others for declaration and permanent injunction was filed by respondent on 25.05.2006, and present petitioner Naseer Ahmad was respondent/defendant No.3 in the said civil suit who is presently represented through his legal heirs as he died during the pendency of civil proceedings. The claim of respondent in the said civil suit for declaration and permanent injunction is to the extent of entries incorporated in the revenue record (jamabandi) against mutation Nos.433 & 435, referred as Ex.P-1 & Ex.P-2 sanctioned in the year 1928 and on 22.01.1929, respectively, whereby plaintiff/respondent represented through PW-1 Razeef Akhtar and PW-2 Muhammad Javed who have taken a categorical stance in their evidence that in Mutation No.433 Ex.P-1 land was mutated through *hibba* (gift) in favour of Raja Khan and through Mutation No.435 Ex.P-2 Jang Khan has transferred 1/5<sup>th</sup> share

of total land measuring 23 Kanal, 11 Marlas in favour of Muhammad Ameen and Muhammad Yasin through second *hibba* (gift)/mutation Ex.P-2, whereby said mutations were confirmed in the year 1928. After the demise of Raja Khan, the land was transferred to his legal heirs but complete share was not transferred in line with mutation No.435. PW-1 Razeef Akhtar has taken another stance that new Khasra No.636 and old Khasra No.976/50 were not mutated through mutation No.435 in favour of defendants No.1 & 2 and as such the record of rights contained wrong information in the revenue record.

11. Similar mistake was further incorporated in the settlement of 1956-57, whereby 1/3<sup>rd</sup> share of land was referred instead of 1/5<sup>th</sup> share in the record and since then true effect of mutation No.435 was not corrected till date. As per the claim of PW-1 Jang Khan was died in the year 1929 and inheritance mutation was sanctioned on 14.07.1929 vide mutation No.480, Ex.P-3. During the course of cross-examination, PW-1 acknowledged that Jang Khan was his grandfather and he is not aware qua the total entitlement/ownership of land including the *shamlat* land in the name of late Jang Khan, nor he has ever placed the *goshwara* of land alongwith suit land, neither he has ever claimed the rectification on record through any civil suit. He also confirmed that despite execution of agreement for *tark qabza* the land was not handed over however, he confirmed that suit land is in possession of defendants No.3 & 4 who have established a society upon the same which is compounded property with gates and guards appointed on the same. PW-1 contends that his claim is confined to Khasra No.636/645 and the incorporation and change of share in the suit land in the year 1931-32 was never agitated by his forefathers.

12. PW-2 Muhammad Javed/respondent has given similar evidence qua the claim of two mutations whereby correct incorporation of transfer of land was not recorded and he is also claiming to set aside the mutation No.435, which was executed with the connivance of revenue authorities. During the course of cross

examination, he also confirmed that his forefathers had never filed the suit for correction in the revenue record.

13. On the other hand Naseer Ahmad, present petitioner while appearing as DW-1 in the civil suit recorded his statement with the claim that his father had purchased the land measuring 412 Kanal which was purchased by petitioner's father Murad Bux in his name as well as in the name of his brother through Ex.D-3. The petitioner Naseer Ahmad produced mutation No.482, 597, Ex.D-3, Ex.D-4 and copy of record of rights for the year 1931-32, 1934-35 & 1956-57 through Ex.D-5 to Ex.D-7 and further produced the mutation Nos.779, 782, 785, 786, 787, 822, 823 through Ex.D-8/2 to Ex.D-8/14 and copy of record of rights for the year 1990-91 through Ex.D-15.

14. While considering this entire evidence trial Court has dismissed the suit of the respondent/plaintiff vide judgment & decree dated 18.04.2013 with the observations that no fraud has ever been committed during the mutation as alleged by the plaintiff and simultaneously it has been held by the learned trial Court that after execution of mutation No.433 & 435 the predecessor in interest of the plaintiffs has never challenged the same rather enjoyed the fruits for a period more than 60 to 70 years, even after the sale to Murad Bux they kept quiet which shows that they accepted the impugned mutations and principle of estoppel comes into play. The matter was contested before the appellate Court whereby appeal was allowed by the learned Additional District Judge (East), Islamabad. Learned appellate Court has given its findings on the core issue No.1 with the following observations:-

