

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE SARDAR TARIQ MASOOD
MR. JUSTICE MUHAMMAD ALI MAZHAR

CIVIL APPEAL NO.1300 of 2019

(Against Judgment dated 12.03.2019
passed by the Lahore High Court, Multan
Bench in Civil Revision No.96-D/2003)

Mst. Faheeman Begum (deceased) through ...Appellants
L.Rs and others

Versus

Islam-ud-Din (deceased) through L.Rs ...Respondents
and others

For the Appellants : Mr. Anwar Mubeen Ansari, ASC
Ch. Akhtar Ali, AOR

For the Respondents : Nemo

Date of Hearing : 03.05.2023

JUDGMENT

MUHAMMAD ALI MAZHAR, J:- This Civil Appeal is filed to challenge the Judgment dated 12.03.2019 passed by the learned Lahore High Court, Multan Bench in Civil Revision No.96-D/2003 whereby the impugned judgments of the courts below were set aside and the suit of the instant appellants was dismissed.

2. Briefly stated, the facts of the case are that the present appellants filed a suit for declaration and permanent injunction against the respondents, asserting that they were co-owners of a 3/8th share, that is, 10 *kanal* 13 *marlas* ("**suit property**") in undivided agricultural property measuring 28 *kanals* and 8 *marlas*, bearing Khewat no. 82/79, Khatooni No. 296 to 299, situated in Mouza Chat Wahan, Tehsil Mailsi, District Vehari, *vide* fard jamabandi for the year 1995-96, and prayed that the Mutation No.260 dated 29.12.1981 ("**Mutation**") be set aside as being against the law, collusive and ineffective *qua* their rights.

3. Learned counsel for the appellants argued that the respondents have failed to discharge the burden of proof with respect to offer and acceptance, and transfer of possession, and that the said Mutation was effected through fraud and forgery, and was attested in connivance with the Revenue Department. It was further argued that Mst. Ghausan had

never appeared before the revenue officer and the Mutation did not bear the thumb impression of Mst. Ghausan, or her CNIC number, nor were the CNIC numbers of those persons who allegedly identified Mst. Ghausan disclosed therein. It was alleged that the respondent no.1 is the brother of the present appellants and was entrusted with the suit property as a tenant after the death of Mst. Ghausan; during this time the respondent no.1 had regularly been paying the appellants a share of the produce, however on the *kharif* crop of 1996 the respondent no.1 allegedly '*refused to liquidate his obligation regarding the share of produce and told that suit land was not in the names of plaintiffs*'. Subsequently the appellants scrutinized the revenue record and it was discovered that the suit property had been shown to be gifted to the respondent no.1 and Yasin (legal heirs are impleaded as respondents no. 2 to 5) by Mst. Ghausan, whereas Mst. Ghausan had never offered to gift the same in her lifetime, nor had any acceptance or transfer of possession taken place. The learned counsel for the appellants further argued that the concurrently rendered judgments and decrees of the Trial and Appellate Courts were in accordance with law, and the interference of the learned High Court therewith was not justified.

4. The present respondents filed the Civil Revision before the High Court with the plea that the judgments and decrees of the lower *fora* are liable to be set aside on account of mis-reading and non-reading of evidence on record and that the Trial and Appellate Court have erred in observing that a *tamleek* is not recognizable if the same is mutated to deprive the real inheritors of the property as the suit property was gifted to the respondents during Mst. Ghausan's lifetime and she had appeared before the Revenue Officer in this regard. It was submitted that no description of the allegation of fraud was provided in the plaint, nor was any date of death cited for Mst. Ghausan. It was further alleged that the question of limitation was wrongly decided and, although the respondents had established their entire case by producing the necessary witnesses, heavy reliance was placed on the solitary statement of the appellant no.1 which was a material illegality.

5. We have heard the learned counsel for the appellants and carefully examined the available record, along with the concurrent findings of the lower *fora*. The impugned judgment clearly reflects that the High Court has properly scrutinized the evidence adduced by the parties and the Judgments and Decrees of the lower Courts and, after proper application of mind, has reached a just and equitable conclusion. For

ease of reference the operative paragraphs of the impugned judgment are reproduced hereunder:

"5. It was claim of the respondent-plaintiff Faheeman Begum that in fact no Tamleek was made in favour of the petitioners and the mutation No.260 dated 29.12.1981 was based on fraud, misrepresentation and collusion. After such allegation, the petitioners were under burden to prove valid Execution of said mutation, for which they produced Allah Bukhsh (D.W.1) Lumberdar, Jumma Shah (D.W.2) Tehsildar, Mumtaz Hussain Patwari (D.W.4), Sardar Yar Muhammad Buzdar Assistant Commissioner (D.W.5), Muhammad Shafi retired Patwari (D.W.6) and one of the petitioners-defendants Islam-Ud-Din as D.W.3; they all have supported the stance take up by the petitioners and have deposed that the mutation on Tamleek was executed in accordance with law and Mst. Ghausan while appearing before the revenue officer got the same executed. All the witnesses remained affirm on material points. It has come on record that Mst. Ghausan remained alive for a considerable time but in her life time she did not ever challenge the veracity and legality of mutation in dispute; thus, as per ratio of judgment reported as Abdul Haq and another v. Mst. Surrya Begum and others (2002 SCMR 1330) the respondent-plaintiff Mst. Faheeman Begum had no locus standi to call into question the same while filing suit as admittedly the said mutation has been given effect in the revenue record. Same is the position in esteemed judgment reported as Muhammad Rustam and another v. Mst. Makhan Jan and others (2013 SCMR 299) & (PLJ 2013 SC 96).

Apart from this, the respondent-plaintiff Mst. Faheeman Begum has neither described the ingredients of fraud in plaint as required by Order VI, Rule 4 of the CPC nor proved the same as to how the petitioners committed fraud; as against this, as stated above, the petitioners produced all the relevant witnesses in the witness box to prove the valid execution of mutation in their favour. They are in possession of the disputed property and nothing is on record to suggest that they ever paid share of produce to the respondent(s)-plaintiff(s), rather it has been proved on record that donor and donees appeared before the concerned authorities and mutation of Tamleek was entered and attested in accordance with law. Reliance is placed on Taj Muhammad Khan through L.Rs. and another v. Mst. Munawar Jan and 2 others (2009 SCMR 598).

Moreover, the mutation in dispute was executed on 29.12.1981, whereas the suit was instituted on 03.05.1997, which was badly barred by limitation." (emphasis supplied by us)

6. In the instant case the respondents have substantiated the fact of *tamleek* through cogent evidence in the form of the revenue record and witnesses produced before the Trial Court, as outlined in the impugned judgment, but the learned Trial and Appellate Courts have failed to consider the evidence in its true perspective. The learned High Court also noted that the suit was badly barred by time as the mutation in dispute was executed on 29.12.1981, whereas the suit was filed with a delay of almost 15 years on 03.05.1997.

7. If the concurrent findings recorded by the lower *fora* are found to be in violation of law, or based on misreading or non-reading of evidence, then they cannot be treated as being so sacrosanct or sanctified that

cannot be reversed by the High Court in revisional jurisdiction which is pre-eminently corrective and supervisory in nature. In fact, the Court in its revisional jurisdiction under Section 115 of the Code of Civil Procedure, 1908 ("**CPC**"), can even exercise its *suo motu* jurisdiction to correct any jurisdictional errors committed by a subordinate Court to ensure strict adherence to the safe administration of justice. The jurisdiction vested in the High Court under Section 115, CPC is to satisfy and reassure that the order is within its jurisdiction; the case is not one in which the Court ought to exercise jurisdiction and, in abstaining from exercising jurisdiction, the Court has not acted illegally or in breach of some provision of law, or with material irregularity, or by committing some error of procedure in the course of the trial which affected the ultimate decision. The scope of revisional jurisdiction is restricted to the extent of misreading or non-reading of evidence, jurisdictional error or an illegality in the judgment of the nature which may have a material effect on the result of the case, or if the conclusion drawn therein is perverse or conflicting to the law.

8. The learned High Court therefore rightly relied on the judgments rendered by this Court in Abdul Haq and another v. Mst. Surrya Begum (2002 SCMR 1330), Taj Muhammad Khan thr. L.Rs and another v. Mst. Munawar Jan and others (2009 SCMR 598), and Muhammad Rustam and another v. Mst. Makhan Jan and others (2013 SCMR 299), and held that the instant appellant had no *locus standi* to challenge the legality of the mutation on a vague allegation of fraud when Mst. Ghausan had never challenged the same in her life time and the mutation had been given effect in the revenue record.

9. In view of the above, the learned counsel for the appellants was unable to persuade us that there was any error, perversity, or legal or jurisdictional defect in the impugned judgment warranting the interference of this Court. Consequently, this Civil Appeal is dismissed.

Judge

Judge

Islamabad
03.05.2023
Faaiza/Khalid
Approved for reporting.