

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

**PRESENT:**

Mr. Justice Umar Ata Bandial, CJ  
Mrs. Justice Ayesha A. Malik  
Mr. Justice Athar Minallah

**CIVIL APPEAL NO.419 OF 2011, CIVIL MISC. APPLICATION  
NO.1839 OF 2011 AND CIVIL APPEAL NO.1184 OF 2019**

[Against the judgment dated 7.4.2011 and 20.3.2014, passed by the Lahore High Court, Bahawalpur Bench, Bahawalpur, in C.Rs. No.407 of 1993 and 25-D-2002/BWP]

Mohammad Boota (deceased) through L.Rs., ... Appellants/  
and others Applicants  
(in all cases)

Versus

Mst. Fatima daughter of Gohar Ali and ... Respondents  
others (in all cases)

For the Appellants : Sh. Zamir Hussain, ASC  
(in CA.419 of 2011)

Agha Muhammad Ali, ASC  
(in CA.1184 of 2019)

Respondents : *Ex-parte*

Amicus Curiae : Barrister Umer Aslam, ASC

Date of Hearing : 22.02.2023

**JUDGMENT**

**AYESHA A. MALIK, J-**. This judgment decides the issues raised in the titled Civil Appeals where the matter in issue is common being succession to tenancy in which the Respondents claim their share. The Respondents did not appear in either appeals, hence, they were proceeded *ex-parte* vide order dated 29.04.2021. Vide order dated 29.04.2021, the Court appointed Barrister Umer Aslam, ASC as *amicus curiae* for its assistance.

2. Civil Appeal No.419 of 2011 arises out of judgment dated 07.04.2011 passed by the Lahore High Court, Bahawalpur Bench, Bahawalpur (**High Court**) in Civil Revision No.407 of 1993 whereby the revision petition filed by the Respondents was allowed. Civil Appeal No.1184 of 2019 arises out of judgment dated 20.03.2014 passed by the High Court in Civil Revision No.25-D of 2002/BWP whereby the revision

petition filed by the Appellants was dismissed. Essentially both decisions of the High Court are in favour of the Respondents.

3. As per the record, Fatima Bibi, Mehr Bibi, Karam Bibi, Allah Rakhi and Fazal Bibi were the daughters of Gohar Ali, who also had two sons Muhammad Boota and Jan Muhammad. Gohar Ali is one of the descendants of Din Muhammad, who was originally awarded tenancy rights in land measuring 200 *Kanals* along with residential *Ihata* No.48 (in Civil Appeal No.419 of 2011) and land measuring 194 *Kanals* 13 *Marlas* with *Ihata* No.49 (in Civil Appeal No.1184 of 2019) situated in Chak No.29/DNB, Tehsil and District Bahawalpur, under the Abadkari Scheme. Din Muhammad died issueless. He had two brothers, namely, Nanak and Manak, who also died during this time. His tenancy rights were inherited by his brothers' sons, which included Gohar Ali and from Gohar Ali, tenancy rights were passed on to his sons, namely, Muhammad Boota and Jan Muhammad. Gohar Ali's five daughters were excluded from succession to the tenancy, which give rise to a dispute.

4. Fatima Bibi and Mehr Bibi, filed suit No.693 on 12.10.1985 being a suit for declaration against their brothers (the Appellants) to the effect that they were deprived of their share in the succession to Din Muhammad's tenancy with reference to land measuring 200-*Kanals* and that inheritance mutation No.21 dated 04.06.1956 sanctioned in favour of both Muhammad Boota and Jan Muhammad on the basis of an order passed by the Deputy Commissioner, Bahawalpur on 08.03.1956, was illegal. Their claim was that they had been receiving their share of proceeds from the tenancy for several years but that was abruptly stopped without any justification and then they were denied their share in the tenancy. The suit was contested and decreed by the trial court vide judgment and decree dated 30.04.1988. Muhammad Boota and Jan Muhammad challenged the said judgment and decree before the appellate court when the matter was remanded to the trial court on 08.04.1989 to give findings on specific issues (No.1 and 2) as to whether the sisters were entitled to succession to the tenancy, and whether it was governed under the Colonization of Government Lands (Punjab) Act, 1912 (**Colonization Act**) where male lineal descendants were to inherit to the exclusion of female legal heirs. In post-remand proceedings, the trial court dismissed the suit of the sisters vide judgment and decree dated 05.03.1990 which was maintained by the appellate court on 06.06.1993 by holding that Gohar Ali's succession