*The respondents No.1 & 2 put an appearance before the learned trial court as well as this court and contended that they have no objection of the correction in the revenue record are made subject to condition that their due share is not disturbed, therefore, since the controversy revolved around wrong entries entered into jamabandi 1931-32 regarding the alter share of the respondents No.1 & 2 from 1/5<sup>th</sup> to 1/3<sup>rd</sup> therefore in the light of the conceding written statement provided by respondents No.1 & 2 the stance of the appellant to the extent of*

*correction in entries of revenue record with regard to the shares of respondents No.1 & 2 stands admitted.*

*Now to look into the status of respondents No.3 & 4 who has admittedly the possession of shamlati land of khasra No.645 & 636, I have perused the evidence in order to reach at a conclusion that whether a decree for declaration and permanent injunction if granted will it affect the right of respondents No.3 & 4 who are bonafide purchaser. The appellant/plaintiff in order to prove his assertions produced PW-1 & PW-2. The perusal of evidence produced by the PWs it reveals that the PW had categorically deposed that he can not deny agreement entered between the father of appellant and respondents No.3 & 4. Moreover, he also affirmed the fact that the documents of tak-e-qabza of khasra No.645 on stamp paper/iqrar nama exists in favour of respondents No.3 & 4. The appellant also affirmed that he had not challenged tark-e-qabza 645, hence, it is established that respondents No.3 & 4 are legal owners to the extent of khasra No.645, hence, even if the share of respondents No.1 & 2 is altered from 1/3<sup>rd</sup> to 1/5<sup>th</sup> as prayed for by the appellant that will not prejudice the right of respondents No.4 & 5. Since the sale of salam khasra was made by the respondents No.1 & 2 and appellant in favour of respondents No.4 & 5 and tark-e-qabza exists in their favour.*

15. While considering this background and reverse findings given by both the courts below, there is no cavil to the proposition that long standing entries could only be settled by way of filing of civil suit. Reliance is placed upon 2004 SCMR 604 (Nemat Ali vs. Malik Habib Ullah), 1996 SCMR 78 (Rasta Mal Khan vs. Nabi Sarwar Khan), PLD (Revenue) 1949 West Punjab 3 (Qazi Muzaffar Hussain vs. Muhammad Ghous etc.) and PLD 1994 SC 336 (Waris Khan vs. Humayun Shan). As such, claim of respondent/plaintiff is to the extent of correction of the longstanding entries of mutation No.433/435, Ex.P-1 & Ex.P-2, whereas present petitioner while appearing in the Court as DW-1 acknowledged that "they have no objection if the correction in the revenue record is made subject to condition that their due share is not disturbed" and even this aspect was not denied by the petitioner during the course of arguments before this Court when he has been confronted with his own stance recorded as DW-1. On the other hand it has not been denied by the respondents that they have sold

out mutations, however, certain piece of land was not transferred except the possession through tark-e-qabza.

16. While considering these reverse findings of the courts below it is settled principle of law that the judgment given by the Appellate Court in such circumstances has to be followed whereas first appellate court is well equipped to re-appraise the evidence available on record and as such the High Court had limited jurisdiction to reverse findings of the first appellate court while exercising the powers U/S 115 CPC, which could only be exercised until and unless the same is result of misreading or against the principles settled by superior courts. Reliance is placed upon PLD 2005 Peshawar 19 (Abdul Waheed v. Muhammad Bilal). As such, this Court is of the view that findings given by the first appellate court are neither contrary to evidence on record, nor any violation of principle of administration of justice and same has to ordinarily been preferred. Reliance is placed upon 2008 YLR 61 Lahore (Abdul Majeed v. Amjad Farooq), 2000 CLC 500 Quetta (Aasa vs. Ibrahim), 2008 YLR 159 Lahore (Kaniz Bibi v. Muhammad Ashraf) and PLD 1970 SC 139 (Shahzada Muhammad Umar Beg v. Sultan Mahmood Khan).

17. I have also gone through the revenue record which is in line with the evidence of respondent/plaintiff, even the same was acknowledged to the extent of mistake committed in the periodical record of rights by DW-1 Naseer Ahmad, present petitioner, therefore, decision rendered by the first appellate court has to be treated correct especially when the petitioner has failed to demonstrate any illegality or misreading of evidence through which any illegal exercise of jurisdiction was being carried out by the first appellate court, therefore, instant civil revision petition is not maintainable.

