

**JUDGMENT SHEET**  
**IN THE PESHAWAR HIGH COURT,**  
**D.I.KHAN BENCH**

*(Judicial Department)*

**Civil Revision No.38-D/2015**

**Muhammad Azeem Khan & others**  
**Vs.**  
**Muhammad Imran Khan & others**

**For petitioners:** Muhammad Yousuf Khan Advocate

**For respondent:** M/S Salimullah Khan Ranazai and Sheikh  
Iftikhar ul Haq Advocates *(for*  
*respondents No.1 to 15).*

Muhammad Khalid Chaudhary Advocate  
*(for respondents No.16 to 20).*

**Date of hearing** **02.10.2023**

**JUDGMENT**

*8.* **MUHAMMAD FAHEEM WALI, J.-** Through this single judgment the fate of instant petition as well as Civil Revision No.48-D/2015, titled 'Abdul Waheed Khan Kundi & others Vs. Mumtaz Khan & others' will be decided together as both are the outcome of same judgments & decrees.

2. Joint facts of both the petitions are that Abdul Waheed Khan etc (proforma respondents No.16 to 22) instituted a suit seeking therein declaration that they and

proforma defendants being legacy heirs of 'Abdul Karim Khan Kundi' are entitled to his legacy. Therefore, entries in the revenue record in favour of defendants No.1 to 5 (now respondents No.1 to 15) as well as Mutation No.1375 dated 08.10.1925 are incorrect, illegal and are liable to be cancelled to the extent of legal shares of plaintiffs and proforma defendants.

3. Per contents of plaint Abdul Karim Khan, the grand predecessor-in-interest of parties was having four sons namely Muhammad Nawaz Khan, Muzaffar Khan, Masur Alam Baig and Abdul Hameed Khan. Muhammad Nawaz Khan fraudulently transferred the entire estate of Abdul Karim Khan in his name through a gift mutation No.1375 dated 08.10.1925, and on the basis of said mutation, also got transferred the occupancy rights in his favour. Thus, other three brothers were illegally deprived of the bequest of their father. Hence, respondents No.16 to 22 (plaintiffs/legal heirs of Abdul Hameed Khan) instituted the suit by arraying respondents No.1 to 15 (LRs of Muhammad Nawaz Khan) as defendants No. 1 to 5, whereas, present petitioners were impleaded as legal heirs of proforma defendants No.6-ii-a/3 and 8.

4. The suit was mainly contested by the respondents No.1 to 15 (defendants No.1 to 4) in three sets by filing their separate written statements. After framing issues and processing the suit in accordance with the procedure, the learned trial Court dismissed the same vide Judgment & Decree dated 27.09.2011. Discontented with dismissal of their suit, respondents No.16 to 20 preferred an appeal which too was dismissed vide Judgment & Decree dated 05.12.2014 passed by the learned Additional District Judge-I D.I.Khan. Now aggrieved of the dismissal of appeal, petitioners, who were arrayed as proforma respondents in the appeal and respondents No. 16 to 20, who were appellants, have preferred the above referred two civil revisions with the same prayer to set aside concurrent findings of the Courts below and to decree the suit.

5. Arguments of the learned counsel for parties heard and record gone through.

6. The record transpires that parties are descendants of one grand-father namely Abdul Karim Khan Kundi, who was survived by four sons namely Muhammad Nawaz Khan, Muzaffar Khan, Masur Alam Baig and Abdul Hameed Khan. The entire estate of Abdul Karim Khan

was transferred in favour of his one son Muhammad Nawaz Khan through gift mutation No.1375 dated 08.10.1925. Admittedly, at the time of filing suit on 25.11.1999, all the four brothers were not alive, however, their legal heirs were impleaded in the suit.