was as per Section 20 of the Colonization Act. The Respondents filed a civil revision before the High Court which was allowed and consequently, the suit of the sisters was decreed vide judgment dated 07.04.2011 which is impugned in Civil Appeal No.419 of 2011. The impugned judgment relied on sharia law and on the fact that the order of the Deputy Commissioner and mutations were passed after 1951 when sharia law was applicable while holding that the Respondents were entitled to their share in the succession of Din Muhammad's tenancy as per sharia law.

5. Fatima Bibi, Mehr Bibi along with Allah Rakhi and Fazal Bibi filed a second declaratory suit bearing No.64 on 02.04.1994, against Muhammad Boota and Jan Muhammad with reference to land measuring 194-Kanals 13-Marlas on the ground that they were deprived of their share in Din Muhammad's tenancy and challenged the order of the Deputy Commissioner dated 22.08.1951 and inheritance mutation No.19 dated 20.07.1952. The trial court decreed the suit vide judgment and decree dated 30.04.2001 which was upheld by the appellate court vide judgment dated 07.01.2002. The legal heirs of Muhammad Boota and Jan Muhammad assailed the said judgment before the High Court through Civil Revision No.25-D-2002 which was dismissed vide judgment dated 20.03.2014, being impugned in Civil Appeal No.1184 of 2019. Effectively the High Court again relied on sharia law and the fact that it was applicable in 1951 when the Deputy Commissioner passed his order and the mutations were sanctioned.

6. The impugned judgments have given different reasons for recognizing the rights of the Respondents, as the female heirs of Gohar Ali. Judgment dated 07.04.2011 in Civil Appeal No.419 of 2011 relies upon the case reported as Ghulam Ali and others v. Mst. Ghulam Sarwar Naqvi (PLD 1990 SC 1) to hold that daughters of Gohar Ali cannot be deprived of their right of inheritance as per sharia law whereas judgment dated 20.03.2014 in Civil Appeal No.1184 of 2019 finds that the disputed mutation is dated 20.07.1952 which means that the law of inheritance at the time of sanctioning of mutation has to be considered. Both the impugned judgments have granted shares to the sisters in the tenancy as per sharia law. Before us, the issue is the manner in which succession to the tenancy should be decided, prior to March 1951, when Section 19-A of the Colonization Act was inserted to provide that succession to the tenancy shall devolve as per sharia law and that Section 20 is not applicable. Hence, the question is whether succession

to Din Muhammad's tenancy is governed under Section 20 of the Colonization Act or sharia law?

7. The Appellants argue that in terms of Section 20 of the Colonization Act, the Respondents were not entitled to inherit in Din Muhammad's succession because he died in 1950. Counsel for the Appellants argued that the original allottee Din Muhammad died issueless and under the provisions of Section 20 of the Colonization Act succession devolved in favour of the male heirs being his grandchildren, as neither of his brothers Manak and Nanak, were alive at that point of time. This included Jan Muhammad and Muhammad Boota, children of Gohar Ali, who was the son of Manak. They also argued that the Respondents as female descendants of Din Muhammad were excluded under the provisions of Section 20 of the Colonization Act and further that sharia law on inheritance was not applicable at the time when Din Muhammad or Gohar Ali died. The thrust of their argument is based on the fact that Din Muhammad and Gohar Ali died prior to 1951, meaning that they died prior to the applicability of sharia law under Section 19-A of the Colonization Act for the purposes of succession. As to the dates of the Deputy Commissioner's orders and sanction of inheritance mutations, they argue that the given dates are not relevant as the relevant date is the date of death of the original tenant for the purposes of determining succession. They have also raised an alternate plea of being treated as original tenants because Din Muhammad had not made full payment towards the tenancy allotment under the Colonization Act. They claim that they paid for the allotment of the tenancy in the year 1958, hence, they be treated as the original tenants. Consequently, as per the alternate plea, there is no dispute on succession as the Respondents never paid any amount towards the tenancy.

