IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
MR. JUSTICE MUSHIR ALAM
MR. JUSTICE YAHYA AFRIDI

CIVIL APPEAL NO. 1522 OF 2013
(On appeal against the judgment of the High Court of Balochistan, Quetta dated 07.08.2013 passed in Civil Revision No. 73 of 2008)

Haji Wajdad ... **Appellant**

Versus

Provincial Government through Secretary Board of Revenue, Government of Balochistan, Quetta, etc. ... **Respondents**

For the Appellant : Mr. Tariq Mehmood, Sr. ASC
Syed Rifaqat Hussain Shah, AOR

For the Respondents : Mr. Ayaz Khan Swati, Additional Advocate-General, Balochistan

Date of Hearing : 15.09.2020

JUDGMENT

YAHYA AFRIDI, J- This Court vide its order dated 21-11-2013 had granted leave to appeal in the challenge made by Haji Wajdad against the judgment dated 07.08.2013 passed by the High Court of Balochistan, Quetta in Civil Revision No. 73 of 2008 in terms that:

> "To consider the question as to whether the High Court while exercising revisional jurisdiction could set aside the determination made by the learned trial and appellate courts in the circumstances set out above, leave to appeal is granted"

2. The facts as asserted by the present appellant in his plaint are that he had inherited the suit property from his father being his sole heir and had since been in possession thereof. It was further averred that while he had gone abroad, he had left his relative to look after the suit property. That a mutation was entered in favour of the Provincial Government in the year 1984. The present appellant though not disclosing the specific date of knowledge of the impugned mutation only stated that a month prior to filing of the suit he obtained knowledge thereof. Aggrieved of the above impugned mutation, the appellant filed a suit for declaration with all consequential relief validating his title and possession over the suit property. The learned trial court framed two issues, and after recording of evidence of the parties, the trial court decreed the suit in favour of the appellant, which was maintained by the appellate court. However, on the revision petition filed by the respondents, the High Court vide its impugned order set aside the judgments of the two courts passed in favour of the present appellant. Hence, the petition before this court.

3. The worthy counsel for the appellant vehemently contended: that the revisional court had without cogent reasons set aside the concurrent findings of fact in favour of the present appellant; the appeal filed by the respondents was barred by time and the findings of the revisional court condoning the same being against a void order was contrary to the settled principle of law; and finally, that even if the limitation in filling the appeal is condoned, the issues so framed by the trial court did not provide for ownership and possession of the disputed property and, hence, warranted remand of the case to the trial court. The worthy Additional Advocate-General, Balochistan, present on behalf of the respondents, vehemently opposed the contention of the worthy counsel for the appellant.

4. We have heard the learned counsel for the parties and with their valuable assistance have gone through the available record.

5. There is no cavil to the principle that the revisional court, while exercising its jurisdiction under section 115 of the

Civil Procedure Code, 1908 **("CPC")**, as a rule is not to upset the concurrent findings of fact recorded by the two courts below. This principle is essentially premised on the touchstone that the appellate court is the last court of deciding disputed questions of facts. However, the above principle is not absolute, and there may be circumstances warranting exception to the above rule, as provided under section 115 CPC: gross misreading or non-reading of evidence on the record; or when the courts below had acted in exercise of its jurisdiction illegally or with material irregularity.[1]

6. In the present case, it is noted that the revisional court was correct in pointing out serious non-reading and mis-reading of evidence. The most crucial non-reading of evidence by the two court below was that Dadullah, father of the appellant, according to Abdul Lateef (PW2), was alive and present at the time of the impugned mutation attested in favour of the Provincial Government, and that there was complete inaction on his part, and that of the present appellant to legally agitate the impugned mutation. In addition, thereto, no credible evidence was produced by the present appellant to prove the possession of Dadullah or that of the present appellant, over the disputed property. And yet, the two courts below misread evidence and rendered a positive finding of possession over the disputed property in favour of the present appellant.

