

IN THE SUPREME COURT OF PAKISTAN  
(Appellate Jurisdiction)

**Present:**

Justice Qazi Faez Isa, CJ  
Justice Irfan Saadat Khan  
Justice Naeem Akhtar Afghan

**Civil Appeals No. 1429 to 1433/2014**

Against the judgment dated 27.3.2014 passed by the Peshawar High Court, Abbottabad Bench in CRs No.342-A, 341-A/2009 & C.M. Petition No.234-A/2014

*Muhammad Aslam (decd.) thr. his LRs*  
(in CAs 1429, 1431-1433/2014)

*Muhammad Ashfaq and another* ...Appellants  
(in CA 1430/2014)

Versus

*Molvi Muhammad Ishaq (decd.) thr. L.Rs.*  
(in CAs 1429 -1430/2014)

*Mst. Salma Bibi (Daughter) (decd.) thr. LRs. and others* ...Respondents  
(in CAs 1431 - 1433/2014)

For the Appellants: Mr. Saad Umar Buttar, ASC  
(in all cases) Sh. Mahmood Ahmad, AOR

For the Respondents: Mr. Barrister Umer Aslam Khan, ASC  
(in all cases)

Date of Hearing: 19.3.2024

**JUDGMENT**

**Irfan Saadat Khan, J.** Leave was granted by this court in the instant matter vide Order, dated 29.10.2014, by observing as under:

"Pursuant to the order dated 17.6.2014, the record requisitioned has been received; from perusal whereof, we are not sure if this is the original record or a reconstructed file. Be that as it may, learned counsel for the Petitioners has argued, that Abdul Jalil, Attorney of the respondents, had entered into a compromise before the learned High Court. He got his statement recorded before the Court to the effect, pursuant whereof the learned High Court passed the order dated 24.11.1979. This entire material independent of the statement of Abdul Jalil statedly record before the Executing Court on 26.5.1980 was sufficient to establish that the possession under the decree was delivered to the petitioners, with the clear area to which the petitioners were entitled under the preemption decree. These vital documents have not been taken into account by the learned High Court while disposing of the application under Section 12(2), CPC and such decision on account of serious misreading or non-reading cannot sustain in law. Leave is granted to consider the above. The record requisitioned must be retained."

2. This is a matter rife with litigation, and thus requires an elaborate narration of the facts giving rise to the *lis* before us as this is the third

round of litigation between the parties. Muhammad Aslam, predecessor-in-interest, of Muhammad Ayaz and others ("Appellants"), filed Suits bearing Nos.51/1, 52/1, and 53/1 of 1972 on 04.03.1972 for possession, through pre-emption, of the land bearing *Khasras* Nos.478, 486, 477, 479, 480, 489, 1381, 488, measuring 17 *Kanals* 13 *Marlas* situated in *Mauza Kokal*, to the extent of 1/5th share along with share in *Shamlat* or whatever area through mutation No.3637, dated 15.07.1971, which was proved to have been transferred on payment of PKR 200/- in favour of Abdul Qayyum son of Muhammad Ismail, resident of village Kokal, Tehsil Abbottabad (**Subject-matter of Suit No. 51/1**); suit for possession through possession in respect of *Khasra* No. 486 measuring 4 *Marlas* in column of cultivation, situated in *Mauza Kokal*, Tehsil Abbottabad or whatever area which was proved to have been transferred through mutation No. 3599, dated 03.03.1971, on payment of PKR 4/- in favour of Abdul Qayyum son of Muhammad Ismail, resident of village Kokal, Tehsil Abbottabad (**Subject-matter of Suit No.52/1**); and suit for possession through pre-emption in respect of *Khasra* Nos. 477, 479, and 480 measuring 4 *Kanals* 9 *Marlas* in the column of cultivation, through mutation No. 3596, dated 03.03.1971, and possession of land through pre-emption including share in *Shamlat* in respect of *Khasra* Nos.477, 486, 477, 479, 480, 489, 1381 measuring 10 *Kanals* 7 *Marlas* to the extent of 1/10th share and *Khasra* No. 488 measuring 7 *Kanals* 6 *Marlas* to the extent of 1/2 share or whatever area which was proved to have been transferred through mutation No. 3597, dated 03.03.1971, on payment of PKR 1200/-, situated in *Mauza Kokal*, transferred to Abdul Qayyum son of Muhammad Ismail, resident of village Kokal, Tehsil Abbottabad (**Subject-matter of Suit No.53/1**). The aforementioned Suits were contested by Abdul Qayyum by filing written statements and subsequently, all three Suits were decreed by the trial Court in favour of the predecessor-in-interest of the Appellants vide judgment and decree, dated 13.02.1973. Abdul Qayyum preferred Appeals, on 29.5.1973, which were allowed vide judgement and decree, dated 11.03.1974, and in consequence thereof all the three Suits decreed by the trial Court were dismissed. Thereafter, Muhammad Aslam, then filed Civil Revision Petitions Nos. 320/74, 321/74, and 322/74 before the High Court which were accepted vide judgment, dated 02.07.1978 and the Suits were decreed accordingly. Aggrieved by the decision in the Revision Petitions, Abdul Qayyum thereafter filed CPLAs bearing No.105-P, 106-P, and 107-P of 1978 before this Court. The decision in the Revision Petitions were then upheld by this Court, vide judgement dated 13.05.1979, which

was a reported decision captioned as *Abdul Qayyum*<sup>1</sup>. This, therefore, concluded the first round of litigation between the parties in respect of the land bearing *Khasras* No. 478, 486, 477, 479, 480, 489, 1381.

