

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

C.R.No.328/2016

Mst. Pervaiz Akhter and others

Versus

Raja Shoaib Malal and others

Date of Hearing: 23.02.2018

Petitioners by: Rai Azhar Iqbal Kharal, Advocate

Respondents by: Mr. Asif Irfan, Advocate for respondent No.1,
Mr. Sherazgul Abbasi, Advocate for respondent
No.2.

MIANGUL HASSAN AURANGZEB, J:- Through the instant civil revision petition, the petitioners, who are the legal heirs of Ghulam Razzaq, impugn the judgment dated 06.06.2016, passed by the Court of the learned Additional District Judge, Islamabad, whereby the petitioners' appeal against the order dated 04.11.2015, passed by the Court of the learned Civil Judge, Islamabad, was dismissed. Vide the said order dated 04.11.2015, the learned civil Court dismissed the petitioners' application for setting aside (i) order dated 24.02.2010, whereby the petitioners were proceeded against *ex-parte*, and (ii) judgment and decree dated 30.06.2010, whereby the suit for specific performance, declaration and permanent injunction instituted by respondent No.1 (Raja Shoaib Malal), was decreed. Through the said suit respondent No.1, had sought *inter-alia* the specific performance of agreement to sell dated 05.09.1992 between respondent No.3 (Muhammad Shahid Khan), and Ghulam Razzaq and his three sons (petitioners No.5 to 7) for the sale of land measuring 58 Kanals, 10 Marlas in Khasra No.224, Khewat No.71 in Village Badhana Kalan, Tehsil and District Islamabad ("the suit land").

2. Ghulam Razzaq breathed his last on 26.10.2007. He had passed away during the pendency of the suit for specific performance, etc., instituted by respondent No.1 against Ghulam Razzaq and his three sons (petitioners No.5 to 7 herein). Until 24.11.2009, the learned counsel for Ghulam Razzaq and his sons continued to appear before the learned civil Court. On

24.02.2010, Ghulam Razzaq and his sons were proceeded against *ex-parte*. On 30.06.2010, the suit instituted by respondent No.1 was decreed. Prior to the passing of the said judgment and decree dated 30.06.2010, the learned civil Court was not informed about Ghulam Razzaq's demise, and no application was filed to implead his legal heirs as parties to the suit. It may be mentioned once again that Ghulam Razzaq's sons (petitioners No.5 to 7) were already defendants in the said suit. On 19.06.2013, petitioners No.5 to 7 filed an application for the setting aside of the *ex-parte* proceedings dated 24.02.2010, and the judgment and decree dated 30.06.2010. On 13.07.2013, petitioners No.1 to 4 (Ghulam Razzaq's widow and daughters) filed a similar application. Both the applications were not accompanied by applications for condonation of delay. Vide order dated 04.11.2015, the learned civil Court dismissed the said applications. The petitioners' appeal against the said order was dismissed by the Court of the learned Additional District Judge, Islamabad, vide judgment dated 06.06.2016. The petitioners in the instant civil revision petition have impugned the said concurrent judgments of the learned Courts below.

CONTENTIONS OF THE LEARNED COUNSEL FOR THE PETITIONERS:-

3. Learned counsel for the petitioners submitted that the suit land was owned by Ghulam Razzaq and his three sons (i.e. petitioners No.5 to 7); that vide agreement to sell dated 05.09.1992, Ghulam Razzaq and petitioners No.5 to 7 sold the suit land to respondent No.3 for a total sale consideration of Rs.10,53,000/-; that the said agreement was witnessed by respondent No.2; that on 05.09.1992, Ghulam Razzaq and petitioners No.5 to 7 executed a general power of attorney in favour of respondent No.2 authorizing the latter to manage, supervise, sell, mortgage, gift, convey, transfer etc. the said land; that the said power of attorney was duly registered; that on the basis of the said general power of attorney, the suit land was transferred to the Director (Housing) Pakistan Navy; that in this

