# IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

**PRESENT:**
Mr. Justice Munib Akhtar
Mr. Justice Shahid Waheed
Mr. Justice Irfan Saadat Khan

**Civil Appeal No.1229 of 2018**
Against the judgment dated 18.5.2016 passed by Peshawar High Court, Abbottabad Bench in Civil Revision No.222-A/2005.

Mst. Iqbal Bibi & others ...Appellant(s)

***VERSUS***

Kareem Hussain Shah & others ...Respondent(s)

For the Appellant(s): Mr. Rashid-ul-Haq Qazi, ASC
Syed Rifaqat Hussain Shah, AOR

For the Respondent(s): Mr. Junaid Akhtar, ASC

Date of Hearing: 01.02.2024

**JUDGMENT**

**Irfan Saadat Khan, J.-** Brief facts of the *lis* before us are that the Respondents filed suit No. 204/1 of 2004 on 22.06.2004 in the Court of the Senior Civil Judge Haripur, which was marked for hearing to Civil Judge-V (**"Civil Judge"**), Haripur, for declaration to the effect that the Respondents were owners of 2 Kanals of land in Khasra No. 558/2/1 to and 6 Kanals and 19 Marls of land in Khasra No. 558/2/2, situated in Mauza Khui Narran, Tehsil and District Haripur (herein after referred to as the khasras) and that the Defendants, who are the Appellants in this matter before us, have no concern with the said property.

2. The Respondents also sought declaration that the Appellants' Power of Attorney, in the name of one Gohar Shah, was false, thus mutations No. 1807, 1809, and 1808 attested on 05.11.1990 were illegal; therefore, the Respondents prayed for correction of the revenue record and cancellation of the aforementioned mutations. The Appellants, who were the answering Defendants in the aforementioned civil suit, denied the claim of the Respondents and raised various legal and factual objections in the matter before the fora below.

3. In light of the divergent pleadings of the parties, the Civil Judge framed ten issues in the matter, after which both the parties submitted their lists of witnesses and evidence. The Respondents, who were the,

Plaintiffs, produced 3 witnesses; and the Appellants, who were the Defendants, also produced 3 witnesses.

4. During the evidence of the parties, PW-1 exhibited attested copy of mutation No. 1807 attested on 15.11.1990, attested copy of mutation No. 1808 attested on 15.11.1990, attested copy of mutation No. 1809 attested on 15.11.1990, and mutation No. 2072 attested 16.06.1993. Attested copy of the Power of Attorney, dated 24.09.1998, issued in favor of Syed Iftikhar Hussain Shah s/o Anwar Hussain Shah by the Respondents was also exhibited.

5. The Halqa Patwari, who was called as witness by the present Respondents, exhibited *fard jamabandi* for the following years: 1988/1989, 1991/1992, 1992/1993, 1996/1997, 2001/2001, and 2004/2005. Moreover, the Halqa Patwari also exhibited *Aks Shajra* and *roznamcha wakiati.*

6. The Registry Moharrar, Tehsil Haripur, who was also called as witness by the present Appellants, exhibited attested copy of the Power of Attorney dated 05.10.1990 executed by the Respondents in favor of their father Gohar Shah, which had been duly endorsed by the District Sub-Registrar Abbottabad on 30.10.1990; wherein complete powers were given to Gohar Shah by the Respondents, amongst other clauses, regarding sale of all or any of their lands in Pakistan to any person. The Registry Moharrar also exhibited register extract of the said Power of Attorney.

7. To summarize, at the expense of reiteration, in essence the *lis* revolves around Appellants claiming the land in aforementioned Khasras; whereas the Respondents contend that the Power of Attorney on which the said land was being claimed was a forged and fabricated document; thus mutations No. 1807, 1808, and 1809, dated 15.11.1990, attested on the basis of the allegedly forged and fabricated document were illegal.

8. Going back to the case, after the evidence stage had lapsed, the Civil Judge, after hearing final arguments of the parties, decreed suit No. 204/1 dated 22.06.2004, on 26.11.2010, in favor of the Respondents. It is pertinent to mention here that the Respondents have already filed an execution petition for this decree proceedings before the Executing Court, which is pending disposal.

