

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

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

Civil Petition No.394-P of 2010
(On appeal against the judgment dated 07.05.2010 of the
Peshawar High Court, Peshawar in C.R. No. 456 of 2009
with CM No. 691 of 2009)

Mst. Jehan Bano & others ...Petitioners

Versus

Mehraban Shah & others ...Respondents

For the Petitioners: Mr. Abdul Sattar Khan, ASC
Mr. Zahoor Qureshi, AOR
(Through video link from Peshawar)

For Respondents No.1 to 3: Mr. Ziaur Rehman Khan, ASC
(Through video link from Peshawar)

For Respondents No. 4 to 12: Nemo

Date of Hearing: 15.03.2024

J U D G M E N T

NAEEM AKHTAR AFGHAN, J. Relevant facts as gleaned from the pleadings of the parties are that Fateh Khan and his brother Shahi Khan (predecessor of petitioners) and Deedar Shah (predecessor of respondent Nos. 1 to 3) entered into an oral exchange of pieces of land of Mouza Dargai Tehsil and District Charsadda in the year 1945. The land measuring 13 kanals in khasra No. 79 Mouza Dargai (hereinafter referred to as the “**suit land**”) belonging to predecessor of the petitioners was given to the predecessor of respondent Nos. 1 to 3 while piece of land in khasra Nos. 1077/789 and 737 of Mouza Dargai was given to the predecessor of the petitioners by predecessor of respondent Nos. 1 to 3.

2. The effect of above exchange transaction was taken in the column of cultivators in the jamabandis of years 1949-50, 1953-54, 1957-58, 1969-70 and 2001-02 as well as in khasra gardawri by mentioning the respective parties in cultivating possession of the respective exchanged pieces of land. However, the effect of above exchange to the extent of the suit land was not taken in the column of ownership of the jamabandis.

3. The predecessor of petitioners i.e. Shahi Khan, his brother Fateh Khan and the successors of Deedar Shah i.e. respondent Nos. 1 to 3 reiterated the above oral exchange transaction of 1945 by executing the exchange deed dated 01.10.1980. However taking undue advantage of existence of the name of Shahi Khan in the column of ownership in the respective jamabandis of Mouza Dargai for the suit land, after death of their predecessor Shahi Khan, the petitioners got entered inheritance mutation No. 2670 dated 21.04.1991 in their names for the suit land. On getting knowledge of the same, respondent Nos. 1 to 3 filed civil suit No. 186/1 (old No. 113/1) on 12.03.2005 against the petitioners before the court of Civil Judge-V Charsadda (hereinafter referred to as the "**Trial Court**") for declaring them as owners of the suit land on the basis of exchange transaction and to declare that the entry of the suit land in the name of legal heirs of Shahi Khan vide inheritance mutation No. 2670 dated 21.04.1991 is wrong and illegal.

4. Apart from contesting the above suit by filing written statement, the petitioners also instituted civil suit No. 187/1 on 25.05.2005 against respondent Nos. 1 to 3 for declaring them as owners of the suit land on the basis of inheritance mutation No. 2670 dated 21.04.1991. The petitioners claimed possession of the suit land and they also challenged the entries in the names of respondent Nos. 1 to 3 in the jamabandis as cultivators of the suit land.

The above suit was contested by respondent Nos. 1 to 3 by filing written statement.

5. The Trial Court consolidated both the suits and framed the following consolidated issues:

1. *Whether plaintiffs have got a cause of action?*
2. *Whether the predecessor of plaintiffs named Dedar Shah and predecessor defendants shahi Khan has made exchange of property orally in 1945 and thereafter executed a deed of exchange dates 01.10.1980, whereafter plaintiffs and defendants are owners in possession of the property exchanged by their predecessors.*
3. *Whether the suit is incompetent in its present form?*
4. *Whether the suit is bad for non-joinder or mis-joinder or necessary parties?*
5. *Whether this Court has got the jurisdiction to entertain the suit?*
6. *Whether suit of the plaintiffs is time barred?*