regard mutation No.1267 was entered on 08.09.1992; that the said general power of attorney stood exhausted when the suit land was transferred to the Director (Housing) Pakistan Navy; that on 29.01.1997 the suit land was repurchased by Ghulam Razzaq and petitioners No.5 to 7, and in this regard, a general power of attorney (Registration No.364) was executed by the Director (Housing) Pakistan Navy, in favour of Ghulam Razzaq; that Ghulam Razzaq had paid Rs.13,21,000/- through cheque dated 28.01.1997 and Rs.13,03,900/- through pay order dated 26.01.1997 to the Director (Housing) Pakistan Navy as sale consideration for the suit land; that on 28.01.1997, Ghulam Razzaq and petitioners No.5 to 7 cancelled the general power of attorney dated 05.09.1992, which had earlier been executed in favour of respondent No.2; that this cancellation was done purely as abundant caution; and that the Director (Housing) Pakistan Navy had executed a general power of attorney on 23.09.1996 authorizing Pashmina Riaz, daughter of Malik Riaz Hussain to sell *inter-alia* the suit land, but the said general power of attorney was cancelled on 29.01.1997 through a registered document.

4. Learned counsel for the petitioners further submitted that after respondent No.2 transferred the suit land on the basis of the general power of attorney dated 05.09.1992 to the Director (Housing) Pakistan Navy, he could not have transferred the suit land to any other party; that nevertheless, on the basis of the said general power of attorney dated 05.09.1992, respondent No.2 entered into an agreement to sell dated 30.06.1996 for the sale of the suit land to respondent No.1 (Raja Shoaib Malal) for a total sale consideration of Rs.25,00,000/-; that the sale by respondent No.2 in favour of respondent No.1 is void; that at no material stage, had Ghulam Razzaq or any of the petitioners sold the suit land to respondent No.1; that the agreement to sell dated 30.06.1996 had not been signed by Ghulam Razzaq or any of the petitioners; that respondent No.1 had not purchased the suit land from the Director (Housing) Pakistan Navy or from Pashmina Riaz.

5. Furthermore, it was submitted that on 06.04.2000, respondent No.1 filed a suit for specific performance of the agreement to sell dated 30.06.1996; that the said suit was barred by time; that Court fee was not affixed with the plaint at any stage; that the said suit was collusive between the plaintiff/respondent No.1 and respondents No.2 and 3; that Ghulam Razzaq passed away on 26.10.2007; that after Ghulam Razzaq's demise, his legal heirs were not impleaded as parties; that respondent No.1 to 3 concealed the fact about Ghulam Razzaq's demise from the learned civil Court; that the learned counsel for Ghulam Razzaq could not have continued to represent him in the Court after his demise; that all the petitioners had no knowledge about the pendency of the said suit, as the same was being defended only by their predecessor, Ghulam Razzaq; that the judgment and decree dated 30.06.2010 had been obtained through fraud on the part of respondent No.1; that the judgment and decree 30.06.2010 had been passed in violation of the principles of natural justice; that law favours adjudication on merits rather than technicalities; and that the impugned orders passed by the learned Courts below were liable to be interfered with in the revisional jurisdiction of this Court. Learned counsel for the petitioners prayed for the revision petition to be allowed, and for the impugned orders passed by the learned Courts below to be set-aside.

CONTENTIONS ON BEHALF OF THE LEARNED COUNSEL FOR RESPONDENT NO.1:-

6. On the other hand, learned counsel for respondent No.1 submitted that Ghulam Razzaq and petitioners No.5 to 7 had executed a registered general power of attorney on 05.09.1992 in favour of respondent No.2 authorizing the latter to *inter-alia* sell the suit land; that the said power of attorney could not be revoked, because same had been executed for consideration; that respondent No.2 on the basis of the general power of attorney dated 05.09.1992 executed agreement to sell dated 30.06.1996 for the sale of the suit land to respondent No.1; that