3. While the matter was subjudice before this Court in CPLAs No. 105-P, 106-P, and 107-P of 1978 the pre-emptor/decree holder filed Civil Review Petitions Nos. 20, 21, and 22 of 1978 before the High Court on 17.09.1978, for review of Order, dated 02.07.1978, passed in Revision Petitions No. 320/74, 321/74 and 322/74 to the extent of modification in the area of *Khasra* No. 488 from 1 *Kanal* 10 *Marlas* to 5 *Kanals* 2 *Marlas* and deposit of enhanced amount on the said excess area. Subsequently, in the said Review Petitions, three Applications, dated 27.10.1979, were also filed for compromise, shown to be signed by Muhammad Aslam, pre-emptor/decree holder and Haji Abdul Jalil, son of Haji Abdur Rehman, General Attorney on behalf of Abdul Qayyum vendee/judgment debtor on the ground that physical possession of the disputed land, as decreed by the High Court, vide judgment dated 02.07.1978, was handed over to the decree holder by the judgment debtor. In view of the statement of the parties and the compromise between them, the said Review Petitions were accepted, vide Order, dated 24.11.1979. The decree holder then filed Execution Petitions No. 16/10, 17/10, and 18/10 of 1980 on 15.04.1980 only to record satisfaction of the decree, as the possession of the disputed land had already been taken over by the decree holder from the judgment debtor. Thus, on the basis of the compromise Appellants filed Execution Petitions before the trial Court which were then allowed vide order dated 26.05.1980. This concluded the second round of litigation between the parties.

4. Molvi Muhammad Ishaq, the present Respondent, who was alive at that time, now being represented by his legal heirs, and was the real brother of Abdul Qayyum, son of Muhammad Ismail, then filed Suit No. 460/1 of 1987 on 21.09.1987 for permanent injunction against Muhammad Aslam, the predecessor-in-interest of the Appellants, for restraining him from interference in *Khasra* No. 488 measuring 7 *Kanals* 6 *Marlas*, situated in village Kokal, Tehsil and District Abbottabad. An Application for grant of temporary injunction was also filed by the Respondents and the trial Court directed the parties to maintain status quo vide Order dated 21.09.1987. An Application for initiating contempt proceedings was then moved against Muhammad Aslam, on 08.10.1987;

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<sup>1</sup> *Abdul Qayyum v Muhammad Aslam* (PLD 1979 SC 867)

for illegally dispossessing the respondents from the said land. Reply to the suit was then filed by the present Appellants on 16.11.1987 before the trial Court. On 29.05.1999, an amended Plaintiff with the prayer for possession of *Khasra* No. 488 was also filed by the Respondents. It was averred in the amended Plaintiff, that Abdul Qayyum, predecessor-in-interest of the Respondents, was the sole owner of the disputed property having the graves of his family members therein; and that he had also constructed a house upon the said disputed property and that Muhammad Aslam, the predecessor-in-interest of the Appellants, in connivance with Revenue Officials had got recorded the said house as '*Ghair Mumkin School*' in the said official revenue records. It was also averred that Muhammad Aslam had threatened him that he would forcibly take possession of the disputed land and the house and would open a school thereupon.

5. Muhammad Aslam, predecessor-in-interest of the Appellants contested the suit by filing amended written statement, on 07.09.1999, and asserted that he had already taken possession of the disputed property in the year 1980, during execution proceedings of the decree in the aforementioned pre-emption suits and the land belongs to him in view of the explicit compromise entered between the parties before the High Court on 24.11.1979. Based on the contesting pleadings of the parties, the Civil Judge-VI, Abbottabad framed issues and both the parties produced their evidences to prove their respective contentions and claims. Subsequently, the trial Court, decreed the suit in favour of the present Respondents, vide judgment and decree, dated 18.12.2008. The present Appellants then preferred Appeal, which was dismissed vide judgement and decree, dated 09.07.2009. Aggrieved thereof, the present Appellants then filed a Civil Revision, which came up for hearing before the High Court on 08.03.2010, which was found to be bereft of merits, and the same was dismissed accordingly. The judgment in the Civil Revision, dated 08.03.2010, was then challenged before this Court, in Civil Petition No. 692 of 2010, and this Court, vide Order, dated 14.09.2011, set aside the judgment of the High Court and remanded the matter to the High Court for a decision afresh.

