

11/20

**IN THE SUPREME COURT OF PAKISTAN**  
**(APPELLATE JURISDICTION)**

**PRESENT:**

MR. JUSTICE UMAR ATA BANDIAL  
MR. JUSTICE IJAZ UL AHSAN.

*AFR*  
7 **CIVIL PETITION NO.4178 OF 2019.**  
(Against the order dated 18.10.2019 passed  
by the Lahore High Court, Lahore in Writ  
Petition No.11802 of 2019).

Ambreen Khatoon & Others

...Petitioner(s)

**Versus**

Mumtaz Bibi & Others

...Respondent(s)

For the petitioner(s): Ghulam Farid Sanotra, ASC.  
Arshad Ali Chaudhry, AOR.

For the respondent(s): N.R.

Date of Hearing: 05.12.2019

**ORDER**

**IJAZ UL AHSAN, J.-** The Petitioners have sought leave to appeal against the Order dated 18.10.2019 passed by the Lahore High Court, Lahore in W.P. No. 11802 of 2019. Through the impugned order, the Writ Petition filed by the Petitioners was dismissed and orders dated 15.08.2016, 05.04.2017, 07.12.2017 and 14.01.2019, passed by the Revenue hierarchy, were set aside and the Revenue Authorities were directed to incorporate the names of Respondent No.1 and 2 as legal heirs of the late Mohy-ud-Din in the Revenue Record.

2. Briefly, the facts necessary for the decision of the *lis* are that one *Ghulam Mohy-ud-Din Hasan* owned 90 Kanals and 02 Marlas of agricultural land (the "**Property**"). On his death, on

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26.07.2006, the legal heirs of *Ghulam Mohy-ud-Din Hasan*, the present Petitioners No. 1 to 5 along with Respondent Nos. 7 & 8, took possession of the Property and thereafter got sanctioned inheritance mutation No.221 dated 31.08.2006. This mutation was recorded in the Revenue Record but did not include Respondent Nos.1 and/or 2 (*Mumtaz Bibi* and *Adnan Hassan*, widow and son respectively of *Ghulam Mohy-ud-Din Hasan*) as legal heirs. Respondent Nos.1 & 2, dissatisfied by their exclusion, They filed an appeal before the Deputy District Officer (Revenue)/Collector, *Depalpur* which was accepted *vide* order dated 14.11.2007. The Petitioners along with Respondent No.7 challenged this order before the Executive District Officer (Revenue), *Okara* who *vide* order dated 03.12.2008 directed the parties to take the controversy to the Civil Court for resolution and determination. Respondent Nos.1 & 2 challenged this order by filing ROR No.277 of 2009 which was dismissed by the Member (Judicial-VI) Board of Revenue, Punjab *vide* order dated 16.06.2009.

3. This led to the litigants filing a total of three suits: -

- (i) *Hassan Ahmad Khan vs. Mumtaz Bibi alias Taji etc*: suit for declaration along with permanent injunction *inter-alia* praying that it be declared that *Mumtaz Bibi* and *Adnan Hassan* are not widow and real son of the late *Ghulam Mohy-ud-Din Hasan*.
- (ii) *Mumtaz Bibi etc vs. E.T.O. etc*: suit for declaration along with permanent injunction.

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(iii) Hassan Ahmad Khan Kunwar vs. Mumtaz Bibi etc: application for making award as rule of court.

The aforementioned suits were consolidated, consolidated issues were framed, and the suits were contested. The trial court *vide* judgment and decree dated 27.07.2009 dismissed all three suits. The three appeals against the dismissal were also dismissed *vide* judgment and decree dated 23.12.2014. It is worthwhile to mention here that while dismissing the suit for maintenance allowance of Respondent Nos.1 & 2, it was observed that Defendant No.1, being the Grand Father, will pay the maintenance allowance to the minor. The Petitioners and Respondent Nos. 7 & 8 filed Civil Revision No.176 of 2015 against the judgments and decrees of the lower *fora* dated 27.07.2009 and 23.12.2014. The Learned High Court dismissed the same *vide* judgment dated 09.10.2015 with costs of Rs.20,000/-. Dissatisfied, the dismissal was challenged before this court through CMA No.1341-L of 2016 and CPLA No. 2727-L of 2015 which were dismissed as withdrawn *vide* order dated 25.05.2016. Another material aspect of the matter is that by virtue of the aforenoted litigation the status of *Mst Mumtaz Bibi* and *Adnan Hasan* as widow and son, respectively, of the deceased *Ghulam Mohy-ud-Din Hasan* stood confirmed and remained intact.