7. *Whether plaintiffs are estopped to sue due to his own conduct?*
8. *Whether the suit is based on malafide and in case of dismissal defendants would be entitled to the compensatory cost?*
9. *Whether defendants became owners of the disputed property vide inheritance mutation No.2670 dated 21.04.1991 and are owners in possession?*
10. *Whether defendants have made improvements in the disputed property and in case of decree in favour of plaintiffs, the defendants would be entitled to the cost of improvements?*
11. *Whether entries in the revenue record regarding Khasra number 79 () is favour of Mehraban Shah etc is wrong and fictitious?*
12. *Whether the deed of exchange dated 01.10.1980 is forged, fictitious and un-registered and liable to be cancelled?*
13. *Whether plaintiff No.3 has purchased property in Khasra number 79 vide sale mutation No.3131 dated 17.01.2003?*
14. *Whether plaintiffs in case No.186/1 are entitled to the decree as prayed for?*
15. *Whether plaintiffs in suit No.187/1 became owners of property situated in Khasra number 79 on the basis of inheritance mutation No.2670 dated 21.04.1991 and as such have not obtained any property in exchange from the plaintiffs in case No.186/1?*
16. *Whether plaintiffs in case No.187/1 are entitled to the decree as prayed for?*
17. *Relief.*

6. After recording evidence of both the parties, vide consolidated judgment and decree dated 21.07.2008, the Trial Court decreed civil suit No. 187/1 filed by the petitioners and dismissed civil suit No. 186/1 filed by respondent Nos. 1 to 3.

7. The respondent Nos. 1 to 3 filed appeal against the above consolidated judgment of the Trial Court which was accepted by the Court of Additional District Judge II Charsadda (hereinafter referred to as the "**Appellate Court**") vide judgment and decree dated 15.04.2009 whereby civil suit No. 187/1 filed by the petitioners was dismissed while civil suit No. 186/1 filed by respondents No. 1 to 3 was decreed.

8. The petitioners preferred Civil Revision No. 456 of 2009 before the Peshawar High Court (hereinafter referred to as "**the Revisional Court**") which has been dismissed vide judgment dated 07.05.2010 against which the instant petition for leave to appeal has been filed by the petitioners.

9. Learned counsel for the petitioners contended that the respondents have failed to prove exchange of pieces of land in Mouza Dargai by the predecessor of the parties; wrong entries were managed by the respondents in the column of cultivators in the khasra girdawari and jamabandis of different years in respect of the suit land; the predecessor of the petitioners was owner of the suit land due to which, after his death, the suit land was recorded in the name of petitioners vide inheritance mutation No. 2670 dated 21.04.1991; after proper appraisal of the evidence, the Trial Court had rightly decreed the suit of the petitioners and dismissed the suit of the respondents but the decision was reversed by the appellate court without properly appreciating the evidence; while upholding the judgment and decree of the appellate court, the revisional court has erred in facts as well as law.

10. In rebuttal, learned counsel for respondent Nos. 1 to 3 contended that the respondents have proved the exchange of pieces of land in Mouza Dargai by the predecessor of the parties through oral exchange in the year 1945 effect whereof was taken in the column of cultivators in the khasra girdawari and jamabandis of different years which was never objected by the predecessor of the petitioners in his lifetime as well as by the petitioners till filing of suit by the respondents; in the exchange deed dated 01.10.1980 as well, the exchange of pieces of land in Mouza Dargai was affirmed by the parties.

Learned counsel for respondents further contended that taking undue advantage of the name of their predecessor in the column of ownership in the jamabandis in respect of the suit land, the petitioners with malafide and by concealment of exchange transaction managed to enter inheritance mutation No. 2670 dated 21.04.1991 in their names which was not in the knowledge of the respondents; on getting knowledge of the same, the respondents filed civil suit in March 2005; the respondents through confidence inspiring evidence have proved the exchange of pieces of land in Mouza Dargai by the predecessor of the parties; after proper appreciation of the evidence, the appellate as well as revisional courts have rightly decreed the suit of the respondents and dismissed the suit of the petitioners.

11. After hearing learned counsel for the parties at length, we have perused the record. The jamabandis of the years 1949-50, 1953-54, 1957-58, 1969-70 and 2001-02 as well as khasra girdawari reveal that the exchange of pieces of land by the predecessor of the parties was given

effect in the periodical record of rights by entering their names in the column of cultivators. After death of their predecessor, the names of respondent Nos. 1 to 3 were also entered in the column of cultivators for the suit land in the jamabandis/khasra girdawari of different years which were not challenged by the predecessor of the petitioners in his lifetime as well as by the petitioners till filing of civil suit by the respondents in March 2005.