9. Be that as it may, aggrieved of the judgment and decree dated 26.11.2010, the Appellants filed an Appeal, No. 166/13 of 2010, on 27.12.2010, before the District and Sessions Judge, Haripur, which was marked for hearing to Additional District and Sessions Judge-I, Haripur ("**ADJ**"). The ADJ dismissed this Appeal of the Appellants on 29.02.2012. Subsequently, the Appellants filed Civil Revision, No. 222-A/2012 before the Peshawar High Court, Abbottabad Bench, which dismissed the Civil Revision of the Appellants, and upheld the judgement and decrees of the Civil Judge and the ADJ, via judgement dated 18.05.2016, in the following terms:

> "14. The contention of learned counsel for the Appellants, that the suit was, hopelessly time barred in view of Article 120 of the Limitation Act, 1908, which prescribes six (06) years for suit of the kind under consideration, is misconceived. No doubt, that the period of limitation for declaratory kind of suits where no specific provision is provided, thereunder the Act ibid, such period be counted in term of Article 120 of the Act, but there is an exception to the provision of ibid law where a person is found to be in possession of the land, then, every fresh *Jamabandi* accrues a fresh cause of action against the entries in record of rights, not incorporated in accordance with law.
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> ...
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> 18. Mere attestation of mutation on the basis of a power of attorney, where the original power of attorney is not proved, does not confer or extinguish any right of an owner and such mutations are always treated to be documents void ab initio and for its formal cancellation, the period of limitation shall be reckoned from the date, when it came in the knowledge of the plaintiff (s).
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> 19. It is settled principle of law that concurrent findings of the courts of competent jurisdiction could not be interfered with by a revisional courts, where no any illegality or irregularity, want of jurisdiction, misreading and nonreading of evidence was pointed out therein, the impugned judgments.
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> 20. In case in hand, the impugned judgments rendered by the learned courts below are based on proper appreciation of law and appraisal of evidence, require no legal interference. Therefore, for the aforementioned reasons, this revision petition, being devoid of any merit, is hereby dismissed accordingly with no order as to cost."

10. It is this aforementioned judgement, dated 18.05.2016, ("**Impugned Judgement**") that the Appellants have challenged before us. Leave to Appeal was granted on 12.10.2018 in the following terms:

> "After hearing the learned counsel for the parties, we grant leave to appeal on the points noted in the our order dated 20.2.2017."

The aforementioned Order, dated 20.02.2017, is as follows:

> "States that the courts below have failed to consider the presumption attached to the power of attorney under Article 95 of

> the Qanoon-i-Shahadat Order, 1984 which was duly testified by the Consulate General of Pakistan in Malaysia and was registered in Pakistan; besides the transactions in question were made in the year 1990 by the father of the respondents as their attorney whereas the suit was filed after 13 years, 7 months and 6 days; the suit was blatantly barred by time but neither a ground(s) for exemption from the law of limitation has been provided in the plaint in terms of Order VII Rule 6 of the CPC nor has it been shown under what provision of the Limitation Act, 1908 should the time be condoned, yet the courts on extraneous considerations and by applying the incorrect ratio of the law laid down in the judgment reported as **Abdul Rehman and others Vs. Ghulam Muhammad (2010 SCMR 978)** has held that the limitation would not be attracted, where a document is void or voidable."

11. Mr. Rashid ul Haq Qazi, ASC appeared on behalf of the Appellants and argued that the Impugned Judgement is against settled provisions of statutory law, the two courts below have given wrong and erroneous findings, and that the High Court in the Impugned Judgement could not term the said findings as concurrent findings of fact and then go on to dismiss the Civil Revision without interfering with the questions of law decided by the courts below. Moreover, the Counsel for the Appellants argued that the High Court could not extend the period of limitation of the suit of the Respondents, who had approached the Civil Judge after more than 13 years, as the limitation prescribed for such suits was 6 years, by virtue of Article 120 of the Limitation Act, 1908 (**"Limitation Act"**).

