

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Mazhar Alam Khan Miankhel
Mr. Justice Qazi Muhammad Amin Ahmed
Mr. Justice Jamal Khan Mandokhel

Civil Petition No.78-Q of 2016

*(Against the judgment dated 06.05.2016 passed by the
High Court of Balochistan in C.R No.(S)32 of 2013)*

Abdul Ghani & others

...Petitioner(s)

Versus

Haji Abdul Fatah & others

...Respondent(s)

For the Petitioner(s): Syed Ayaz Zahoor, Sr.ASC
Mr. Gohar Yaqoob Yousafzai, AOR

For Respondent No.1: Mr. Ghulam Mustafa Buzdar, ASC

For Respondent No.2: Mr. Liaqat Ali Jatoi, ASC

Date of hearing: 01.11.2021.

ORDER

Qazi Muhammad Amin Ahmed, J.- Abdul Fateh, respondent, remained successful throughout downstairs to counter petitioners' claim over the suit property. At the center of controversy is Mst. Sahib Khatoon; she mothered plaintiff/respondent from her wedlock with Muhammad Musa, however, contracted second marriage with Muhammad Raheem after former's death, survived by Muhammad Ibrahim, issueless, leaving petitioners as distant kinder in the field; they laid claim over the disputed land, partly on account of their being residual successors of Muhammad Ibrahim and partly through a sale. The respondent came up with a *Qabin-nama* dated 29.6.1949 (Ex.P-3), purporting transfer of the land as *dower* to the lady, on the strength

whereof, a learned Civil Judge at Dhadar, District Khichi decreed the suit vide judgment and decree dated 31.12.2012, affirmed throughout lastly by a learned Judge-in-Chamber of the High Court of Balochistan vide judgment dated 06.05.2016, *vires* whereof, are being assailed on a variety of grounds.

2. Syed Ayaz Zahoor, learned Sr.ASC, contends that the Courts below ran into concurrence of error inasmuch as plaintiff's claim, devoid of any proof, in the face of longstanding entries in the revenue record, reflecting multile mutations favouring the petitioners, there was hardly an occasion to uphold plaintiff's claim; adds that Mst. Sahib Khatoon did not figure anywhere in the pedigree-table or in the revenue record whereas the petitioners, being rightful owners, are firmly entrenched in the suit property. None appeared to prove Ex.P-3 and as such acquisition of land partly through sale and partly through inheritance could not have been set aside. The learned counsel for the respondent has defended the impugned judgments being well reasoned, structured upon an ancient title document protected by the statutory presumption.

3. Heard. Record perused.

4. Position consistently taken by the petitioners, notwithstanding, *Qabinnama* Ex.P.3, insurmountably stands in impediment to acceptance of their claim, inasmuch as, being a document antedating a period far beyond 30 years, surfacing on the record from respondent's custody, to be considered as *proper*, by all means, in circumstances, nullifies the hypothesis of residual bequeathal or the sale as they could not possibly acquire a better title after the land was once invested in Mst. Sahib Khatoon in pursuance thereto.

Though the genuineness of *Qabinnama* Ex.P.3 has been disputed at the bar, however, upon our own examination, in the totality of circumstances and admitted nuptial bond between Muhammad Raheem and Mst. Sahib Khatoon, we entertain no manner of doubt that the disputed land was parted by the former as a dower to her better half as far back as on 29.6.1949 on an official stamp paper. Any manipulation, given the timeframe, is inconceivable, even by the best of foretellers. Consideration of *Qabinnama* Ex.P.3 in favour of the respondent by the

courts below, an exercise found by us, most prudent as well as within the remit of law, calls for no interference. Petition fails. Leave declined.

Judge

Judge

Judge

Quetta, the
1st November, 2021
Azmat/-