

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

**Present:**

Justice Shahid Waheed  
Justice Shahid Bilal Hassan  
Justice Aamer Farooq

**Civil Appeal No.151-P of 2013 & C.M.A.Nos.11-P of 2014, 213-P of 2017, 530-P of 2018 & 2570 of 2024**

*(Against the judgment & decree dated 21.01.2013 of the Peshawar High Court, D.I.Khan Bench passed in C.R.No.52 of 2009)*

*Rana Muhammad Yameen and another*

... *Appellant(s)*

**Versus**

*Muhammad Jamil (decd.) through L.Rs. and others*

... *Respondent(s)*

For the Appellant(s):

Mr. Abdul Sattar Khan, ASC  
(for appellants & applicants in  
C.M.A.No.11-P of 2014)  
(via video-link from Peshawar)

Syed Abid Hussain Shah, ASC for  
applicant(s)  
(in C.M.A.No.213-P of 2017)

Mr. Ahmed Ali, ASC for applicant(s)  
(in C.M.Nos.530-P of 2018 & 2570 of 2024)

For Respondent(s):

Syed Mastan Ali Shah Zaidi, ASC  
(for respondents No.1 to 6)

Mr. Rashdeen Nawaz Kasuri, Additional  
Attorney General for Pakistan, on  
Court's call

Date of Hearing:

21.02.2025

**ORDER**

**SHAHID BILAL HASSAN, J.** Through this appeal, filed under Article 185(2)(d) of the Constitution of Islamic Republic of Pakistan, 1973, the appellants have challenged the vires of the impugned judgment and

decree dated 21.01.2013 passed by Peshawar High Court, D.I. Khan Bench, in revision petition No.52 of 2009.

2. Facts, in precision, are as such that a patch of land, fully described in the plaint, was allotted to Hassan Muhammad son of Naseer Khan, who died on his way while migrating to Pakistan from India at the time of partition of the sub-continent in the year 1947. He was allotted the suit land in District D.I. Khan in lieu of his verified claim No.1388 in Chak No.71/WB, Vehari, Punjab. On getting knowledge about the same, Hazrat Nabi, defendant No.1/respondent No.7 allegedly through a fake and fictitious power of attorney fraudulently transferred the said land to defendants No.2 to 4/ present appellants and respondent No.8 on behalf of the late Hassan Muhammad. Muhammad Jamil and five others/respondents No.1 to 6, purportedly, being legal heirs of the deceased Hassan Muhammad instituted a suit against the said Hazrat Nabi and three others for declaration to the effect that they were owners in possession of the suit land through inheritance from their predecessor in interest namely Hassan Muhammad and the appellants and respondent No.8/ defendants had no concern with the same. They also sought declaration to the effect that the subsequent transfer of the suit land by respondent No.7/defendant No.1 in the name of appellant No.2 on the basis of alleged forged and fake general power of attorney through mutations detailed in the plaint are false, based on mala fide, illegal and fraudulent, therefore, ineffective upon their rights. They also prayed that the so-called power of attorney, allegedly executed by late Hassan Muhammad, their predecessor in interest in favour of respondent No.7/defendant No.1 being fake and fictitious is liable to cancellation. Alongwith the suit, the respondents No.1 to 6 also sought perpetual and mandatory injunction restraining the appellants and respondent No.8/defendants from interfering in the possession of the suit land; that the appellants and respondent No.8/defendants were asked time and again to cope with the demand of the respondents No.1 to 6/ plaintiffs but they refused and denied; hence, the suit.

The suit was contested by the appellants and respondents No.7 & 8 by submitting written statement. The divergence in pleadings of the parties was summed up into issues by the trial Court. It is notable fact

that during proceedings of the suit, a person with name Hassan Muhammad appeared before the trial Court and submitted an application for dismissal of the suit by contending therein that plaintiffs/respondents No.1 to 6 were neither his relatives nor known to him and they have committed fraud to snatch his property; that he has already lodged an FIR No.197 against the plaintiffs on 03.10.1995 under sections 419/420/468/471 PPC at Police Station Cantt. D.I. Khan, in which the plaintiffs/respondents No.1 to 6 remained in gallows. The said Hassan Muhammad produced the copy of the above-mentioned FIR, original claim, allotment form and NIC with his application. The Court recorded the statement of Hassan Muhammad and dismissed the suit of the plaintiffs/respondents No.1 to 6 with cost of Rs.5,000/- vide order dated 29.05.1996. An appeal was preferred before the District Judge, D.I. Khan against the said order which was dismissed vide judgment dated 07.11.1996. Revision petition was filed by the respondents No.1 to 6/plaintiffs before the Peshawar High Court, which was accepted on 21.05.1999 and case was remanded with a direction to record evidence of the parties on the following additional issue:

*Whether Hassan Muhammad S/O Naseer Khan the original claimant/allottee of the suit land and predecessor-in-interest of the plaintiffs is dead?*

After remand of the case, the parties produced their pro and contra evidence. The trial Court vide judgment and decree dated 30.05.2008 dismissed suit of the respondents No.1 to 6/plaintiffs, who being aggrieved preferred an appeal. The appellate Court vide judgment and decree dated 28.01.2009 dismissed the appeal with the following observation:

*'Resultantly, this appeal having no force is dismissed while the judgment/order and decree of the learned trial Court dated 30.5.2008 is maintained. As none of the party i.e. plaintiffs or defendants could establish their respective claim to the suit property, therefore, the suit property would revert back to the central government for which the revenue officials be asked to doing the needful. The claim of the plaintiffs being frivolous which has dragged the Courts into controversy since institution of the very suit on 05.9.1995, therefore, compensatory costs of Rs.10,000/- (Rupees ten thousand) is imposed on the plaintiffs to be deposited in the government treasury.'*

The respondents No.1 to 6 feeling dissatisfied with the above said judgments and decrees filed revision petition bearing No.52 of 2009 before the Peshawar High Court, D.I. Khan Bench, which was accepted vide impugned judgment dated 21.01.2013 and while setting aside the impugned judgments and decrees of both the lower Courts, the suit of the respondents No.1 to 6/plaintiffs was decreed as prayed for in the plaint. The compensatory cost of Rs.10,000/- imposed upon the plaintiffs/respondents No.1 to 6 was also declared null and void.

3. At first, we have to dilate upon and consider the claim of the appellants that as to whether they successfully discharged the onus with regards to their entitlement of the disputed land being legal heirs of Hassan Muhammad (deceased), the original allottee through verified claim No.1388, Chak No.71/WB in Vehari, Province of Punjab? When we go through the record and ponder upon the same, it divulges that the appellants/plaintiffs narrated a self-drafted pedigree table in the plaint, showing their link/relation with Hassan Muhammad (deceased), allottee of the disputed land. Neither they produced any independent witness nor produced the pedigree table from the proper custody i.e. revenue hierarchy establishing their relationship with the deceased Hassan Muhammad (original allottee) and even the death certificate of said Hassan Muhammad (deceased) was also not brought on record showing and establishing his date of death. It is an established principle of law that mere taking a stance and pleading a fact in the plaint or written statement is not sufficient, rather the same has to be proved by leading unimpeachable, confidence inspiring and solid evidence, direct or secondary (*after obtaining permission by moving application in this respect*). In judgment<sup>1</sup> this Court has held that:

*"It is, indeed, a clear drift rather an outright departure from what has been pleaded in the plaint. Granted that averments made in pleadings do not constitute evidence but the evidence led in their support must be consistent therewith. Anything stated outside the scope of such averments cannot be looked into. The rule of *secundum allegata et probata*, not only excludes the element of surprise, but also precludes the party from proving what has not been alleged or pleaded. This Court, in the cases of "Government of West Pakistan (Now Punjab) through*

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<sup>1</sup> Muhammad Nawaz alias Nawaza and others vs. Member Judicial Board of Revenue and others (2014 SCMR 914)

*Collector, Bahawalpur v. Hail Muhammad) (PLD 1976 SC 469), "Messrs Choudhary Brothers Ltd., Sialkot v. The Jaranwala Central Co-operative Bank Ltd., Jaranwala" (1968 SCMR 804), "Binyameen and 3 others v. Chaudhry Hakim and another" (1996 SCMR 336) and "Major (Retd.) Barkat Ali and others v. Qaim Din and others" (2006 SCMR 562), held that no party can be allowed to lead evidence on a fact which has not been specifically pleaded nor can any evidence be looked into which is outside the scope of pleadings." (Underline for emphasis)*

