

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**Present:**

Mr. Justice Sardar Tariq Masood  
Mr. Justice Mazhar Alam Khan Miankhel

23/25

**Civil Petition No. 146-P/2015**

(On appeal against the judgment dated 27.02.2015  
passed by Peshawar High Court, Bannu Bench  
in C. R. No. 90-B/2009)

Pioa Shah

Petitioner(s)

Versus

Amin Khan, etc.

Respondent(s)

For the Petitioner(s):

Mr. Shah Faisal, ASC  
Haji Muhammad Zahir Shah, AOR

For the Respondent(s):

Mr. Salahuddin, ASC

Date of Hearing:

13.01.2025

**JUDGMENT**

**Mazhar Alam Khan Miankhel, J.** The petitioner through instant petition for leave to appeal has impugned the judgment dated 27.02.2015 of the Peshawar High Court, Bannu Bench, Bannu, whereby his revision petition was dismissed upholding the judgment and decree dated 23.10.2009 of the appellate court whereby the suit for redemption filed by the respondents was decreed.

2. We have heard the learned counsel for the parties and have gone through the available record.

3. Perusal of the record would reveal that the parties in general and specially the petitioner being a defendant has produced unnecessary revenue record on the file which has wasted the time and energy of the courts and the parties. The suit property alongwith other property was mortgaged since long but we have no concern with the previous and old record and the same will have no effect on the merits of the case. The suit property presently comprised of two Khasra Nos. 5912 and 5929, area measuring 8 Kanals 1 Marla having old Khasra No. 1620.

The respondent No.1 being a plaintiff became owner of the suit property in the year 1953 vide Mutation No.46508. It has come on the record that after his purchase, he redeemed the part of the property purchased by him twice from different mortgagees. Copies of Mutation No.46506 and 46508 are available at page 130 & 131 of the paper book would reflect the factum of redemption by the Respondent No.1. Since it was a joint property, so he by way of an exchange of properties became owner of the shares of remaining co-sharers namely Qutab Din, etc in lieu of his property given in exchange to them and ADK (PW-2) has confirmed this very fact. Both the exchange Mutations bearing No.52537 and 52538 are available on the record as Ex.PW2/7 and Ex.PW2/8. Since these mutations were not incorporated in the revenue record, so he mentioned this very fact in his plaint by reserving his right for such implementation and for that purpose, he impleaded all the other co-sharers (from whom he received the property vide above noted exchange mutations) as defendants in his suit. We can say in simple words that the Respondent No.1 is the owner of the entire property, part of which (only 32 shares) is under the charge of mortgage. The petitioner purchased the mortgagee rights of the suit property from Muhammad Saleem, etc., vide Mutation No.673 dated 28.03.1981 and as such he became mortgagee of the suit property. The major chunk of the suit property was free from the charge of mortgage and the mortgagee rights purchased by the petitioner were only to the extent of 32 shares as noted above. The record shows that the major chunk of the suit property is in the possession of the Respondent No.1 as owner, which is free from the charge of mortgage (بلا رین حصہ) alongwith the shares of other owners received through exchange as noted above. The purchase of the mortgagee rights vide Mutation No.673 on 28.03.1981 by the petitioner is the axis of the case and the whole case revolves around this date. The appellate Court and the High Court after proper appraisal of the evidence have rightly granted a decree in favour of the Respondent No.1 by accepting his appeal and dismissing the Civil Revision of the present petitioner.

4. The Respondent No.1 initially had filed a pre-emption suit against the sale of mortgagee rights in favour of the petitioner *vide* Mutation No. 673, noted above, but his suit was dismissed for many reasons like impugned sale not being the transfer of ownership and for want of performance of requisite *talbs* etc., dismissal of pre-emption suit was upheld up-to this Court. This might be on some misconception of law or an ill advice to the Respondent No.1 but this aspect of the case is in no way going to affect the rights of the Respondent No.1 seeking for the redemption of his property. Thereafter, the Respondent No.1 filed the instant suit for the redemption of his property. The plea of *res judicata* because of the pre-emption suit was raised by the petitioner but the same cannot be made applicable in the given situation. A suit for pre-emption and a suit for redemption, both are independent rights and separate causes of action, having no nexus with each other, hence, the principle of *res judicata* is not attracted. The present suit of the Respondent No.1 for the redemption being an independent cause was decreed by the appellate Court as per available record and the law on the subject. The above noted purchase of the mortgagee rights by the petitioner in March, 1981 *vide* above noted Mutation No.673, provided a fresh cause of action and a fresh start of limitation for the Respondent No.1 as this acts as an acknowledgement.

