

**ORDER SHEET.**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

**Civil Revision No. 165/2014**

Muhammad Iqbal Noori

Versus

Director Collector (ADCR) & 6 others.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
(06)	12.08.2020	Mr. Rifaqat Islam Awan, Advocate for the petitioner. Mr. Asim Inayat, Advocate for respondents No. 4 & 5. Barrister Talha Ilyas Sheikh, Advocate for respondents No. 6 & 7.

Vide my detailed judgment of even date passed in  
Civil Revision No. 164/2014 titled **Muhammad Iqbal Noori Vs. Muhammad Nawaz through its legal heirs & 17 others,** the instant civil revision stands **Dismissed.**

**(MOHSIN AKHTAR KAYANI)**  
**JUDGE**

RAMZAN

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

**C.R. No.164/2014**

Muhammad Iqbal Noori

*versus*

Muhammad Nawaz through its legal heirs & 17 others

&

**C.R. No.165/2014**

Muhammad Iqbal Noori

*versus*

District Collector (ADCR) & 6 others

Petitioner by: Mr. Rifaqat Islam Awan, Advocate.

Respondents by: Barrister Talha Ilyas Sheikh, Advocate for  
Respondent No.4 (in C.R. No.164/14)/Respondents  
No.6 & 7 (in C.R. No.165/14)

Mr. Asim Inayat, Advocate for Respondents No.4 &  
5 (in C.R. No.165/14)

Date of Decision: 12.08.2020

**MOHSIN AKHTAR KAYANI, J:** Through the captioned civil revision petitions, the petitioner has called in question orders of even date 25.05.2013, passed by learned Additional District Judge-VI (West), Islamabad, whereby appeals filed by the petitioner against judgments and decrees of the learned Civil Judge (West), Islamabad, even dated 30.03.2013, have been dismissed *in limine*.

2. Brief and consolidated facts of the captioned civil revision petitions are that the petitioner in the year 2001 had filed two suits i.e. suit for temporary and permanent injunction, titled "*Muhammad Iqbal Noori v. Muhammad Nawaz & 17 others*" and suit for declaration & permanent injunction, titled "*Muhammad Iqbal Noori v. District Collector (ADCR), Islamabad & 6 others*" with the claim that he had purchased some land from one Sheikh Muhammad Ameen i.e. predecessor-in-interest of Respondent No.18 (in C.R. No.164/2014) and Respondents No.4 & 5 (in C.R. No.165/2014), in Mouza Choor Harpal, Rawalpindi, however successors-in-interest of said Sheikh Muhammad Ameen started attempts to take over the

said land allegedly purchased by the petitioner. The suits were only contested by Respondent No.4 (in C.R. No.164/14) and Respondents No.6 & 7 (in C.R. No.165/14), while rest of the respondents were proceeded against ex-parte. The learned trial Court after recording of pro and contra evidence passed the impugned judgments and decrees, even dated 30.03.2013. The petitioner feeling aggrieved thereof preferred respective appeals, however the same were dismissed *in limine* vide impugned orders dated 27.05.2013. Hence, the captioned civil revision petitions.

3. Learned counsel for petitioner contends that the judgment and decree passed by the learned trial Court suffers from mis-reading and non-reading of evidence in determining the real controversy or matter in issue, which illegality has also not been rectified by the first Appellate Court in appeal; that the observation of the learned trial Court in holding that suit for permanent injunction without declaration is not maintainable is the result of erroneous assumption of law; that the learned trial Court grossly erred while disposing of the suits independently as the same were filed regarding same property and were required to be consolidated; that the first Appellate Court has failed to reappraise the evidence available on record and passed the impugned orders, which are not sustainable in the eyes of law and liable to be set-aside.

4. Conversely, learned counsel for Respondent No.4 (in C.R. No.164/14)/ Respondents No.6 & 7 (in C.R. No.165/14) as well as learned counsel for Respondents No.4 & 5 (in C.R. No.165/14) opposed the filing of captioned civil revision petitions on the grounds that both the Courts below have rightly appreciated the evidence available on record and decided the matter in accordance with law as the petitioner has failed to discharge his onus in proving the issues settled in the suits, therefore, the captioned civil revision petitions may be dismissed.

5. Despite publication of proclamation in Daily Pakistan dated 21.07.2020 in both the cases, respondents No. 3A and 3B (Asghar Khan and Mst. Rafique) and 7A and 7B (Asghar Khan and Mst. Rafique) have not turned up, therefore, they are proceeded ex-parte in both the cases.

