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JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Civil Revision No.4663 of 2015
Muhammad Bashir Ahmad and another

VERSUS

Province of Punjab through District Officer (Revenue) others

JUDGMENT

Date of Hearing: 16.05.2024

Petitioner(s): Mr. Shahid Aziz Anjum & Imran A. Mian, Advocate

Respondent(s): Mr. Qamar Zaman Qureshi, Additional Advocate General Punjab

Mr. Muhammad Ali Ramay, Abbas Ali Cheema & Janaan Gull, Advocates for the legal heirs of respondent No.2

Respondents No. 3 to 22 ex parte on 25.04.2024

SHAHID BILAL HASSAN-J: Succinctly, the petitioners instituted a suit for declaration against the respondents, wherein they asserted that they are real sons of Mst. Saidan Bibi (deceased) and Mst. Saidan Bibi was real daughter of Fateh Muhammad (deceased) who was owner of 61-Kanals 02-Marlas land in Chak No.385/GB, Tehsil Samundari, District Faisalabad; that Fateh Muhammad had three sons namely Fazal Muhammad, Safdar Khan and Zafar Ali and three

daughters namely Maqsoodan Begum, Mehmooda Begum and Saidan Bibi; that the respondents No.2 to 22, in connivance with subordinate staff of respondent No.1 got mutation of suit land in their favour vide mutation No.35 dated 11.08.1961 but in order to deprive Mst. Saidan Bibi from inheritance, her name was excluded from the mutation of inheritance. The petitioners challenged the vires of the said mutation No.35 dated 11.08.1961 and subsequent inheritance mutation in favour of respondents No.2 to 22 and they sought their shares in the suit land being children of Mst. Saidan Bibi.

2. The suit was contested by the deceased respondent No.2 namely Safdar Ali while submitting written statement who controverted averments of the plaint by maintaining that Fateh Muhammad died on 10.11.1960 whereas Mst. Saidan Bibi died in the year 1947; that Muslim Family Laws were promulgated in the year 1961, therefore, at the time of death of Fateh Muhammad, the children of Mst. Saidan Bibi being maternal grandchildren of Fateh Muhammad were not entitled to get any share in inheritance of Fateh Muhammad and mutation No.35 dated 11.08.1961 was correctly entered and sanctioned. After death of Safdar Ali Khan, his children were impleaded as defendants

No.2-A to 2-E in the suit. The defendants No.3, 4 to 9, 10 to 13 and 14 filed their conceding written statements to the suit, whereas the remaining defendants were proceeded against ex parte. Out of the divergent pleadings of the parties, the learned trial Court framed issues and evidence of the parties in pro and contra was recorded. On conclusion of trial, the learned trial Court vide impugned judgment and decree dated 19.03.2015 dismissed suit of the petitioners. The petitioners being dissatisfied and aggrieved preferred an appeal but the same was dismissed vide impugned judgment and decree dated 30.11.2015 by the learned appellate Court; hence, the instant revision petition.

3. Heard.

4. There is no denial to the fact that earlier a suit germane to the disputed inheritance mutation No.35 was instituted by the present petitioners on 21.12.2001 in Tehsil Samundari, copy whereof was placed on record as Ex.D3, which was dismissed as withdrawn on 02.10.2002 vide Ex.D5 after the statement of the learned counsel for plaintiffs in the said suit to the effect that he withdraws the suit and now there is no dispute between the parties and that the parties have reached to a settlement; meaning thereby the said suit was withdrawn due to some settlement and without

seeking any permission to institute the same afresh; therefore, the present suit was hit by Rule 1(3) of Order XXIII, Code of Civil Procedure, 1908, because the said provision of law provides:-

> *'Where the plaintiff withdraws from a suit, or abandons part of a claim, without the permission referred to in sub-rule(2), he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.'*

In the present case, no permission, as stated above, was sought for filing the suit afresh, therefore, the petitioners were precluded from instituting the suit under discussion. In this regard reliance is placed on *Muhammad Yar (Deceased) through L.Rs. and others v. Muhammad Amin (Deceased) through L.Rs. and others* **(2013 SCMR 464)**, wherein it has been held that:-

> *'From the clear language of the above, it is vivid and manifest that the noted rule mainly comprises of two parts; sub-rule (1) entitles the plaintiff of a case to withdraw his suit and/or abandon his claim or a part thereof, against all or any one of the defendants, at any stage of the proceeding and this is his absolute privilege and prerogative (Note: except in certain cases where a decree has been passed by the Court such as in the cases*

> *pertaining to the partition of the immovable property etc.). And where the plaintiff has exercised his noted privilege he shall be precluded from instituting a fresh suit on the basis of the same cause of action qua the same subject matter and against the same defendant(s) and this bar is absolute and conclusive, which is so visible from the mandate of sub-rule(3).'*

It was further held in the above said judgment that:-

> *'……; but the fact remains that the counsel in clear and unequivocal terms pleaded to the Court and got his statement recorded, that the petitioners would not like to pursue the suit and would like to withdraw. This is a withdrawal simpliciter as envisaged and covered by the provisions of Order XVIII, Rule 1(1), C.P.C., without there being any nexus and recourse to sub-rule (2)(a)(b). Thus, in view of the above peculiar circumstances of this case, the petitioner could not file a fresh civil suit to challenge the same decision/verdicts of the Revenue Courts through which their pre-emption suit was discarded.'*

The facts of the case in hand are identical to the facts of the above said judgment of the Supreme Court of Pakistan because in the present case, the withdrawal of the earlier suit by learned counsel for the petitioners is

simpliciter and no permission to file afresh was sought. The observations and inference drawn in the above said judgment has been reaffirmed by the Supreme Court of Pakistan in judgment reported as *Khawaja Bashir Ahmed and Sons (Pvt.) Ltd. v. Messrs Martrade Shipping and Transport and others* **(PLJ 2021 SC 227)**. Therefore, the learned Courts below have rightly adjudicated upon the matter in hand on this score.

