**IN THE SUPREME COURT OF PAKISTAN**
(Appellate Jurisdiction)

**Bench**
Mr. Justice Yahya Afridi
Mr. Justice Jamal Khan Mandokhail

**Civil Appeal No. 25-Q/2018**
(Against the judgment dated 17.06.2023 of the High Court of Balochistan, Sibbi Bench passed in CR No. (s) 11/2012)

Khaleelullah & others ***...Appellant*(s)**

Versus

Muhaim Khan & others ***...Respondent*(s)**

For the Appellant(s): Mr. Khushnood Ahmed, ASC
Mr. Abdul Rahim Mengal, AOR

For the Respondent(s): Mr. Abdul Rashid Awan, ASC
Mr. Gohar Yaqoob Yousafzai, AOR
(R 1 to 8)
Nemo (R 9-11, 13-16)
Mr. Abdul Fateh, Naib Tehsildar

Date of hearing: 19.12.2023

**ORDER**

**Yahya Afridi, J**. Khaleelullah and others have filed the instant appeal challenging three concurrent findings recorded by the Courts below.

2. The matter at hand concerns the legacy of Qaim Khan son of Adam Khan, to which a claim has been made by the petitioners, as legal heirs, being his great-grandchildren, and that too, notably after a lapse of thirty years following the death of their mother, Mst. Khanzadi.

3. The admitted facts on record are that Adam Khan was survived by two sons namely, Karam Khan and Qaim Khan. Karam Khan had one son, Nawab Khan, who too was survived by one son, Hafeezullah. The legal heirs of Hafeezullah are respondents No. 1 to 4 in the present petition. Conversely, Qaim Khan had three sons, namely; Muhaim Khan, Mehrullah, and Habibullah. Both Muhaim Khan and Habibullah died

issueless, while Mehrullah was survived by a daughter, Mst. Khanzadi. The present appellants are the legal heirs of Mst. Khanzadi, and they claim their share of inheritance in the legacy of Qaim Khan, their maternal great-grandfather.

4. We further observe that neither Mehrullah son of Qaim Khan, nor Mst. Khanzadi daughter of Mehrullah, claimed their share in the disputed property during their lifetimes. Notably, the lawsuit filed by the current appellants was instituted in 2007, while Mst. Khanzadi is reported to have passed away approximately a quarter century prior thereto.

5. It is also on record that Hafeezullah, the father of the respondents sold to Jalal Khan and Huzoor Bakhsh, 2 ½ *Rahkies* in *mouza* Bostan, as acknowledged by the appellant/Plaintiff No. 1, who is also the attorney for the other appellants/plaintiffs, in his statement recorded on 07.06.2011. Additionally, in *mouza* Bostan, the respondents/defendants disposed of in favour of Ali Akbar, Meher Gul, and Ali Ahmed, sons of Murad Khan, half of the remaining property in the said *mouza*, as per *Khatooni* No. 15. These vendees, subsequently transferred their acquired property to Zakria Kasi, as confirmed by Muhammad Ameen and respondent/defendant Muhaim Khan in their statements recorded on 14.06.2011 and 18.06.2011, respectively. Similarly, in *mouza* Chacher Tappa Talli, the respondents/defendants sold their entire property to Muhammad Hashim and Sharbat Khan, as admitted by Muhammad Ameen and respondent/ defendant Muhaim Khan in their respective statements. These sale transactions are acknowledged in the evidence presented. The appellants/plaintiffs have impleaded only Ali Akbar, Meher Gul, and Ali Ahmed, sons of Murad Khan, as defendants in their plaint. As for the other purchasers stated hereinabove, they have not

been impleaded as parties in the suit, and also before this Court in the present petition.