5. As per available record, this was a simple case of redemption of property and time period provided for the same is 60 years under article 148 of the Limitation Act, 1908 (**the Act of 1908**). Besides the above noted period of limitation, law has also provided different modes, which work as an acknowledgement under Sections 19 & 20 (2) of the Act of 1908 and resultantly the period for redemption of mortgaged property for an owner/mortgagor starts running as a fresh cause of action from such period. In this case too, question of acknowledgement was very much there but the learned counsel for the petitioner at the very start of his arguments, placed reliance on the case of Nawaz Ali Khan and another Vs. Nawabzada and others (PLD 2003 SC 425) by submitting that the case of Maqbool Ahmad Vs. Govt of Pakistan (1991 SCMR 2063) would not be

applicable to the facts and circumstances of the case in hand as Article 148 of the Act of 1908, is still in the field and the mortgage being beyond the 60 years of time, was not available for redemption.

6. We in view of the above argument and the relevant part of the judgment in the case of *Nawaz Ali Khan (supra)* noted above, put the respondents on notice for proper administration of justice.

7. It is a settled law that the sale of mortgagee rights is always considered as an acknowledgment as defined under Section 19 of the Act of 1908. The possession of the petitioner over a part of the suit property to the extent of his mortgage was also admitted by both the parties at the bar during the course of hearing and the petitioner in his written statement has also admitted his possession over the mortgaged property. The possession of the mortgagee and getting/deriving benefits from the mortgaged property is sufficient enough to attract the provisions of Section 20(2) of the Act of 1908. In the case of *Abdul Haq Vs. Ali Akbar and others (1999 SCMR 2531)*, it has categorically been held that the time would be reckoned afresh after each harvest and this will be a recurring cause of action. The learned counsel for the petitioner by placing reliance on the case of *Nawaz Ali Khan and another Vs. Nawabzada and others (PLD 2003 Supreme Court 425)*, vehemently argued that the Respondent No.1 cannot avail the benefit of Maqbool Ahmed's case (*supra*) as Section 28 of the Act of 1908 has been declared against the injunctions of Islam, which is applicable to Article 144 of the Act of 1908 only and Article 148 of the Act of 1908 is out of its scope and still in the field. His argument was that the mortgage being more than 60 years old, the suit of the Respondent No.1 is barred under Article 148 of the Act of 1908 (*ibid*). The argument of the learned counsel, in our opinion, is based on some misconception of law. Since the petitioner, as per his own admission at the bar, regarding his possession over the mortgaged property will act as an acknowledgment under Section 20(2) of the Act of 1908 and the period of limitation will start running afresh. Even the purchase of mortgagee rights *vide* Mutation No.673 dated 28.03.1981 from Muhammad Saleem etc., will also act as



an acknowledgment under Section 19 of the Act of 1908. So, as per the law, the purchase of mortgagee rights by the petitioner has given also a fresh cause of action and a fresh start of limitation to the Respondent No.1. The suit for redemption filed by the Respondent No.1 is covered by both provisions of law i.e. Sections 19 and 20 (2) of the Act of 1908 and as such is well within the time and has rightly been held so by the Courts below.

