

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Yahya Afridi

Mrs. Justice Ayesha A. Malik

**CIVIL APPEAL NO.43-Q OF 2018**

[Against judgment dated 28.11.2014 passed by the High Court of Balochistan, Quetta in CR No.234/2006]

Ghulam Mustafa

***...Petitioner(s)***

*Versus*

Mst. Mah Begum and others

***...Respondent(s)***

For the Petitioner(s) : Mr. Habib-ur-Rehman, ASC

For Respondent No.3 : Mr. Kamran Murtaza, Sr.ASC

Other Respondent(s) : Nemo

Date of Hearing : 24.01.2024

**ORDER**

**YAHYA AFRIDI, J.-** By leave of the Court, the appellant

has assailed judgment dated 28.11.2014 passed by the High Court of Balochistan, Quetta ("**High Court**"), whereby civil revision filed by the appellant and others was dismissed. The leave granting order dated 14.12.2018, being relevant, is reproduced below:

"It is, inter alia, contended that the petitioner and the respondents were joint owners pursuant to family settlement. Parties' shares were determined however, later it transpired that the respondents have transgressed their entitlement and sold some of the Khasra No.314 in which the petitioner had a share which matter was agitated before the Revenue Authority through an application dated 25.07.1994. The matter proceeded in respect of a mutation entry No.653, Khasra No.314 measuring 8 rods and 22 pols revenue hierarchy after prolonged proceedings came to a conclusion that though the respondents have transgressed their entitlement yet in equity directed that the petitioner may be compensated out of Khasra No.274 and 275. It is stated that Suit No.233/94 was already pending in respect of Khasra No.274 to 275. It is urged that the order of Revenue Authority could not overtake the judgment and decree of the Civil Court, therefore, it was not executable by the Revenue Authority. Consequently, he had invoked civil jurisdiction; the suit was filed before the learned Senior Civil Judge-II, Quetta, which was decreed. Through impugned judgment under Order II Rule 2, CPC it was held to be barred. It is urged that the suit cannot be held to be barred as the controversy was already sub-judice before the Revenue Hierarchy which is competent to decide the same. The contentions do call for examination. Accordingly, leave to appeal is granted to consider the point noted above."

2. The parties have been locked in litigation for more than two decades, with respect to the ownership dispute over land property situated in *Khasra* No. 313, 314 and 316 and its transfer recorded in mutation No. 653 dated 03.04.1984 ("**disputed property**"), which forms part of the joint property, collectively designated as *Khasra* No. 211, 274, 275, 313, 314, and 316, measuring 40 rods and 2 pols in *Mahal Chashma Habib, Mouza Habib, Quetta*, jointly owned by the predecessors-in-interest of appellant, respondent No. 32 to 37, and respondent No. 1 to 7.

3. In the year 1998, the appellant filed a civil suit for declaration, recovery of possession by way of partition, and permanent injunction of the disputed property in the Court of Civil Judge-II, Quetta. The said suit was dismissed *vide* judgement dated 25.11.2004, essentially on the following grounds: the suit did not disclose the cause of action and was barred by law within the meaning of Order II Rule 2 read with Section 11 of the Code of Civil Procedure, 1908, and Article 114 of Qanoon-e-Shahadat Order, 1984. Aggrieved thereof, the appellant filed an appeal, which too met the same fate, leading to the Civil Revision before the High Court which was dismissed *vide* order dated 28.11.2014. Hence, the present petition before this Court, wherein leave to appeal has been granted, in terms stated in the paragraph 1 of this judgement.

4. The perusal of the records reveals that the appellant, while testifying as a witness<sup>1</sup>, explicitly admitted the following: the sanctioning of Mutation No. 653 in *Khasra* 314 in the year 1984; that in *Khasra* No. 316, *vide* mutation No. 591 dated 07.07.1982<sup>2</sup>, the

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<sup>1</sup> refer to page 121 of the Paper-book

<sup>2</sup> refer to page 183 of the Paper-book

predecessor in interest of respondents No. 1 to 7 mutated land in favour of respondents No. 12 to 15 and respondents No. 16 and 17, and the respondents no. 8 and 26, respectively, and that too, when his father was still alive; further during the course of his cross-examination, the appellant acknowledged the sale of half share in *Khasra* 316 by both him and the predecessors-in-interest of respondents No. 32 to 37; he also admitted that a specific portion of the property underwent partition between his father and the predecessors-in-interest of respondents. In addition to the above admissions, what is also pertinent to note that the appellant in 1994 had initiated a civil suit, seeking a decree for declaration, partition, and possession concerning *Khasra* 274 and 275. However, concerning the partition, the appellant did not pursue a claim for the remaining property. In the same year 1994, the appellant and the predecessors in interest of respondents No. 32 to 37 lodged an application against mutation 653, which was subsequently dismissed.