6. The main thrust of the learned counsel for the appellants was that the right of inheritance is not bound by any law of limitation, and under Islamic law, the right of legal heirs would accrue at the time of the death of the predecessor and would not require any revenue entry to establish the said right. He further contended that fraud was committed by the respondents, whereby the name of Mst. Khanzadi was fraudulently excluded from the *Shajra Nasab* (pedigree table), and thus managed to directly transfer the disputed property in the name of the respondents. In support of his contentions, the learned counsel placed reliance on **Mohammad Boota (decd) v. Mst. Fatima daughter of Gohar Ali (2023 SCMR 1901)**, **Mst. Parveen (decd) v. Muhammad Pervaiz (2022 SCMR 64)**, **Noor Din (decd) v. Pervaiz Akhtar (2023 SCMR 1928)**, **Ghulam Qasim v. Mst. Razia Begum (PLD 2021 SC 812)**, **Tahsinullah v. Mst. Parveen (decd) (2022 SCMR 346)**, **Lal Din v. Muhammad Ibrahim (1993 SCMR 710)**, **Haji Wajdad v. Provincial Government thr. Secretary Board of Revenue Government of Balochistan, Quetta (2020 SCMR 2046)**, **Bashir Ahmad Anjum v. Muhammad Raffique (2021 SCMR 772)**, **Mst. Gohar Khanum v. Mst. Jamila Jan (2014 SCMR 801)**, **Nazir Ahmad v. Abdullah (1997 SCMR 281)**, and **Salamat Ali v. Muhammad Din (2022 SC 353).**

7. On the other hand, the learned counsel for the respondents vehemently contended that the circumstances of the present case do not warrant any interference, as the case of the appellants is barred by time, given the period elapsed between their legal challenge and the death of Qaim Khan, which was not agitated by his son, Mehrullah, and thereafter, by his grand-daughter, Mst. Khanzadi. He then contends that now the great-grandchildren are estopped by their conduct to claim the same. He further stated that third-party interest has been created in this regard. He has placed reliance on **Noor Din (decd) v. Pervaiz Akhtar (2023 SCMR 1928)** and **Salamat Ali v. Muhammad Din (2022 SC 353)**.

8. We have carefully reviewed the judgments cited by the learned counsel for the parties and have noted that the same may present different shades and complexities in various contexts, sometimes leading to perceptions of inconsistency. But what remains foundational is that, the estate of a Muslim, on his death, is transferred to his legal heirs by operation of law, with each heir having constructive possession of his share in the estate till the partition of the entire estate or transfer of his share under the law.

9. As already reiterated above, this Court while dealing with inheritance cases has treaded very cautiously to balance the proprietary rights of the legal heirs of the deceased Muslim owner and third party, who has acquired proprietary rights therein, and that too, in good faith and for valuable consideration. It is for this reason that, legal heirs must be vigilant and not indolent regarding their proprietary rights in their *shari* share of inheritance.

10. In our opinion, there is a stark distinction between cases in which an heir has been deprived of his *shari* share and disregarded at the time of recording of the inheritance mutation, and those cases in which the heir comes forward to seek his *shari* share after third-party rights in the subject land have been created. To succeed in respect of the former category of cases, as compared to the latter, is legally less cumbersome, as it is not hurdled by the rigors of limitations - the possession over the inherited property by one heir is considered as constructive possession on behalf of all the heirs, and the cause of action would only arise, when the deprived heir seeks his share and the same is denied by the other in possession of the inherited property. However, to succeed in respect of the latter category of cases, where third-party interest is created in the inherited property, is legally more problematic, as the legal heir would then have to face the wrath of the period of limitation. The burden of

proof would rest on the claimant heir to demonstrate and prove that he was not aware of having been deprived, give cogent reasons for not challenging the property record of long-standing, or showing complicity between the buyer and the seller (the ostensible owner) or that the buyer knew of his interest in the property and yet proceeded to acquire the same. It is when faced with such legal handicap that the claimant heir may seek exception to the bar of limitation provided under Section 18 of the Limitation Act, by establishing that he was kept oblivious to the cause of action or accrual of his rights through fraud, and therefore, was an 'injuriously affected person'. Thus, in cases, where the claimant heir, being an 'injuriously affected person' has a right to sue, does not institute the suit claiming his right within the prescribed limitation period, no fresh period of limitation can be available to him, his legal heir(s) or any other person who derives his right to sue from or through him (the injuriously affected person). This proposition has already been clarified by this Court in **Mst. Rabia Gula v. Muhammad Janan (2022 SCMR 1009)** in the following words:-