8. The *amicus* explained that prior to 1951, for the purposes of succession in Punjab including the State of Bahawalpur, either customary law prevailed or sharia law prevailed where the parties were muslims. In order to establish that customary law governs succession, the parties were required to establish the custom and that they are bound by that custom. He clarified that this is not the case in the present dispute as there is no claim to any custom or usage applicable to the parties. He further elaborated that from 11.01.1881, when the Punjab Laws Act, 1872 (**Act of 1872**) was applied in the Punjab, until 03.03.1951 being the date of promulgation of the Punjab Muslim

Personal Law (Shariat) Application (Amendment) Act, 1951 (**1951 Shariat Act**), cases of succession were decided as per personal law where the parties were muslims, such that sharia law would prevail. He, therefore, stated that even prior to 1951, sharia law was enforced for the purposes of succession. He further elaborated that with the promulgation of the West Punjab Muslim Personal Law (Shariat) Application Act, 1948 (**1948 Shariat Act**), matters of succession were decided as per sharia law. He has placed reliance on the case reported as Basheer Ahmed and others v. Mst. Fatima Bibi (deceased) through LRs and others (2020 SCMR 72) which provides that the predominant rule of decision in cases of succession prevalent in the State of Bahawalpur was that muslim law applied where the parties were muslim for the period from 11.01.1881 when the Act of 1872 was applied to the territory of Bahawalpur until 03.03.1951, the date of promulgation of the 1951 Shariat Act. On the factual aspects of the case, he argued that even though it is alleged that Din Muhammad and Gohar Ali died prior to 1951, inheritance mutations were sanctioned on 20.07.1952 and on 04.06.1956 which means that the Appellants formally acquired title through inheritance mutations on those dates. As per his contention, the date of acquiring the right is the date of Deputy Commissioner orders, as that time, the applicable law on the subject was Section 19-A of the Colonization Act which prescribes that succession for muslims will proceed on the basis of sharia law.

9. The Colonization Act prescribes for succession to tenancy under Sections 20 and 21 thereof and then in March 1951, the said Act was amended with the insertion of Section 19-A which settled the issue of succession under the Colonization Act. In the case before us, the dispute arose on the death of Din Muhammad, which is prior to 1951. Hence, it is necessary to examine the relevant provisions of the Colonization Act. For the sake of reference, the relevant provisions of the Colonization Act are reproduced below:

**"19-A. Succession of the tenancy.**--- When after the coming into force of the Colonization of Government Lands (Punjab) (Amendment) Act, 1951, any Muslim tenant dies, succession to the tenancy shall devolve on his heirs in accordance with the Muslim Personal Law (Shariat), and nothing contained in sections 20 to 23 of this Act shall be applicable to his case:

Provided that when the tenancy rights are held by a female as a limited owner under this Act, succession shall open out on the termination of her limited interest to all persons who would have been entitled to inherit the property at the time of the death of the last full owner had the Muslim Personal Law (Shariat) been applicable at the

time of such death, and in the event of the death of any of such persons before the termination of the limited interest mentioned above, succession shall devolve on his heirs and successors existing at the time of the termination of the limited interest of the female as if the aforesaid such person had died at the termination of the limited interest of the female and had been governed by the Muslim Personal Law (Shariat):

Provided further that the share, which the female limited owner would have inherited had the Muslim Personal Law (Shariat) been applicable at the time of the death of the last full owner shall devolve on her if she loses her limited interest in the property on account of her marriage or remarriage and on her heirs under the Muslim Personal Law (Shariat) if her limited interest terminates because of her death.]

