

**Journal**

1997 CLC 1691

**Court**

LAHORE HIGH COURT

**Date**

1997-01-29

**Appeal No.**

CIVIL REVISION NO. 206-D OF 1991

**Judge**

MIAN NAZIR AKHTAR, J .

**Parties**

MST. JAMEELA KHATOON AND 4 OTHERS (PETITIONERS) VERSUS SATTAR BAIG AND 2 OTHERS (RESPONDENTS)

**Lawyers**

C.A. REHMAN AND MALIK MUHAMMAD YOUSAF JAVED FOR PETITIONERS. CH. KHURSHID AHMAD FOR RESPONDENTS NOS. 1 TO 6. „

**Statutes**

CIVIL PROCEDURE CODE (V OF 1908) - S. 12(2) WEST PAKISTAN REHABILITATION AND SETTLEMENT SCHEME, 1956 - PARAS. 46 AND 46-A WEST PAKISTAN LAND REVENUE ACT (XVII OF 1967) - S. 42 WEST PAKISTAN REHABILITATION AND SETTLEMENT SCHEME, 1956 - PARAS. 46 AND 67 WEST PAKISTAN LAND REVENUE ACT (XVII OF 1967) - S. 42 CIVIL PROCEDURE CODE (V OF 1908) - S. 9 QANUN-E-SHAHADAT (10 OF 1984) - ARTICLES 88 AND 101 QANUN-E-SHAHADAT (10 OF 1984) - ARTICLE 119 QANUN-E-SHAHADAT (10 OF 1984) - ARTICLES 64 AND 71

## Judgment

This revision petition arises out of a suit for declaration with consequential relief filed by Javed Baig, Sattar Baig, and Hamid Baig, respondents Nos.1 to 3 through their attorney Dr. Karim-ud-Din, on 12-4-1980 in the Court of Civil Judge, Jhang. The plaintiffs claimed to be owners in possession of the disputed land measuring 2143 Kanals and 9 Marlas, (fully detailed in the heading of the plaint) situated in Mauza Kakki Nau Chak Soem, Tehsil Shorkot, District Jhang, in their capacity as legal heirs of Mst. Badar-un- Nisa deceased who (as claimed by the petitioners) was martyred in the year, -» 1947 at the time of partition. According to respondents Nos.1 to 3 she passed away in the year 1952/53 in Pakistan\*. The plaintiffs also challenged the order dated 13-6-1970 passed by the Settlement Commissioner (Lands), mutation Nos.1106 and 1115 attested on 10-12-1971, mutation No.976 attested on 30-10-1969 and mutation No.1133 attested on 30-6-1973 and decree dated 3-12-1981 in favour of Salamat Ali respondent No. 11 and decree dated 14-12-1982 in favour of Wali Muhammad respondent No. 12 on the ground of fraud and mis-representation etc. The suit was resisted by the defendants including Mst. Jameela Khatoon deceased, predecessor-in-interest of the present petitioners, who was cited' as defendant No.3 in the plaint. The pleadings of the parties gave rise to the following issues (1) Whether the plaintiffs are owners in possession of the suit land? OPP (2) Whether the impugned order dated 13-6-1970 passed by the Settlement Commissioner (Lands) and on the basis thereof mutation Nos. 1106 and 1115, dated 10-12-1971, mutation No.976 dated 30-10-1976, mutation No. 1133, dated 30-6-1973, the decree of the civil Court \* dated 3-12-1981 in favour of defendant No. 11 and decree of the Civil \* Court dated 14-12-1982 in favour of defendant No. 12 are illegal, based on fraud, void and are ineffective and inoperative on the rights of the plaintiffs? OPP

\* (3) Whether this Court lacks jurisdiction to take cognizance of the present suit? OPD (4) Whether the suit of the plaintiffs is time-barred? OPD % (5) Whether Mst. Jamila Khatoon defendant No.3, has matured her title due to adverse possession for a period extending over 12 years? OPD-3.

J 4 (6) Whether the defendant No.3 is entitled to special costs under section 35-A of the C.P.C.? OPD-3.

(7) Whether the suit of the plaintiffs is bad for joinder of unnecessary parties? OPD .

(8) Whether the suit has not been properly valued for the purposes of court-fee and jurisdiction? If not, what is the correct valuation? OPD \* (9) Whether the suit is not maintainable in its present form? OPD (10) Whether the plaintiffs are estopped to file this suit because of their words and conduct? OPD (11) Whether Mst. Ummatul Mobeen, defendant No.4 has matured her title due to adverse possession for a period extending over 12 years? OPD-4 (12) Whether the defendants Nos.5, 10 and 12 are entitled to special costs under section 35-A of the C.P.C.? OPD (13) Whether the suit of the plaintiffs cannot proceed in view of preliminary objections Nos.8 and 10 of the written statements filed by defendants Nos.3, 5, 10 and 12? OPD I I r \* (14) Whether the sale in favour of defendant No. 11 by means of a registered sale deed dated 17-10-1982, is protected under section 41 of the Transfer of Property Act? OPD-11 (15) Whether the Pedigree-table, as contained in para. No.2 of the plaint, is correct? OPP p (16) Relief. \* The plaintiffs/respondents Nos.1 to 3 produced two witnesses namely Abdul Hameed Khan P.W.1 and Dr. Karim-ud-Din P.W.2

(General attorney of the plaintiffs). They produced documents Exhs.P.I to P.21 in support of their pleas. The present petitioners produced Muhammad Yasin Baig D.W.I, Mirza Aslam Baig D.W.2 an Issues Nos.1, 2 and 15.....Jointly decided against the plaintiffs/respondents 1 to 3.