on the date of the execution of the said agreement to sell, the entire sale consideration of Rs.25,00,000/- was paid; that the general power of attorney dated 05.09.1992 was cancelled on 28.01.1997; that the agreement to sell dated 30.06.1996 was executed prior to the cancellation of the said general power of attorney; that in the said agreement to sell, there was no time fixed for the performance of the agreement; that where no time is fixed for the performance of the agreement to sell under Article 113 of the Schedule to the Limitation Act, 1908, the limitation period for filing a suit for specific performance commences from the date on which the seller refuses to perform the agreement; that respondent No.1 had instituted the suit for specific performance etc., within the limitation period provided by law; that the order sheet of the suit for specific performance shows that Ghulam Razzaq and petitioners No.5 to 7 had put appearance on 31.07.2000; that this shows that Ghulam Razzaq and petitioners No.5 to 7 had knowledge of the pendency of the suit; that a joint written statement had been filed on behalf of Ghulam Razzaq and petitioners No.5 to 7; that on 19.10.2002, issues were framed by the learned civil Court; that on 24.02.2010, *ex-parte* proceedings were initiated against Ghulam Razzaq and petitioners No.5 to 7; that vide judgment and decree dated 30.06.2010, respondent No.1's suit was decreed; that on 13.07.2013, petitioners No.1 to 4 filed an application for the setting aside of the said judgment and decree dated 30.06.2010; that the said application was filed more than three years after the passing of the said judgment and decree dated 30.06.2010; that in the said application, petitioners No.1 to 4 had alleged fraud against respondent No.1; that it was alleged that respondent No.1 had not informed the Court about Ghulam Razzaq's demise; and that it was the obligation of the petitioners to have informed the Court about Ghulam Razzaq's demise.

7. Learned counsel for respondent No.1 further submitted that the application for the setting-aside of the judgment and decree dated 30.06.2010 was filed way beyond the limitation

period prescribed by law; that the said application was not accompanied by an application for condonation of delay; that the petitioners did not apply to the learned civil Court for impleading the legal heirs of Ghulam Razzaq as parties to the suit within the limitation period provided by law; that even after Ghulam Razzaq's demise, petitioners No.5 to 7 continued to be represented by counsel before the learned civil Court until 24.11.2009; that petitioners No.5 to 7 cannot claim to be unaware of the proceedings before the learned civil Court; the petitioners have not explained as to why the application for the setting aside of the judgment and decree dated 30.06.2010 was filed so belatedly; and that the concurrent judgments of the learned Courts below do not suffer from any misreading or non-reading of evidence so as to warrant interference in the revisional jurisdiction of this Court. Learned counsel for respondent No.1 prayed for the revision petition to be dismissed.

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

9. The record shows that vide agreement to sell dated 05.09.1992, (Exh.P/1), Ghulam Razzaq, and his sons Hafeez-ur-Rehman (petitioner No.5), Ilyas Ahmad (petitioner No.6), and Ejaz Ahmad (petitioner No.7), agreed to sell the suit land to Muhammad Shahid Khan (respondent No.3) for a total sale consideration of Rs.10,53,000/- (i.e. Rs.18,000/- per kanal). As per the recital of the said agreement to sell, the total sale consideration was paid by respondent No.3 to the sellers by the time the said agreement was executed. One of the marginal witnesses of the said agreement to sell was Raja Haroon Rashid (respondent No.2).

10. On 05.09.1992, the above named sellers executed a general power of attorney (Exh.P/2) in favour of respondent No.2 authorizing the latter to *inter-alia* manage, supervise, sell, mortgage, gift, transfer, etc. the suit land. This power of attorney was duly registered. One of the marginal witnesses of the said

power of attorney was respondent 3. Respondents No.2 and 3 are said to be partners.

11. Vide agreement to sell dated 30.06.1996 (Exh.P/3), respondent No.2, as the general attorney of Ghulam Razzaq and petitioners No.5 to 7, agreed to sell the suit land to respondent No.1 (Raja Shoaib Malal) for a total sale consideration of Rs.25,00,000/-. As per the recital of the said agreement to sell, the total sale consideration was paid by respondent No.1 to the sellers when the said agreement was executed.

