

92/23

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Amin-Ud-Din Khan
Mr. Justice Muhammad Ali Mazhar
Mr. Justice Athar Minallah

AFR
C.A No.998 of 2020

(Against the judgment dated
12.10.2020 passed by the Peshawar
High Court, Peshawar in Civil
Revision No. 1007 of 2009).

Shah Fakhr-e-Alam and others

....Appellants

Versus

Mst. Shaukat Ara and others

...Respondents

For the Appellants:

Mr. Zia ur Rehman Khan, ASC.
Syed Rifaqat Hussain Shah, AOR.

For the Respondents:

Mr. Abdus Sattar Khan, ASC for
respondents No. 1, 2 and 4.

Date of Hearing:

24.05.2023

ORDER

Amin-ud-Din Khan, J: Through this appeal filed under Article 185(2)(d) of the Constitution of Islamic Republic of Pakistan, 1973, the appellants have challenged the judgment and decree dated 12.10.2020 passed by the Peshawar High Court, Peshawar whereby Civil Revision No. 1007 of 2009 filed by the respondents was allowed and concurrent judgments of the two fora below were set aside.

2. The plaintiffs-respondents filed a suit seeking a declaration of ownership over a specific piece of land measuring 116 kanals and 11 marlas. They claimed that the defendants had no legitimate connection to the property and that the erroneous entries in the revenue record favouring the defendants should be corrected. The plaintiffs further requested a permanent injunction to prevent the defendants from denying their ownership, as well as restoration of possession if the plaintiffs were proved not to be already in

possession, and a partition of the property. According to the plaintiffs' case, the suit property was originally owned by Qazi Habib Ullah Khan and Qazi Ghulam Nabi, who sold it to one Abdul Majeed. The predecessor of the plaintiffs, Qazi Ameer Muhammad Khan, pre-empted the sale. There came another claim of pre-emption from one Qazi Ahmad Ali Khan. A subsequent compromise decree in 1937 declared that both pre-emptors were entitled to equal shares of the property. The plaintiffs claimed that Qazi Ameer Muhammad Khan possessed the property until his death, and they are now the rightful owners in possession. It was also alleged that Qazi Ahmad Ali Khan mortgaged his share of the property, which was subsequently transferred to the defendants through a registered sale deed. It is further pleaded that even the share of Qazi Ameer Muhammad Khan was included in said mortgage and transfer. The plaintiffs discovered these facts only one and a half years before the suit when reviewing the revenue record. The suit was contested by raising objections related to limitation and Order II Rule 2 of the Code of Civil Procedure 1908 (CPC), arguing that since the plaintiffs challenged the 1937 decree, they were obligated to challenge it under section 12(2) of the CPC. The defendants claimed that Qazi Ameer Muhammad Khan was never recorded as the owner, as the property belonged to Qazi Ahmad Ali Khan, who mortgaged it to Syed Ameer Khusrau, the father of defendants no. 1 & 2. The property was then transferred to defendants no. 1 & 2 through a registered sale deed. It was further stated that a pre-emption suit was filed against the sale, and ultimately, defendants no. 1 & 2 became the owners of the entire property, including the suit property. The suit property subsequently also underwent partition. The trial court dismissed the suit, and the appellate court upheld the dismissal. However, the plaintiffs' revision petition was allowed, and the suit was decreed. Hence, this appeal.

3. We have heard the learned counsel for the parties and perused the record. Learned counsel for the appellants has relied upon “Mushtaq ul Aarifin and others versus Mumtaz Muhammad and others” (2022 SCMR 55), “Muhammad Shifa and others versus Meherban Ali and others” (2022 SCMR 647), “Muhammad Rafique and another versus Syed Warand Ali Shah” (2021 SCMR 1068), “Qamar Sultan and others versus Mst. Bibi Sufaidan and others” (2012 SCMR 695), “Haji Wajdad versus Provincial Government through Secretary Board of Revenue Government of Balochistan, Quetta and others” (2020 SCMR 2046) and “Nasrullah Khan and another versus Mst. Khairunnisa and others” (2020 SCMR 2101).

On the other hand, learned counsel for the respondents has referred to the judgments of this Court reported as “Allah Ditta versus Ghulam Muhammad and 3 others” (2008 SCMR 1021), “Ali Ahmad and another versus Muhammad Fazal and another” (1972 SCMR 322), “Abdul Sattar Khan and another versus Rafiq Khan and others” (2000 SCMR 1574), “Malik Khawaja Muhammad and 24 others versus Marduman Babar Kahol and 29 others” (1987 SCMR 1543), “Muhammad Yaqoob versus Mst. Sardaran Bibi and others” (PLD 2020 Supreme Court 338), “Khan Muhammad through LR’s and others versus Mst. Khatoon Bibi and others” (2017 SCMR 1476), “Evacuee Trust Property Board and others versus Mst. Sakina Bibi and others” (2007 SCMR 262), “Muhammad Shafi versus Mushtaque Ahmed through Legal Heirs and others” (1996 SCMR 856), “Ali Muhammad versus Hussain Bakhsh and others” (PLD 1976 SC 37), “Muhammad Hussain and others versus Wahid Bakhsh (deceased) through Legal Heirs” (2004 SCMR 1137), “Ali Akbar Khan versus Ghulam Sarwar and 19 others” (PLD 1986 Peshawar 1) and “Muhammad Ali and 25 others versus Hassan Muhammad and 6 others” (PLD 1994 SC 245).