It is a cardinal principle of law that the plea raised, as observed above, in the pleading(s) by either of the party, would have no effect in the absence of evidence in proof of the same and does not equate the evidence rather the person who asserts a fact in pleading(s) has to prove the same by leading evidence, independent and unimpeachable, in its support<sup>2</sup>, which is lacking in this case because the respondents No.1 to 6 could not produce independent evidence and even none of them except plaintiff No.6 Umar Din (P.W.8) entered appearance in the witness box so as to corroborate their stance, pleaded in the plaint; this witness appeared for himself and on behalf of other plaintiffs/respondents as their attorney. This witness being beneficiary and interested witness, without independent corroboration, especially in absence of submission of pedigree table through proper custody, cannot be believed. Moreover, non-appearance of other plaintiffs except P.W.8 in the witness box and depose on oath, as well as, stand the cross examination by rival party, cannot be treated as substantive evidence on their behalf. In judgment Mst. Khair-UI-Nisa<sup>3</sup> a four-member Bench of this Court held:

*In the present case, unfortunately, Mohammad Hussain Shah died during the pendency of the suit before his evidence was recorded. He, therefore, could not appear in person to state whether he had notice of the original contract or not. There is, therefore, no negative evidence on behalf of the appellants to discharge the burden which lay so heavily on them. Raja Mohammad Anwar, learned counsel for the appellants, has contended that the deceased had denied the factum of the notice in the written statement and this should be considered as evidence in the case under section 32 of the Evidence Act. The contention of the learned counsel is not well founded. Written statements cannot be the exhibits in the case without the person who filed the same being examined in the Court. The statements*

<sup>2</sup> Articles 117 & 118, Qanun-e-Shahadat, 1984

<sup>3</sup> Mst. Khair-UI-Nisa and 6 others v. Malik Muhammad Ishaque and 2 others (PLD 1972 Supreme Court 25)

*made in the written statement are not on oath. They are only verified and therefore, they cannot be treated as evidence in the case. This view finds support from the case of J. B. Ross & Co. v. C. R. Seriven and others (A I R 1917 Cal. 269 (2)) and Muhammad Siddique v. Bhupendra Narayan Roy Chowdhury (P L D 1962 Dacca 643). It was held in the former case as under :----*

*"A verification is required with a view to discourage, if not 'to prevent, the institution of false suits; the Legislature never contemplated that verified statements should be treated as evidence on behalf of a plaintiff against a defendant. 'The inference may legitimately be drawn from the language used in section 191 read with section 193, I. P. C., that a verified statement would not be "evidence" but for the special provision of section 191 which has been enacted for a special purpose."*

4. From the above discussion, it can safely be concluded that no doubt the disputed land was allotted to one Hassan Muhammad (deceased) but the respondents No.1 to 6 could not establish and prove their relationship with the said Hassan Muhammad by leading confidence inspiring, trustworthy and independent evidence; therefore, their suit was rightly dismissed by the trial Court as well as appellate Court and the High Court has wrongly evaluated evidence on record while setting aside the concurrent judgments and decrees passed by the Courts below.

5. Now, we consider the claim of the present appellants, defendants in the suit, who claimed that Hassan Muhammad through respondent No.7, by executing a purported general power of attorney, transferred the disputed land in their favour through different deeds and mutations. It is evident from record that in pre-remand proceedings though one person posing himself as Hassan Muhammad by submitting his NIC on 21.05.1996 appeared before the trial Court and while recording his statement admitted the genuineness of the purported general power of attorney, executed in favour of the respondent No.7, but in post remand proceedings the present appellants neither produced the said person posing himself as Hassan Muhammad despite order by the Court in pursuance of order of the High Court nor brought anything showing his incapability to appear before the Court or death of said person during the intervening period by bringing on record death certificate. Even, the appellants could not bring on record and exhibit the original purported general power of attorney so as to strengthen their claim. As observed above, mere

taking a plea in pleadings is not sufficient rather the same has to be proved by leading evidence; however, in this case, the present appellants also failed to prove their stance, taken in their written statement. The stance of the appellants also stood negated by the deposition of P.W.5, who produced letter dated 01.06.2006 by the District Registrar, Sahiwal as Ex.P.W.5/12, which depicts that ID Card bearing No.334-33-999645 was never issued in the name of Hassan Muhammad son of Naseer Khan r/o Chak No.98/6R Tehsil and District Sahiwal, therefore, the appellate Court rightly drew inference that the general power of attorney was never executed genuinely and the same is collusive, fraudulent, forged, fictitious and therefore has no effect whatsoever. The conclusion can be none but failure of the appellants in proving their stance, as well. Therefore, the appellate Court has rightly adjudicated upon the matter in hand while rendering judgment and decree dated 28.01.2009.