12. On 06.04.2000, respondent No.1 filed a suit for specific performance, declaration and permanent injunction against Ghulam Razzaq, petitioners No.5 to 7, and respondent No.2 before the Court of the learned Civil Judge, Islamabad. In the said suit, the plaintiff/respondent No.1 had sought specific performance of the agreement to sell dated 30.06.1996 executed by respondent No.1 (purchaser) and respondent No.2 as general attorney of Ghulam Razzaq and petitioners No.5 to 7 (sellers), for the sale of the suit property. On 28.01.1997, Ghulam Razzaq and petitioners No.5 to 7 had cancelled the general power of attorney dated 05.09.1992, which had earlier been executed in favour of respondent No.2. In the said suit, the plaintiff/respondent No.1 had also prayed for a declaration to the effect that the cancellation of the general power of attorney dated 05.09.1992 was illegal.

13. In the said civil suit, Ghulam Razzaq was defendant No.1, whereas petitioners No.5 to 7 were defendants No.2 to 4. The said defendants had filed a joint written statement. From the divergent pleadings of the contesting parties, the learned civil Court, vide order dated 19.10.2002, framed the following issues:-

- "1. *Whether the plaintiff is entitled to get a decree for specific performance, declaration and permanent injunction as prayed for? OPP*
2. *Whether the plaintiff has no cause of action and locus standi against the defendants? OPD 1 to 4*
3. *Whether the suit is time barred? OPD 1 to 4*
4. *Whether the suit is not maintainable in view of preliminary objections No.5 to 11 of written statement? OPD 1 to 4*

5. *Whether the suit is not maintainable in view of preliminary objection No.1 of written statement? OPD 5 & 6*
6. *Relief."*

14. Three witnesses appeared on behalf of respondent No.1/plaintiff and recorded their evidence on 22.03.2007. Thereafter, Ghulam Razzaq passed away on 26.10.2007. The learned Civil Court was not informed about Ghulam Razzaq's demise. The learned counsel for Ghulam Razzaq and petitioners No.5 to 7 continued to appear for the said parties before the learned civil Court until 24.11.2009. Since respondent No.1/plaintiff's witnesses were not cross-examined despite several opportunities, Ghulam Razzaq and petitioners No.5 to 7 were proceeded against *ex-parte*, vide order dated 24.02.2010. Vide judgment and decree dated 30.06.2010, respondent No.1's suit for specific performance, declaration and permanent injunction was decreed. Against the said judgment and decree dated 30.06.2010, the petitioners could have filed an appeal under Section 96(2) C.P.C., for which the limitation period is 30 days under Article 152 of the Limitation Act, 1908. This the petitioners did not do. On 19.06.2013, petitioners No.5 to 7 filed an application for the setting aside of the *ex-parte* proceedings and the judgment and decree dated 30.06.2010. On 13.07.2013, petitioners No.1 to 4 (Ghulam Razzaq's widow and daughters) filed a similar application. Both these applications were not accompanied by applications for condonation of delay. Vide order dated 04.11.2015, the learned Civil Court dismissed the said applications. The petitioners' appeal against the said order was dismissed by the Court of the learned Additional District Judge, Islamabad, vide judgment dated 06.06.2016. The said concurrent judgments and decrees passed by the learned Courts below have been impugned by the petitioners in the instant civil revision petition.

15. As mentioned above, petitioners No.5 to 7's application dated 19.06.2013, and petitioners No.1 to 4's application dated

13.07.2013, were not accompanied by applications for condonation of delay.

16. The vital question that needs to be answered is whether petitioners No.5 to 7's application dated 19.06.2013, and petitioners No.1 to 4's application dated 13.07.2013, for the setting aside of the judgment and decree dated 30.06.2010 were barred by limitation. Article 164 provides a limitation period of thirty days for an application by a defendant for an order to set aside a decree passed *ex-parte*. The said thirty-day limitation period is to commence from the date of the decree, but where summons were not served on the defendant, the limitation period is to commence when the applicant/defendant gains knowledge of the decree.