6. The High Court then passed the Order, which is now impugned before this Court being Civil Appeal No. 1429/2014, dated 27.03.2014 which, as stated above, is the third round of litigation between the

respective parties. The relevant portion of the order of the High Court reads as follows:

"10. At the very outset, it is worth mentioning that this Court has also allowed today three petitions filed under Section 12(2) CPC by the legal heirs of deceased Abdul Qayyum son of Muhammad Ismail and the decree passed in favour of the predecessor-in-interest of the petitioners in preemptions suits were set aside along with the execution proceedings and dismissed the preemption suits, *inter alia*, on the ground that the decree-holder/pre-emptor Muhammad Aslam had not deposited the entire preemption amount ('Zar-e-Shufa') enhanced and fixed by this Court vide order dated 02.07.1978 in CR NO. 320/74 before the target date i.e. 07.09.1978.

...

12. When this Court analyzes the judgments of both the Courts below, it is observed that the Courts below have gone into all aspects of the questions/issues and given reasons therefor. In as much as the entire pleadings, the oral and documentary evidence on record were taken into consideration and their findings are supported by legal justification and evidence on record. No misreading or non-reading of material evidence or jurisdictional error could be pointed by the learned counsel for the petitioners.

On facts, both the Courts below have rendered their concurrent findings, which this Court does not find to be arbitrary, capricious or out rightly absurd, warranting this. Court to invoke and exercise its revisional jurisdiction.

13. Accordingly, for the reasons stated hereinabove, the present revision petition being devoid of merit is dismissed."

7. Apart from the aforesaid Appeal another Appeal bearing No. 1430 of 2014 was also filed by the present Appellants. The background of this Appeal being that a contempt Application, dated 08.10.1987, for flouting the status quo order dated 21.09.1987 passed by the trial Court, in the suit bearing No. 460/1 of 1987 by the present respondents, was moved and the trial Court vide Order, dated 18.12.2008, directed issuance of contempt of Court proceedings against the present Appellants. The said Order of the trial Court, on contempt Application as well as on the main suit, was challenged by the Appellants on 02.04.2009 before the Appellate Court, which dismissed the same vide Order dated 09.07.2009. This Order was then challenged before the High Court, in Civil Revision bearing No. 341/2009, which too was dismissed vide order dated 08.03.2010. The said Order alongwith the Order of dismissal in Civil Revision filed by the Appellants was then challenged before this Court and this Court set aside the same for *de novo* consideration vide Order dated 14.09.2011. The High Court then, once again, dismissed the same vide Order dated 27.3.2014, which is also impugned before us, vide Appeal No.1430 of 2014, by the present Appellants.

8. In addition to these two Appeals, three more Appeals bearing No. 1431 of 2014, 1432 of 2014, and 1433 of 2014 have also been filed by the present Appellants against the Order of the High Court dated 27.03.2014. The background of these three Appeals being that the Appellants filed three Applications under section 12(2) Code of Civil Procedure, 1908 ("CPC") dated 14.02.1990 challenging that the review proceedings, where the land under dispute, bearing *Khasra* No. 488, have been allotted by the revenue authorities in favour of the Appellants, were incorrect and these entries made in the revenue record may be reversed since the same were obtained by way of fraud and misrepresentation by the present Appellants. The said Applications were allotted Nos. 16/6 of 1990, 17/6 of 1990, and 18/6 of 1990 and thereafter were dismissed by the trial Court vide order dated 18.02.1991 by deciding the same in favour of the present Appellants. Being aggrieved with the said order Appeals were preferred before the Appellate Court by the present Respondents. The said Appeals were then accepted by the Appellate Court vide order dated 25.09.2008. The Respondents then filed petition bearing No. 101 of 2011 before the High Court. While the said petition was pending before the High Court, in a connected case this Court vide order dated 14.09.2011 observed that instead of filing Applications under section 12(2) CPC before the trial Court, the Respondents ought to have filed these Applications before the High Court. This Court then vide above referred order of 14.09.2011 converted the Applications filed under section 12(2) CPC before the trial Court to be the one filed before the High Court. These Applications were then allotted CM No. 234-A, 235-A, and 236-A by the High Court and vide Order, dated 27.03.2014, were then allowed. The Appellants, being aggrieved with the said Order, have preferred, the present above numbered Appeals before this Court. Needless to state that the Writ Petition bearing No. 101 of 2011 filed by the present Respondents before the High Court since has become infructuous and was accordingly disposed of vide the same Order of 27.03.2014.