6. Though the High Court has ample powers to undo and disturb the concurrent findings of the trial Court and first appellate Court in exercise of revisional jurisdiction under section 115, Code of Civil Procedure, 1908, but, if the same are found to be based on any illegality or irregularity and wrong exercise of jurisdiction; however, in the present case no such occasion was available with the High Court; therefore, when the position was as such, the concurrent findings of the Courts, on facts, ought not be interfered with.<sup>4</sup> Moreover, in judgment<sup>5</sup> this Court has held:

*'Needless to mention that a revisional Court cannot upset a finding of fact of the Court(s) below unless that finding is the result of misreading, non-reading, or perverse or absurd appraisal of some material evidence. The revisional Court cannot substitute the finding of the Court(s) below with its own merely for the reason that it finds its own finding more plausible than that of the Court(s) below.'*

Furthermore, in Mst. Farzana Zia case<sup>6</sup> it has invariably been held by this Court that:

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<sup>4</sup> Mst. Zaitoon Begum v. Nazar Hussain and another (2014 SCMR 1469), CANTONMENT BOARD through Executive Officer, Cantt. Board Rawalpindi v. IKHLAQ AHMED and others (2014 SCMR 161), Muhammad Farid Khan v. Muhammad Ibrahim, etc. (2017 SCMR 679), Muhammad Sarwar and others v. Hashmal Khan and others (PLD 2022 Supreme Court 13) and Mst. Zarsheda v. Nobat Khan (PLD 2022 Supreme Court 21)

<sup>5</sup> Salamat Ali and others v. Muhammad Din and others (PLJ 2023 SC 8)

<sup>6</sup> Mst. Farzana Zia and others v. Mst. Saadia Andaleeb (2024 SCMR 916)

*'13. We are sanguine that the High Court has the powers to reevaluate the concurrent findings of fact arrived at by the lower courts in appropriate cases but cannot upset such crystalized findings if the same are based on relevant evidence or without any misreading or non-reading of evidence. The first appellate court also expansively re-evaluated and re-examined the entire evidence on record. If the facts have been justly tried by two courts and the same conclusion has been reached by both the courts concurrently then it would not be judicious to revisit it for drawing some other conclusion or interpretation of evidence in a second appeal under section 100 or under revisional jurisdiction under section 115, C.P.C., because any such attempt would also be against the doctrine of finality.*

*It was further held that:*

*The High Court cannot substitute its own findings unless it is found that the conclusion drawn by the lower courts were flawed or deviant to the erroneous proposition of law or caused serious miscarriage of justice and must also avoid independent re-assessment of the evidence to supplant its own conclusion.'*

7. The above portrayal ends with the conclusion that the instant appeal is accepted, impugned judgment and decree dated 21.01.2013 passed by Peshawar High Court, D.I. Khan Bench, in revision petition No.52 of 2009 is set aside and that of the appellate Court is restored.

8. Application bearing C.M.A.No.11-P of 2014 is for impleading legal heirs of respondent No.7; the same is allowed subject to all just and legal exceptions. The applications bearing C.M.A.Nos.213-P of 2017, 530-P of 2018 and 2570 of 2024 have been filed for impleading the respective applicants as respondents, being necessary party, in the appeal in hand. In this respect, we observe that as the alleged general power of attorney was forged and fictitious, the sale/transfer of disputed land, made on the basis of the said document, is nothing but a void transaction and on the basis of the same, the subsequent purchaser(s) cannot claim their right(s). Therefore, the above C.M.As. stand dismissed.

9. Before parting with this judgment, we observe, further, as both the parties have failed to establish their claim and title against the disputed land; therefore, the disputed land would be treated as 'Nazul Land' and would remit to the Federal Government i.e. status ante and would be disposed of as per rules governing the disposal of "Nazul land". Mr. Rashdeen Nawaz Kasuri, Additional Attorney General for



Pakistan, on Court's call, has appeared before us, who would inform the concerned quarters as to remitting of the suit land to the Central Government, for which the revenue hierarchy would proceed with the matter and to do the needful in accordance with law.

Judge

Judge

Judge

Islamabad:  
21.02.2025  
'Approved for reporting'  
(M.A.Hassan)