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

**PRESENT:**

MR. JUSTICE MANZOOR AHMAD MALIK  
MR. JUSTICE AMIN-UD-DIN KHAN

**CIVIL PETITION NO.138-P OF 2015**

(Against the judgment dated 22.12.2014 passed by the  
Peshawar High Court, Bannu Bench in Civil Revision  
No.81-B of 2009)

*Asal Janan & others*

...Petitioner (s)

*Versus*

*Zareef Khan & others*

...Respondent(s)

For the Petitioner (s) : Mr. Abdul Sattar Khan, ASC

For Respondents No.10 : Mr. Amanullah Khan, ASC  
to 19, 20 & 28 Mr. Salamat Shah, ASC

Other Respondents : N.R.

Date of Hearing : 21.01.2020

**JUDGMENT**

**AMIN-UD-DIN KHAN, J.-** This Civil Petition for  
Leave to Appeal has been filed under Article 185(3) of the  
Constitution of the Islamic Republic of Pakistan, 1973,  
against the judgment dated 22.12.2014 passed by the  
learned Peshawar High Court, Bannu Bench whereby Civil  
Revision bearing No.81-B of 2009 filed by the Petitioners  
was dismissed.



2. We have heard the learned counsel for the parties at full length and gone through the voluminous record of this case. In the suit filed by the Plaintiffs/Petitioners on 24.02.1993, the mutation pertaining to the suit property attested in the year 1922 and 1927 and mutations thereafter have been challenged. After hot contest the suit was dismissed by the learned Trial Court vide judgment and decree dated 12.12.2005. The appeal filed there-against too was dismissed vide judgment and decree dated 20.11.2008. The Civil Revision filed by the Plaintiffs/Petitioners was also met with the same fate vide judgment date 22.12.2014 passed by the Peshawar High Court. Although, a notice was issued by this Court vide order dated 17.10.2018 to the Respondents by noting some questions, on the presumption that, involving the matter of inheritance between the parties. There are concurrent findings of all the Courts below that though Mst. Sabardana was mother of the Plaintiffs/Petitioners but Plaintiffs could not prove that she was daughter of Ganj.

3. The learned counsel for the petitioners has referred to the entry no. 260 in document, Exh. PW-3, alleged copy of the register of birth entries to show that Mst. Sabardana was daughter of Ganj, who was born on 20.06.1900. It is further stated that PW-3 was produced to

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prove the said document. We have noticed that PW-3 is Sanitary Supervisor, DHQ Hospital. He is not holder of the record of birth entries nor did he issue the copy thereof. The alleged certified copy of the Exh. PW-3 is allegedly attested by Executive District Officer Health, Karak. It does not fulfil the requirements as under the Article 87 of the Qanun-e-Shahadat Order, 1984; i.e. to contain the endorsement that it is a true copy of the register of birth entries. This document does not even contain the title part of the register to show whether it is a register of birth entries, whereas no certificate is available of this document by the person issuing the certified copy that it is a true copy of document in his custody. Same is the position of PW-3 who is irrelevant person as admitted in his cross-examination. Therefore, this evidence is not sufficient to hold that Mst. Sabardana was daughter of Ganj against the concurrent findings recorded by the three Courts below. The other entries that the learned counsel for the Petitioners has relied on are the disputed mutations which were even cancelled subsequently. We have noted that there are concurrent findings of fact recorded by all the Courts below. The learned counsel for the Petitioner could not show that the same are against the admissible documentary evidence available on the file.

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4. So far as period of limitation for filing a suit is concerned, if the claim of the Plaintiffs/Petitioners is on the basis of inheritance then this Court is conscious of the principle that at the time of the death of propositus, all the legal heirs automatically become share-holders in the immovable property left by propositus, therefore, they become joint owners. For ousting any of the legal heirs, the person pressing for the bar of limitation in order to file such suit, is required to show the clear and conscious ouster of said plaintiff from the suit property. Only then, the point pressed on the basis of limitation can be considered by the Courts, in case of matter of inheritance. In case subject matter of a suit is pleaded to be of inheritance is not sufficient to give the benefit of law of limitation as noted *supra* to the plaintiff unless he is able to prove that the matter pertains to inheritance. In the instant case, there are concurrent findings of the three courts below that the Plaintiffs/Petitioners failed to prove that their mother was daughter of Gunj and entitled to inherit from the legacy of Mst. Lota, as pleaded in their case. Therefore, it is not a case of inheritance and the bar of limitation is fully applicable. Hence, the suit was barred by time as mutation attested in the year 1922 and mutation attested thereafter was challenged in a suit filed on 24.02.1993.



5. The learned counsel for the Petitioners failed to make a case for grant of leave. Therefore, the instant petition is dismissed and leave refused.

*Sd/-J*

*Sd/-J*

Islamabad, the

21<sup>st</sup> of January, 2020

'APPROVED FOR REPORTING'

Syed Farhan Ali

*[Signature]*