

89/23

SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Mr. Justice Muhammad Ali Mazhar
Mr. Justice Syed Hasan Azhar Rizvi
Ms. Justice Musarrat Hilali

(AFR)

Civil Appeal No.130 of 2016

[On appeal against the Judgment dated 13.11.2015 passed by the Lahore High Court, Rawalpindi Bench, in Civil Revision No.399-D of 2014]

Noor Din deceased through LRs

...Appellant(s)

VERSUS

Pervaiz Akhtar & others

...Respondent(s)

For Appellant(s) : Mr. Mushtaq Ahmad Mohal, ASC
Syed Riffaqt Hussain Shah, AOR

For Respondents 1-6 : Mr. Asad Hussain Ghalib, ASC

Date of Hearing : 01.08.2023

JUDGMENT

Musarrat Hilali, J.— Subject matter in hand is the estate of one Qaim Din, who died in the year 1957. His inheritance mutation No.18 was attested on 05.04.1958 in favour of his two sons, Fazal Ellahi and Noor Din; however, name of Mst. Mir Jan, his real daughter, was excluded from the inheritance mutation. Later on, Fazal Ellahi died issueless and his estate was also devolved upon his brother Noor Din. After the death of Mst. Mir Jan, her legal heirs (the respondents herein) filed a suit for a declaration, cancellation of inheritance mutation No.18 dated 05.04.1958 and the subsequent inheritance mutation of Fazal Ellahi, who died issueless, on the ground of being illegal and based on fraud. They also prayed for permanent injunction restraining the appellants/

defendants from further alienating the suit property. They further prayed for mandatory injunction directing the revenue authorities to correct the entry in the revenue record.

2. The suit was contested by the appellants/defendants by filing written statement. The learned trial Court, after framing of issues and recording pro and contra evidence, dismissed the suit vide judgment dated 28.09.2012, however, appeal of the respondents was allowed by the learned Additional District Judge, Rawalpindi vide judgment dated 26.02.2014. The appellants/defendants assailed the said judgment in revision which was also dismissed by the Lahore High Court, Rawalpindi Bench, Rawalpindi vide judgment dated 13.11.2015. Hence, revisional judgment was challenged by the appellants/defendants before this Court and on 03.02.2016 leave to appeal was granted in the following terms:

“It is contended by the learned counsel for the Petitioners that the Suit filed by the Respondents was time barred and no explanation, in this behalf, was given. The matter in issue pertains to a Mutation of Inheritance dated 05.04.1958 while the suit was filed on 20.06.2005. In this behalf, the learned counsel relied upon the judgment of this Court in the case, reported as Noor Din and another v. Additional District Judge, Lahore and others (2014 SCMR 513). Leave is granted, *inter alia*, to consider the aforesaid contentions.

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

4. Perusal of the record would reveal that Qaim Din, the predecessor of the parties, died in the year 1957 leaving behind two sons namely Fazal Ellahi and Noor Din and a daughter namely Mst. Mir Jan, the mother the respondents. However, vide the inheritance mutation No.18 dated 05.04.1958 the estate of Qaim Din was devolved upon his two sons Fazal Ellahi and Noor Din

while his daughter Mst. Mir Jan was excluded. The appellants/defendants in their written statement though did not deny relationship of the parties yet took a stance that Qaim Din had transferred the entire property in his life time in favour of his sons but no evidence was produced in support of their stance. Allah Ditta son of Noor Din appeared as DW-1 but he neither produced any document as to the transfer of the suit property in the name of his father Noor Din by his grandfather Qaim Din nor stated the factum of gift and even during cross-examination showed his ignorance as to when Qaim Din transferred his estate to his sons during his life time. He further admitted that he has no knowledge as to whether Qaim Din had transferred his property by way of gift or otherwise.

5. Learned counsel for the appellants/defendants mainly highlighted the question of limitation formulated in the leave granting order by contending that law of limitation is relevant whenever property is claimed on the basis of inheritance. He contended that the suit is hopelessly time barred as the inheritance mutation was sanctioned in the year 1958 while the suit was filed in the year 2005 and that too by the legal heirs of Mst. Mir Jan, after more than three decades of her death, as she did not challenge the inheritance mutation in her life time.

6. Undisputedly, the matter pertains to inheritance and under the Islamic Law of inheritance, as soon as an owner dies, succession to his property opens. This Court in the case titled Ghulam Ali and 2 others v. Mst. Ghulam Sarwar Naqvi (PLD 1990 SC 1) has held that if the State, the Court, the clergy, the executor, the administrator does not intervene, no other body intervenes on any other principle, authority, or relationship-even of kinship,

thus, the brother, the father, the husband, the son or vice versa, does not or cannot intervene as an intermediary. Likewise, the law is well settled that wrong mutation confers no right in property as revenue record is maintained only for fiscal purposes. This Court in a case titled Mst. Gohar Khanum and others v. Mst. Jamila Jan and others (2014 SCMR 801) has held that mutation is meant to record the legal entitlement and if the mutation is erroneously made such mutation would not create title in accordance with Sharia Law of inheritance. So far possession of the property by an heir is concerned, a three member bench of this Court in a case titled Khair Din v. Salaman (PLD 2002 SC 677) has followed the decision of a two member bench in the case of Ghulam Ali, supra, that heir in possession has to be considered to be in constructive possession of the property on behalf of all the heirs in spite of his exclusive possession, e.g., the possession of the brothers would be taken to be the possession of their sisters, unless there was an express repudiation of the claims of the sisters in favour of brothers and in order to relinquish or transfer her interest in the property, there has to be a positive and affirmative act. In the case titled Mst. Granan though legal heirs and others v. Sahib Kamala Bibi and others (PLD 2014 SC 167) this Court has held that the law of limitation would be relevant when the conduct of the claimant demonstrates acquiescence and particularly when third party interest is created in the inherited property. Here in the instant case, there is nothing on the record to show that Mst. Mir Jan had either relinquished her interest in the disputed property or transferred it in favour of her brothers, therefore, the cause of action accrued when the appellants/defendants denied their right. As per averments of plaint, the respondents came to know about

the wrong entry for the first time on 22.12.2004 when they obtained copy of inheritance mutation of Qaim Din, therefore, the suit cannot be held as time barred.

7. In view of the above discussion, we find that the conclusion arrived at by the appellate and revisional Court concurrently is in accordance with law and record, therefore, we see no justification to interfere in the impugned judgment. However, at this stage learned counsel for the appellants/defendants pointed out that there is no cavil to the proposition and claim to inheritance, which have to be devolved on the death of Qaim Din but the revenue authorities had also allowed shares on account of inheritance in the properties, which have been purchased by the appellants/defendants by their own, which were not part of the inheritance of the estate of late Qaim Din. Learned counsel representing respondents No. 1 to 6 categorically stated that the inheritance claim should be confined only to the estate of late Qaim Din devolved upon his legal heirs/respondents No. 1 to 6 and not in the properties purchased by the appellants/defendants by their own. Hence, the instant appeal is disposed of in the above terms.

JUDGE

JUDGE

ISLAMABAD

01.08.2023

NOT APPROVED FOR REPORTING

Washmi

JUDGE