12. Mr. Junaid Akhtar, learned ASC has appeared on behalf of the Respondents and submitted that the three courts below have decided the matter in favour of the Respondents and that there are concurrent findings in their favour. He stated that the issue of limitation does not arise in the instant matter as the moment Iftikhar Hussain Shah came to know about the alleged illegal mutation entries from the revenue record he filed the suit in a timely manner. He stated that insofar as the factual aspects of the matter were concerned, the fora below have threshed out the matter threadbare and after examining the record, evidence, and witnesses have found the mutation entries in favor of the present Appellants to be false and fabricated. He stated that it is a settled proposition of law that concurrent findings are not to be disturbed until and unless they are found to be erroneous or perverse, he stated that in the instant matter all the three courts below have come to the unanimous decision that the mutation entries in respect of the Khasras was fake and forged, therefore, the present petition filed by the Appellants is liable to be dismissed with heavy cost. He therefore, has supported the orders of the three fora below.

13. We have heard both the learned counsel at considerable length and have also perused the record with their able assistance. At this juncture, we find it pertinent to address a key aspect of the present *lis*, which was touched upon in the Leave to Appeal granting Order of 20.02.2017, reproduced in para. 10, herein above. With regards to the onus of proving an allegedly fraudulent Power of Attorney, Article 119 of the Qanun-e-Shahadat Order, 1984, ("**QSO**") states:

> **119. Burden of proof as to particular fact:** The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.
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> **Illustrations**
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> (a) A prosecutes B for theft, and wishes the Court to believe that B admitted the theft, to C. A must prove the admission.
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> (b) B wishes the Court to believe that at the time in question, he was elsewhere. He must prove it.
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> **(EMPHASIS ADDED)**

If the entirety of the case of the Respondents hinges on the fact that the allegedly fraudulent Power of Attorney is the root cause of the present *lis* then the burden to prove such fraud, in our view, lies upon them. However, they have failed to do so, rather the veracity of the Power of Attorney was not even challenged at the evidence stage, when its authenticity was proved, as described in para. 6, herein above.

14. Furthermore, Article 95 of the QSO States:

> **95. Presumption as to powers-of-attorney:** The Court shall presume that every document purporting to be a power-of - attorney, and to have been executed before, and authenticated by, a notary public, or any Court, Judge, Magistrate, Pakistan Consul or Vice Consul, or representative of the Federal Government, was so executed and authenticated.

In *Ziauddin Siddiqui*[1] the Plaintiff sought specific performance, alleging that the Defendant, through her husband and attorney had agreed to sell a house in Karachi, for Rs. 75,000, with an advance payment of Rs. 5,000 and the balance was payable within 6 months at the time of execution and registration of the sale deed. The Defendant in the suit allegedly failed to complete the sale, having left for the United Kingdom. Once in the United Kingdom the Defendant sent a Power of Attorney to

[1] Ziauddin Siddiqui v. Mrs. Rana Sultana (1990 CLC 645)

complete the sale, which was *prima facie* incomplete and subsequent attempts to rectify the error were also inadequate. The Plaintiff claimed to have received possession of the property in question and asserted readiness to fulfill their part of the contract, while the Defendants allegedly failed to do so. Specific performance was sought based on these grounds and the Defendant in the written statement submitted before the Court pleaded that she and her husband mostly resided in the United Kingdom and that neither she nor her husband entered into any agreement of sale with the Plaintiff, as the property in dispute was the only one that the Defendant owned in Pakistan and there was no need or requirement of its sale, and further that the documents relied upon by the Plaintiff were either forged or irrelevant. In its decision, the High Court opined:

> "It can hardly be disputed that a power of attorney in order to raise and sustain a presumption, under Article 95 of Qanun-e-Shahadat, 1984, of its execution before and authentication by inter alia, a Pakistan Consul or Vice Consul has to be so executed or authenticated. For a person executing such power in order to qualify for the referred presumption, under Pakistan Law, the exercise is required to have been gone into at the Pakistan Embassy in the United Kingdom. This, obviously, is not the position here and, therefore, no such presumption as referred arises.
> ... It would seem that where a purported power of attorney has actually been acted upon but does not qualify for the presumption under Article 95 of the Qanun-e-Shahadat 1984, those who seek to rely upon it or are, allegedly, effected thereby may resort to due modes of its proof, which may include examination of its attesting witnesses. None of this, however, would be necessary if the donor of the power or its executant himself or herself admits its execution. In such an event the principle underlying Article 81 of the Qanun-e-Shahadat, 1984, would become applicable and the admission of the executant shall be sufficient proof of execution as against himself or herself."
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> **(EMPHASIS ADDED)**