9. Mr. Saad Umar Buttar, ASC along with Sh. Mehmood Ahmed, AOR appeared in the instant matter and stated that this was the third round of litigation between the parties and in the first two rounds of litigation the matter, with regard to the dispute pertaining to *Khasra* No. 488, has already been decided and resolved in favour of the present Appellants. He stated that a compromise was entered between the parties, duly recorded

by the learned single Judge of the Peshawar High Court, vide diary sheet, dated 24.11.1979, and the same was entered between the parties in front of him. He stated that the said diary-sheet would clearly reveal that it contained not only the signatures of the learned Judge but also that of Abdul Jalil, General Attorney of Abdul Qayyum, the predecessor-in-interest of the present Respondents, and the Counsel of the (late) Muhammad Aslam. According to him, from the above compromise, it was clear that the matter with regard to *Khasra* No. 488 had been settled between the parties and the Respondents, with *mala fide* intention, had subsequently filed the suit bearing No. 460/1 of 1987 before the trial Court on 21.09.1987 by claiming ownership in respect of the same *Khasra*, i.e. 488. He stated that Abdul Jalil, who was the Attorney of Abdul Qayyum, was present in the Court at the time of signing the compromise and it was a strange to note that no action whatsoever was taken by Abdul Qayyum against his Attorney during his lifetime from 1979 to 1988, as during the said period he was alive, and it was only after his death that the present Respondents filed a suit against the present Appellants in respect of the aforesigned *Khasra* No. 488. He stated that sanctity is always attached to Court's proceedings, and therefore, the trial Court, Appellate Court, and the High Court were not justified in allowing the request of the Respondents. Hence, according to the learned Counsel, the orders of three Courts below were a result of misreading or non-reading of the evidences and thus were erroneous and are liable to be set aside.

10. The learned Counsel next contended that the three Courts below had also erred in not considering the fact that the suit bearing No. 460/1/1987 was filed in the year 1987, i.e. eight years after the compromise, by the (late) brother of (late) Abdul Qayyum, namely Molvi Muhammad Ishaq. He stated that (late) Abdul Qayyum in his lifetime had not denied the factum of giving Power of Attorney to Haji Abdul Jalil or that he was not authorized to enter into a compromise with the present Appellants. Hence, according to the learned Counsel, the very initiation of legal proceedings by the (late) brother of the Abdul Qayyum against the present Appellants was nothing but an afterthought on his part just to usurp the property of the present Appellants and to dispossess them in an unwarranted manner. He stated that the proceedings initiated by the present Respondents against the Appellants were hopelessly and miserably time barred but this aspect has not been considered by the

three Courts below. In support of his contention the learned counsel relied upon dicta of this Court in *Sarfraz*<sup>2</sup>.

11. The learned Counsel further stated that the Appellants after the compromise were put in possession of the land comprising 05 Kanals and 02 Marlas and no objection in this regard was ever raised by either (late) Abdul Qayyum or his legal heirs or Molvi Muhammad Ishaq or his legal heirs, as the case may be, from 1979 to 1987. He stated that on the land the Appellants had constructed a School, namely, Quaid Public School, which is presently being run by them satisfactorily; whereas the Respondents are bent upon closing down the same to cause misery to the students enrolled therein.

12. So far as the aspect of short payment of *Zar-e-Shufa* is concerned, the learned Counsel submitted that from the perusal of the judgment, dated 02.07.1978, passed by the Peshawar High Court in C.R. No. 320/1974, it was clear that the Court had directed the Appellants to deposit an amount of PKR 120/-, which was deposited by them on 27.07.1978. According to him, this argument of the Respondents that since the decree contained a payable amount of PKR 128/-, and the Appellants had only paid PKR 120/-, thus they were liable to be evicted from the ownership of *Khasra* No. 488, held no merit as whatever amount was determined and was required to be paid by the Appellants, as per the directions of the High Court's Order, dated 02.07.1978, was paid by the Appellants in a timely manner; hence there was no default on part of the Appellants, with regard to the payment of *Zar-e-Shufa*. He stated that if there was some mistake in respect of recording of the amount payable by the Appellants as *Zar-e-Shufa* by the High Court, the Appellants could not be penalized for it. He stated that it was a settled proposition of law that no one should suffer on account of lapses on the part of the Court. He, therefore, stated that this aspect of the case was also ignored by the three Courts below and, therefore, in his view, the said Orders were liable to be set aside being erroneous, perverse, and not in accordance with the law.

13. Insofar as the Appeal filed on the contempt application is concerned, the learned counsel for the Appellants submitted that no contempt was made by the Appellants as they had acted as per the compromise entered between the parties before the High Court way back

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<sup>2</sup> *Sarfraz v Muhammad Aslam Khan* (2001 SCMR 1062)

in 1980, hence, on this aspect also the three Courts below had erred in observing that the Appellants had flouted the Order of the trial Court with regard to the status quo to be maintained by the parties.