> "8.3 Section 18 of the Limitation Act, 1908 ("Limitation Act") is the most pivotal provision providing relief in computing the limitation period, applicable to a person who claims to be deprived of the knowledge of his right to sue based on the fraud of the other party. That section is reproduced for ease of reference:
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> 18. Effect of fraud. Where any person having a right to institute a suit or make an application has, by means of fraud, been kept from the knowledge of such right or of the title on which it is founded, or where any document necessary to establish such right has been fraudulently concealed from him, the time limited for instituting a suit or making an application—
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> (a) against the person guilty of the fraud or accessory thereto, or
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> (b) against any person claiming through him otherwise than in good faith and for a valuable consideration,
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> shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of the concealed document, when he first had the means of producing it or compelling its production.
>
> In essence, this provision postpones the commencement of the limitation period in cases where a person is by means of fraud kept from the knowledge of his right to institute a suit. In such circumstances, the period of limitation commences from the date when the fraud first became known to the "person injuriously affected". Such injuriously affected person can, therefore, institute a suit within the limitation period specified for such suit in the First Schedule ("Schedule") to the

> Limitation Act, but computing it from the date when he first had knowledge of the fraud, whereby he was kept from knowledge of his right to institute the suit. Thus, section 18 of Limitation Act is an umbrella provision that makes the limitation period mentioned in the Articles of the Schedule, begin to run from the time different from that specified therein.
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> 8.4 It is but fundamental to appreciate that the "fraud" stated in section 18 of the Limitation Act must not be confused with the fraud that constitutes cause of action, and creates a right to institute the suit for the relief prayed therein. The "fraud" envisaged in section 18 only relates to concealing, not creating, the right to sue, and thus affects only the limitation period, and has nothing to do with the cause of action and the relief prayed.
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> 8.5 It would, thus, be safe to hold that, when despite obtaining knowledge of such fraud and his right to sue, as mentioned in section 18, the injuriously affected person does not institute the suit within the prescribed limitation period, no fresh period of limitation can be available to his legal heir(s) or any other person who derives his right to sue from or through him (the injuriously affected person); for once the limitation period begins to run, it does not stop as per section 9 of the Limitation Act.
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> 8.6 Further, the definition of the term "plaintiff", as given in section 2(8) of the Limitation Act also has the effect of barring the fresh start of the limitation period for the legal heir(s) or any other person, who derives his right to sue from or through such injuriously affected person, as it provides that "plaintiff" includes any person from or through whom a plaintiff derives his right to sue.
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> 8.7 Therefore, it is the date of knowledge of the "person injuriously affected" of the fraud mentioned in section 18, and of his right to sue that is relevant for computing the limitation period, not of his legal heir(s), unless he asserts and prove that his predecessor (the person injuriously affected) never came to know of the fraud, whereby his right to institute the suit was concealed, in his lifetime; in the latter eventuality, it is, of course, the knowledge of the present plaintiff (his successor) that would be the starting point for the limitation to run.
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> 8.8 Needless to mention that, a plaintiff who wants to avail the benefit of section 18 of the Limitation Act must assert the commission of such fraud by the defendant, in the plaint, and should also give the particulars thereof, and the date of knowledge, as required under Rule 4 of Order VI of the Code of Civil Procedure 1908, and then prove the same through positive evidence." (internal references omitted)

11. In the current case, the legal heirs of Qaim Khan are not merely asserting their rights to inheritance; rather, they are also seeking a Court declaration against third parties. It is clear from the pleadings that several decades have passed since third-party interests were created. This was initiated when the father of the respondents sold 2 ½ *Rahkies* in *mouza* Bostan to Jalal Khan and Huzoor Bakhsh, approximately sixty years ago, as admitted by appellant/Plaintiff No. 1, who also represents other appellants/plaintiffs, in his statement recorded on 07.06.2011. Furthermore, in *mouza* Bostan, the respondents/defendants sold half property, as per *Khatooni* No. 15, in 2002 to Ali Akbar, Meher Gul, and Ali Ahmed, sons of Murad Khan. These vendees subsequently sold the

same property to Zakria Kasi, as acknowledged by Muhammad Ameen and respondent/defendant Muhaim Khan in their statements on 14.06.2011 and 18.06.2011, respectively. In *mouza* Chacher Tappa Talli, the respondents/defendants disposed of their entire property to Muhammad Hashim in 1994 and Sharbat Khan in 1997, as confirmed by Muhammad Ameen and respondent/ defendant Muhaim Khan in their statements on the respective dates. Given these transactions occurred way back in 1994 and 1997 and the appellants did not institute the suit claiming their right within the prescribed limitation period, it would be inappropriate to disturb these already concluded transactions, and no fresh period of limitation can be made available to the appellants.