With the aforementioned facts and dicta of the High Court in mind, in the present case, the Power of Attorney was duly testified by the Consulate General of Pakistan in Malaysia and was then registered in Pakistan, therefore it qualifies for the presumption of execution and authentication available as per Article 95 of the QSO. With regard to the presumption attached to a Power of Attorney under Article 95 of the QSO, the Lahore High Court in *Iqbal Ahmad Sabri*[2] opined:

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[2] Iqbal Ahmad Sabri v. Fayyaz Ahmad (2007 CLC 1089)

> "The presumption as to the authenticity and genuineness of power of attorney has been attached under the provisions of Article 95 of Qanun-e-Shahadat Order that every document purporting to be a power of attorney and to have been executed before the authenticated by a Notary Public or any Court, Judge, Magistrate, British Counsel or Vice-Counsel or representative of Federal Government, was so executed and authenticated. The authentication is not merely attestation, but something more. It means that the person authenticating has assumed himself of the identity of the person who has signed the instrument as well as the fact of execution. It is for this reason that a power of attorney bearing the authentication of notary public or an authority mentioned in Article 95 is taken as "sufficient", evidence of the execution of the instrument by the person, who appears to be the executant on face of it. This provision of Article 95 of Qanun-e-Shahadat Order, 1984, is mandatory and it is open to the Court to presume that all the necessary requirements for the proper execution of the power of attorney have been duly fulfilled."
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> **(EMPHASIS ADDED)**

Furthermore, this Court in *Shahnaz Akhtar*[3] has held:

> "...Article 95 of the Qanun-e-Shahadat Order 1984 (Section 85 of Evidence Act) which relates to the presumption as to power of attorney whereby the Court has to presume that every document purporting to be a power of attorney and purported to have been executed before and authenticated by a Notary Public or any Court, Judge, Magistrate, Pakistan Council or Voice-Council or representative of Federal Government was so executed and authenticated. The documentary evidence, particularly for a registered document, enfolds a presumption of truth and genuineness and such presumption of truth is attached to the registered power of attorney which is admissible unless its genuineness is suspected and proved to be counterfeited or deceptive; its admissibility cannot be doubted to impede the agent from acting on behalf of principal unless the indenture of power of attorney is controverted and repudiated with satisfactory evidence."
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> **(EMPHASIS ADDED)**

Therefore, the Power of Attorney in favour of the Appellants enfolds a presumption of truth and genuineness and its admissibility cannot be doubted as there exists no proof on record pointing towards it being forged.

15. Having said that, without going into further factual controversies of the case, we confine ourselves to two primary issues involving the instant matter:

> 1) The limitation period prescribed for a declaratory suit; and if an extension in the limitation period is deemed to be extended with the preparation of every new *jamabandi;*

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[3] Shahnaz Akhtar v. Syed Ehsan ur Rehman (2022 SCMR 1398)

2) The fate of the concurrent findings by three fora below us.

With regard to the first issue, it would be appropriate to first to delve upon Article 92 of the Limitation Act, which in our view was of relevance to the Respondents as opposed to Article 120 (which will be discussed in later paragraphs); Article 92 reads as follows:

| | Description of suit | Period of limitation | Time from which period begins to run |
|---|---|---|---|
| 92. | To declare the forgery of an instrument issued or registered. | Three years | When the issue or registration becomes known to the plaintiff |

In this regard, it would be worthwhile to reproduce *Muhammad Bashir*[4], which is a judgement of the Lahore High Court:

> "While her witness Muhammad Ramzan P.W.3 admitted that possession was taken from him by the vendee about ten years back. The statement was recorded on 28-7-1992. The respondent while appearing as P.W.1 on 27-1-1992 admitted that her tenant informed her as to the sale about 10/12 years ago.
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> 8. The sale-deed is dated 9-8-1982, therefore, if the aforementioned statements of plaintiff and D.W.3 are taken into consideration, it becomes clear that the plaintiff came to know of the sale-deed immediately after its registration. This is natural because the petitioner not only got the mutation entered and sanctioned but also took over the possession. This becomes further clear from the admission of the plaintiff that she moved revenue authorities requesting for not to sanction the mutation io favour of the petitioner, police and elders for settlement of this dispute. Above all she was also admitted having filed a suit earlier but her explanation is that she was tricked by a counsel. Be that as it may, one thing is clear that the sale was in her knowledge. Therefore, the case of the plaintiff would not be covered by Article 18 of the Limitation Act. If looked from this angle, there is nothing wrong with the finding recorded by the trial Court on this issue. The same reads as under:-- "ISSUE N0.2: In para. 6 of the plaint it is admitted that the plaintiff came to know about the forged transaction in July, 1984 but while appearing as P.W.1 she admitted that matter was brought to his knowledge by his tenant about 10/12 years prior to her statement which was recorded on 27-1-1992. If it is calculated from the date on which her statement was recorded her knowledge comes to be near about 1978 - 80 meaning thereby, that the plaintiff came to know about the impugned documents from the very beginning when sale-deed was executed and suit has been filed in January, 1987 after a delay of not less than 5 years. According to law of Limitation period prescribed for filing suit under section 39 of the Specific Relief Act is 3 years and suit is within four corners of said section. The present suit is therefore, badly barred by time as prescribed by law. Issue is, therefore decided against the plaintiff."
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> 9. Now coming to the other aspect. The sale-deed is clearly voidable therefore, the cancellation was the only remedy and not suit for declaration. I j am fortified in my view by the judgments in the cases of Hamida Begum, Abdul Hamid and Mst. Hallma Bibi

[4] Muhammad Bashir v. Mst. Sattar Bibi (PLD 1995 Lahore 321)

> (supra). Now it is to be seen whether Article 91 of the Limitation Act as argued by the learned counsel for the petitioner would apply or Article 92. I am of the considered view that since the plaintiff has.sought cancellation of a registered document, therefore, it will be fairly and squarely case covered by Article 92 and not 91 of the Limitation Act, which is general in nature and residuary clause. The limitation would be governed by the premier relief claimed in the plaint and not by the incidental and secondary relief. The suit was, therefore, covered by Article 92 of the Limitation Act, which provides three years when the registration becomes known to the plaintiff. Therefore, suit was barred by limitation.
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> 10. Now coming to the merits. The onus of issue No.1 was on the plaintiff, therefore, in order to succeed she was to prove that the alleged general power of attorney in favour of Riyasat Ali was a forged and fabricated document but she did not even attempt to get the same produced. In other words she failed to furnish the basis of her claim in the suit and discharge the onus. The non-production of the document was fatal to her claim. The Courts below held that the document was . in possession of defendant No.2, who was proceeded ex parte. This is no justification for its non-production because the plaintiff and the trial Court were not helpless in this behalf. The plaintiff could have moved the trial Court for an order to the said defendant to produce the document or summoned him for production of document and even the trial Court could have itself directed the said defendant to produce the general power of attorney. This becomes clear if the reference is made to section 30, Order XVI, Rules 1, 6 and 7, C.P.C. and in cash of failure the trial Court should have resorted to penal provisions compelling him to produce the document. This having not been done, it was legally not possible to hold that the alleged general power of attorney was a forged and fabricated document. This amounts to exercise of jurisdiction in vacuum, which is not permissible under law. It is relevant to note here that it is not the case of the plaintiff that the petitioner was a privy to the general power of attorney. On the other hand, she admitted that Riyasat Ali, the alleged General Attorney, is her son-in-law and nephew."

16. With the above dictum in mind which though is not binding upon us but is being reproduced above for the sake of brevity only, it would have served the Respondents interests better had they argued at the fora below that the limitation period of three years, provided as per Article 92 of the Limitation Act, was attracted to the present case, as they had just become aware of the apparent forgery of the Power of Attorney, which led to alleged illegal mutation entries, held by the Appellants. Nevertheless, even if the Respondents had taken this route, their claim would not succeed, as it is quite hard to digest that Gohar Shah, who passed away in the year 1993 did not challenge the alleged illegally mutation entries made in 1990 in his life time.