**20. Succession to tenants acquiring otherwise than by succession.**--- Subject to the proviso to section 14, when, after the commencement of this Act, any original tenant dies the succession to the tenancy shall devolve in the following order upon---

- (a) the male lineal descendants of the tenant in the male line of descent. (The term "lineal descendants" shall include an adopted son whose adoption has been ratified by a registered deed);
- (b) the widow of the tenant until she dies, or re-marries, or loses her rights under the provisions of this Act;
- (c) the unmarried daughters of the tenant until they die or marry, or lose their rights under the provisions of this Act;
- (d) the successor or successors nominated by the tenant by registered deed from among the following persons, that is to say, his mother, his pre-deceased son's widow, [his pre-deceased grandson's widow], his married daughter, his daughter's son, his sister, his sister's son, and the male agnate members of his family; and
- (e) the successor or successors nominated by the Collector from among the persons enumerated in clause (d) of this section.

**21. Succession to tenants acquiring by succession.**--- When after the commencement of this Act, any male tenant, who is not an original tenant, dies, or any female tenant dies, marries or re-marries, the succession to the tenancy shall devolve:

- (a) in the case of a female, to whom the tenancy has been first allotted, on the successor nominated by the Collector from the issue of such female tenant, or from the male agnates of the person, on account of whose services the tenancy was allotted to her,
- (b) in all other cases, on the person or persons, who would succeed if the tenancy were agricultural land acquired by the original tenant."

The Colonization Act is an Act which provides administration of Government land in Punjab and was made applicable to Bahawalpur in the year 1924, as held in Basher Ahmed and others v. Mst. Fatima Bibi (deceased) through LRs and others (2019 SCMR 99). Tenancy rights

were granted in terms of Sections 10, 11 and 15 of the Colonization Act subject to the approval of the government, based on the statement of conditions of tenancy (Sections 10 and 11) and on payment of the purchase money (Section.15). Section 20 of the Colonization Act provides for succession to tenancy where the original tenant dies, by giving male lineal descendants priority over all other categories as listed in this section. Section 21 is made applicable where any male tenant, who is not the original tenant dies, succession then devolves as if the tenancy rights were for agricultural land acquired by the original tenants. Section 21 operates after the death of a tenant who inherited from the original tenant, such that succession for tenancy is deemed as if its agricultural land, so either by custom or by sharia law.

10. The applicability of Sections 20 and 21 of the Colonization Act has been considered by this Court in two cases, which have been cited and relied upon by the parties. The first, Mst. Imam Bibi v. Allah Ditta and others (PLD 1989 SC 384) interpreted Section 20 to hold that Imam Bibi could not inherit from her father Nizam Din and that only his son Allah Ditta would inherit the tenancy. As per the judgment Nizam Din died before Section 19-A was inserted in the Colonization Act and became applicable to the State of Bahawalpur. Therefore, in terms of the Imam Bibi case, Section 20 of the Colonization Act applied to cases of succession from the original tenant until the insertion of Section 19-A in the Colonization Act. The second case Umar Din and another v. Mst. Sharifan and another (PLD 1995 SC 686) describes that Muhammad Ibrahim, the original tenant died and his rights devolved upon his three sons in 1948; one of his sons died leaving behind a daughter and a widow, on whom his tenancy rights devolved. The two sons of Muhammad Ibrahim challenged succession in favour of the daughter and the widow and ultimately, the Court ruled that as per Section 21(b) of the Colonization Act, the daughter would inherit, as the tenancy rights were not of the original tenant but from a tenant who had acquired rights from the original tenant. In terms of Section 21(b) of the Colonization Act, the daughter was able to inherit in the tenancy of her father because succession was not from the original tenant and so Section 20 was not applicable. Under Section 21(b) of the Colonization Act, female legal heirs could inherit based on custom or sharia law, as the case may be. We have considered both cases in great detail. Even though a lot has been argued based on both these cases, we find that these cases focused on the applicability of Section 19-A of the

Colonization Act based on the date of death of the tenant and did not consider the significant effect of the 1948 Shariat Act.