17. In the case at hand, petitioners No.5 to 7 were already defendants in the suit and had filed a joint written statement along with their father, Ghulam Razzaq. As mentioned above, the learned counsel for Ghulam Razzaq and petitioners No.5 to 7 continued to appear for the said parties before the learned civil Court until 24.11.2009. Therefore, for the said petitioners, the thirty-day limitation period for the filing of an application for the setting aside of the judgment and decree dated 30.06.2010 commenced from the date of the decree. This makes petitioners No.5 to 7's said application dated 19.06.2013 grossly time-barred. In holding so, I derive guidance from the law laid down in the following cases:-

- (i) In the case of Shahid Pervaiz Vs. Mohammad Ahmad Ameen (2006 SCMR 613), after the defendant had joined the proceedings before the trial Court and filed a written statement, an *ex-parte* decree was passed against him. Four months after the passing of the *ex-parte* decree, the defendant filed an application for the setting aside of the *ex-parte* judgment and decree. It was held that since the defendant had participated in the proceedings before the learned trial Court, the limitation period for filing an application for the setting aside of the *ex-parte* decree was

thirty days starting from the date of the decree as provided in Article 164 of the Schedule to the Limitation Act, 1908. The order of the learned trial Court dismissing the defendant's time barred application for the setting aside of the *ex-parte* judgment and decree, was maintained up to the Hon'ble Supreme Court.

- (ii) In the case of Secretary Education Department, Government of N.-W.F.P., Vs. Asfandiar Khan (2008 SCMR 287), the learned trial Court had dismissed the defendant's application for the setting aside of the *ex-parte* judgment and decree as it was filed fifteen months after the decree. Since the defendant had participated in the proceedings before the learned trial Court before the suit was decreed *ex-parte*, the defendant's contention that the limitation period for filing an application for the setting aside of an *ex-parte* decree was three years and not thirty days, was spurned concurrently up to the Hon'ble Supreme Court. In paragraph 05 of the said report, it was held that *inter-alia* as follows:-

"5. ... Since it was well within the knowledge of petitioners that suit was pending against them and were declared ex parte as such Article 164 of Limitation Act would be applicable in their case whereby period to move application for condonation of delay is 30 days. In the similar circumstances, it was held by this Court in the case of Shahid Pervaiz alias Shahid Hameed v. Muhammad Ahmad Ameen 2006 SCMR 631 that defendant joined proceedings before the trial Court and afterwards on his absence an ex parte decree was passed. Defendant after four months filed application for setting aside ex parte decree which application was dismissed being time-barred. Article 164 of Limitation Act provides 30 days to file application for setting aside ex parte decree because petitioner/defendant had participated in the proceedings before the trial Court."

Law to the said effect has also been laid down in the cases of Honda Atlas Cars (Pakistan) Ltd. Vs. Honda Sarhad (Pvt.) Ltd. (2005 SCMR 609), Government of N.-W.F.P. through Secretary, C&W Department Vs. Khani Zaman (1995 CLC 516), Akram Rashid Vs. Hamid Ali Khan (2015 CLC 1290), Khayal Badshah Vs.

Afzal Khan (PLD 2015 Peshawar 59), and several other judgments.

18. Nevertheless, petitioners No.5 to 7, in their application for the setting aside of the judgment and decree dated 30.06.2010 pleaded that they got knowledge of the said judgment and decree two weeks before the filing of the said application, whereas petitioners No.1 to 4 pleaded that they got knowledge three weeks before filing of their application. As mentioned above, petitioners No.5 to 7's application dated 19.06.2013, and petitioners No.1 to 4's application dated 13.07.2013, were not accompanied by applications for condonation of delay. This is an added reason why the impugned orders passed by the learned Courts below have to be maintained. In the cases of Honda Atlas Cars (Pakistan) Ltd. Vs. Honda Sarhad (Pvt.) Ltd. (2005 SCMR 609), and Akram Rashid Vs. Hamid Ali Khan (2015 CLC 1290), interference with an order dismissing a time barred application for the setting aside of an *ex-parte* decree was declined, because the said application was not accompanied by an application for condonation of delay. In the case of Ciba Geigy (Pak.) Ltd. Vs. Mohammad Safdar (1995 CLC 461), it has been held *inter-alia* that where no application for condonation of delay was filed with a time barred application for the restoration of the suit, the Court was left with no alternative but to dismiss such an application.