14. Insofar as the three Appeals under Section 12(2) CPC, decided in favour of the Respondents are concerned, here again the counsel for the Appellants stated that: firstly, these Applications were hopelessly and miserably time barred as these were filed in the year 1992 whereas according to him the cause of action, if any, arose in the year 1987; and secondly, there was no fraud or misrepresentation on the part of the present Appellants so as to justify the Respondents to file Applications under Section 12(2) CPC, as they had always acted in a *bona fide* manner and as per the directions given to them by the High Court. He further stated that the directions of the High Court contained in the Order dated 02.07.1978 had now been merged in the Order of the Supreme Court, dated 13.05.1979, therefore, there was neither any violation nor any element of fraud or misrepresentation on the part of the Appellants; an aspect, which in the learned Counsel's view, had also been ignored by the three Courts below, and therefore needed to be vacated as the Appellants had already been declared to be the owners of land comprising of 05 *Kanals* and 02 *Marlas* of Khasra No. 488 by the High Court but the Respondents were bent upon displacing the Appellants from their land by unnecessarily dragging them into litigation in one case after another for more than 5 decades. He, therefore, finally prayed that the 5 appeals may be allowed with costs imposed upon the Respondents.

15. Barrister Umer Aslam Khan, ASC appeared on behalf of the Respondents and stated that there was no doubt this was the third round of litigation between the parties. He stated that Haji Abdul Jalil was not authorized to enter into a compromise between the parties and the said compromise, in his view, was non-est in the eye of law. He stated that a perusal of the record would reveal that Haji Abdul Jalil has categorically denied his signatures present on the Power of Attorney and has recorded his statement before the trial Court wherein he stated that he had never appeared before a Court of law, in connection with the matter concerning the land in question.

16. The learned Counsel for the Respondents further stated that when (late) Molvi Muhammad Ishaq found some alteration in the *jamabandi* in the year 1987, he immediately, filed a suit bearing No. 460/1 of 1987

and the trial Court was quite justified in directing the parties to maintain status quo in the matter. He stated that (late) Muhammad Aslam, along with his sons, since, had forcibly took possession of the land, therefore, contempt Application was rightly filed before the trial Court in which the Appellants were duly found guilty by the said Court.

17. The learned counsel next contended that it was a settled proposition of law that in case of lesser amount of payment of *Zar-e-Shufa*, the matter is always decided against the person required to pay the said amount. He stated that since the Appellants have paid PKR 8/- less than the amount as determined in the decree, hence, no lease in this regard could be given to them. In this regard the Counsel relied upon the decisions rendered in *Syed Ishaque Hussain*<sup>3</sup>, *Khadim Hussain*<sup>4</sup> and *Hafiz Muhammad Ramzan*<sup>5</sup>. He next submitted that the non-payment of *Zar-e-Shufa* by the Appellants had given a cause of action to the Respondents, therefore, they quite rightly filed the suit No. 460/1/1987 against the Appellants and concurrent findings of all the three Courts below were rightly in favour of the Respondents.

18. The learned Counsel stated that the Appellants are not entitled for possession of the land in question with regard to *Khasra* No. 488 and even if for arguments sake it was assumed that they were entitled to a portion of the land in *Khasra* No. 488 it would be to the extent of 01 *Kanal* and 10 *Marlas* only and not 05 *Kanals* and 02 *Marlas*, as claimed by the Appellants. He stated that the Appellants took advantage of the compromise entered by an unauthorized person before the High Court and now wanted to dispossess the Respondents from their ancestral property by playing fraud with the connivance of the revenue authorities. The learned Counsel next stated that the Applications under Section 12(2) CPC were filed within time as correction in the *jamabandi* was made in the year 1987 whereas these Applications were filed on 05.06.1990, which were very much within the limitation period as per Article 181 of the Limitation Act, 1908 ("**Limitation Act**"). He stated that this aspect was also decided by the High Court in their favour vide the impugned judgment dated 27.03.2014, when this Court vide Order dated 14.09.2011 remanded the matter for deciding the Applications under Section 12(2) CPC filed by the Respondents. He, therefore, stated that in

<sup>3</sup> *Syed Ishaque Hussain Rizvi v Sheikh Mubarik Ali* (2005 SCMR 1604)

<sup>4</sup> *Khadim Hussain v Abdid Hussain* (PLD 2009 Supreme Court 419)

<sup>5</sup> *Hafiz Muhammad Ramzan v Muhammad Bakhsh* (PLD 2012 Supreme Court 764)

view of these facts, all the 5 Appeals filed by the present Appellants were misconceived and were liable to be dismissed with heavy costs.

19. We have heard the learned Counsel for both the parties at considerable length, have perused the record with their able assistance and have also considered the various decisions relied upon by them in support of their contentions.

20. At the very outset, it is noted that the contention raised by the Respondents and replied to by the Appellants, in respect of the matter agitated by the Respondents before the lower Courts, insofar as holding of the land comprising of 05 *Kanals* and 02 *Marlas* in Khasra No. 488, is concerned, it already stands settled and decided in the previous round of litigation in favour of the Appellants. Hence, in our view dilation on this aspect, with regard to the land holding and possession of the said 05 *Kanals* and 02 *Marlas* pertaining to Khasra No. 488, would neither be appropriate nor justified since, as stated above, it has already been decided in favour of the Appellants and finally laid to rest, vide Order dated 02.07.1978 by the High Court. The Execution Petitions, as noted in para-3 above, have been decided on 15.04.1980 and the decree in this regard has also been prepared in favour of the Appellants, therefore, we are of the view that the Appellants for all practical purposes are the owners of said 05 *Kanals* and 02 *Marlas* and the claim of the Respondents in this regard that the Appellants are only entitled for land holding of 01 *Kanal* and 02 *Marlas* is misconceived, unwarranted, and uncalled for.