Respondent Nos.1 & 2 thereafter approached the Revenue authorities for correction of the inheritance mutation Nos.211 dated 31.08.2006, 327 dated 29.08.2014 and 32486 dated 15.08.2016. However, the Naib Tehsildar, *Depalpur*, turned down the application *vide* order dated 15.08.2016. The Assistant

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Commissioner upheld the same *vide* order dated 05.04.2017. On appeal the Additional Commissioner (Revenue), Sahiwal Division, Camp at Okara *vide* order dated 07.12.2017 upheld the order as did the Member (Judicial-VII) Board of Revenue, Punjab, Camp at Sahiwal *vide* order dated 14.01.2019. Having exhausted the revenue hierarchy, Respondent Nos.1 & 2 approached the High Court which *vide* the impugned order accepted the Writ Petition and set aside the orders of the Revenue hierarchy. It was held that the correction of the inheritance mutation No.221 dated 31.08.2006 was imperative in the facts and circumstances of the case and the rounds of litigation that the parties had been involved in, especially cases involving the status of *Mumtaz Bibi* as widow and *Adnan Hasan* as real son of *Ghulam Mohy-ud-Din Hasan* deceased and his legal heirs, directing the Tehsildar to incorporate the names of Respondent Nos.1 & 2 as Legal Heirs of the deceased *Ghulam Mohy-ud-Din Hasan* in the Revenue Record. Aggrieved, the Petitioner filed the present petition.

4. Learned Counsel for the Petitioners has argued that the Learned Single Judge erred in deciding the matter when the attendance of all the parties was not procured. The Counsel stressed that in the absence of an *ex-parte* order against Respondent No.7 (*Ghulam Moin-ud-Din Hassan*), the case could not have proceeded to be decided. He argued that the matter had attained finality when the suits and countersuits stood dismissed *vide* judgment and decree dated 27.07.2009 and said dismissal was maintained by the appellate Court *vide* judgment and decree

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dated 06.11.2009 and the same were not challenged by Respondent Nos.1 & 2. He emphasised that the claim of Respondent Nos.1 & 2 had been decided in terms of inheritance through the judgment and decree dated 23.12.2014 when on remand the appellate court once more dismissed the three suits. That the Revenue authorities had conclusively declined to set aside the mutation No.221 dated 31.08.2006 and the same had attained finality when Respondent No.1 was refused relief in ROR No.227/2009 on 16.06.2009. He opposed the writ petition filed by Respondent Nos.1 & 2 arguing that when the matter had been conclusively decided and had since attained finality, it could not be decided under Article 199 of the Constitution. Further, that once the civil courts and the Revenue Authorities had decided the matter, it suffered from *Res Judicata* and could not have been reagitated. He submitted with emphasis that in the absence of a declaratory decree declaring Respondent Nos.1 & 2 as legal heirs, no benefit could have been granted merely on assumptions and presumptions.

5. We have heard the Learned Counsel and have minutely gone through the record in detail. This issue pivots on the question of the status of Respondent Nos.1 & 2 as legal heirs of one *Ghulam Mohy-ud-Din Hasan* who died on 26.07.2006. He left behind some 90 Kanals and 02 Marlas of land. The father of the deceased, one Kanwar Hassan Ahmad Khan took upon himself to get the Property mutated *vide* inheritance Mutation No.221 dated 31.08.2006. In doing so, he left out the names of Respondent

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Nos.1 & 2 from the inheritance of the deceased *Ghulam Mohy-ud-Din Hasan*. Respondent Nos.1 & 2 claim to be the widow and son respectively of the deceased and as legal heirs claim entitlement to inherit his estate. Aggrieved of having been deprived of inheritance, Respondent Nos.1 & 2 Challenged against the Inheritance Mutation No.221 dated 31.08.2006. The matter was decided in favour of Respondent Nos.1 & 2 *vide* the order of the District Officer (Revenue)/Collector, however on appeal to the Executive District Officer (Revenue), the same was set aside and the parties advised to approach the civil courts being the competent forum. This order was maintained by the Board of Revenue in ROR No.277 of 2009 *vide* order dated 16.06.2009.

At this stage, three suits were filed by the parties. The two suits were filed by the father of the Deceased, Kanwar Hassan Ahmad Khan, the first was a Suit for Declaration and permanent injunction against Respondent Nos.1 & 2 praying that his son, *Ghulam Mohy-ud-Din Hasan* died issueless and that Respondent No.1 is not his widow, nor is Respondent No.2 his son and thus, neither should inherit a share in his deceased son's property. His second suit against Respondent Nos.1 & 2 prayed that an arbitrator award dated 26.03.2008 that rejected the claim of Respondent Nos.1 & 2 as legal heirs of *Ghulam Mohy-ud-Din Hasan*, be made rule of court. The third suit was filed by Respondent Nos.1 & 2 and pertained to a tractor. These three suits were consolidated, contested and decided. Of the consolidated issues framed by the trial court, of import to the present question are issues No.1 and 3.