12. According to section 52 of the West Pakistan Land Revenue Act 1967 presumption of truth is attached to the entries made in the periodical record of rights i.e. jamabandis/khasra girdawari until contrary is proved. Reference in this regard is made to the cases of **“Abdul Ahad v. Roshan Din”**¹, **“Hakim Khan v. Aurangzeb”**², **“Aurangzeb v. Muhammad Jaffar”**³ and **“Muhammad Amir v. Mst. Beevi”**⁴.

The petitioners have failed to rebut the presumption of truth attached with the long standing jamabandis/khasra girdawari for the suit land existing in the names of respondent Nos. 1 to 3 due to exchange transaction.

13. On the contrary, apart from producing confidence inspiring oral evidence, the respondent Nos. 1 to 3 have also proved the exchange transaction through the exchange deed dated 01.10.1980 which bears thumb impressions of the predecessor of petitioners, his brother Fateh Khan, signatures of respondent Nos. 1, respondent No. 3 and thumb impression of respondent No. 2.

14. Another aspect which cannot be ignored is that Fateh Khan (paternal uncle of the petitioners) or his successors did not challenge the exchange transaction.

15. The oral as well as documentary evidence available on record proves that exchange of pieces of land in Mouza Dargai was made between predecessor of parties and Fateh Khan in the year 1945 effect whereof was duly taken in the jamabandis and khasra girdawari of different years in the column of cultivators. It further proves that taking undue advantage of the existence of the name of their predecessor in the column of ownership for the suit land in the jamabandis, after his death, the petitioners

¹ PLD 1979 SC 890

² 1979 SCMR 625

³ 2007 SCMR 236

⁴ 2007 SCMR 614

managed inheritance mutation No. 2670 dated 21.04.1991 in their names by concealing the factum of exchange of the suit land as well as long standing cultivating possession of the respondents over the suit land since the year 1945.

16. It is settled law that mutation by itself does not create title and it carries a rebuttable presumption. Reference in this regard is made to the cases of **“Ghulam Sarwar v. Ghulam Sakina”**⁵, **“Fazal Ellahi v. Zainab Bi”**⁶ and **“Nasir Ali v. Muhammad Asghar”**⁷.

In the instant case the respondent Nos. 1 to 3 have successfully rebutted the contents of mutation No. 2670 by proving the exchange of suit land by the predecessor of petitioners with their predecessor and by their long standing cultivating possession of the suit land as mentioned in the jamabandis and khasra girdawaris of different years due to exchange transaction.

17. In order to justify the grant of leave under Article 185 (3) of the Constitution of Islamic Republic of Pakistan (hereinafter referred to as the ‘**Constitution**’), serious question of law is *prima-facie* to be made out or some case of grave miscarriage of justice has to be established. The scope of petition under Article 185 (3) of the Constitution is confined to the extent of substantial question of law. According to settled law, this Court does not lay its hand in the case of concurrent findings based on proper appraisal of evidence unless serious question of law arises or the findings are found improper, perverse or untenable in law. Reference in this regard is made to the cases of **“Muhammad Rahim v. Bakht Muhammad”**⁸ , **“Rehmatullah v. Saleh Khan”**⁹, **“Fateh Yarn Pvt. Ltd. v. Commissioner Inland Revenue”**¹⁰, **“Abdul Baqi v. Khan Muhammad”**¹¹ and **“Government of Khyber Pakhtunkhwa v. Intizar Ali”**¹².

In the instant petition, learned counsel for the petitioners has raised factual controversy which has rightly been decided by the appellate as well as revisional courts through concurrent judgments in favour of respondent Nos. 1 to 3 which are based on proper appraisal of the evidence available on record. Learned counsel for the petitioners has failed

⁵ 2019 SCMR 567

⁶ 2019 SCMR 1930

⁷ 2022 SCMR 1054

⁸ 2006 SCMR 1217

⁹ 2007 SCMR 729

¹⁰ 2021 SCMR 1133

¹¹ PLD 2022 SC 546

¹² 2022 PLC (C.S.) 837

to raise any substantial question of law and has failed to demonstrate grave miscarriage of justice by the appellate and revisional courts while passing the impugned judgments.

Since no question of law has been raised by learned counsel for petitioners, therefore while refusing leave to appeal, the petition is dismissed.

Chief Justice

Judge

Judge

Announced in the open Court at Islamabad on _____

Judge

ISLAMABAD
18 March 2024
Approved for reporting
Atif/Zohaib Afzal*