17. This brings us to the route that the Respondent did take, which is Article 120 of the Limitation Act; Article 120 of the Limitation Act reads:

| | Description of suit | Period of limitation | Time from which period begins to run |
|---|---|---|---|
| 120. | Suit for which no period of limitation is provided elsewhere in this schedule. | Six years | When the right to sue accrues |

This Court in *Kala*[5], vis-à-vis limitation has opined:

> "15. There is yet another aspect of the case. It is in evidence that Sardar Muhammad predecessor-in-interest of the respondents died in 1987. He never challenged the allotment made in favour of Habib Shah vide the order dated 2-6-1965 and in favour of Khani Zaman on 13-9-1976 and surprisingly even the plaintiffs did not challenge those allotments till filing of the suit i.e. on 26-7-1995 almost after 30 years of allotment made in favour of Habib Shah and 19 years of the allotment made in favour of Khani Zaman. This contumacious conduct and laches would impinge on their bona fides. In Abdul Haq v. Surraya Begum (2002 SCMR 1330), the suit was dismissed because the plaintiffs had challenged the sanction of mutation after nine years of its sanction and the person from whom the respondents claimed inheritance had not challenged those mutations during his lifetime. The Court observed as under:-
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> > "11. Atta Muhammad was deprived of right to inherit the property as a consequence of mutation in dispute but he did not challenge the same during his lifetime. The Appellants claimed the property through Atta Muhammad as his heirs who filed the suit as late as in 1979 about nine years after the sanction of mutation which had already been given effect to in the record of rights. The Appellants, therefore, had no locus standi to challenge the mutation independently, for Atta Muhammad through whom they claimed inheritance himself had not challenged the same during his lifetime."

Furthermore, this Court in *Haji Muhammad Yunis (Deceased)*[6] has observed:

> **"Bar of Limitation**
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> 12. On Issue No.4, the trial court concluded that although the suit was instituted after 19/20 years of the sanction of the sale mutation and the predecessor of the Mst. Farukh Sultan (respondent No.1/plaintiff) had not challenged the sale mutation during her lifetime, yet a new Jamabandi is prepared after every four years, which creates a fresh cause of action; therefore, the suit of the plaintiff was within time. The appellate court did not give any finding on this issue, while the High Court endorsed the findings of the trial court with the observation that repetition of every wrong entry in the subsequent Jamabandi gives a fresh cause of action, therefore, the suit was filed within the period of limitation. 13. We find that both the trial court and the High Court have not correctly decided the issue of limitation. This Court has recently clarified, in Rabia Gula v. Muhammad Janan, 5 the application of Article 120 of the First Schedule to the Limitation

[5] Kala v. Kamo Begum (2013 SCMR 1558)
[6] Hajid Muhammad Younis (Deceased) v. Farukh Sultan (2022 SCMR 1282)

Act, 1908 ("Limitation Act") to a suit for declaration filed under section 42 of the Specific Relief Act, 1877 ("Specific Relief Act").

The Court has opined:

8.12 A suit for declaration of any right, as to any property is filed under section 42 of the Specific Relief Act, which reads:

> 42. Discretion of Court as to declaration of status or right-- Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief: Provided that 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.
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> (Emphasis added)

It becomes evident by reading the above provisions that the right to sue accrues to a person against the other for declaration of his right, as to any property, when the latter denies or is interested to deny his such right. It thus postulates two actions that cause the accrual of right to sue, to an aggrieved person: (i) actual denial of his right or (ii) apprehended or threatened denial of his right.

8.13 Now, what "actions" can be termed as an "actual denial of right", and what a mere "apprehended or threatened denial of right", in the context of adverse entries recorded in the revenue record. It is important to note that a person may ignore an "apprehended or threatened denial" of his right taking it not too serious to dispel that by seeking a declaration of his right through instituting a suit, and may exercise his option to institute the suit, when he feels it necessary to do so, to protect his right. For this reason, every "apprehended or threatened denial" of right gives a fresh cause of action and right to sue to the person aggrieved of such apprehension or threat. However, this option to delay the filing of the suit is not available to him in case of "actual denial" of his right; where if he does not challenge the action of actual denial of his right, despite having knowledge thereof, by seeking declaration of his right within the limitation period provided in the Limitation Act, then his right to do so becomes barred by law of limitation.

8.14 Admittedly, entries in the revenue record do not create or extinguish proprietary rights. Such an entry may at most be termed as a mere "apprehended or threatened denial" of right, and not an "actual denial" of right. Accordingly, every new adverse entry in the revenue record relating to proprietary rights of a person in possession (actual or constructive) of the land regarding which the wrong entry is made, gives to such person, a fresh cause of action to institute the suit for declaration.