19. Now, Order XXII, Rule 4 C.P.C. provides *inter-alia* that where a defendant dies during the pendency of the suit, the Court shall cause the legal representatives of the deceased defendant to be made a party to the suit on an application made in that behalf. After Ghulam Razzaq's demise, his legal heirs had to approach the Court for their impleadment as parties to the suit. It was petitioners No.5 to 7's legal duty to have informed the learned civil Court about Ghulam Razzaq's demise, and to have applied for the impleadment of all of Ghulam Razzaq's legal heirs as parties to the suit. Petitioners No.5 to 7 did not bother to inform the Court about Ghulam Razzaq's demise. Fraud could

not have been alleged against respondent No.1 for not informing the learned civil Court about Ghulam Razzaq's demise. It must be borne in mind that petitioners No. 5 to 7 were already defendants in the suit, and were represented by counsel. The order sheet of the learned civil Court shows that the learned counsel for petitioners No.5 to 7 continued to appear before the learned civil Court after Ghulam Razzaq's demise until 24.11.2009. Therefore, petitioners No.5 to 7's assertion that they did not even know about the suit or that it had been decreed, vide judgment and decree dated 30.06.2010, is not believable.

20. Article 177 of the Schedule to the Limitation Act, 1908, provides a limitation period of 90 days from the date of the death of the deceased defendant for filing an application to have the legal representatives of the deceased defendant to be made a party to a suit. Petitioners No.1 to 4, in their application dated 13.07.2013, prayed for an opportunity to be impleaded as parties to the suit. This application was filed more than five and a half years after Ghulam Razzaq's demise. Since the said application was not accompanied by an application for condonation of delay, the same was rightly dismissed by the learned civil Court. In the case of Bibi Khudeja (Deceased) through L.Rs. Vs. Pir Sarwaruddin Shah (Deceased) through L.Rs. (1992 MLS 490), the Division Bench of the Hon'ble High Court of Sindh, after making reference to the amendments in Order XXII, Rule 4 (3) C.P.C., held as follows:-

“Thus under the newly-added sub-rule (3), if no application has been made for impleading the legal representatives of the deceased defendant within the time limited by law, the Court may proceed with the suit and notwithstanding the death of the defendant it may pronounce any order or judgment and the same shall have the same force and effect as if it had been pronounced before the death of the defendant took place. Now, under article 177 of the Limitation Act the period prescribed for making such application, which may be made either by the plaintiff or by the legal representatives of the deceased defendant, is 90 days, which period is to be computed from the date of the death of the deceased defendant. Consequently, if no application is made either by the plaintiff or by the legal representatives of the deceased defendant within the time prescribed by the law, the Court would be obliged to continue the proceedings notwithstanding the death of the defendant

and any judgment or order pronounced thereby would have the same force and effect as provided in sub rule (3), as pointed out earlier.”

21. Since the learned Courts below did not dismiss the petitioner’s application on the ground of limitation, and since the learned counsel for the contesting parties argued the case on merits at length, I propose to decide this petition on merits as well.

22. The petitioners’ stance is that respondent No.2/Raja Haroon Rashid, in exercise of his authority under the said general power of attorney, sold the suit land to the Director (Housing), Pakistan Navy. This was said to be an oral sale. The petitioners also assert that vide mutation No.1267, dated 08.09.1992 (i.e. three days after the execution of the said agreement to sell and general power of attorney), the suit land was transferred/mutated in favour of the Director (Housing) Pakistan Navy. The petitioners further assert that upon the transfer of the suit land in favour of the Director (Housing) Pakistan Navy, the general power of attorney stood exhausted, and respondent No.2 was left with no authority to execute any further agreement *qua* the suit land. Therefore, the petitioners assert that the agreement to sell executed by respondent No.2 in favour of respondent No.1 was not lawful.

23. In the proceedings before the learned civil Court, Ghulam Razzaq and petitioners No.5 to 7, had not taken the position that the entry of mutation No.1267, dated 08.09.1992, the general power of attorney executed in favour of respondent No.2 stood exhausted. The petitioners, in the proceedings before the appellate forum or a revisional forum, cannot take a position contrary to the one taken by their predecessor before the learned civil Court. Learned counsel for the petitioners could not deny the fact that the said mutation had not been sanctioned at any material stage. Since the said mutation was not sanctioned, the suit property could not have been considered to have been transferred in favour of the Director (Housing) Pakistan Navy.

