

Form No: HCJD/C-121

**JUDGMENT SHEET.**

**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD.**

**Civil Revision No.02 of 2011**

Mehr-un-Nisa and others.

Versus

Yousaf and others.

**Petitioner's by : Mr. Zulfiqar Ali Abbasi,**  
**Advocate.**

**Respondent's by : Raja Muhammad Khan, Advocate**  
**for respondents No.12 to 14**  
**(14A-14G).**  
**Respondents No.1-11, 15 and 16**  
**are ex-parte.**

**Date of Decision: 02.03.2020**

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**AAMER FAROOQ, J. -** The petitioners filed a suit for declaration and cancellation of three difference mutations and in this behalf, challenge was made to Mutation Nos.198, 237 and 526 with respect to Khasra Nos.416, 860, 553, Mouza Darkala, Islamabad. The suit was resisted by the respondents and out of divergent pleadings issues were framed. One of the objections raised by the respondents was that the suit is barred by limitation as the mutations, in question, have been entered as

far back as 1967. The parties led their evidence and upon conclusion of trial the suit of the petitioners was dismissed, vide judgment and decree dated 16.12.2006. Appeal was filed by the petitioners, which also was dismissed, vide judgment dated 07.12.2010, hence the petition.

2. Learned counsel for the petitioners, *inter-alia*, contended that wrong entries in the *Jamabandi* provide a continuing cause of action to the aggrieved party as the wrong entries when corrected after every four years confers a fresh cause of action. It was also submitted that mutation per se does not give rise to the title and the beneficiary of the transaction i.e. the respondents had to prove through cogent evidence the same was in their favour. It was further contended that the petitioners are still in possession and owners of land measuring 18-Kanals and 6-Marlas, 12-Marlas and 28-Kanals and 17-Marlas in Khasra Nos.416, 860, 553 Mouza Darkala, Islamabad. Learned counsel further contended that *Khasra Girdawari*, Ex-P/5 as well as *Register Haqdaran* Ex-P/4 clearly shows that the petitioners are in possession.

3. Learned counsel for respondents No.10 to 14 (14-A to 14-G), *inter-alia*, contended that the plea was taken by the petitioners that Mutation No.526 has inadvertently been written so in fact it is Mutation No.524, which is not the case. It was further contended that since the entries were entered in 1967, 1969 and 1995, whereas the suit was filed in the year 1995,

hence the same was barred by limitation. It was further submitted that the entire land is *Shamlat Deh* and involves other co-owners/co-sharers as every owner of the land in the village has a proportionate ownership, whereas the other co-sharers, who were proper and necessary parties, were not impleaded.

4. Arguments advanced by learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

5. The claim of the petitioners as mentioned in the head note of the plaint is as follows:-

*“Suit for declaration to the effect that the plaintiffs are owners in possession of the land measuring 18 Kanals 6 Marlas bearing Khasra No.416 and also co-owners/co-sharers in joint constructive possession of dehshamlat land situated in Mouza Darkala Tehsil and District Islamabad and sale effected through Mutation No.198 dated 09.09.1967 in respect of malkiat land measuring 18 Kanals and 6 Marlas on behalf of Yousaf defendant No.1 and Akram predecessor-in-interest of defendant Nos.2 to 7 in favour of Muhammad Mumtaz and AbdurRafiq defendants No.12 ad 13 and further sale through same Mutation No.198 bearing Khasra No.553 measuring 28 Kanals 17 Marlas on behalf of defendants No.1 and Akram predecessor-in-interest of defendants Nos.2 to 7 are based on fraud, forgery, illegal void, abinitio and ineffective on rights and interest of plaintiffs and another transfer of land from shamlat land Khasra Nos.2198/756, 861, 946, 1468, 945, 1465, 1469, 1470, 1472, Salam, 429KA ½ share total area 91-Kanals 10-Marlas against consideration of Rs.1,000/- on behalf of Yousaf defendant No.1 and Akram predecessor-in-interest of defendants No.2 to 7 through Mutation No.237, dated 24.01.69 is also based on fraud, forgery, illegal, void, abinitio*

*and ineffective on the rights of the plaintiffs and other co-sharers and subsequent transfer of Shamlat land through Mutation No.526 (still not sanctioned) on behalf of Nazar Muhammad defendant No.8 in favour of SubedarKhurshid and Muhammad Saeed sons of Mir Dad, defendant Nos.10 and 11 for the land comprising 39 Kanals from Khasra No.2198/756 situated in the Revenue Estate of MauzaDarkala is based on fraud, forgery, illegal, void, abinitio and ineffective on the rights and interests of the plaintiffs and other co-sharers with consequential relief permanently restraining the defendants from claiming any right or interest on the basis of the alleged mutation/(disputed, or making any sort of interference in the peaceful possession of the plaintiffs in respect of the suit land or transferring, alienating the suit land to any other person on the basis of the aforesaid forged mutation.”*

Bare reading of the same shows that the petitioners have challenged Mutation No.198, dated 09.09.1967 as well as Mutation No.237 dated 24.01.1969. One of the objections raised by the respondents was regarding the suit being barred by limitation and in this respect issue No.2 was framed. It is trite law that period of limitation for filing a suit for declaration is six years from the date of cause of action, whereas the suit was filed much belatedly. One of the plaintiffs/petitioners namely Muhammad Azeem (PW-2) clearly stated in his cross-examination that he came to know about the mutations, in question, after about 5 or 6 years of the date thereof. PW-1 namely Abdul Latif did not mention anything about the knowledge of the mutations. Since question of limitation was raised and apparently was an issue in question, hence it was

incumbent upon the plaintiffs/petitioners to prove that when did they come to know about mutations in question and how. The statement of PW-2 is categorical and in light thereof it was rightly concluded by the learned Trial Court as well as the learned Appellate Court that the claim of the petitioners is barred by limitation. It is also an admitted position, which is on record through cross-examination of PW-1 that not all co-sharers have been impleaded as defendants, who were necessary party. Learned counsel for the petitioners placed reliance on various judgments regarding limitation. In this behalf, reliance was placed on "*Muhammad Iftikhar Khan Vs. Fazal Ahmad and others*" (**PLJ 2006 Peshawar 316**), "*Abdul Sattar Khan and another Vs. Rafiq Khan and others*" (**2000 SCMR 1574**), "*Azam Khan Vs. Azad Khan and 6 others*" (**PLJ 1986 Lahore 499**), "*Atta Muhammad Vs. Nasir Uddin*" (**PLD 1993 Peshawar 127**), "*Fida Hussain and others Vs. Abdul Aziz*" (**2005 CLC 180**), "*Muhammad Akram and another Vs. Altaf Ahmad*" (**PLD 2003 SC 688**) and "*Jumma Khan and others Vs. Mahmud Khan and others*" (**1973 SCMR 289**). The judgments qua limitation are not applicable in the facts and circumstances of the case, however, there is no cavil with the principles laid down in the same.

6. The findings of the learned Trial Court as well as learned Appellate Court with respect to the question of limitation

do not suffer from any material irregularity or other jurisdictional error warranting interference.

7. In view of the above, the instant petition is without merit and is accordingly **dismissed**. Since the revision petition is being dismissed on the issue of the suit being barred by limitation, no finding is being rendered on merit.

**(AAMER FAROOQ)**  
**JUDGE**

*\*M. Zaheer Janjua\**