5. We confronted the learned counsel for the appellant, seeking clarification on how the suit, initiated by the appellant with claims for declaration, permanent injunction, and possession through partition, could be considered within the limitation period prescribed by law. In response, the learned counsel directed our attention to the initial application submitted by the appellant before the revenue hierarchy on 31.08.1994<sup>3</sup>, contending that it was filed within twelve years of the sanctioning of mutation No.653 dated 03.04.1984 (**“the impugned mutation”**), falling within the ambit of Article 142 of the First Schedule to the Limitation Act, 1908.

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<sup>3</sup> refer to page 154-55 of the Paper book

6. We are afraid, the contention of the learned counsel for the appellant is devoid of legal force. In the instant case, the impugned mutation regarding the disputed property was entered on 03.04.1984, which led the appellant to file the suit in 1998 seeking declaration of ownership, recovery of possession and permanent injunction. What is pertinent to note that in the suit filed by the appellant, the reliefs for recovery of possession and permanent injunction are consequential ones, dependent on the main relief of declaration of ownership of the disputed property, which in the present case was filed after 14 years, and thus, goes clearly beyond the six-year period of limitation provided under Article 120 of the First Schedule to the Limitation Act, 1908. By now, it is settled that when the main relief of declaration of ownership is barred by time, the consequential reliefs, even if within time, would be of no legal avail. In this regard, reference may be made to the cases of Muhammad Din v. Deputy Settlement Commissioner (2022 SCMR 1481) and Javaid Shafi v. Rashid Arshad (PLD 2015 SC 212).

7. Regarding the accrual of cause of action and the application of the law of limitation in suits for declaration, the Supreme Court, in the case of Salamat Ali v. Muhammad Din (PLD 2022 SC 353), elucidated the distinction between cases where the cause of action stems from an "apprehended/threatened denial" and those rooted in an "actual denial". The Court affirmed that: -

"26. What "actions" can be termed as an "actual denial of right", and what a mere "apprehended or threatened denial of right", in the context of adverse entries recorded in the revenue record, is a question that requires consideration. Admittedly, entries in the revenue record do not create or extinguish proprietary rights. Such an entry may at most be termed as a mere "apprehended or threatened denial" of right, and not an "actual denial" of right. Accordingly, every new adverse entry in the revenue record relating to proprietary rights of a person in possession (actual or constructive) of the land regarding which the wrong entry is made, gives to such person, a fresh cause of action to institute the suit for declaration. *The situation is, however, different in a case where the person in possession (actual or constructive) of the land regarding which the wrong entry is made, is ousted from such possession, besides a wrong entry in the revenue*

*record. In such a case, the act of ousting him from the actual or constructive possession of the land, constitutes an "actual denial" of his rights, and does not remain a mere "apprehended or threatened denial".* (Emphasis added)

8. A co-owner of the joint property who, despite possessing knowledge of an "actual denial of his right", refrains from challenging the said invasion of his right within the stipulated period of limitation, is denuded of the right to challenge the same. Similarly, in cases of joint property, where the third party interest is created and reflected in subsequent revenue records (*Jamabandi*), the same would not give rise to a renewed cause of action since it amounts to the actual denial of his right, as established in the precedent of Haji Muhammad Yunis vs. Mst. Farukh Sultan (2022 SCMR 1282).

"Considering this legal and factual context, it is imperative to underscore that the legal heirs of a joint property inherently possess the right to assert their claims without constraint by limitation. However, exceptions arise when third-party interests are introduced, and the actual possession of the joint property is transferred to a third party through a transaction with one of the legal heirs/co-sharers. In the present case, as asserted by the appellant, the heirs purportedly illicitly transferred their share to a third party through the impugned mutation. Consequently, the period of limitation is triggered in such circumstances, requiring the aggrieved parties to seek remedy within the prescribed twelve-year limitation for the cancellation and possession of the disputed property."

9. In view of the above, we note that the High Court has appropriately addressed this facet of the matter. Hence, we refrain from delving into the merits of the case and confine our decision to the scope of limitation. Consequently, the appeal is dismissed on account of being time-barred.

JUDGE

Islamabad  
24.01.2024  
'APPROVED FOR REPORTING'  
Azmat/\*

JUDGE