6. Arguments heard, record perused.

7. Perusal of record reveals that petitioner Muhammad Iqbal Noori is aggrieved with the concurrent findings of the Courts below in two separate suits arising out of the same subject matter.

8. In order to understand the proposition, it is necessary to dilate upon the issues separately, whereby suit for Temporary & Permanent Injunction titled "*Muhammad Iqbal Noori Vs. Muhammad Nawaz and 18 others*" was filed on 21.04.2001 with the prayer that his plots No. 61, 63, 68, 57, 71, 58, 75, 76, 77, Gulshan-e-Iqbal Colony be given protection and respondents be restrained from interfering in the land, and he is the absolute owner of the said plots.

9. The petitioner on the other hand has simultaneously filed another suit for declaration & permanent injunction titled "*Muhammad Iqbal Noori Vs. District Collector ADCR), Islamabad & 6 others*" on 02.04.2007 with the prayer that Muhammad Nawaz S/o Sher sold out the land measuring 18 Kanal and 17 Marla, situated at Mouza Chuhr Harpal, Tehsil and District Islamabad and other respondents have no right to claim any land and even "Fard Badar" No. 387 dated 31.10.2001 and Mutations No. 6653 to 6656, 10012 to 10013 in favour of Sheikh Mohammad Amin could not be given effect.

10. Both the suits have been dismissed by trial Court and even by learned First Appellate Court. During the course of arguments, it has been conceded by the petitioner counsel that the land in both the suits is same and when his earlier claim for temporary and permanent injunction was pending, he filed, the subsequent suit for declaration and as such when the situation has been changed, his first suit has become infructuous and the material proceedings have to be considered in terms of second suit. The petitioner Muhammad Iqbal Noori while appearing as PW-1 contends that respondents are adamant to take over his land by force, which forced him to filing of the suit for permanent injunction. The petitioner while appearing as PW-1 in the first suit has produced the registered sale deeds, mutations and different photograph Exh.P1 to Exh.P32, however, during the course of cross-examination, he acknowledges that another suit titled "*Muhammad Iqbal Noori Vs. District Collector ADCR), Islamabad & 6 others*" was

pending adjudication and suit property in both the cases are same, he also confirms that Sheikh Muhammad Amin predecessor in interest was original owner rather Muhammad Nawaz and others were became subsequent owners of Gulshan-e-Iqbal. He also acknowledges the sale deed, whereabouts, Hadood e Arba and Quadrants. He also confirms that land which was purchased by him was not demarcated prior to the year 2001. All the legal heirs of Muhammad Nawaz, Muhammad Azad and Sultan Mehmood have been mentioned in the column of ownership. He verified the fact that Asghar Khan/Defendant No. 4 on 14.07.2006 moved an application before District Officer Islamabad for correction of Fard Badar No. 387.

11. This entire scenario if considered in the light of proposition in hand, it is dispute among the rival claimants/owners on the basis of their whereabouts , disputed property, which could only be resolved if the revenue record has been summoned to establish their clear demarcation, partition, therefore, this aspect at the most could be seen in the light of 2005 SCMR 1872 (Sultan Mehmood Shah Vs. Muhammad Din and others), whereby it was settled that if a title property is in dispute, simple suit for permanent injunction or possession is not maintainable without seeking declaration of title, as such the suit was rightly dismissed by learned Trial Court and same was upheld by learned First Appellate Court.

12. Learned counsel for the petitioner has conceded that the second suit has been filed after the first suit with declaration in order to rectify the mistake of the earlier suit, which has been contested by the respondents, whereby issues were framed on 25.02.2013 and petitioner appeared as PW-1, who has submitted his documentary evidence comprising of report, complaint, record of rights, NOC, sale deeds, mutations, compromise deed, Exh.P1 to Ex.P32.

13. On the other hand, Defendant No. 7/Malik Muzafar Khan appeared as DW-1, who produced sale deed, mutations, record of rights, complaints, Exh.D1 to Exh.D8.

14. While placing the claim of the petitioner in juxtaposition with the defendant, the prayer of the petitioner is regarding a decree for declaration and

permanent injunction to the effect that Muhammad Nawaz sold out the land measuring 18 Kanals in Khasra No. 216, 217, 218 in Khewat No. 778, according to register Haqdaran-e-Zamin for the year 1978-79, Mouza Chuhar Harpal and the defendants have no right, authority or power to cancel the Fard Badar No. 387 dated 31.10.2001.