Issue No.3, Answered in negative.

i Issue No.4,.....In favour of the plaintiffs; suit held to be within time.

Issue No.5,.....Against the defendants, Mst.

. Jameela Khatoon had not become owner due to adverse possession.

Issues Nos.6 and . The plaintiff was burdened with special costs of Rs.5,000 to be paid to defendants Nos.3, 5, 10 and 12.

\ 99 w Issues Nos.7 to 9, 11, In the negative.

13 and Issue No. 10.....Plea of estoppel not proved.

i The plaintiffs/respondents 1 to 3 challenged the judgment and decree of the trial Court by way of an appeal before the learned District Judge, Jhang which was entrusted to the learned Additional District Judge. The appellate Court reversed the findings of the trial Court on Issues Nos.1, 2 and 15 and held that Mst. Jameela Khatoon predecessor-in-interest of the petitioners and Mst: Naseera Begum had no relations with Samad Baig and Mst. Badar-un-Nisa deceased and were not entitled to have any share in the inheritance left by them. The findings of Issues Nos.6 and 12 were also reversed. The appeal was accepted and the suit was decreed in favour of respondents Nos. 1 to 3 with costs throughout vide judgment and decree dated 22-1-1991. The present revision petition was filed in this Court on 11-2-1991.

w M 2. It may be mentioned in the very outset that the present revision petition was contested only by respondents Nos.1 to 3. The legal representatives of Mst. Shahzadi, deceased, respondent No.6 did not appear despite service and were ordered to be proceeded against ex parte vide order dated 17-2-1993. No one appeared on behalf of the Province of Punjab, respondent No.4, the Settlement Commissioner (Lands), Sargodha respondent No.5 and respondents Nos.7 to 12 despite notice. They are also proceeded against ex parte. It may be mentioned that respondents Nos.7 to 10 were deleted in the trial Court from the array of defendants vide order dated 10-12-1986. Hence, there was no need to implead them as respondents in the present revision petition.

3. Some other relevant facts having a bearing on the controversies involved in the case are that after the demise of Mst. Badar- un-Nisa, mutation of inheritance No.30 (Exh.P.I) was sanctioned on 13-5-1953 by the Assistant Rehabilitation Commissioner (Land) giving 1/2 share to Samad Baig son-in-law and 1/2 to Mst. Naseera Begum daughter of the deceased. The correctness of the said mutation was challenged by Mst. Jameela Khatoon deceased predecessor-in-interest of the petitioners by way of an appeal before the -Deputy Settlement Commissioner (Land) who dismissed it vide order dated 25-11-

1969. She filed a revision petition before the Settlement Commissioner, who accepted it vide order dated 13-6-1970 (Exh.P.2). He held that Mst. Jameela Khatoon being daughter of Mst. Badar-un-Nisa, deceased was entitled to have her share in the inheritance left by the deceased and remanded the case to the Assistant Rehabilitation Commissioner (Land) for a fresh decision. In post remand proceedings the Assistant Rehabilitation Commissioner (Land) heard the parties before him and entered two mutations bearing Nos. 1106 and 1115 (Exhs.P.5 and P.6). The first one related to the proprietary rights of Mst. Badar-un-Nisa, deceased and the second one to her mortgagee rights. The Assistant Rehabilitation Commissioner (Land), allowed 2/3rd share to Mst. Naseera Begum and Mst.

Jameela Khatoon and the remaining 1/3rd to Samad Baig as a residuary of Younus Baig (son of Mst. Badar-un-Nisa deceased).

Samad Baig died on 25-6-1969 leaving behind Mst. Naseera Begum widow and her two sisters namely Mst. Ummatul Mobeen and Mst. Jameela Khatoon. Accordingly mutation of inheritance No.976 was sanctioned in their names on 30-10-1969 (Exh.P.3). Mst.

Naseera Begum was given 1/4th share as a widow and the remaining 3/4th share was given to the two sisters in equal shares.

Another mutation of inheritance No.1133 (Exh.P.7) in respect of inheritance of Samad Baig deceased was sanctioned on 30-6-1973 in favour of Mst. Naseera Begum widow having 1/4th share and Mst. Ummat-ul-Mobeen and Mst. Jameela Khatoon having 3/4th share.