11. To appreciate the legal question on the applicability of sharia law, a look at the historical background is relevant. Pakistan gained independence in 1947 and Bahawalpur acceded to Pakistan in October, 1947 by signing the Instrument of Accession.<sup>1</sup> Bahawalpur enjoyed a degree of autonomy as a separate state with its own government, legislature and judiciary until 1955 under the Instrument of Accession. In 1955, Bahawalpur merged with West Pakistan under the Establishment of West Pakistan Act, 1955. After the abolition of the one unit scheme in 1970, Bahawalpur became a district of the Punjab and remains the same to-date. So far as the applicability of sharia law, before 1947 (pre-partition) the Act of 1872 declared certain rules, laws and regulations to have the force of law in Punjab under the provisions of Section 25 of the Indian Councils Act, 1861. Section 5 of the Act of 1872 provided that in matters regarding succession, marriage, divorce, dower amongst other personal law matters, the rule of decision was that either a custom was applicable to the parties or in the case of muslims sharia law and in the case of hindus, hindu law. For ease of reference, Section 5 of the Act of 1872 is reproduced below:

**“5. Decisions in certain cases to be according to native laws.--** In questions regarding succession, special property of females, betrothal, marriage, divorce, dower, adoption, guardianship, minority, bastardy, family relations, wills, legacies, gifts, partitions, or any religious usage or institution, the rule of decision shall be—

(a) any custom applicable to the parties concerned, which is not contrary to justice, equity or good conscience, and has not been by this or any other enactment altered or abolished and has not been declared to be void by any competent authority;

(b) the Muhammadan Law, in cases where the parties are Muhammadans, and the Hindu law, in cases where the parties are Hindus, except insofar as such law has been altered or abolished by legislative enactment, or is opposed to the provisions of this Act, or has been modified by any such custom as is above referred to.”

This law recognized the force of custom applicable to parties which was not contrary to justice, equity or good conscience and essentially required parties to establish that a particular custom was applicable to them for decisions on personal law matters. Section 5 of the Act of 1872 was repealed by the Muslim Personal Law Shariat Application Act, 1937 (**1937 Shariat Act**) which provided that notwithstanding any custom or

---

<sup>1</sup> The Instrument of Accession dated the 3<sup>rd</sup> of October 1947



usage regarding succession, the rule of decision where the parties are muslim shall be based on sharia law. The exception created by way of Section 2 of the 1937 Shariat Act to sharia law was succession relating to agricultural land, meaning that in all other cases succession was governed by sharia law but in cases involving agricultural land customary law prevailed. After 1947 (after partition), the 1948 Shariat Act was promulgated on 15.3.1948 being an Act to provide for the application of sharia law on matters related to personal law, where the parties were muslims. Section 2 provided that notwithstanding any custom or usage to the contrary all questions regarding succession, including succession to agricultural land in cases where parties are muslim shall be decided as per sharia law. In terms of Section 4 of the 1948 Shariat Act, Section 5 of the Act of 1872 was applicable to the extent that it was not in conflict with the 1948 Shariat Act. Therefore, in terms of the 1948 Shariat Act, sharia law prevailed for the purposes of succession where the parties were muslim. The aforementioned Act was amended by the 1951 Shariat Act on 10.03.1951 whereby it clarified through an amendment to Section 2 in the Punjab Act IX of 1948 that the rule of decisions in matters of personal law which included succession was sharia law where the parties were muslims. At the same time on 04.03.1951, the Bahawalpur Muslim Personal Shariat (Application) Act, 1951 was promulgated which made sharia law applicable to muslims in the State of Bahawalpur on matters of personal law including succession were governed by sharia law. Subsequently, the West Pakistan Muslim Personal Law (Shariat) Application Act, 1962 (**1962 Shariat Act**) was promulgated on 31.12.1962 which again made sharia law applicable to muslims in personal law matters. This Act repealed the 1937 Shariat Act, the 1948 Shariat Act and the 1951 Shariat Act. The 1962 Shariat Act was amended by way of West Pakistan Muslim Personal Law (Shariat) Act (Amendment) Ordinance, 1983 with the insertion of Section 2-A which reads as follows:

"2-A. Notwithstanding anything to the contrary contained in section 2 or any other law for the time being in force, or any custom or usage or decree, judgment or order of any Court, where before the commencement of the Punjab Muslim Personal Law (Shariat) Application Act, 1948, a male heir had acquired any agricultural land under custom from the person who at the time of such acquisition was a Muslim--

- (a) he shall be deemed to have become, upon such acquisition, an absolute owner of such land, as if

such land had devolved on him under the Muslim Personal Law (Shariat) Act;

- (b) any decree, judgment or order of any Court affirming the right of any reversioner under custom or usage, to call in question such an alienation or directing delivery of possession of agricultural land on such basis shall be void, inexecutable and of no legal effect to the extent it is contrary to the Muslim Personal Law (Shariat) Act; and
- (c) all suits or other proceedings of such a nature pending in any Court and all execution proceedings seeking possession of land under such decree shall abate forthwith:

Provided that nothing herein contained shall be applicable to transactions past and closed where possession of such land has already been delivered under such decree."

**(emphasis supplied)**

This section gave finality to the understanding that where the parties were muslim, in the context of succession, only sharia law was applicable. Section 2-A settled the matter to the effect that in matters of inheritance the rule of law shall always be sharia law. In the case of Ghulam Haider and others v. Murad through Legal Representatives and others (PLD 2012 SC 501), this Court while examining the scope, effect and application of Section 2-A of the 1962 Shariat Act held that the purpose of this section was to ensure compliance with sharia law even prior to 1948 so as to put an end to all controversies and litigation in respect of succession prior to the 1948 Shariat Act so as to hold for all times to come that succession will be governed under Section 2-A *ibid*. As to the applicability of the 1962 Shariat Act, this Court in the cases of Hakim Ali and others v. Barkat Bibi and others (1988 SCMR 293) and Muhammad Yousaf v. Karam Khatoon (2003 SCMR 1535) has held that the Act will apply retrospectively, due to the clear language of Section 2-A. Hence, as per the dicta of this Court, even prior to 1951 (when Section 19-A was inserted in the Colonization Act), sharia law was enforced in the State of Bahawalpur.

12. In the context of the aforementioned Shariat Application Acts, succession for the purposes of muslims was governed by sharia law even before 1951 unless any custom was established as being consistently prevalent in the area and applicable to the parties. Even Section 5 of the Act of 1872 did not exclude sharia law from applying on personal law matters, provided a custom, not contrary to justice, equity and good conscience was established. The 1948 Shariat Act clarified that muslim personal law was applicable for the purposes of succession *notwithstanding* any custom meaning that all decisions regarding

succession were governed by sharia law. The 1948 Shariat Act was applicable to the State of Bahawalpur where the rule of decision for the purposes of succession was sharia law as has been held in the case Government of Pakistan v. Brig. His Highness Nawab Muhammad Abbas Khan abbasi and others (PLD 1982 SC 367). The significance of the 1948 Shariat Act is that it categorically provides that sharia law shall prevail notwithstanding any custom or usage to the contrary in matters of succession. Hence, without a doubt even prior to 1951, sharia law was applicable to muslims on matters of succession.

13. The issue of the applicability of sharia law prior to 1951 has been examined by this Court in various different decisions. In the case of Muhammad Yousaf v. Karam Khatoon (2003 SCMR 1535) Section 5 of the Act of 1872 was examined in the context of prevailing customs in the State of Bahawalpur and this Court concluded that prior to 1951 if a party were to rely on a particular custom negating sharia law, then the burden was on that party to establish the custom and its applicability to their case because even Section 5 did not exclude sharia law. The Court concluded that the issue of proving the custom was a question of fact based on evidence. In the case of Abdul Ghafoor and others v. Muhammad Shafi and others (PLD 1985 SC 407) this Court held that Section 2-A of the 1962 Shariat Act was applicable to a period prior to 1948 and the question of retrospectiveness was not relevant because the provisions of the section itself state that it was applicable prior to the commencement of the 1948 Shariat Act. Hence, for all intent and purposes after 1948, sharia law was clearly applicable in the State of Bahawalpur on the basis of which the rights of inheritance were to be determined. Therefore, based on the aforesaid, to answer the question raised we find that even prior to March 1951, sharia law was applicable in Bahawalpur to muslims on account of the 1948 Shariat Act which means that even in the presence of a custom or Section 20 of the Colonization Act sharia law will prevail.