21. Furthermore, perusal of the record reveals that it was Haji Abdul Jalil, the Attorney of (late) Abdul Qayyum, who had hired counsel, on behalf of Abdul Qayyum, to represent their cases before different *fora* in the earlier round of litigation. It is quite strange to note that the said Haji Abdul Jalil subsequently, while appearing before the trial Court made an unwarranted statement that he had neither appeared before a Court of law nor entered into a compromise before a Judge of the High Court as a lawful Attorney of Abdul Qayyum. Whereas the record clearly depicts that it was he who filed and signed the compromise Application before the High Court, dated 27.10.1979, and it was he who appeared before the High Court, by entering into a compromise, with the present Appellants, which matter was duly recorded by the High Court on 24.11.1979, wherein it was categorically admitted between the parties that the possession of the land of *Khasra* No. 488 pertaining to 05

*Kanals* and 02 *Marlas* would be peacefully handed over to Muhammad Aslam. The contents of the said compromise dated 24.11.1979 are reproduced herein below for better understanding:

"Statement of Mr. Muhammad Aslam, Petitioner and Mr. Abdul Jalil General Attorney of Abdul Qayyum respondent on SA:-

.....  
We have compromised the dispute between us and have submitted the application for the same purpose which is duly singed by both of us. The compromise has been made according to the contents of the Review Petition No.20/78. The possession of the land comprising Khasra No.488 measuring 5 kanals and 2 marlas has since been delivered to the petitioner alongwith other area decree in his favour. The respondent shall be entitled to the refund of the amount deposited by the petitioner in court. The compromise may be accepted accordingly.

R.O. & AC

Dated: 24.11.1979

Sd/---

J U D G E

Circuit at Abbottabad

Sd/---

Sd/---  
Mohammad Aslam  
Petitioner

Sd/---  
Abdul Jalil, General Attorney  
of Abdul Qayyum respondent

Sd/---

Mohammad Younis Tanoli  
Advocate for the petitioner".

Hence the subsequent assertion of Haji Abdul Jalil that he had neither entered into a compromise nor had appeared before a Court of law, in our view, is nothing but an after thought on his part. It is also astonishing to note that the said Haji Abdul Jalil has admitted that it was he who had been hiring the Counsel right from the trial Court to the Supreme Court, as an Attorney on behalf of Abdul Qayyum, but stated that he had never asked from those Counsel, appointed by him, about the fate of those matters, which appears to be an unbelievable story. It is also noted that when Haji Abdul Jalil was asked by the trial Court regarding the whereabouts of the original Power of Attorney to which he stated that he had no knowledge about the same but strangely enough submitted that the signatures on the photocopy of the Power of Attorney, produced as secondary evidence before the trial Court, were not his, which, in our view create heavy doubts about the veracity of the statements made by him.

22. Insofar as the veracity of the compromise is concerned, we find ourselves in agreement with the Learned Counsel for the Appellants that sanctity and assumption of truth is always attached to Court proceedings. Article 91 of the Qanun-e-Shahadat Order, 1984 ("QSO") states:

**91. Presumption as to documents produced as record of evidence.—** Whenever any document is produced before any

Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate or by any such officer as aforesaid, the Court shall presume:

that the document is genuine; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken

(EMPHASIS SUPPLIED)

This Court in *Muhammad Ramzan<sup>6</sup>*, *Fayyaz Hussain<sup>7</sup>*, *Waqar Jalal Ansari<sup>8</sup>*, and recently in *Abdul Aziz<sup>9</sup>* has held that there is always a presumption of correctness and sanctity attached with regard to judicial proceedings. In light of Article 91 of the QSO, which mandates a presumption of genuineness, whenever any document produced before a court is purported to be signed by a judge and the aforementioned dicta of this Court, we find the Respondents' argument that Abdul Jalil never entered into a compromise and that he never appeared before any Court of law quite astonishing and contrary to the record.

23. It is also strange to note that (late) Abdul Qayyum passed away in the year 1988, whereas the compromise was entered in the year 1979, and he never uttered a single word during his lifetime either with regard to the veracity of the compromise entered by his Attorney Haji Abdul Jalil before the Court or with regard to the genuineness of the Power of Attorney given by him in his lifetime to Haji Abdul Jalil and it was only after his death that his legal heirs filed the Applications under section 12(2) CPC questioning the compromise or lesser payment of *Zar-e-Shufa* by agitating that the decree obtained by Muhammad Aslam was by way of fraud or misrepresentation. We are afraid that the three Courts below have neither considered this aspect nor have properly dilated upon the matter that how Haji Abdul Jalil could take a somersault by denying the contents of the compromise, when he himself appeared before a Court of law, as the Attorney of (late) Abdul Qayyum. It is also strange on the part of the legal heirs of Abdul Qayyum or for that matter his brother Molvi Muhammad Ishaq, that they kept mum for a number of years i.e. 1979 to 1987 and, thereafter, agitated the matter either by filing of a suit for possession or through Applications under section 12(2) CPC claiming