i ' l \* t 4. Mst. Badar-un-Nisa deceased was first married to Yousuf Baig and out of the wedlock one son namely Younus Baig and a daughter Mst. Naseera Begum were bom. Mst. Naseera Begum was married to Samad Baig son of Muhammad Baig, elder brother of Yousuf Baig deceased. After the death of Yousuf Baig, Mst. Badar-un-Nisa contracted marriage with Muhammad Baig. Out of the second wedlock, Mst. Jameela Khatoon predecessor-in-interest of the petitioners was bom. (This fact is disputed by respondents Nos.1 to 3) Muhammad Baig second husband of Mst. Badar-un-Nisa was earlier married to Mst. Maryam Bibi from whom he had a son named Samad Baig and a daughter Mst. Ummatul Mobeen. The father of Muhammad Baig and Yousuf Baig was Khairat Baig deceased. Respondent Nos.1 to 3 who are sons of Shahbaz Baig claimed that their father Shahbaz Baig was real brother of Khairat Baig, hence they were entitled to inherit the entire property left by Mst. Badar-un-Nisa and Samad Baig, deceased. On the other hand the petitioners assert that Shahbaz Baig and Khairat Baig had no relation whatsoever because name of father of Khairat Baig was Ahmad Baig while Shahbaz Baig was son of Mughal Baig. The second major bone of contention between the parties is that according to the petitioners Mst. Badar-un-Nisa deceased had two daughters namely Mst. Naseera Begum and Mst. Jameela Khatoon but according to respondents Nos.1 to 3 Mst. Badar-un-Nisa deceased had only one daughter named Mst. Naseera Begum. While dealing with Issue No.2 the trial Court held that Shahbaz Baig and Khairat Baig were not real brothers, hence mutations of inheritance of Mst. Badar-un-Nisa and Samad Baig were rightly entered and sanctioned; that Mst. Badar-un-Nisa deceased had two daughters namely Mst. Naseera Begum and Mst. Jameela Khatoon; the former from Yousaf Baig and the latter from Muhammad Baig. The appellate Court reversed the findings of the trial Court and held that Khairat Baig and Shahbaz Baig were real brothers

and that Mst.

i' Jameela Khatoon and Mst. Ummatul Mobeen were not entitled to inherit either from Samad Baig or Mst. Badar-un-Nisa deceased. \* i \*. T J 5. Learned' counsel for the petitioners contends that mutations of inheritance sanctioned by the Settlement Authorities on 10-12-1971, 30-6-1973 and 30-10-1969 were not open to challenge in the civil Court as held in the cases of Mst. Zainab v. Mst.

Raji and others (PLD 1960 SC (Pak.) 229), Ahmad Din v. Muhammad Shall and others (PLD 1971 SC 762) and Ghulam Muhammad v. Muhammad Din and others (1989 MLD 488); that decrees dated 3-12-1981 and 14-12-1982 could not be challenged before the civil Court in view of the bar created under section 12(2) of the C.P.C.; that Khairat Baig was son of Ahmad Baig while Shahbaz Baig was son of Mughal Baig, therefore, the appellate Court wrongly held that they were real brothers; that both Khairat Baig and Shahbaz Baig belonged to two different families, therefore, descendants of Shahbaz Baig could not lay any claim to inheritance left by Mst. Badar-un-Nisa and Samad Baig descendants of Khairat Baig deceased; that the mutation of inheritance of Mst. Badar-un-Nisa or Samad Baig deceased could not be challenged by respondents 1 to 3, descendants of Shahbaz Baig, who had nothing to do with the inheritance of the two deceased persons; that even if the respondents are held to be collaterals of Younus Baig, deceased, the last male holder of the disputed property, they could not inherit because after his death' the property would devolve on the following heirs:- Mst. Badar-un-Nisa Mst. Nasira Begum, real sister: \* 1 Mst\* Jameela Khatoon, uterine sister: Samad Baig, first cousin of Younus Baig: 1/6th share 1/2 share 1/6th share Will get the residue being nearer as compared to the respondents who would stand excluded.

As regards the inheritance left by Mst. Badar-un-Nisa, deceased, he submits that her daughters namely Mst. Naseera Begum and Mst. Jameela Khatoon would inherit 2/3rd property as sharers and would get the remaining 1/3rd on the application of doctrine of radd. He submits that Mst. Badar-un-Nisa was not survived by any collateral, who could lay claim to the remaining 1/3rd property. Hence the same would return to the two daughters namely Mst. Naseera Begum and Mst. Jameela Khatoon. As regards that inheritance of Samad Baig he submits that 1/4th would go to his widow Mst. Naseera Begum and the remaining 3/4th to his real sister Mst. Ummatul Mobeen and Mst. Jameela Khatoon, consanguine sister. He next submits that the suit filed by the respondents was barred by time as mutation of inheritance of Mst. Badar-un-Nisa, deceased was sanctioned on 10-12-1971 while that of Samad Baig, deceased on 30-6-1973 and the suit for declaration was filed on 10-4-1980 which was clearly barred by time.

6. On the other hand Ch. Khurshid Ahmad, learned counsel for respondents 1 to 3 contends that there are two main points of controversy between the parties, the first whether Khairat Baig was son of Mughal Baig or \* Ahmad Baig and the second whether Mst. Jameela Khatoon was daughter of Muhammad Baig and sister of Mst. Naseera Begum and Mst. Ummatul Mobeen. As regards the first point he submits that the appellate Court has rightly held Khairat Baig to be a son of Mughal Baig and hence real brother of Shahbaz Baig, predecessor-in-interest of respondents 1 to 3. On the second point the learned counsel submits, that the appellate Court has duly taken into consideration the relevant material and correctly held that Mst. Jameela Khatoon was not daughter of Muhammad Baig or \* sister of Mst. Naseera Begum and Mst. Ummatul