8. It would also not be out of context to say that if at all the suit is considered barred by limitation, mere lapse of time of 60 years could not deprive the Respondent No.1 from the right of his ownership and the petitioner would not become owner on the basis of prescription automatically due to such lapse. For claiming a right under prescription, which is not available after the target date of 31.08.1991 as given in Maqbool Ahmed's case (*supra*), one has to seek declaration from the competent Court of law and on having such a decree of declaration, one can become owner on the strength of prescription. Title under prescription cannot be achieved just by operation of law. The Federal Shariat Court in Maqbool Ahmed's case (*supra*) has held that the right of ownership cannot be snatched simply by lapse of certain period of time. Yes! the remedy provided under the law to achieve that right can be refused but right will remain there and the same principle would also apply in case of Article 148 of the Act of 1908 though not discussed and considered in the case of Maqbool Ahmed's case (*supra*) but the essence of Maqbool Ahmed's case (*supra*) would also make it applicable against Article 148 of the Act of 1908. Simply efflux of time would not deprive an owner from his ownership rights. In Maqbool Ahmad's case (*supra*), cut-off date of 31.08.1991 is given, which means that after the said cut-off date, no one can claim his right under the law of prescription. Reference can be made to the cases of Durrani and 35 others Vs. Hamidullah Khan and 15 others (PLJ 2007 SC 346), Muhammad Hussain and others Vs. Wahid Bakhs through Legal Heirs (2004 SCMR 1137). Mr. Justice Nisar Hussain Khan of the Peshawar High Court, as he then was, has very elaborately and rightly discussed the effect of judgment of Maqbool Ahmad's case (*supra*) over Article 148 of the Act,

1908 in his well-reasoned judgment in the case of Bilawar Khan Vs. Amir Sabar Rahman and others (PLD 2013 Peshawar 38). Though article 147 and 148 of the Act of 1908 are still part of the main statute book but the above two provisions of law have since been deleted in the province of Khyber Pakhtunkhwa vide KPK Act XV of 2016 dated 12.08.2016 and thereby both the above noted articles are no longer available in the statute book to the extent of Khyber Pakhtunkhwa province. For the sake of arguments, if the case of Respondent No.1 is considered time barred, even then the petitioner will not become owner automatically and cannot claim the title after the said cutoff date. The record would further confirm that the petitioner has never claimed title under prescription either before or after the target date noted above. The case of Nawaz Ali Khan and another Vs. Nawabzada and others (PLD 2003 SC 425), as relied upon by the learned counsel for the petitioner is not applicable to the facts and circumstances of the present case and is distinguishable. The learned counsel without going through the entire judgment referred a part of the same in support of his case and thereby created a little bit confusion. In the said judgment, the mortgagee had filed a suit for prescription of his title much prior to the target date of 31.08.1991. Though it is not mentioned in the said judgment as to whether any decree of prescription of title was passed in favour of that mortgagee or not but as per settled law only those mortgages are exempt from the application of Maqbool Ahmad's case (*supra*) in which a decree of prescription of title is passed prior to the target date as noted above. As far as, the title on the basis of prescription is concerned, legally a decree of a competent civil Court that too prior to the target date is must and now after the judgment of this Court in Maqbool Ahmad's case (*supra*), the principle of prescription has been buried alongwith the law once for all. Even in the presence of the Articles 147 and 148 of the Act of 1908, the rights of ownership of a mortgagor cannot be even touched to talk of losing their right(s). Here in this case, the mortgagee was in possession and because of purchase of mortgagee rights from Muhammad Saleem etc., as discussed above, fresh cause of action and fresh start of limitation has accrued to the Respondent No.1, the

mortgagor. It is an undeniable fact that the petitioner, as discussed above, purchased the mortgagee rights vide Mutation No.673 dated 28.03.1981, which would confirm the fact that his right under prescription was not mature even till the cut-off dated of 31.08.1991. His argument that the Respondent No.1 can not ask for redemption of his property from the charge of mortgage because of efflux of time is not tenable in view of the above facts.

9. The arguments of the learned counsel for the petitioner are based on misconception of law and being not fully aware of the facts available on the record.

10. This petition being meritless is not competent, hence, the same is dismissed as such and leave refused. Needless to mention that the Executing Court should restore the possession of the mortgaged property to the Respondent No.1 hopefully within a period of three months and the necessary entries in the shape of mutation of redemption of the mortgage be entered and attested without failure, as the Respondent No.1 has been kept away for a long period of time from his legal rights of enjoying his property. It is redeemed without mortgaged money as he being in possession has received usufruct more than the mortgaged money.

Costs shall follow the event.

ISLAMABAD

13.01.2025

Approved for Reporting

Irfan Aslam, Stenotypist

Assisted by:

Mr. Habib, Law Clerk

Mian Johar Imam, Law Clerk