<sup>6</sup> *Muhammad Ramzan v Lahore Development Authority, Lahore (2002 SCMR 1336)*

<sup>7</sup> *Fayyaz Hussain v Akbar Hussain (2004 SCMR 964)*

<sup>8</sup> *Waqar Jalal Ansari v National Bank of Pakistan (2008 SCMR 1611)*

<sup>9</sup> *Abdul Aziz v Abdul Hameed (2022 SCMR 482)*

possession over a land comprising 07 *Kanals* and 06 *Marlas* without realizing that the matter with regard to possession and ownership of the land comprising of 05 *Kanals* and 02 *Marlas* had already been laid to rest in the earlier round of litigation.

24. It would also not be amiss to mention that the order of the High Court, dated 02.07.1978, which was subsequently challenged in CPLA Nos.105-P, 106-P and 107-P of 1978, stood decided by this Court in the case of *Abdul Qayyum*, and in our view stood merged in the aforesaid Order of this Court. It is a settled proposition of law that if an Order of the lower Court merges in the order of the higher Court the order of the lower Court is to be deemed as an order of the higher hierarchy. Reference in this regard may be made to the decisions of this Court in *Sahabzadi Maharunisa*<sup>10</sup> and *Bashir Ahmed Badini*<sup>11</sup>

25. It is also pertinent to mention that Applications under section 12(2) CPC were filed in the year 1990, i.e. after almost 11 years of the compromise, though it was averred that these applications were filed, after the entries of *jamabandi* made in 1987 and hence were in time but equally true is the fact that in those Applications the main question agitated on behalf of the Respondents was with regard to the entering into the compromise in a defective manner and thereafter, obtaining the decree by way of fraud or misrepresentation by the present Appellants. This Court in *Sarfraz*<sup>12</sup> has held:

“...although under the provisions of the Limitation Act no specific time has been prescribed for filing of application under section 12(2), C.P.C., therefore, Article 181 of Limitation Act being residuary will govern such proceedings according to which maximum period of three years has been prescribed for filing the application under section 12(2), C.P.C.”

Therefore, even in a hypothetical sense, if one were to count the period of limitation from 1987, the Applications under section 12 (2) CPC were time-barred. Attention is also drawn to this Court's decision in the case of *Bashir Ahmed*<sup>13</sup> wherein it was held that limitation has to be counted from the date of knowledge. In the instant matter, in our view, the Respondents were fully aware about the date and facts of the compromise entered between the parties in 1979 but filed the Applications under section 12 (2) CPC only in the year 1990. Thus, in

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<sup>10</sup> *Sahabzadi Maharunisa v. Ghulam Sughran* (PLD 2016 SC 358)

<sup>11</sup> *Bashir Ahmed Badini v. Chairman and Member of Administration Committee and Promotion Committee of High Court of Balochistan* (2022 SCMR 448)

<sup>12</sup> *Sarfraz v Muhammad Aslam Khan* (2001 SCMR 1062)

<sup>13</sup> *Bashir Ahmed v Muhammad Hussain* (PLD 2019 SC 504)

our view, all the three Courts below have erred in entertaining these Applications, without examining the true contents of the compromise.

26. The learned counsel for the Respondents during the course of the arguments placed reliance upon the case of *Nur Jehan Begum*<sup>14</sup>. The perusal of the said judgment reveal that the facts of that case are different from the facts of the instant matter and, therefore, hardly helps the case of the Respondents. Had the Courts below examined the aforesaid aspects of limitation and finality in a proper and pedantic manner, the outcome would have been somewhat different, hence, we agree with the submissions made by the learned Counsel for the Appellants that the Orders of the three Courts below are a result of misreading or non-reading of the evidence and thus can safely be termed as perverse and contrary to the record. In our view, the decree obtained by the Appellants was not by way of fraud or misrepresentation.

27. Now we wish to deal, with the issue of *Zar-e-Shufa*, as raised by the learned counsel for the Respondents in their applications under section 12(2) CPC, by contending that the payment of *Zar-e-Shufa* was not made/deposited by the Appellants as directed by the High Court, vide Order dated 02.07.1978 and, therefore, the pre-emption must fail by placing reliance on *Riaz Hussain*<sup>15</sup>, *Khadim Hussain*<sup>16</sup> and *Muhammad Ramzan*<sup>17</sup>. Here again, we disagree with the submissions made by the learned counsel for the Respondents. Perusal of the record of the High Court, dated 02.07.1978, clearly reveals that the High Court directed the Appellants to pay an amount of PKR 120/-, as *Zar-e-Shufa*, which admittedly was deposited. However, as per the Respondents, the Court had directed to pay PKR 128/- and thus legal proceedings subsequently initiated by the Respondents against the Appellants were with regard to the non-payment of the additional PKR 8/-. It is our view that if there was some typographical error or mistake in this regard, it is of no help to the Respondents. The legal maxim *actus curiae neminem gravabit* is quite clear: 'an act of court shall prejudice no man.' It is also a settled proposition of law by this Court that no one should suffer on account of a lapse on the part of a Court. Reference in this regard can be made to this Court's dicta in *Abid Jan*<sup>18</sup>, *General (Retd.) Pervez Musharraf*<sup>19</sup> and *Faqir*