24. I have gone through the joint written statement filed by Ghulam Razzaq and his three sons (i.e. petitioners No.5 to 7). In the civil suit, Ghulam Razzaq was defendant No.1, whereas petitioners No.5 to 7 were defendants No.2 to 4. In paragraph-5 of the said written statement (preliminary objections), it has been admitted that Ghulam Razzaq and petitioners No.5 to 7 had sold the suit land to respondent No.3 (Muhammad Shahid Khan) through agreement dated 05.09.1992, and that on respondent No.3's request, a general power of attorney dated 05.09.1992 (registration No.1046) was executed in favour of respondent No.2 (Raja Haroon Rashid). The receipt of the sale consideration was also admitted. Furthermore, it was pleaded in the said written statement that after the execution of the said documents, Ghulam Razzaq and petitioners No.5 to 7 had no concern with the suit land. Again in paragraph-4 of the said written statement (on merits), it was pleaded that after the execution of the general power of attorney in favour of respondent No.2, who was respondent No.3's nominee, Ghulam Razzaq and petitioners No.5 to 7's concern with the suit land had come to an end. In paragraph-5 of the said written statement (on merits), it has been pleaded that respondent No.3 had purchased the suit land from Ghulam Razzaq and petitioners No.5 to 7, and instead of transferring the said land to himself, required Ghulam Razzaq and petitioners No.5 to 7 to execute a general power of attorney in favour of his nominee, respondent No.2. In the said written statement, it has not been pleaded that Ghulam Razzaq and petitioners No.5 to 7 had re-purchased the suit land from the Director (Housing), Pakistan Navy, either through a mutation or otherwise. The contention raised by the learned counsel for the petitioners is that the petitioners had become owners of the suit land due to its re-purchase from the Director (Housing), Pakistan Navy through a registered general power of attorney dated 29.01.1997 is not borne out from the pleadings in the joint written statement filed by Ghulam Razzaq and petitioners No.5 to 7. Even in their appeal, the petitioners have not pleaded that the

suit land was re-purchased by them from the Director (Housing), Pakistan Navy.

25. A written statement is a statement filed by the defendants in answer to the plaint, and constitutes their defence. It is well settled that pleadings are treated as a foundation in civil matters, and a point having not been taken regarding a factual position cannot be allowed to be taken at a subsequent stage, whether in evidence or in arguments. A party is bound by its pleadings, and cannot be permitted to deviate therefrom. A Court cannot give a judgment on an unpleaded issue. If there is a contradiction or inconsistency in the pleadings and the arguments, the arguments to the extent of the contradiction or inconsistency have to be disregarded by the Court. The maxim, *secundum allegata at probate* (party to a litigation can only succeed according to what is alleged and proved), is attracted in the case at hand. Since the factum of the re-purchase of the suit land had not been pleaded by Ghulam Razzaq and petitioners No.5 to 7 in their joint written statement, they cannot expect to succeed by raising this ground in their arguments. The petitioners cannot be permitted to improve their case and raise a new ground of attack by departing from their pleadings in the joint written statement. Petitioners No.1 to 4 also being the legal heirs of Ghulam Razzaq are bound by the latter's pleadings in his written statement. Reference in this regard may be made to the law laid down in the cases of Jannat Bibi Vs. Sher Muhammad (1988 SCMR 1696), Binyameen Vs. Hakim (1996 SCMR 336), Anwar Ali Vs. Manzoor Ahmad (1996 SCMR 1770), Province of Punjab Vs. Ibrahim and Sons (2000 SCMR 1172), and Din Muhammad Vs. Subedar Muhammad Zaman (2001 SCMR 1992). True, pleadings cannot be equated with evidence, but it is well settled that a party cannot be permitted to lead evidence or put up a case which is not in conformity with his/her pleadings.

26. Since I do not find any jurisdictional infirmity in the concurrent orders/judgments, passed by the learned Courts

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

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2018

(JUDGE)

APPROVED FOR REPORTING

Qamar Khan*

Uploaded By: Zulqarnain Shah