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[1] **Nazim-ud-Din and others Versus Sheikh Zia-ul-Qamar and others (2016 SCMR 24)**
Mandi Hassan alias Mehdi Hussain and another Versus Muhammad Arif (PLD 2015 SC 137)
Nazir Ahmad and another Versus M. Muzaffar Hussain (2008 SCMR 1639)
Nabi Bakhsh Versus Fazal Hussain (2008 SCMR 1454)
Abdul Hameed and others Versus Khalid and others (2007 SCMR 938)
Abdul Sattar Versus Mst. Anar Bibi and others (PLD 2007 SC 609)
Abdul Mateen Versus Mst. Mustakhia (2006 SCMR 50)
Habib Khan and others Versus Mst. Bakhtmina and others (2004 SCMR 1668)
Ghulam Muhammad and 3 others Versus Ghulam Ali (2004 SCMR 1001)

7. The revisional court was also correct in declaring the suit of the present appellant to be time barred being beyond six years period provided under Article 120 of the Limitation Act, 1908 (**"Act"**). It has by now been settled that, limitation would run even against void affecting rights of any person. And no one can seek condonation of delay by challenging solely on the said basis. The aggrieved person who files a belated claim against an alleged void order would have to first plead his knowledge thereof, and then prove the same by cogent and reliable evidence, so as to legally justify his such claim to be within the period of limitation from the date of his knowledge.[2]

8. In the present case, had the appellant proved continuous possession of the disputed property, his right to the property could have been treated as a continuing right[3], and each of the successive entry in the Record of Rights (***Jamabandi***), recording the Provincial Government to be the owner of the disputed property would have given a fresh cause of action to the appellant to challenge the same.[4] The failure on the part of the appellant to prove continuous possession was, thus, fatal.

9. We also note that there is a triple presumption of correctness attached to the impugned mutation: firstly, it was the result of the first settlement (***Bundubast***) of the area[5]; secondly, the

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[2] **Gen. (R.) Parvez Musharraf Versus Nadeem Ahmed (Advocate) and another (PLD 2014 SC 585), Messrs Blue Star Spinning Mills Ltd. Versus Collector of Sales Tax and others (2013 SCMR 587), Ghulam Hussain Ramzan Ali Versus Collector of Customs (Preventive), Karachi (2014 SCMR 1594) and Raja Khan Versus Manager (Operation) Faisalabad Electric Supply Company (WAPDA) and others (2011 SCMR 676)**

[3] **Khan Muhammad through L.Rs and others v. Mst. Khatoon Bibi and others (2017 SCM 1476)**

[4] **Khan Muhammad through L.Rs and others v. Mst. Khatoon Bibi and others (2017 SCMR 1476)**

[5] **Nawab Khan and others Versus Said Karim Khan and others (1997 SCMR 1840)**

recording of ownership was based on long standing mutations[6]; and finally, the recording was in favour of the provincial government that was protected under section 52 of the Land Revenue Act, 1967. This presumption of correctness attached to such entries in the Revenue Record, is, however, rebuttable. The judicial consensus that has developed over time is that the said presumption, can not be controverted by mere oral evidence. To rebut the said presumption of correctness, sufficient and convincing evidence must be produced.[7]

10. We note that the appellant, in the present case, failed to bring on record, a single supportive entry reflecting his possession in the official revenue record or any other reliable piece of evidence. Moreover, the appellant also failed to bring any positive assertion confirming his possession or any other finding in his favour during the cross examination of the official witness produced by the respondents. Instead, the appellant only produced two private persons, whose standing in the area and credence of their testimony did not come up to the required threshold to dispel the presumption of correctness attached to the impugned long standing mutation.