Mobeen. He adds that on the basis of the above two findings the appellate Court has rightly held the plaintiffs/respondents 1 to 3 to be entitled to the inheritance left by Mst, Na&era Begum and Samad Baig. He explained that Mst. Badar-un-Nisa deceased had initially contracted marriage with Yousaf Baig and out of the said wed-lock one daughter namely Mst. Naseera Begum and one son Younas Baig were bom. After the death of Yousaf Baig she contracted marriage with Muhammad Baig, real brother of Yousaf Baig, deceased but no child was born out of the second marriage. He adds that Mst. Naseera Begum was married to Samad Baig, who died without leaving behind any issue. He submits that the appellate Court has recorded findings of fact on the above referred points of dispute which do not call for interference by this Court in exercise of, revisional jurisdiction. He further submits that respondents Nos.1 to 3 were not impleaded as parties before the learned Settlement Commissioner (Lands) who passed order dated 13-6-1970 in their absence; that the disputed mutations of inheritance were sanctioned in their absence and that they learnt 9- about the same about six months before institution of the suit and filed the suit \* on 12-4-1980 well within the period .of limitation. The learned counsel took pains in preparing a useful chart of all the relevant mutations and placed it on the record.

m W w 7. There is weight in the argument raised by the petitioners' learned counsel that the suit to the extent of challenge to decrees dated 3-12-1981 and 14-12-1982 passed by the civil Court in favour of Salamat Ali", respondent No. 11 and Wali Muhammad respondent No. 12 was barred by virtue of the provisions of Section 12(2) of the C.P.C. The suits in which the above-referred two decrees were passed were instituted on 3-11-1981 and 17-12-1982 respectively. Prior to that, section 12 of the C.P.C was amended through Ordinance X of 1980 published in official gazette on 26-3-1980. Through the r \* said Ordinance subsection (2) was brought on the statute book which provided \* . that a person challenging the validity of a judgment, decree or order on the plea of fraud, misrepresentation or want of jurisdiction had to seek his remedy by making an application to the Court which had passed the final judgment, decree i or order and not by a separate suit. Therefore, the suit challenging validity of decrees dated 3-12-1981 and 14-12-1982 on the grounds of fraud and mis- h representation was barred by the express provision of section 12(2) of the C.P.C. The appellate Court did not advert to this aspect of the matter and illegally decreed the suit as a whole.

\* 8. The various mutations challenged in the civil suit are divisible into two categories; one relating to the claim made by legal heirs of Mst. Badar-un-Nisa, deceased who had died in India (as admitted by Abdul Hamid P.W. 1) and the other in respect of right holders who had died in Pakistan. As regards the second category of mutations, there is no difficulty in holding that validity of the same could be challenged before the civil Courts in accordance with the law. However, difficulty arises in respect of mutations, attested by the Rehabilitation Authorities on the basis of a claim made by a person for allotment of land in their capacity as legal heirs of right-holders who had died in India. The object of the Re-settlement Scheme framed under the provisions of the Pakistan Rehabilitation Ordinance (XIX of 1948) was to rehabilitate maximum number of the displaced persons.

The provisions of paragraphs 46 and 46-A of the Scheme were not really intended to determine the rights of heirs of the deceased rightholders in respect of the properties left by them in India. The mutations entered by the Rehabilitation Authorities were simply



meant to determine as to who shall be allotted land in Pakistan in lieu of the property abandoned by the deceased right holders. This exercise was undertaken on claims made by displaced persons. If a person did not come forward to lodge a claim before the Rehabilitation Authorities, then he could not make a grievance that the said authorities had allotted land to any other heir of the deceased. In the present case, there is no documentary proof on the record to show as to who had lodged claim before the Rehabilitation Authorities. However, Muhammad Yasin Baig, while appearing-as D.W.I had stated that the claim was lodged by Samad Khan whereupon land was allotted in the name of Mst.

Badar-un-Nisa. The record contains mutation No.30 dated 13-5-1953 (Exh. PI) which shows that land was allotted in the name of Mst. Badar-un-Nisa mother of Younus Baig in her capacity as displaced person from Akbar Pur Barota Tehsil Soni Pat District Rohtak and that she was survived by two heirs i.e., Samad Baig son of Muhammad Baig and Mst. Naseera Begum daughter of Mst. Badar-un-Nisa. The mutation was entered on 17-7-1952 and formally sanctioned on 13-5-1953 by the Assistant Commissioner Grade-II, Jhang. It was challenged by Mst. Jameela Khatoon (predecessor-in-interest of the petitioners) by way of an appeal which was dismissed by the D.R.C. (Lands) vide order dated 25-11-1969. She filed a revision petition which was accepted by the Settlement Commissioner (Lands) vide order dated 13-6-1970. He held that Mst. Jameela Khatoon being daughter of Mst. Badar-un-Nisa deceased was also an heir and hence entitled to allotment of land\* He remanded the case to the A.R.C (Lands) for a fresh decision who heard the parties before him and sanctioned mutations Nos. 1106 and 1115 on 10-12- 1971. It may be mentioned that so far as respondents 1 to 3 are concerned they did not independently lodge any claim before the Rehabilitation Authorities for allotment of land in lieu of the property abandoned by Mst. Badar-un-Nisa in India. Moreover, after the demise of Samad Baig they did not make any effort to have mutation of inheritance sanctioned in their favour. The Rehabilitation Authorities could not possibly know that the petitioners were also claiming share in the properties left by Mst.

Badar-un-Nisa and Samad Baig, deceased. As mentioned above, the correctness of mutation No.30 was challenged only by Mst.

Jameela Khatoon, predecessor-in-interest of the petitioners and on acceptance of her revision petition the matter was remitted to the A.R.C. (Lands) Therefore, he rightly sanctioned mutation No. 1106 and 1115 on 10-12-1971 after hearing the parties before him. The said mutations were sanctioned by the A.R.C. (Lands) under the provisions of paragraph No.46 of the Re- Settlement Scheme and were immune from attack in the Civil Court. The above view finds support from the judgments in the cases of "Mst. Zainab v.