8.15 The situation is, however, different in a case where the beneficiary of an entry in the revenue record also takes over the possession of the land on the basis of sale or gift transaction, as the case may be, recorded in that entry. His action of taking over possession of the land in pursuance of the purported sale or gift is certainly an "actual denial" of the proprietary rights of the purported seller or donor. Therefore,

> in such a case, if the purported seller or donor does not challenge that action of "actual denial" of his right, within the prescribed limitation period, despite having knowledge thereof, then his right to do so becomes barred by law of limitation.
>
> (Emphasis added)

On careful reading of the above, it is evident that this Court has explained the distinction between an "actual denial of right" and an "apprehended or threatened denial of right" in relation to applicability of the law of limitation in cases seeking declaration of proprietary rights in immovable property. It has held that every new adverse entry in the revenue record, being a mere "apprehended or threaten denial" relating to proprietary rights of a person in possession (actual or constructive) of the land regarding which the wrong entry is made, gives to such person a fresh cause of action to institute the suit for declaration. It has, however, further clarified that the situation is different in a case, where the beneficiary of an entry in the revenue record actually takes over physical possession of the land on the basis of sale or gift mutation. In such a case, the alleged wrong entry in the revenue record coupled with the very act of taking over possession of the land by the alleged buyer or donee, in pursuance of the purported sale or gift, is an "actual denial of the proprietary rights" of the alleged seller or donor and thus, the time period to challenge the said disputed transaction of sale or gift by the aggrieved seller or donor would commence from the date of such actual denial. Therefore, in such a case, if the purported seller or donor does not challenge that action of "actual denial of his right" within the prescribed limitation period, despite having knowledge thereof, his right to do so becomes barred by the law of limitation, and the repetition of the alleged wrong entry in the subsequent revenue record (Jamabandi) does not give rise to a fresh cause of action.

14. In the present case, Haji Muhammad Yunis and Mst. Mumtaz Akhtar (appellants) claim that the possession of the suit property was handed over to them under the sale mutation in 1989, and it was subsequently taken over by Syed Faisal Shah (respondent No.2), when they were abroad. We find that this assertion of the appellants is supported by the documentary evidence produced by the respondent No.2 himself, that is, copy of Khasra Girdawri (Exh-DW5/6). As per the said document, Syed Faisal Shah (respondent No.2) took over possession of the suit property in 2009, and prior to that period Haji Muhammad Yunis and Mst. Mumtaz Akhtar (appellants) were recorded to be in possession of the suit property. Similarly, this fact is further fortified by the copies of Utility Bills (Exh-DW5/1) tendered by Syed Faisal Shah (respondent No.2) in his evidence; almost all these Bills relate to the period after the year 2009.

15. Possession follows the title. This is a well settled principle. Therefore, unless contrary is proved by cogent evidence, an owner is presumed to be in possession of his property. Haji Muhammad Yunis and Mst. Mumtaz Akhtar (appellants), who are owners of the suit property, as per the revenue record, are thus presumed to be in possession of the suit property, since the sanction of the sale mutation in the year 1989. If Mst. Farukh Sultan (respondent No.1) and Syed Faisal Shah (respondent No.2) or their parents remained in possession of the suit property throughout, as asserted by them, then they were to produce cogent evidence in that regard, which is lacking in the present case. Even the copies of the Utility Bills produced by the respondents were for the period after 2009. The failure on their part to produce copies of the Utility Bills for the period from 1989 to 2009, negates their assertion of possessing the

disputed property throughout, and strengthens the stance of the appellants.

16. Needless to reiterate, that disputed facts in civil cases are ordinarily decided on the evidential standard of preponderance of probability. In view of the evidence available on record of the case, all probabilities tilt in favour of the assertion of fact made by Haji Muhammad Yunis and Mst. Mumtaz Akhtar (appellants). We, therefore, find that the possession of the suit property was taken over by the appellants in the year 1989 under the sale mutation as claimed by them. Therefore, the cause of action arose, and the right to sue for declaration of her right and challenge the sale mutation accrued to Mst. Surriya Ashraf, the purported seller, in 1989 as per section 42 of the Specific Relief Act and Article 120 of the first Schedule to the Limitation Act 1908. She lived for about two decades after sanction of the suit mutation but did not exercise such right within the limitation period of six years prescribed in Article 120 of the first Schedule to the Limitation Act. Her right, therefore, became time barred even in her lifetime, and if she were alive in 2009 and had herself instituted the suit to challenge the sale mutation, her suit would have been time barred. When the right to sue of a person from or through whom the plaintiff derives his right to sue has become time barred, no fresh period of limitation can start for such plaintiff."