11. Moving on to the next contention of the learned counsel for the appellant regarding the appeal of the respondents being time barred, and its legal effect on the impugned decision. The reasoning recorded by the Revisional Court to condone the two

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6 **Muhammad Khaliq v. Gul Afzal Khan (PLD 2015 SC 247); Mst. Phaphan through L.Rs. v. Muhammad Bakhsh and others (2005 SCMR 1278) (e as laid down in the cases of Mehr Khan v. Mst. Basaee (PLD 2008 SC 612) Hakim Khan. v. Aurangzeb & another (1979 SCMR 625), Sundar Singh v. Chhajju Khan (AIR 1934 Lahore 309) and the Evacuee Trust Property Board and others v. Haji Ghulam Rasool Khokhar and others (1990 SCMR 725).**

7 **Muhammad Hussain v. Khuda Bukhsh 1989 SCMR 1563 Ghulam Haider v. Wali Muhammad 2008 SCMR 1428**

days delay in filing the appeal by the respondents was premised on the ground that when the basic order of the trial court was void, then the delay in filing of the appeal was of no legal effect. We find this reasoning to be legally erred: the original order was passed by a court of competent jurisdiction and, hence, the decision could not be declared as void.

12. As far as the legal effect of the above mentioned erred reasoning of the revisional court to condone the appeal of the respondents, we note that the same shall not adversely affect the legal correctness of the final out come of the impugned decision. In this regard, we must appreciate that the Revisional Court under section 115 CPC can exercise jurisdiction either on an application of an aggrieved person or *suo motu* to effectively correct any material error of facts or law committed by any subordinate court. In the present case, once the High Court was presented with the revision petition of the respondents, the entire case (**trial and appellate proceedings**) was open for consideration to the court, without being restricted to the question of limitation of filing of appeal before the appellate. Seen in this perspective, the revision petition filed by the respondents could be deemed as an "information" to the Revisional Court, and it could then *suo motu* exercise its revisional jurisdiction with regard to the judgment of the trial court, which it found to suffer from material irregularities. A larger bench of this court in **Hafeez Ahmad's case**[8] has extensively dilated upon this *suo motu* authority of the High Court under

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8 **Hafeez Ahmad Versus Civil Judge, Lahore (PLD 2012 Supreme Court 400)**

section 115, CPC, in relations to time barred petitions. It was opined that:

> **"Such Court may exercise suo motu jurisdiction if the conditions for its exercise are satisfied. It is never robbed of its suo motu jurisdiction simply because the petition invoking such jurisdiction is filed beyond the period prescribed therefor. Such petition, could be treated as an information even if it suffers from procedural lapses or loopholes. Revisional jurisdiction is pre-eminently corrective and supervisory, therefore, there is absolutely no harm if the Court seized of a revision petition, exercises its suo motu jurisdiction to correct the errors of the jurisdiction committed by a subordinate Court. This is what can be gathered from the language used in Section 115 of the Code and this is what was intended by the legislature, legislating it. If this jurisdiction is allowed to go into the spiral of technicalities and fetters of limitation, the purpose behind conferring it on the Court shall not only be defeated but the words providing therefor, would be reduced to dead letters. It is too known to be reiterated that the proper place of procedure is to provide stepping stones and not stumbling blocks in the way of administration of justice. Since the proceedings before a revisional Court is a proceeding between the Court and Court, for ensuring strict adherence to law and safe administration of justice, exercise of suo motu jurisdiction may not be conveniently avoided or overlooked altogether. The Court exercising such jurisdiction would fail in its duty if it finds an illegality or material irregularity in the judgment of a subordinate Court and yet dismisses it on technical grounds."**

13. As far as the contention of the worthy counsel for the appellant that the issues framed by the trial court were vague to the extent of title and possession of the disputed property, we are afraid that, the said contention is devoid of merit. We note that issue No. 1 specifically relates to title and possession of the

disputed property. More so, when the very claim of the present appellant was his title and continuous possession over the disputed property, failing to produce any reliable cogent evidence in support thereof, is contrary to the principle of burden of proof as provided under section 117 of the Qanun-e-Shahadat Order, 1984.

13. Accordingly, for the reasons stated hereinabove, we note that the final decision rendered by the revisional court is legally correct in the circumstances of the case, and thus, warrant no interference. The present Appeal is dismissed.

Judge

Judge

Announced in open Court
On 02.10.2020 at Islamabad

Judge

Approved for reporting
Arif