Issue No.1 pertained to status of Respondent Nos.1 & 2 as legal heirs of Mohy-ud-Din. The Learned Trial Court after careful examination of the record concluded that there was sufficient evidence on record to establish the marriage between *Ghulam Mohy-ud-Din Hasan* and Respondent No.1 and the legitimacy of Respondent No.2 as his son. The Trial Court referred to the entry in the birth register of the Chowkidar of the locality where *Ghulam Mohy-ud-Din Hasan* had made the entry of the birth of Respondent No.2 in his own hand. Besides such entry, there were other irrefutable facts supporting the entries. We agree with the conclusion drawn by the trial court that this definitively established that Respondent No.2 was the son of *Ghulam Mohy-ud-Din Hasan* and Respondent No.1 was his lawfully wedded wife.

Issue No.3 dealt with the second suit filed by Kanwar Hassan Ahmad Khan regarding the arbitrator award. The Trial Court found that the arbitrator award dated 24.03.2008 was made while the civil suits between the parties were still pending and the same could not have been referred to arbitration without the permission of the court. It further held that the arbitration itself was incomplete as one of the three arbitrators, one Mushtaq Ahmad appeared before the court and deposed on oath that the proceedings were not completed on account of Respondent No.1 showing no confidence in the other two arbitrators. The trial court concluded that the legitimacy of marriage and parentage could not be decided through arbitration. Additionally, the arbitrators had ignored the evidence produced by Respondent No.1 and thus, the

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trial court had decided the issue in favour of Respondent Nos.1 & 2.

6. The consolidated judgment and decree of the Learned Trial Court against all three suits, was then challenged before the Learned Appellate Court which upheld the findings of the trial court on both the issues. The Appellate court *vide* its consolidated judgment dated 23.12.2014 reaffirmed the view taken by the trial court and added that there was sufficient evidence, oral as well as documentary, including DNA evidence establishing Respondent No.2 as the son and to prove the relationship between *Ghulam Mohy-ud-Din Hasan* and Respondent Nos.1 & 2. This was challenged before the High Court through Civil Revision No.176 of 2015 which was dismissed. Civil Appeal No.2727-L of 2015, filed against the High Court's dismissal before this court was also dismissed as withdrawn *vide* order dated 25.05.2016. Respondent Nos.1 & 2 thereafter approached the Revenue Hierarchy again, however, the same refused the claim of Respondent Nos.1 & 2 as legal heirs despite the judgments up to the Supreme Court in favour of Respondent Nos.1 & 2. Left with no recourse, they once approached the High Court in its Writ Jurisdiction where the Learned Single Judge after careful and extensive examination concluded that the courts had determined that Respondent Nos.1 & 2 were the widow and son of the deceased *Ghulam Mohy-ud-Din Hasan* and the Revenue authorities had no legal right to refuse implementation of the decisions of the civil courts and resultantly,



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had directed incorporation of the same in the inheritance mutation.

7. We agree with the findings of the lower courts in that Respondent Nos.1 & 2 are the widow and son of deceased Ghulam Ghulam Mohy-ud-Din Hasan. The record clearly reflects that there is sufficient evidence to establish the marriage of Respondent No.1 with Ghulam Mohy-ud-Din Hasan. This is evident from the CNIC issued to Respondent No.1 wherein she was stated to be his spouse. Furthermore, CNIC was also issued to Respondent No.2 stating his father to be Ghulam Mohy-ud-Din Hasan. The birth register entry and the DNA test results also conclusively put this issue to rest and it can be stated with finality that Respondent Nos.1 & 2 are the widow and son of Ghulam Mohy-ud-Din Hasan as was correctly held by all the *fora* below. The Learned ASC for the Petitioners did not point us to any evidence that may even remotely have rebutted this finding. It is unfortunate that the father of the deceased attempted to disinherit the widow of his son and his own grandson from their rightful share. However, we cannot allow such abuse of law and violation of the rights of widows and orphans for petty personal gains. Such practices point towards moral and ethical degeneration and such greed cannot be perpetuated by relying on technicalities and Hyper-technicalities. There cannot be worse abuse of the legal process and cannot be countenanced. Respondent Nos.1 & 2, being the rightful legal heirs of the deceased Ghulam Mohy-ud-Din Hasan are legally entitled to their lawful share in his property. We do not understand

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under what legal regime the Revenue authorities took it upon themselves to refuse to implement the findings of courts of competent jurisdiction. It is beyond question that the decisions of the courts are binding on the Revenue Authorities as has been held by this court numerous times. The learned Counsel for the Petitioner was unable to show legal, procedural or jurisdictional defect, error or flaw in the impugned judgment nor was he able to demonstrate any misreading or non-reading of the evidence or the record. We have not found any reason that may have furnished basis or justification to interfere in the impugned judgment which is viable to be maintained and upheld.

8. For the reasons recorded above, we do not find any merit in this Petition, which is accordingly dismissed. Leave to appeal is refused.

**ISLAMABAD.**

05.12.2019.

A S Bhatti/\*

'Not Approved For Reporting'

*Amel*  
*(3/2/20)*