18. Keeping the aforementioned dictum in mind, it is clear to us that the Respondents questioned transactions made in 1990 by their father after a period of almost 13 years, 7 months, and 6 days; when admittedly the Respondents, who reside in Malaysia, had visited Pakistan after 1990 a number of times. Thus, in our view, the reliance of the Respondents on the Power of Attorney given by them to one Iftikhar Hussain shah in 1998 when the mutation entries in the name of the present Appellants had already been made in the revenue records in the year 1990, in accordance with the Power of Attorney given by the respondents to their late father namely Gohar Shah, appears to be wholly unwarranted and misconceived. It is also an undeniable position that Gohar Shah passed away in the year 1993 whereas the mutation entries were made in the year 1990 and that no effort was made by the late Gohar Shah to challenge the mutation entries in his life time. Moreover, the statement of Iftikhar Hussain Shah that he came to know about the mutation entries in the year 2004 also appears to be misconceived as admittedly the Power of Attorney was given to him by the Respondents, who live abroad, in the year 1998; and it is quite curious that ever since then he made no effort to verify the mutation entries and only came to know about the same in the year 2004 when he examined the revenue record. It is also beyond our comprehension that for over a decade the Respondents were not aware of an alleged fabricated Power of Attorney and then sought a declaration as owners of the aforementioned Khasras. Hence, keeping in mind these aspects, we are of the firm view that the action taken by the

Respondents was hit by limitation, no lease in this regard could be given to them and thus the matter was hopelessly time barred.

19. This bring us to the second issue, which is the fate of concurrent findings by the fora below us, as mentioned in paragraph 12, herein above. Since, the suit instituted before the Civil Judge was hopelessly barred by time, any relief acquired by the Respondents through the decree of that suit, in our view, cannot stand. Though this Court has always exercised restraint and caution, when it comes to concurrent finding, however in *A. Rahim Foods*[7] this Court has opined:

> "In the exercise of its appellate jurisdiction in civil cases, this Court as a third or fourth forum, as the case may be, does not interfere with the concurrent findings of the courts below on the issues of facts unless it is shown that such findings are on the face of it against the evidence available on the record of the case and is so patently improbable or perverse that no prudent person could have reasonably arrived at it on the basis of that evidence. 2 A mere possibility of forming a different view on the reappraisal of the evidence is not a sufficient ground to interfere with such findings."
>
> **(EMPHASIS ADDED)**

Furthermore, this Court, in *Nazim-ud-Din*[8], has observed:

> "It is settled law that ordinarily the revisional court would not interfere in the concurrent findings of fact recorded by the first two courts of fact but where there is misreading and non-reading of evidence on the record which is conspicuous, the revisional court shall interfere and can upset the concurrent findings, as well as where there is an error in the exercise of jurisdiction by the courts below and/or where the courts have acted in the exercise of its jurisdiction illegally or with material irregularity."
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> **(EMPHASIS ADDED)**

20. Since the error, vis-à-vis limitation, is floating on the surface of the record and is so apparent, it is surprising that the High Court did not interfere with the concurrent findings in its revisional jurisdiction rather they found it fit to extend the period of limitation by linking it to new *jamabandis*. It is also interesting to note that the decision upon which the High Court has placed reliance support the stance of the Appellants rather than that of the Respondents. Hence on these facts, we have no option but to interfere with the concurrent findings of the fora below as these findings are patently improbable, perverse, and based on misreading of the law. The Appellants are hereby declared to be the owners of the Khasras mentioned herein above.

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[7] A. Rahim Foods v. K&N's Foods (2023 CLD 1001)
[8] Nazim-ud-Din v. Sheikh Zia-ul-Qamar (2016 SCMR 24)

21. In light of what has been stated herein, the Appeal of the Appellants is allowed and the Impugned Judgement and decree is set aside. The parties are left to bear their own costs.

Islamabad
01st Feb., 2024
Arshed/AJK, L.C.

Approved for Reporting