

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

5/19

Present:

Mr. Justice Mushir Alam
Mr. Justice Qazi Faez Isa

AFR
Civil Appeal No. 1137/2012

(On appeal from the judgment dated 31.10.2012 of
the Lahore High Court, Multan Bench passed in
Civil Revision No. 1176 of 1994)

Muhammad Akram (deceased) through L.Rs. ... Appellants

Versus

Mst. Noor Begum (deceased) through
LRs and others. ... Respondents

For the Appellants: Sardar Muhammad Aslam, ASC.
Chaudhry Akhtar Ali, AOR.

For Respondent Nos. 1-6,
8(b) and 17 (e and f): Syed Najmul Hassan Kazmi, Sr. ASC
Mian Muhammad Hanif, ASC.

Date of Hearing: 30.05.2019.

JUDGMENT

Qazi Faez Isa, J. This appeal challenges the judgment of the learned Judge of the Lahore High Court, Multan Bench which had allowed the civil revision *vide* judgment dated 31st October, 2012 and dismissed the suit filed by Muhammad Akram by setting aside the judgment and decree dated 14th January, 1991 of the learned Civil Judge, Sahiwal and judgment dated 25th April, 1994 of the learned Additional District Judge, Sahiwal.


2. Muhammad Akram (alias Muhammad Akbar) had filed a suit on 8th March, 1983 seeking a declaration that he was entitled to the tenancy rights of Ghulam Muhammad pursuant to the Colonization of Government Lands (Punjab) Act, 1912 ("the Act") to the exclusion of Bahisht Bibi, the widow of Ghulam Muhammad. The learned counsel for the appellants relied upon clauses (a) and (b) of section 20 of the Act in support of the claim of Muhammad Akram and stated that the judgments of the trial and appellate

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courts were in accordance with the law and there was no valid reason to set them aside. Reliance was also placed upon the cases of: *Yousaf Ali v Muhammad Aslam Zia* (PLD 1958 Supreme Court 104), *Imam Bibi v Allah Ditta* (PLD 1989 Supreme Court 384) and *Muhammad Saleem Ullah v Additional District Judge* (PLD 2005 Supreme Court 511). On the other hand, the learned senior counsel for the contesting respondents relied upon the impugned judgment and upon the precedent of *Mushtaq Ahmad v Hakim Bibi* (PLD 1969 Supreme Court 338, 343).

3. We have heard the learned counsel for the parties at some length and with their assistance examined the documents on record.

4. Ghulam Muhammad was holder of tenancy rights in respect of four hundred *kanal* and two *marla* of land in Chak No. 118/12-L situated in Chichawatni, Sahiwal. Upon his death he was survived by two sons and a widow namely, Muhammad Akram, Muhammad Azam and Bahisht Bibi. *Vide* mutation No. 25 dated 27th November, 1925 Muhammad Akram was shown to have one-third interest in the tenancy rights of the late Ghulam Muhammad, Inam Ullah (son of Muhammad Azam) was similarly shown to have one-third share therein and the remaining one-third was shown to be of Bahisht Bibi. We are informed that when the said mutation was effected Muhammad Akram was a minor. Subsequently, *vide* mutation No. 59 dated 15th February, 1937 occupancy rights in respect of the said land were equally conferred on Muhammad Akram, Inam Ullah and Bahisht Bibi. Thereafter, *vide* mutation No. 246 dated 24th February, 1950 ownership rights in respect of the said land were conferred upon the said three individuals. Bahisht Bibi died on 12th March, 1960 and *vide* mutation No. 49 dated 31st October, 1960 Muhammad Akram acquired one-third share as her legal heir and remaining two-thirds were acquired by her five daughters.




5. Excluding mutation No. 25, the record reveals that Muhammad Akram was not only present when the aforesaid mutations were made but that he had himself wanted them effected. Muhammad Akram wanted to undo his own acts whilst contending that they did not conform with section 20 of the Act insofar as the widow of Ghulam Muhammad namely, Bahisht Bibi, was not entitled to one-third share in the property. Whilst Muhammad Akram may have feigned ignorance with regard to mutation No. 25 dated 27th November, 1925, which was effected when he was a minor he was a party to all the subsequent mutations. The record also reveals that proprietary rights had been acquired by Bahisht Bibi pursuant to section 30 of the Act and *Sanad Sultani* was issued in her favour; the proprietary rights were also recorded *vide* mutation No. 246 dated 24th February, 1950. In this regard in the case of *Mushtaq Ahmad* (above) it was held, that once proprietary rights have been acquired, "*It becomes a case of merger of the tenancy or occupancy rights in absolute rights of ownership.*" The acquisition of propriety rights by Bahisht Bibi had been done with the full knowledge and consent of Muhammad Akram; he could not therefore raise objections thereto, let alone file a suit to undo the same thirty-three years after the said proprietary rights had been acquired. Muhammad Akram took no action with regard to the said acquisition of proprietary rights by Bahisht Bibi and did not approach the authorities designated under the Act to undo the same and/or to grant proprietary rights of Bahisht Bibi to him.


6. In his declaratory suit Muhammad Akram did not seek the cancellation of any of the aforesaid mutations in terms of Section 52 of the Specific Relief Act, 1877. The proviso to section 42 of the Specific Relief Act stipulates, the "*Bar to such declaration: Provided no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so*". The suit was therefore not maintainable. Section 36 of the Act also bars jurisdiction of the Civil Courts in any matter in which the authorities mentioned therein could exercise powers. Muhammad

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Akram never took his grievance to the said authorities and in the year 1983 sought to undo fifty years old transactions and thirty-three years old conferment of proprietary rights on Bahisht Bibi, and transactions which were in his knowledge and to which he himself was a party. Greed caused Muhammad Akram to deprive the five daughters of Bahisht Bibi, one of whom was blind. The conduct of Muhammad Akram and his successors in pursuing the litigation by depriving the rightful owners of the property is deplorable. In case the land in question is held by the appellants it shall be immediately handed over to their rightful owners without delay. It is for these reasons that we had dismissed this appeal *vide* short order dated 30th May, 2019 and had granted costs throughout to the contesting respondents.

Bench-III
Islamabad
31st May, 2019
(Farrukh)


Not Approved for Reporting


14/6/19


11-6-'19