15. During the course of cross-examination of the petitioner, he acknowledges that land falls within the Mouza Chuhar Harpal, which is within the territorial jurisdiction of Rawalpindi, its sale deed were executed and registered in Islamabad. The land in dispute has been converted into Colony, which is near Pirwadhahi Mor on the Peshawar Road. The claim regarding forgery in the revenue record has not been proved independently. PW-1 simultaneously acknowledges that he produced different copies of sale deeds and mutations, even he admitted that Muhammad Nawaz has sold out the land measuring 07 Kanal and 07 Marlas through sale deed and mutations from column of cultivation and simultaneously he sold out the land measuring 10 Kanal and 18 Marlas through column of ownership and all the land, which were transferred and sold out were from Khasra No. 216, 217, 218 without mentioning the **Quadrants/whereabouts** (Haddood e Arba). He confirms that the periodical record of rights for the year 1990-91 have not been legalized by any of the revenue authorities and legal heirs of Sultan Mehmood have not sold out their land in Khasra No. 216, 217, 218 to Sheikh Muhammad Ameen, even he was not aware regarding year of partition made by the revenue authorities in Khewat No. 778. PW-1 and have also not challenged the sale deed of different individuals.

16. On the other hand, Malik Muzafar Khan appeared as DW-1 and has given complete detail pictures of the land alongwith its legal rights.

17. While considering the entire evidence, the initial onus is upon the petitioner in terms of Article 117 of Qanun-e-Shahadat Order, 1984, but surprisingly petitioner has not called any of the revenue officials to justify his claim. He is mainly aggrieved with the findings of the revenue authorities of District Rawalpindi, Halqa Patwari of Mouza Chuhar Harpal.

18. There is no cavil to the proposition that land falls within the territorial jurisdiction of Mouza Chuhar Harpal, which is in the District Rawalpindi, its sale deeds were executed and registered in Islamabad, however, the main proceedings, which have been assailed are of District Rawalpindi. Similarly, petitioner being plaintiff has sought declaration in favour of those persons, who are not party in the suit and even the principal owners have already died. The learned Trial Court has rightly considered the provision of Section 172(vi) of Land Revenue Act, 1967, whereby the correction of any entry in a record-of-rights, periodical record or register of mutations falls within the jurisdiction of revenue authorities only and Civil Court has no jurisdiction.

19. The view rendered by learned Trial Court has rightly been appreciated by learned First Appellate Court, and in the Civil Revision No. 165/14, it has been observed that instant revision is barred by time and as such petitioner had filed C.M No. 01/2014 for condonation of delay, whereby he conceded that the Civil Revision was time barred of eight (08) days. When confronted, learned counsel for the petitioner contends that petitioner was indisposed and remained in his native town at Layyah, thereafter due to the incident of District Courts, F-8, Islamabad dated 03.03.2014 Terrorist Attack, Courts had remained closed, however, this aspect has been considered in the light of available record, it reveals that learned Appellate Court has announced the judgment and decree dated 27.05.2013, whereby copy of the said judgment was applied on 03.03.2014 and same was received on 08.04.2014, which is admittedly 11 months after dismissal of the appeal, however, petitioner has entered into another way of deceiving the Court by filing review in terms of Section 114 CPC, which was dismissed by learned Additional District Judge on 17.12.2013, even then the revision was time barred.

20. In view of above position, I have gone through the judgment reported as 2006 SCMR 676 (City District Government, Lahore through District Coordination Officer, Lahore Vs. Mian Muhammad Saeed Amin), PLD 2003 SC 628 (Sheikh Muhammad Saleem Vs. Faiz Ahmad), 2019 CLC 497 (Overseas Pakistanis Foundation, Islamabad Vs. Joint Management (Pvt.) Ltd and others),

2002 SCMR 1405 (Mst. Hajran Bibi and others Vs. Abdul Ghani), 2001 SCMR 286 (Allah Dino and another Vs. Muhammad Shah and others) and comes to an irresistible conclusion that where the statutes governing the proceedings did not prescribe period of limitation, the proceedings instituted thereunder would be controlled by Limitation Act, 1908, however, where the law under which proceedings have been launched had its prescribed period of limitation as under S. 115 C.P.C, then the benefits of Section 5 of the Limitation Act, 1908, could not be availed unless the same had been made applicable as per Section 29(2) of the Limitation Act, 1908.

21. For what has been discussed above, Civil Revision No. 164/2014 is meritless and civil revision No. 165/2014 is time barred as no legal justification has been rendered by the petitioner side for condonation of delay, therefore, both the civil revisions are hereby Dismissed.

(MOHSIN AKHTAR KAYANI)  
JUDGE

RAMZAN