5. Even the suit under discussion is barred by limitation, because the earlier suit was withdrawn on 02.10.2002 and the suit under discussion was instituted after about eight years from its withdrawal, as Rule 2 of Order XXIII, Code of Civil Procedure, 1908 provides that:-

> *'**2. Limitation law not affected by first suit.** In any fresh suit instituted on permission granted under the last preceding rule, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been instituted.'*

The learned appellate Court has rightly observed that once limitation began to run it does not stop in the absence of any solid reason.

6. Additionally, the documentary evidence produced by the petitioners as to death of Mst. Saidan Bibi and Fateh Muhammad is not confidence inspiring and cogent rather it has surfaced on record through report of Secretary Union Council concerned that there is no entry of death of Fateh Muhammad in the register of deaths for the year 1961 and same is the position as to entry of death of Mst. Saidan Bibi in the year 1964 and Maqsoodan Bibi in the year 1968. As against this, the documents Ex.D1 and Ex.D2 being public documents fully support the stance of the respondents/ defendants. Therefore, it can safely be concluded and held that Mst. Saidan Bibi, having died prior to death of Fateh Muhammad, who died on 10.11.1960 was rightly excluded from the inheritance mutation No.35 as to legacy of Fateh Muhammad, because at that time Muslim Family Personal Law Ordinance, 1961 had not been promulgated and enacted; therefore, no benefit of section 4 of the Ordinance, 1961 *ibid* was available to the present petitioners.

7. Pursuant to the above, the learned Courts below have rightly appreciated and evaluated evidence of the parties and have reached to a just conclusion, concurrently, that the petitioners have failed to prove their case by leading cogent, confidence inspiring and

trustworthy evidence. As such, the concurrent findings on record cannot be disturbed in exercise of revisional jurisdiction under section 115 of Code of Civil Procedure, 1908. Reliance is placed on judgments reported as *Mst. Zaitoon Begum v. Nazar Hussain and another* (**2014 SCMR 1469)**, *CANTONMENT BOARD through Executive Officer, Cantt. Board Rawalpindi v. IKHLAQ AHMED and others* **(2014 SCMR 161)**, *Muhammad Farid Khan v. Muhammad Ibrahim, etc.* **(2017 SCMR 679)**, *Muhammad Sarwar and others v. Hashmal Khan and others* **(PLD 2022 Supreme Court 13)** and *Mst. Zarsheda v. Nobat Khan* **(PLD 2022 Supreme Court 21)** wherein it has been held that :-

> *'There is a difference between the misreading, non-reading and misappreciation of the evidence therefore, the scope of the appellate and revisional jurisdiction must not be confused and care must be taken for interference in revisional jurisdiction only in the cases in which the order passed or a judgment rendered by a subordinate Court is found perverse or suffering from a jurisdictional error or the defect of misreading or non-reading of evidence and the conclusion drawn is contrary to law. This court in the case of Sultan Muhammad and another v. Muhammad Qasim and others (2010 SCMR 1630) held that the concurrent*

> *findings of three courts below on a question of fact, if not based on misreading or non-reading of evidence and not suffering from any illegality or material irregularity effecting the merits of the case are not open to question at the revisional stage.'*

Further in judgment reported as *Salamat Ali and others v. Muhammad Din and others* **(PLJ 2023 SC 8)**, it has invariably been held that:-

> *'Needless to mention that a revisional Court cannot upset a finding of fact of the Court(s) below unless that finding is the result of misreading, non-reading, or perverse or absurd appraisal of some material evidence. The revisional Court cannot substitute the finding of the Court(s) below with its own merely for the reason that it finds its own finding more plausible than that of the Court(s) below.'*

In this regard, safer reliance can also be placed on judgment reported as *Mst. Farzana Zia and others v. Mst. Saadia Andaleeb* **(2024 SCMR 916)** wherein it has invariably been held that:-

> *'13. We are sanguine that the High Court has the powers to reevaluate the concurrent findings of fact arrived at by the lower courts in appropriate cases but cannot upset such crystalized findings if the same are based on relevant evidence or*

> *without any misreading or non-reading of evidence. The first appellate court also expansively re-evaluated and re-examined the entire evidence on record. If the facts have been justly tried by two courts and the same conclusion has been reached by both the courts concurrently then it would not be judicious to revisit it for drawing some other conclusion or interpretation of evidence in a second appeal under section 100 or under revisional jurisdiction under section 115, C.P.C., because any such attempt would also be against the doctrine of finality…… The High Court cannot substitute its own findings unless it is found that the conclusion drawn by the lower courts were flawed or deviant to the erroneous proposition of law or caused serious miscarriage of justice and must also avoid independent re-assessment of the evidence to supplant its own conclusion.'*

8. For the foregoing reasons, the revision petition in hand comes to naught and the same stands dismissed. No order as to the costs.

SHAHID BILAL HASSAN
Judge

Approved for reporting.

Judge

M.A.Hassan