Mst. Raji and others" (PLD 1960 SC (Pak.) 229), "Umar Draz Ali v. Khurshid Ali and others" (PLD 1960 (W.P.) Lahore 834), "Ahmad Din v. Muhammad Shafi and others" (PLD 1971 SC 762), "Mst. Ghulam Fatima v. Muhammad Hussain and 5 others" (PLD 1976 SC 729) and "Ghulam Muhammad v. Muhammad Din and others" (1989 MLD 488). In the case of Mst. Zainab, it was held that a declaratory suit to establish title to evacuee lands abandoned in India was not competent; that section 18 of Act XLII of 1956 expressly ousted the jurisdiction of the Civil Court to question an order passed by a Rehabilitation Authority hence a Civil Court was not competent to adjudicate on the rights of or dispossess a

person to whom any immovable property had been allotted or leased by a Rehabilitation. Authority and that object of the Rehabilitation Laws was to settle refugees on lands and give them certain rights in an expeditious manner. In the case of Umar Draz Ali, it was held that paragraphs Nos.46 and 46-A of the Scheme were not meant to determine the entitlement of heirs to inherit the estates left by the deceased right-holders in India because the lands were situated in India over which the Rehabilitation Authorities in

Pakistan had no jurisdiction. The relevant para, from the judgment reads as under:-- "It was, therefore, not intended to determine the rights of the heirs of deceased rightholders in the estates abandoned by them in India while deciding the impugned mutations. These mutations are in fact a measure to determine who shall be allotted land in Pakistan in lieu of the land abandoned by deceased rightholders." It was also held that the Rehabilitation Authorities had exclusive jurisdiction in the matter for the purposes of Rehabilitating as large a number of refugees as was possible. In Ahmad Din's case, it was held that the Rehabilitation Authorities had exclusive jurisdiction to attest a mutation under paras. 46 and 67 of the Rehabilitation Settlement Scheme and that a civil suit filed by a person who claimed to be sole heir of the deceased right-holder was not competent. In Mst. Ghulam Fatima's case, it was held that there was no provision in the Displaced Persons (Land Settlement) Act, 1958 or the Settlement Scheme for determining the question of succession to the estate of confirmed allottees (who passed away in Pakistan), hence a civil suit to establish right or title in the suit estate filed by an heir was not barred. In Ghulam Muhammad's case reliance was placed on the dictum of the Hon'ble Supreme Court laid down in Ahmad Din's case and it was held that civil suit to challenge mutations attested by the Rehabilitation Authorities in matters of inheritance of persons who had died in India was not competent. However, after the demise of the confirmed allottees in Pakistan a person claiming to be an heir could agitate the matter before a Civil Court to establish his title in the property. Therefore, validity of mutation No.30 dated 13-3-1953 sanctioned by the Assistant Rehabilitation Commissioner and order dated 13-6-1970 passed by the Settlement Commissioner (Lands) could not be challenged before the Civil Court. Since mutations Nos. 1106 and 1115 were sanctioned in pursuance of order dated 13-6-1970 passed by the Settlement Commissioner (Lands), the same were also immune from attack in the Civil Court. However, after the demise of Samad Baig, Mst. Naseera Begum and Mst. Jameela Khatoon any person claiming to be their legitimate heir, if unlawfully left out from the inheritance of the said deceased persons/ could competently agitate the matter before the Civil Court.

9. The plaintiffs/respondents Nos.1 to 3 had no knowledge about the mutation proceedings before the Rehabilitation Authorities and could not be nonsuited on the grounds of limitation alone. Dr. Karim-ud-Din, general attorney for respondents Nos. 1 to 3 had appeared as P.W.2 in the trial Court and stated that the two mutations of inheritance of Mst. Badar-un-Nisa and Samad Baig were sanctioned without any intimation to respondents Nos. 1 to 3 and that they were residing at Karachi and came to Jhang about six months before institution of the suit and then learnt about the disputed mutation. His above statement was not challenged in cross-examination and would be deemed to have been admitted. Therefore, their suit could not be dismissed on the ground of limitation.



