IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

20/19

PRESENT:
MR. JUSTICE GULZAR AHMED
MR. JUSTICE FAISAL ARAB
MR. JUSTICE IJAZ UL AHSAN

(AFR)

Civil Petition No.107 of 2018
(Against the judgment dated 24.11.2017 passed by the High Court of Balochistan Quetta in Civil Revision No. 173 of 2014).

Ainuddin and others. ...Petitioner(s)

versus

Abdullah and another. ...Respondent(s)

For the petitioner(s): Mr. Tariq Mahmood, Sr. ASC.
Syed Rafaqat Hussain Shah, AOR.

For respondent No.1: Mr. Abdul Hadi Tareen, ASC.
Mr. Ahmed Nawaz Ch., AOR.

Date of hearing: 14.02.2019.

O R D E R

IJAZ UL AHSAN, J.- Leave to appeal is sought against a judgment of the High Court of Balochistan at Quetta, dated 24.11.2017, through which a Civil Revision Petition filed by the petitioners was dismissed.

2. The brief facts necessary for decision of this *lis* are that the petitioners instituted a suit for declaration and permanent injunction against the Respondents. Their claim was that they were legal heirs of Haji Muhammad Ali and Haji Abdul Wahid, while the Respondents were legal heirs of Baha-ud-Din, who was survived by four sons. It was stated that in 1957 through an agreement dated 24.01.1957, Haji

Muhammad Ali and Haji Abdul Wahid entered into an agreement with Baha-ud-Din for purchase of his share in the suit property for a consideration of Rs.625/-. This amount was allegedly received by Baha-ud-Din and it was claimed that possession was also handed over to the predecessors of the petitioners. It was further claimed that since taking possession in 1957, the petitioners had continued to hold possession till filing of the suit in the year 2009. It was stated that at the time of handing over possession, an assurance was given by Baha-ud-Din that a sale deed will be executed shortly. The said Baha-ud-Din subsequently died. The petitioners claimed that the legal heirs of Baha-ud-Din were approached who assured them that once inheritance mutation had been entered in their respective names, they will transfer the suit property to the petitioners. Admittedly, such mutation was made in 2002. It was claimed that this fact came to the knowledge of the petitioners on 04.04.2009, whereafter they filed a suit for declaration and permanent injunction.

3. The trial Court framed issues, recorded evidence and proceeded to decree the suit in favour of the petitioners, vide judgment & decree dated 29.11.2013. The Respondents appealed. The appellate forum set aside the judgment & decree of the trial Court, vide judgment and decree dated

11.04.2014 which was upheld by the revisional Court vide impugned judgment dated 24.11.2017. Hence, this petition.

4. The learned counsel for the petitioners submits that the judgments of the appellate as well as revisional Courts disagree with the judgment & decree of the trial Court. However, both Courts misread the evidence and failed to consider the reasoning adopted by the trial Court. The learned counsel maintains that admittedly the petitioners had been continuously in occupation of the suit property for a long time and the finding of the trial Court in this regard could not have been disturbed without assigning cogent reasons. He submits that the question of limitation was a mixed question of law and fact and could not have been decided against the petitioners without the application of judicial mind. The learned counsel has further submitted that sufficient oral evidence had been produced to establish the existence of an agreement to sell and the findings of the appellate *fora* that the petitioners had failed to prove the agreement to sell are incorrect. He has vehemently argued that in civil matters, cases are required to be decided on the principle of preponderance of evidence. According to him, in the present case, the evidence was more favourable to the petitioners which fact was ignored by the appellate as well as revisional Courts.

5. The learned counsel for the Respondents on the other hand has supported the impugned judgment of the High Court. He submits that the suit of the petitioners was patently barred by time. Further, as held by the High Court, the Respondents had failed to establish the agreement to sell. In addition, they had not been vigilant and had initially let 52 years pass before approaching the Court of competent jurisdiction. He therefore maintains that the appellate Court as well as the revisional Court had valid reasons and lawful justification to set aside the judgment & decree of the trial Court.

6. We have heard the learned counsel for the parties and examined the record. We note that despite the fact that the alleged agreement was executed on 24.01.1957, the petitioners waited till 2009 to file a suit for declaration and permanent injunction against the Respondents. It is significant to note that if the suit was based upon an agreement to sell, ordinarily a suit for specific performance should have been filed. We have asked the learned counsel for the petitioners to explain to us why such course of action was not adopted. He has made and effort to justify the mode adopted by the petitioners. We are however not satisfied with the explanation attempted by the learned counsel for the

petitioners and uphold the findings of the lower *fora* in this regard.

7. We further notice that the petitioners let more than 52 years lapse before approaching the Court for asserting their rights. This is despite the fact that they alleged that on the demise of Baha-ud-Din they had approached his legal heirs who had promised to transfer the property in their favour in accordance with the terms and conditions of the agreement to sell. Admittedly, the property was transferred through a mutation of inheritance in the year 2002, yet the Respondents waited for another seven years to approach the Court. They were obviously not vigilant in claiming and asserting their rights and as such let the period of limitation expire before approaching the Court. The delays have not been explained in even a remotely convincing manner.

8. The petitioners also failed to prove the alleged agreement to sell. It appears that out of two marginal witnesses who had allegedly witnessed the execution of the agreement to sell, only one was produced. His credibility was questionable in view of the fact that he had purportedly signed the document. However, when he was cross-examined, he produced his CNIC which bore his thumb impression instead of signatures. No explanation was offered explaining failure of the petitioners to produce the other witness.

9. We have also perused the evidence produced by the petitioners and find that despite a claim that the Respondents had given assurances to the petitioners that the property will be transferred in their names once the same had been mutated in their favour, no evidence of any credible nature was produced to substantiate such claim. The record also indicates that a portion of the adjacent land which had also been allegedly purchased by the petitioners was transferred in favour of Respondent No.2 in the year 2002 being his sole legal heir. However, no objection was raised by the petitioners at any stage regarding such transfer. Perusal of the entire evidence placed on record has not shown any misreading or non-reading of the same.

10. We have gone through the judgments of the appellate as well as the revisional Court and examined their reasoning in the context of the reasoning adopted by the trial Court. We are satisfied that the appellate as well as the revisional Courts aptly applied their minds to the facts and circumstances of the case, correctly read and appraised the evidence, examined the record and gave cogent and legally sustainable reasons to upset the finding of the trial Court. In addition, the learned counsel for the petitioners was unable to show us any legal, procedural or jurisdictional error, defect or flaw in the impugned judgment that may necessitate

interference by this Court. We are therefore not persuaded to grant leave to appeal in this case.

11. Accordingly, this petition is dismissed and leave to appeal is refused.