14. With respect to the Appellants' alternate plea that they be treated as the original tenants given that they made the payment towards the tenancy originally allotted to Din Muhammad, we find no merit in the said argument for two reasons. Firstly, in terms of the record the Appellants were treated as the legal heirs of Din Muhammad vide orders of the Deputy Commissioner dated 22.08.1951 and 08.03.1956 and on the strength of these orders were issued inheritance mutation Nos.19 and 21 dated 20.07.1952 and 04.06.1956. The record

clearly depicts them as the legal heirs of Din Muhammad on the basis of which succession devolved upon them in terms of Section 20 of the Colonization Act. In this context, they have relied upon Saeed-ud-Din and others v. Hafeez Begum and others (2013 SCMR 1133), however, even in this case, this Court has held that even though Lal Din paid one instalment before his death, he was a tenant under the Colonization Act on the basis of which at the time of his death, succession devolved upon his sons as per Section 20 of the Colonization Act, after which the sons of Lal Din became tenants in their own right when they completed the payment. Therefore, the Appellants' claim that Din Muhammad made some payment but did not make the full payment and that they paid the outstanding amount in 1958 when they became absolute owners is of no avail because for the purposes of their claim to tenancy, they were treated as the legal heirs of Din Muhammad, as per Section 20 of the Colonization Act. Secondly, even if they made some payment, the Colonization Act recognizes Din Muhammad as the original tenant and the Appellants as his successors under Section 20. Hence, there is no merit in the alternate plea.

15. The Appellants have also raised an objection on the issue of limitation given that the mutations were sanctioned on 20.07.1952 and 04.06.1956 and the suits were filed on 12.10.1985 and 02.04.1994 after a considerable delay. Article 120 of the Limitation Act, 1908 deals with the limitation to file a suit for declaration which has been interpreted by this Court in its recent judgment Saadat Khan and others v. Shahid-ur-Rehman and others (PLD 2023 SC 362) where the Court has held that in the cases where brothers deny their sisters their right to inherit, limitation would run from the date of knowledge when the fraud or denial became known to the sisters. As per the record of this case, in both suits the Respondents claim that they were being paid their share of the proceeds from the tenancy by their brothers and it is on the denial of making payment of their share and further on the denial of their claim to succession that the suits were filed. The Appellants have asserted that the Respondents were fully aware of their possession and after a considerable delay of four decades two suits were filed by the Respondents. However, even to this effect this Court has held in Mst. Gohar Khanum and others v. Mst. Jamila Jan and others (2014 SCMR 801) that where a mutation is erroneously made in favour of a male heir, such mutation would not create title in favour of the male heir if it is contrary to sharia law of inheritance. In another case Shabla and

others v. Ms. Jahan Afroz Khilat and others (2020 SCMR 352), this Court has held that no limitation runs against matters involving inheritance rights of a female where she has been defrauded of her right by her family. It has also been held in Khan Muhammad through LRs. and others v. Mst. Khatoon Bibi and others (2017 SCMR 1476) that in cases of inheritance, it is well settled that a claimant becomes a co-owner/co-sharer of the property left by the predecessor on his death and the sanction of inheritance mutation is meant for updating the revenue record for fiscal purposes. Where a person has been denied the right of inheritance that would give them cause of action and that no limitation would run against a co-sharer. Hence, we find no merit in the objection against limitation as the Respondents filed their suits on being denied their share in the tenancy of Din Muhammad.

16. In view of the aforesaid, impugned judgments passed by the High Court do not call for any interference. These Civil Appeals being devoid of merit are dismissed with no order as to costs. CMA No.1839 of 2011 is disposed of.

**CHIEF JUSTICE**

**JUDGE**

**JUDGE**

'APPROVED FOR REPORTING'  
Azmat/\*

Announced on \_\_\_\_\_ at \_\_\_\_\_.

**JUDGE**