\* 10. On merits, the appellate Court appears to have fallen in error in holding that respondents. Nos. 1 to 3 were entitled –to inherit the property left by Mst. Badar-un-Nisa and Samad Baig as being collaterals of .the deceased person. The contesting parties did not place on record any certified copy of the pedigree-table but gave their own pedigree-tables in the pleadings as well as in- the oral evidence. The plaintiffs/respondents Nos.1 to 3 claimed that the common ancestor of the parties as Mughal Baig who had three sons namely Khairat Baig, Shahbaz Baig and Jaffar Baig; that Khairat Baig had two sons namely Muhammad Baig and Yousaf Baig; that Yousaf Baig was first married to Mst. Badar-un-Nisa and out of their wedlock one son Younis Baig and a daughter Mst. Naseera Begum were born; that after the death of Yousaf Baig, Mst. Badar-un-Nisa contracted marriage with Muhammad Baig who was earlier married to Mst. Maryam Bibi and had a son from her named Samad Baig; that Shahbaz Baig had six sons namely Ayub Baig, Ghafoor Baig, Shakoor Baig, Yaqoob Baig, Mehboob Baig, and Lai Baig; that Sattar Baig is son of Ayub Baig and Javed Baig is son of Sultan Baig another son of Ayub Baig and that Hamid Baig respondent No.3 is son of Khurshid Baig who is son of Lai Baig. To controvert the claim made by respondents Nos.1 to 3, the petitioners gave their own pedigree- table showing that Khairat Baig was son of Ahmad Baig who had nothing to do with the family of Mughal Baig. It is strange that although the plaintiffs/respondents Nos.1 to 3 had expressly stated in the plaint that Mughal Baig had three sons namely Khairat Baig, Shahbaz Baig and Jaffar Baig but the appellate Court has recorded a finding to the effect that Mughal Baig had two other sons as well namely Kallu Baig and Sarfraz Baig. This finding appears to be conjectural .apart from being beyond the scope of the pleadings of the parties. The appellate Court has derived an inference from the ' mortgage deed Exh. P.20 that Mughal Baig had five sons. The relevant part from the judgment of the Court contained in para. 14 is reproduced below for ready reference:- \* I w " „All that the document indicates is that Shahbaz Baig and Jaffar Baig had mortgaged their property whereas the ' remaining property was owned by Khairat Baig, Kallu Baig and Mst. Niazi Begum. It means that the mortgagors had joint property with Khairat Baig and others. No doubt the name of the father of Khairat Baig is not mentioned in this document but according to the pedigree-table given in the written statement by the respondents Mst. Niazi Begum was wife\* of Sarfraz. Baig alias Jabbu Baig.

Said Mst. Niazi Begum has been mentioned in this document as well alongwith Khairat Baig and Kallu Baig. The point for consideration is that on the perusal of this document it appears as if Mughal Baig had five sons who were known as Shahbaz Baig, Kallu Baig, Jaffar Baig, Khairat Baig and Sarfraz Baig, None of the parties, however, admit this number of sons of Mughal Baig, I, however, & cannot deny the fact that this document, which was registered in the year, 1895, cannot be stated as incorrect. Since it speaks about the parentage of two persons, who were going to mortgage their property and has given the names of person whose share was not being so mortgaged. The inference which could have been drawn was that Khairat Baig and Kallu Baig were also sons of Mughal Baig and Mst. Niazi Begum was shown in the document as widow of one of the sons of Mughal Baig." r l i This finding is conjectural and a laboured one, apart from being beyond the scope of the pleadings of the parties. The document Exh.P.20 at the most shows that Shahbaz Baig and Jaffar Baig are sons of Mughal Baig who had mortgaged their property and that Khairat Baig, Kallu Baig and Mst. Niazi Begum were coowners. This document does not mention the name of father of Khairat Baig and » # j Kallu Baig. Therefore, the inference drawn by the appellate Court to the effect that it

appeared as if Mughal Baig, had five sons known as Shahbaz Baig, Kallu Baig, Jaffar Baig, Khairat Baig and Sarfraz Baig is entirely conjectural. .

' \* J m 11.' The petitioners had claimed that Khairat Baig was son of Ahmad Baig and had nothing to do with the family of the plaintiffs/respondents Nos.1 to 3 who were descendants of Mughal Baig. In order to prove their plea they had produced documents Exhs.D.1 to D.8. The trial Court had relied on these documents being more than 30 years old but the appellate Court rejected the same among others for the reason that the same had not come from the proper custody. This view of the appellate Court appears to be erroneous because the petitioners being the descendants of Khairat Baig, their custody of the documents was proper. While placing reliance on the mortgage deed Exh.P.20, the appellate Court stated that such a document was to be presumed as correct for the reason that it had been produced from the proper custody of those who claimed to be legal heirs of Shahbaz Baig one of the executants of the document. The same reasoning ought to have been applied while dealing with documents Exhs.D.1 to D.8. The appellate Court appears to have acted illegal and with material irregularity in rejecting sound documentary evidence produced by respondents Nos.1 to 3. Exh.D. 1 is the Sanad Lambardari of Muhammad son of Khairat Baig. In the very outset it has been mentioned that the office of Lambardar for Mau/a Akbar Pur Barota had fallen vacant due to the death of the Lambardar namely Khairat Baig son of Ahmad Baig. The appellate Court doubted this document for two reasons firstly, it was issued by the Collector, Delhi although Akbar Pur Barota was included in District Rohtak. This aspect of the matter was got clarified in the oral evidence of Abdul Hameed Khan P.W.1 who admitted that Khairat Baig was appointed as a Lambardar of village Akbar Pur Barota and that earlier Tehsil Soni Pat was included in District Delhi. This fact is further established by the documentary evidence on the record. The Mortgage Deed dated 30-6-1895 (Exh. P.20) pertaining to land situated in village Akbar Pur Barota Tehsil Soni Pat, was registered in the office of SubRegistrar, Delhi. The appellate Court readily accepted this document to be authentic and did not raise any question as to how it could be registered in the office of Registrar, Delhi when according to him village Akbar Pur Barota, Tehsil Soni Pat was included in District Rohtak. Again, the copy of Khatuni (Exh. D.4) was issued by the copying department of the office of the Deputy Commissioner, Rohtak although the property is shown to be located in Tehsil Soni Pat District Delhi proper. Similarly, the copy of "Shart Wajibul Arz" (Exh.

D.6). Salc-Deed (Exh. D.7) and Mutation No, 198 (Exh. D.8) show that Tehsil Soni Pat was included in District Delhi.