<sup>14</sup> *Nur Jehan Begum v syed Mujtaba Ali Naqvi* (1991 SCMR 2300)

<sup>15</sup> *Riaz Hussain v Nazar Muhammad* (2005 SCMR 1664)

<sup>16</sup> *Khadim Hussain v Abid Hussain* (PLD 2009 SC 419)

<sup>17</sup> *Muhammad Ramzan v Muhammad Bakhsh* (PLD 2012 SC 764)

<sup>18</sup> *Abid Jan v. Ministry of Defence* (2023 SCMR 1451)

<sup>19</sup> *General (Retd.) Pervez Musharraf v Federation of Pakistan* (2024 SCMR 60)

*Muhammad*<sup>20</sup>. Thus, the decisions relied upon by the learned Counsel for the Respondents are distinguishable from the facts obtaining in the instant matter.

28. The epitome of the discussion herein above is that all the 05 Appeals are hereby allowed. The Appellants, since they were already declared to be the owners of 05 *Kanals* and 02 *Marlas* and are in possession and have a decree in their favour, hence the Respondents are restrained from interfering and dispossessing them from the said land or any building constructed by them on this land. The suits, the applications filed under section 12(2) CPC, and the contempt proceedings against the Appellants are found to be bereft of merits hence are declared to be void and of no legal effect. Thus, the Orders of the three Courts are hereby set aside.

29. We are mindful of the fact that usually concurrent findings of the lower Courts are not to be disturbed and interfered with but in cases where such findings are found to be erroneous and perverse, they are liable to be struck down if based on misreading or non-reading of the material available on the record or the evidence and are a result of miscarriage of justice. This Court in *Sardar Ali Khan*<sup>21</sup> has opined:

“This Court could not go behind concurrent findings of fact unless it can be shown that the finding is on the face of it against the evidence or so patently improbable, or perverse that to accept it could amount to perpetuating a grave miscarriage of justice or if there has been any misapplication of principle relating to appreciation of evidence or finally, if the finding could be demonstrated to be physically impossible.”

Furthermore, in *Muhammad Rashid Ahmed*<sup>22</sup> this Court whilst relying upon a number of its past decisions observed that concurrent findings suffering with material irregularity could be interfered with. A similar view was taken in the case of *Abdul Sattar*<sup>23</sup> and *United Bank Limited*<sup>24</sup> wherein it was observed that concurrent findings of fact recorded by Courts below cannot be treated as sacrosanct and can be interfered with in case of non-reading and misreading of the evidence. Likewise, in the case of *Brig. (R) Sher Afghan*<sup>25</sup>, whilst placing reliance on a number of the decisions by this Court, it was observed that if a finding is based on no evidence or is arbitrary or fallacious, the revisional Court, is not deprived

<sup>20</sup> *Faqir Muhammad v Khursheed Bibi* (2024 SCMR 107)

<sup>21</sup> *Sardar Ali Khan v State Bank of Pakistan* (2022 SCMR 1454)

<sup>22</sup> *Muhammad Rashid Ahmed v Muhammad Siddique* (PLD 2002 Supreme Court 293)

<sup>23</sup> *Abdul Sattar v Mst. Anar Bibi* (2007 Supreme Court 609)

<sup>24</sup> *United Bank Limited v Jamil Ahmed* (2024 SCMR 164)

<sup>25</sup> *Brig. (R) Sher Afghan v Mst. Sheeren Tahira* (2010 SCMR 786)

of its power to interfere with such a finding. Reference may also be made to the decisions rendered in *Nabi Bakhsh*<sup>26</sup> and *Mst. Kulsoom Bibi*<sup>27</sup>. In light of what has been discussed above, we are of the view that Learned Counsel for the Appellants has been successful in showing that the findings arrived at by the *fora* below were erroneous, especially in view of the sanctity attached to the compromise entered before a Judge of the High Court, and therefore not disturbing the concurrent findings of the *fora* below would amount to a grave miscarriage of justice. There shall however be no order as to costs.

Announced in open Court on 3<sup>rd</sup> June 2024.  
Arshed/A.J.K, LC

Judge

Approved for Reporting

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<sup>26</sup> *Nabi Bakhsh v Fazal Hussain* (2008 SCMR 1454)

<sup>27</sup> *Mst. Kulsoom Bibi v Muhammad Arif* (2005 SCMR 135)