18. While going through the captioned W.P No.700/2013, whereby the petitioner is aggrieved with the order dated 10.10.2012, passed by the Chief Commissioner, Islamabad, the petitioner claimed that orders dated 11.11.2009 & 31.05.2012 have rightly been passed by Deputy Commissioner (R)/District



Collector, Islamabad, as such, it appears that Muhammad Javed/respondent No.4 in the writ petition filed application for correction of revenue record to the extent of land situated in Khasra No.636, which was not included in mutation No.1536 at the time of preparation of record of rights for the year 2002-03, whereby he has also referred the suit titled Naseer Ahmed and others Vs. Muhammad Javaid and others pending in the civil court. The said application was contested by the present petitioner, as a result whereof the Deputy Commissioner/District Collector, Islamabad, through impugned order dated 11.11.2009, has dismissed the said application and refused to exercise the jurisdiction as the matter was sub-judice before the competent court. Similar view was also taken by the Deputy Commissioner/Commissioner Revenue in order dated 31.05.2012 and parties were directed to seek the remedy from the competent civil court having jurisdiction. However, Chief Commissioner, Islamabad has taken different view and accepted the revision and directed the respondents to approach revenue authority for correction of revenue record.

19. While considering the entire background as well as different orders of the revenue authorities, question of exercise of jurisdiction in terms of Section 172 of Land Revenue Act, 1967 is involved, as such, respondent No.4 Muhammad Javed's case is only to the extent of Khasra No.636, Mouza Athal, whereby he has taken the specific stance in his application dated 20.08.2008, which is as under:-

یہ کہ 11 اگست 1990ء کو جناب عبدالرشید ولد کاظم خان نے ایک معاہدہ برائے فروخت نصیر احمد ولد چوہدری مراد بخش ساکن اسلام آباد کے ساتھ ۱۰۰ کنال زمین مبلغ -/37000 فی کنال کے حساب سے کیا جس میں اس نے خسرہ نمبر 636 کی زمین بیچ دی (معاہدہ کی کاپی ہمراہ درخواست لف ہے)۔

یہ کہ سال 2002-2003 کی جمع بندی سے میرا نام کاٹ دیا گیا اور نصیر احمد و تنویر احمد ولد مراد بخش کا نام جمع بندی میں ڈال دیا گیا جس کی وجہ مجھے معلوم نہ ہو سکی۔

یہ کہ میں نے یا میرے کسی حصہ دار نے کسی کو بھی اپنی ملکیت نہیں بیچی۔

مندرجہ بالا حقائق کی روشنی میں حضور سے درخواست کی جاتی ہے کہ حقائق کی تفتیش کے لئے انکوائری قائم کی جائے اور مجھے مالی نقصان

اور ذہنی پریشانی سے بچایا جائے اور اس کے ذمہ داروں کے خلاف قانونی کارروائی کی جائے۔

آپ کی عین نوازش ہوگی۔

20. While considering the above claim, Muhammad Javed / respondent No.4 is claiming that he has not sold out his land but his share was transferred, a report has been furnished in this regard and Halqa Patwari on 15.11.2008 submitted a report in which claim of said respondent was acknowledged in the following manner:-

حالانکہ انتقال نمبر 1536 میں نمبر خسرہ 636 مخصوص ہے نہ ہوا ہے اسلئے اندراج نصیر احمد۔ تنویر احمد پسران مراد بخش بعد برابر حصہ دران کا اندراج ہونا چاہیے تھا انتقال نمبر 1536 میں نمبر خسرہ 636 کا اندراج بھی موجود نہ ہے لہذا رپورٹ بمراد مناسب احکام پیش ہے۔

21. If the above report is correct, as per the revenue record, such factum of correction falls within the purview of revenue authorities in terms of Section 172(2)(vi) of Land Revenue Act, 1967, whereby jurisdiction of civil court is barred and revenue authorities are well within the powers to rectify their mistake and, as such, no restriction could be imposed upon them, hence, impugned order dated 10.10.2012, passed by the Chief Commissioner, Islamabad is in accordance with law.

22. In view of above reasons, instant civil revision as well as writ petition is hereby **DISMISSED**.

(MOHSIN AKHTAR KAYANI)  
JUDGE