Subsequently, it was made part of district Rohtak. Therefore, the Collector Delhi had rightly granted Sanad Lambardari.

Secondly, the appellate Court was unduly influenced by the fact that the Sanad was printed at the Central Jail Steem Press, Lahore. Whether there was any press at Delhi or not has not been proved on the record. The Government documents could be got published from any press under the directions of the then Government. Had it been a fabricated document then either the name of the press at Delhi would have been mentioned or the same would not have been mentioned at all. It is pertinent to mention that the Sanad Lambardari is accompanied by the instructions regarding performance of duties by the Lambardar. The sanad itself contains reference to the instructions in

these words:- 'c-Ur 4 \* The instructions run into 8 printed pages and confirm genuineness of the document Exh.D. 1. Hence, there was no valid reason to doubt the authenticity of this document. It clearly proves that Khairat Baig was son of Ahmad Baig and that his son Muhammad Baig was appointed as Lambardar. Muhammad Baig had contracted marriage with Mst. Badar-un-Nisa after demise of her first husband Yusuf Baig, real brother of Muhammad Baig. Out of the said wedlock (as claimed by the petitioners) one daughter Mst. Jameela Khatoon was born. The petitioners are the successors-in-interest of Mst. Jameela Khatoon and their custody of the document Exh. D.1 or for that matter documents Exhs. D.2 to D.8 was proper..

12. Exh. D.2 is a copy of the Mortgage Deed registered in the office of Sub-Registrar Soni Pat on 3-5-1881. At the end of the document, the person who had prepared the copy has given a note under his signatures in these words, The appellate Court discarded this document on the erroneous assumption that it did not bear the signatures of the executant of the witnesses, without realizing that it was a copy of a registered document. Being a document more than 30 years old it also deserves to be accepted as correct. It mentions the name of Mortgagee as Khairat Baig, son of Mirza Ahmad Baig, Lambardar Mauza Akbar Pur Barota. The document Exh. D.4 is a copy of Khewat/Khatuni and bears the seal of the office of the Commissioner District Rohtak. It also mentions the name of Khairat Baig son of Ahmad Baig. It was discarded by the appellate Court on the hypertechnical ground that the signatures of the attesting official had been washed. In fact, the signatures appearing on the seal affixed at the end has become somewhat dim but has not been washed away. The document was issued on 26-7-1916 on the application made by Mughal Baig and could be presumed to be correct by virtue of the provisions of section 100 of the Evidence Act. Exh.D.6 is a copy of Sharat Wajbul Arz of the village Akbar Pur Barota and bears the seal of the Copying Department. On this document, the initial of the official under the stamp appears to have washed away but this, per se, is not enough to discard the document. It visibly appears to be an old document and bears the seal of the copying department. It contains the names of the three Lambardars including Khairat Baig son of Ahmad Baig. This entry is consistent with the entries made in the Sanad Lambardari Exh.D.1 and Mortgage Deed Exh.D.2. These documents prove beyond any shadow of doubt that Khairat Baig is son of Ahmad Baig and not of Mughal Baig as claimed by the plaintiffs/respondents Nos.1 to 3. In this view of the matter, the plaintiffs/respondents Nos.1 to 3 who are descendants from the family of Mughal Baig failed to establish any link with the family of Ahmad Baig or Khairat Baig. Hence, they could not claim inheritance left by Mst. Badar-un-Nisa who was widow of Muhammad Baig son of Khairat Baig. On the same basis, they were not entitled to claim the inheritance left by Samad Baig who was son of Muhammad Baig from his earlier marriage with Mst. Maryam Bibi. They were not competent to assail the legality or validity of the order dated 13-6-1970 passed by the Settlement Commissioner and the subsequent mutations of inheritance mentioned in issue No.2. Therefore, I reverse the findings of the appellate Court on issues Nos.1, 2 and 15 and restore those of the trial Court. In view of the findings on issues Nos.1, 2 and 15, the trial Court was justified in recording findings on issues No.6 in favour of Mst. Jameela Khatoon deceased defendant No.3 (not represented by the petitioners) and awarding special costs of Rs.5,000 to her under section 35-A of the C.P.C. Since defendants No.5 (Mst. Shahzadi Siddique). No. 10 (Ayub Baig, deceased now represented by his legal heirs) and No.12 (Wali Muhammad) did not challenge the judgment passed by the appellate Court, the findings recorded by the appellate Court qua issue No. 12 are maintained. Resultantly, the above referred

defendants Nos.5, 10 and 12 shall not be entitled to get special costs under section 35;A of the C.P.C.

I E I 13. The oral evidence of Abdul Hameed P.W./1 and Dr. Karim-un-Din P.W./2 qua parentage of Khairat Baig and Mst. Jameela Khatoon does not appear to be reliable. Abdul Hameed Khan P.W. 1 correctly stated that Mughal Baig had three sons but wrongly included Khairat Baig as one of the sons leaving out Sarfraz Baig who is proved by documentary evidence to be son of.