4. We have gone through the case law cited by the learned counsel for the parties. We are of the view that while entertaining and deciding a matter, the court must keep in view the provision under which the matter has arisen. A petition under section 115 of CPC was before the learned High Court. We have gone through the judgment passed by the learned High Court. We note that the learned High Court while exercising jurisdiction under section 115 of the CPC, once a revision was before that Court, was required to remain within the jurisdiction vested in it under the said provision of law. Nevertheless, the learned High Court went to reinterpret the evidence available on the file and while doing so not only ignored the interpretation made by the two fora below but reinterpreted the evidence without explaining how the interpretation of the evidence made by the two fora below was incorrect and illegal. We believe that when a trial court and the first appellate court, which are responsible for considering both factual and legal aspects, have already taken a specific viewpoint, the learned High Court under the jurisdiction granted by section 115 of the CPC should generally refrain from offering an alternative interpretation of the evidence, unless the lower courts' interpretation is clearly unreasonable or contradicts well-established legal principles. Nothing of the sort was available in the instant case before the High Court.

5. The learned High Court fell in error while ignoring the concurrent findings of fact recorded by the two fora below. It is settled principle of law that when a higher court is unsatisfied with the findings of the lower courts, the higher court must carefully examine and discuss the lower courts' findings. Subsequently, the higher court should provide reasons for disagreeing with the lower courts and replacing their findings with its own. In the instant case,

it seems that the learned High Court disregarded the factual findings made by the lower courts and instead substituted its own findings. This action not only goes against the principles of justice but also contradicts the established legal precedent set by this Court. It is essential that any findings being set aside must be done so with proper reasons and logical justification, while the findings made by the higher court must also be supported by valid reasons based on the available evidence and the law.

6. The evidence available on record reveals that Abdul Majeed purchased the suit property from Qazi Habib Ullah Khan and Qazi Ghulam Nabi. However, pre-emptors Qazi Ameer Muhammad Khan and Qazi Ahmad Ali Khan intervened before the sale was finalized. A compromise was reached during the proceedings. The plaintiff claims that the suit property was divided equally between Qazi Ameer Muhammad Khan and Qazi Ahmad Ali Khan based on the compromise. The defendants, on the other hand, refute this and assert that the entire property was decreed in favour of Qazi Ahmad Ali Khan. Record of litigation from 1937, Ex.PW2/4, indicates that the suit property was ordered to be divided equally between both pre-emptors. In accordance with the decree in his favour, Qazi Ameer Muhammad Khan filed an execution petition which was duly executed and the revenue hierarchy attested mutation no. 492 in favour of Qazi Ameer Muhammad Khan. However, the predecessor of the defendants, Syed Ameer Khusrau, challenged the mutation in the Court of Collector Charsadda. The Collector, in his decision dated 27.03.1946, Ex.PW3/11, cancelled the mutation. It is evident from the available record that Qazi Ameer Muhammad Khan did not contest the findings of the Collector's Court, implying that these findings have become final. Furthermore, the suit property was later

purchased by Syed Ameer Khusrau from Qazi Ahmad Ali Khan. This transaction was sought to be pre-empted by a number of people including Qazi Ameer Muhammad Khan by filing separate suits. While some pre-emptors continued to contest their respective suits, Qazi Ameer Muhammad Khan withdrew his suit midway. The conduct of Qazi Ameer Muhammad Khan suggests that he was not unaware of his ownership rights regarding the suit property; rather, he intentionally relinquished his rights by not challenging the Collector Charsadda's decision and by withdrawing his pre-emption suit.

7. Regarding the respondents' argument in defence of the High Court's judgment on the issue of limitation, which suggests that there is no time limit for challenging a wrong entry in the revenue record, we must express our disagreement. This argument contradicts both the law itself and the rulings of higher courts. It is not an established legal principle that no limitation can be imposed against a wrong entry. The law states that if a wrong entry is made and, in accordance with the prevailing Land Revenue Act, the ownership entry is recorded in the Register Haqdaran Zameen/Jamabandi/periodical record, each new entry in the latest record, typically updated every four years, creates a new cause of action. However, for a plaintiff to successfully argue that the wrong entry was unknown to them and lacked legal basis, they must demonstrate that the last wrong entry came to their knowledge. In such cases, the Court has declared the suit to be within time. However, it is important to note that this Court, as well as the principles of law of limitation, have never provided a blanket exemption from the law of limitation for individuals challenging an admitted wrong entry.

8. The case dates back to year 1946 when the Collector Charsadda cancelled the mutation recorded in the favour of Qazi Ameer Muhammad Khan, but the suit was filed in 1992, clearly exceeding the limitation and being time-barred. In fact, Qazi Ameer Muhammad Khan, whose legacy the plaintiffs-respondents claim rights from, never disputed the Collector's order. The argument presented by the learned counsel that the order is invalid and not binding on the plaintiffs-respondents is untenable under the law. Unless challenged and declared invalid through appropriate action and declaration, an entry, order, or action remains in effect. In this case, numerous transactions, including sales, pre-emption suits, declaratory suits, and the transfer of the suit property, took place after the Collector's order, but none of them were challenged or sought to be declared null and void by the plaintiffs-respondents. The cited case law by the respondents' counsel is not applicable to this case, and therefore, they cannot take benefit from it. Given these circumstances, the jurisdiction exercised by the learned High Court under Section 115 of the CPC is contrary to the law, and thus, the challenged judgment is overturned. The well-reasoned findings of the lower courts, which were based on a proper interpretation of the evidence and application of the law, are reinstated. Accordingly, this appeal is allowed in the aforementioned terms.

Islamabad, at 11:30 am
24th of May, 2023
(Mazhar Javed Bhatti)

Approved for reporting.