7. The plaint and evidence of parties transpires that remaining three sons of Abdul Karim Khan were aware of the impugned gift mutation dated 08.10.1925 in favour of Muhammad Nawaz Khan but they did not challenge the same despite the fact that they remained alive for many years after the attestation of impugned mutation as, it appears from the plaint that Muhammad Nawaz Khan died in the year 1965, Muzaffar Khan died in the year 1970, Masur Alam Baig died issueless in the year 1936 and Abdul Hameed Khan died somewhere in 1947. Worthy Supreme Court in a number of cases has held that if a transaction was not challenged by the father, then his son, after his death, will lack locus standi to challenge the same. Reliance in this regard is placed on the case of *Abdul Haq and another Vs. Mst. Surrya Begum and others* (2002 SCMR 1330) wherein it was held:

*"11. Atta Muhammad was deprived of right to inherit the property as a*

*consequence of mutation in dispute but he did not challenge the same during his lifetime. The petitioners claimed the property through Atta Muhammad as his heirs who filed the suit as late in 1979 about nine years after the sanction of mutation which had already been given effect to in the record of rights. The petitioners, therefore, had no locus standi to challenge the mutation independently, for Atta Muhammad through whom they claimed inheritance himself had not challenged the same during his lifetime."*

8. Same view was reiterated in the case of "*Mst. Grana through Legal Heirs and others Vs. Sahib Kamala Bibi and others*" (PLD 2014 Supreme Court 167). Hence, in view of the guidance derived from the above verdict of worthy Apex Court, both sets of petitioners have no locus standi to challenge the impugned mutation as same was not challenged by their father.

9. Moreover, both sets of petitioners have not denied the knowledge of impugned mutation dated 08.10.1925 to their father as, mentioned above, Abdul Hameed died in 1947 and Masur Alam Baig died in the year 1936.

Thereafter, the legacy of Muhammad Nawaz Khan was transferred to his sons upon his death in the year 1965, which fact was also in their knowledge but they opted to remain silent for 34 years long time, and filed present suit on 25.11.1999. This fact not only constitutes estoppel and waiver on the part of petitioners but also exposes them before law of limitation. In the case of "*Atta Muhammad Vs. Maula Bakhsh and others*" (2007 SCMR 1446) august Supreme Court of Pakistan held:

*"Findings of the learned two Courts is that the plaintiffs were out of possession and they have not been able to establish receipt of rent and profits from the land, although the appellant claimed to the contrary. This was the second misrepresentation which disentitled the plaintiffs to any relief in equitable jurisdiction. The learned two Courts held that the suit was barred by time but the learned High Court, by making a sweeping statement, that there is no limitation in the cases of inheritance has, in fact, rewritten the law of limitation."*

10. A stale claim under the law of limitation cannot be enforced legally as the passage of time sets the law of

limitation in operation and there can be no exception unless the relaxation is granted by the Limitation Act 1908 by itself. Reliance is placed on the case of "*Umer Baz Khan through L.Hrs Vs. Syed Jehanzeb & others*" (PLD 2013 S.C. 268), "*Mst. Grana through Legal Heirs and others Vs. Sahib Kamala Bibi and others*" (PLD 2014 Supreme Court 167).

11. It was also the claim of petitioners that the grand predecessor, Abdul Karim Khan Kundi, died prior to execution of the impugned gift mutation but this contention could not be established through evidence.

12. Yet there is another aspect of the case; petitioners of instant petition were proforma defendants before the learned trial court and they were placed and proceeded ex-parte. After passing the impugned judgment & decree by the learned trial court, they joined proceeding at appellate stage but did not file any appeal or application for setting aside decree, which was ex-parte to their extent, before the learned trial court. This fact also estops them to challenge the decree of learned trial court.

13. In the nutshell, both learned courts below have rightly non-suited the petitioners. The decision so arrived

at by the two learned courts below is unexceptional and need not to be interfered with by this Court in its limited revisional jurisdiction. Consequently, this and connected revision petitions are hereby dismissed with no order as to cost.

**Announced.**

**02.10.2023.**

*(\*M/Subhan)*

  
**JUDGE**



(S.B) Hon'ble Mr. Justice Muhammad Faheem Wali