Mughal Baig. Similarly it is proved by sound documentary evidence that Khairat Baig is son of Ahmad Baig. It appears that Abdul Hameed Khan P.W.1 made a wrong statement to the effect that Khairat Baig was also son of Mughal Baig simply to help the plaintiffs/respondents Nos.1 to 3. He claimed that he was residing at a distance of four miles from Akbar Pur Barota Tehsil Soni Pat but had not seen Mughal Baig. He added that he had seen his son Yaqoob Baig (though he had no son by this name) and at once corrected himself by saying that he had not seen any of his sons. Therefore, his statement regarding relationship of the families of Mughal Baig and Khairat Baig appears to be hearsay. He had no direct or special means of knowledge about their families and had wrongly mentioned the name of Khairat Baig and Yaqoob Baig as sons of Mughal Baig. Hence, his opinion could not be given any weight or treated as relevant under the provisions of section 50 of the Evidence Act (now Article 64 of the Qanoon-e-Shahadat Order, 1984). For the same reason, the statement of Dr. Karim-ud-Din P.W.2 regarding the pedigree-table of Mughal Baig and Khairat Baig cannot be accepted. .

I 14. On the other hand, the two witnesses namely Yaseen Baig, D.W.1 and Aslam Baig, D.W.2 produced by the predecessor-in-interest of the petitioners appear to be reliable. Muhammad Yaseen Baig, D.W. 1 is a Mughal by caste and was 73 years old when he made his statement in the Court. He stated that he knew the families of the contesting parties; that he was residing at a distance of about 30 miles from the family of Mughal Baig (in India); that Mst. Badar-un-Nisa had died in India in the year, 1947; that he had seen Mst. Badar-un-Nisa, Mst. Naseera Begum, Mst. Jameela Khatoon, Samad Baig and Mst. Ummatul Mobeen and that about the other relatives of the parties he was given information by Samad Baig and his real uncle Ahmad Baig; that Mughal Baig had three sons namely Sarfraz Baig alias Jabboo Baig, Jaffar Baig and Shahbaz Baig and that he had not seen them but was informed about them by Sattar Baig, Samad Baig and his uncle Ahmad Baig. He further stated that the area where the property owned by Badar-un-Nisa deceased was situated (in India) was included in District Delhi till the year, 1907 and, thereafter, it was included in District Rohtak. The statement made by this witness rings true and is supported by documentary evidence in material respects, particularly regarding parentage of Khairat Baig, inclusion of Tehsil Soni Pat in District Delhi, its subsequent inclusion in District Rohtak and the names of three sons of Mughal Baig. He also stated that Mst. Jameela Khatoon belonged to the family of Khairat Baig who had two sons namely Muhammad Baig and Yousuf Baig; that Muhammad Baig was first married to Mst. Maryam Bibi and out of the said wedlock one son Samad Baig and a daughter Mst. Ummatul Mobeen were born; that Yousuf Baig was married to Mst. Badar-un-Nisa and out of their wedlock a son named Yousuf Baig and a daughter Mst. Naseera Begum were born; that after the death of Yousuf Baig, Mst. Badar-un-Nisa contracted marriage with Muhammad Baig and out of their wedlock Mst. Jameela Khatoon predecessor-in-interest of the petitioners was born. He specifically denied the.

suggestion in cross-examination that Mst. Jameela Khatdon was not the daughter-of Muhammad Baig from his second marriage with Mst. Badar-un-Nisa. Mirza Aslam Baig, D.W.2 is son of Mst. Jameela Khatoon. Although; he was born: in the year, 1950, yet being a son of Mst. Jameela Khatoon deceased Was in a position to know: the facts regarding the relationship of the parties. He stated that he knew the family of his father and mother and that he had seen. Samad Baig a/d Mst. Naseera Begum. He stated that they belonged to the family of Khairat Baig whose father was Ahmad Baig; that Khairat Baig had two sons Yousuf Baig and Muhammad Baig; that Muhammad Baig was married to Mst. Maryam Bibi and but of their wedlock a son Samad Baig and a daughter Mst. Ummatul Mobeen were born, that Yousuf Baig was married to Mst. Badar-un-Nisa and had a son Younis Baig and a daughter Mst. Naseera Begum from her; that after the death of Yousuf Baig, Mst. Badar-un-Nisa contracted marriage with Muhammad Baig and out of their wedlock Mst. Jameela Khatoon (mother of the witness) was born. He also stated that respondents Nos. 1 to 3 had no relationship with his family. He specifically stated that respondents Nos. 1 to 3 belonged to the family of Mughal Baig and that the father's name of Khairat Baig was Ahmad Baig and not Mughal Baig. His statement also rings true in all its material aspects and was wrongly rejected by the appellate Court on untenable grounds. It may be mentioned here that Mst. Naseera Begum widow of Samad Baig and Mst. Jameela Khatoon had jointly filed a suit against Mst. Ummatul Mobeen challenging the validity of sale mutation No. 779 sanctioned on 19-3-1966. They had given the pedigree-table which is in accord with the statements made by D.W. 1 and D.W. 2. A copy of the plaint was brought on the record as Exh. D/11. After the death of Mst. Naseera Begum the suit was pursued till the end by Mst. Jameela Khatoon, who claimed the share of Mst. Naseera Begum as well. The suit was decreed by the trial Court vide judgment and decree dated 6-1-1986 (Exh. D/15). The said judgment also supports the claim made by Mst. Jameela Khatoon deceased that she was daughter of Muhammad Baig and step sister of Samad Baig and Mst. Naseera Begum.

t 15, For the foregoing discussion, the revision petition is accepted, the impugned judgment and decree dated 22-1-1991 passed by the learned Additional District Judge are set aside and the judgment and decree dated 2-4-1990 passed by the trial Court are restored (except the findings on issue No. 12) with costs throughout.

V A.A./J-21/L « Revision accepted.