12. In view of the above facts, the case law cited by the counsel for the appellants does not specifically address the pertinent question in the current case: whether the law of limitation applies to a case when a third-party interest in the estate of the deceased predecessor has already been established.

13. In the case of denial of the inheritance to an heir, the cause of action to sue accrues to him, when the co-sharer[s]/legal heir[s] in actual possession of the inherited property denies (actually) or is interested to deny (threatens) the share of the claimant legal heir in the inherited property. The *actual* denial of right of a co-sharer by the other co-sharer may occur, when the latter does something explicit in denial of the rights of former, such as by making a fraudulent sale or gift deed. This Court has recently clarified that the transfer of property to a third party, be it through sale or gift, constitutes an *actual* denial of rights. In contrast, a simple annotation in the revenue records is regarded as a *threatened* or *apprehended* denial of rights. This proposition has been illustrated in the case of **Haji Muhammad Yunis vs. Mst. Farukh Sultan (2022 SCMR 1282)**, where the Court noted:

> "On careful reading of the above, it is evident that this Court has explained the distinction between an "actual denial of right' and an "apprehended or threatened denial of right" in relation to applicability of the law of limitation in cases seeking declaration of proprietary rights in immovable property. It has held that every new adverse entry in the revenue record, being a mere "apprehended or threaten denial" relating to proprietary rights of a person in possession (actual or constructive) of the land regarding which the wrong entry is made, gives to such person a fresh cause of action to institute the suit for declaration. It has, however, further clarified that the situation is different in a case, where the beneficiary of an entry in the revenue record actually takes over physical possession of the land on the basis of sale or gift mutation. In such a case, the alleged wrong entry in the revenue record coupled with the very act of taking over possession of the land by the alleged buyer or *donee*, in pursuance of the purported sale or gift, is an "actual denial of the proprietary rights" of the alleged seller or donor and thus, the time period to challenge the said disputed transaction of sale or gift by the aggrieved seller or donor would commence from the date of such actual denial. Therefore, in such a case, if the purported seller or donor does not challenge that action of "actual denial of his right" within the prescribed limitation period, despite having knowledge thereof, his right to do so becomes barred by the law of limitation, and the repetition of the alleged wrong entry in the subsequent revenue record (*Jamabandi*) does not give rise to a fresh cause of action."

This Court has also highlighted a similar distinction in **Salamat Ali v. Muhammad Din (PLD 2022 Supreme Court 353)**. In the matter at hand, the *threatened or apprehended denial* occurred when Hafeezullah (the predecessor of the respondents) transferred the share of Mehrullah into his own name in the revenue records during 1958-60. The *actual* denial of the rights of the appellant took place over sixty years ago, when Hafeezullah, father of the respondents, sold to others, portions of the disputed property in years 1994 and 1997. Therefore, considering that the third-party transactions were executed sixty years ago, the period of limitation under Article 120 of the Schedule to the Limitation Act has elapsed and therefore, makes the suit filed by the appellants in 2007, time-barred. Additionally, in paragraphs 14 and 17 of the plaint, the appellants claimed that their cause of action arose in March 2006, a claim which was not supported by any evidence.

14. As to the objection of the learned counsel for the appellants that the creation of third-party interest was not mentioned in the written statement, and therefore, the same should not be pleaded or evidenced in the current case. Upon reviewing the written statement, we noted that the objection regarding limitation has been appropriately recorded.

According to the principles of pleadings, once an assertion is duly recorded, its specifics need not be detailed therein. Even otherwise, if the objection as to the law of limitation is not raised by any of the parties to the suit, the trial Court and the appellate Court are obligated under section 3 of the Limitation Act to consider and decide the same.[1]

15. Given these circumstances, it is reasonable to conclude that the dismissal of the claim of appellants by the three lower Courts on the grounds of limitation was correct. It is a well-established practice of this Court that where there are concurrent findings of facts and law of the Courts below, this Court ordinarily does not interfere with the decision so made by them, unless there are exceptional circumstances warranting interference, which is lacking in the present case.

16. Consequently, the appeal is dismissed.

Judge

Judge

19th December, 2023
Quetta.
*Approved for reporting.*
*Rizwan*

[1] **3. Dismissal of suit, etc. instituted, etc. after period of limitation**. Subject to the provisions contained in sections 4 to 25 (inclusive), every suit instituted, appeal preferred, and application made after the period of limitation prescribed therefor by the First Schedule shall be dismissed although limitation has not been set up as a defence.