

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Qazi Faez Isa
Mr. Justice Yahya Afridi

Civil Appeals No. 152 and 153 of 2019

(Against the consolidated judgment dated 26.11.2018 passed by the Peshawar High Court, Abbottabad Bench, in Civil Revisions No. 182-A/2018 and 145-A of 2018)

AND

Civil Petition No. 472 of 2019

(Against the judgment dated 26.11.2018 passed by the Peshawar High Court, Abbottabad Bench, in Writ Petition No. 521-A/2018)

Haji Muhammad Yunis (deceased) through legal heirs and another.
(in all cases)

... **Appellants**

Versus

Mst. Farukh Sultan and others. (in CA. 152/2019)
Syed Faisal Shah and others. (in CA.1523/19 &
CP.472/19)

... **Respondents**

For the appellants: Mr. Munawar Iqbal Duggal, ASC.
(In all cases) Syed Rifaqat Hussain Shah, AOR.

For private respondents: Agha Muhammad Ali, ASC.
(In all cases) Ch. Akhtar Ali, AOR.

For official respondents: Nemo.

Date of Hearing: 26.04.2022.

JUDGMENT

Yahya Afridi, J. What we have before us is a classic case depicting the mental anguish and prolonged ordeal faced by overseas Pakistanis in securing their real estate investments through the courts in Pakistan.

Parties and Subject Matter

2. The saga of the ordeal faced by Haji Muhammad Yunis¹ and his wife, Mst. Mumtaz Akhtar (**appellants/defendants No. 1 and 2**), who were first living in South Africa and then settled in the United

¹Haji Muhammad Yunis has died during pendency of these appeals and petition, and is represented by his legal heirs.

Kingdom, commenced when they purchased a house on a 4-kanal and 7-marla land, bearing *khata* No. 2433/3409, *hasra* No. 1366, situated in *Mouza Mir Pur*, Tehsil and District Abbottabad (**suit property**) from Mst. Suriyya Ashraf *vide* sale mutation No. 3477 (**sale mutation**) sanctioned on 15 October 1989 for a sale consideration of one million rupees. Mst. Surriya Ashraf lived for about 19 years after the sale mutation and died in October 2008. On her death, Mst. Surriya Ashraf left behind three legal heirs, two daughters, namely, Mst. Farukh Sultan (**respondent No.1/plaintiff**) and Mst. Fozia Naian (**respondent No.6**) and one son, namely, Syed Faisal Shah (**respondent No.2**). Other parties are Tehsildar, Abbottabad (**respondent No.3**), Sub-Registrar Abbottabad (**respondent No.4**) and Patwari Halqa Revenue Estate Mirpur, Abbottabad (**respondent No.5**).

Civil Appeals No. 152 and 153 of 2019

3. Mst. Farukh Sultan (**respondent No.1**) instituted a suit,² on 22 June 2009, seeking declaration that she and her siblings, being the legal heirs of Mst. Surriya Ashraf, were the co-owners of the suit property, and that the sale mutation, being the result of fraud and forgery, was void and ineffective against their rights. Her siblings did not join her cause as co-plaintiffs in the suit; she, therefore, impleaded them as *proforma* defendants. Her sister, Mst. Fozia Naian (**respondent No.6**), did not appear in the suit, while her brother, Syed Faisal Shah (**respondent No.2**), appeared and contested her claim by filing his written statement, claiming therein that the suit property had fallen to his share in the family settlement, and he was the exclusive owner thereof. He, however,

² The present appeals have arisen from this suit.

also disputed the validation of the sale mutation. On his stance of exclusive ownership of the suit property in the written statement, respondent No.1 got him transposed as a proper defendant in the suit. He also instituted a separate suit on 26 June 2009, claiming his ownership of the suit property, and disputing the sale mutation, but later withdrew the same on 16 June 2011.

4. The trial court dismissed the suit of Mst. Farukh Sultan (**respondent No.1**) on 7 January 2015. She and her brother, Syed Faisal Shah (**respondent No.2**) filed two separate appeals, and the appellate court dismissed both the appeals by a common judgment dated 20 February 2018. Thereafter, both of them filed two separate civil revision petitions, which were allowed by a common judgment by the High Court dated 26 November 2018 (**impugned judgment**), and the concurrent judgments of the trial and appellate courts were thereby reversed and the suit of respondent No.1 decreed. Hence, Civil Appeals No. 152 and 153 of 2019 have been filed as of right by the appellants.

Civil Petition No. 472 of 2019

5. The background of this petition for leave to appeal is this: Muhammad Yunis and Mst. Mumtaz Akhtar (**appellants**) filed a complaint on 24 September 2012, against Syed Faisal Shah (**respondent No.2**) under sections 3 and 8 of the Illegal Dispossession Act 2005, for his trial of the offence of illegally occupying the suit property and for recovery of the possession of the suit property. The trial court, on an application of Syed Faisal Shah (**respondent No.2**) stopped the proceedings of this complaint on 1st April 2013 till decision of the civil suit of Mst. Farukh Sultan (**respondent No.1**).

After decision of the civil suit as well as decision of the appeal, the trial court restored the proceedings of the complaint on 7 March 2018 on application of Muhammad Yunis and Mst. Mumtaz Akhtar (**appellants**), and framed the formal charge against Syed Faisal Shah (**respondent No.2**) on 23 April 2018. Syed Faisal Shah (**respondent No.2**) filed an application challenging the maintainability of the complaint on 8 May 2018, on the ground of pendency of his civil revision petition against the judgments of the trial and appellate courts passed in the civil suit. The trial court dismissed this application by its order of the same date, that is, 8 May 2018 while placing reliance upon the judgment of this Court rendered in **Muhammad Naseem v. Farida Gul**³. Syed Faisal Shah (**respondent No.2**) challenged the said order by filing a writ petition in the High Court. The High Court allowed his writ petition, accepted the said application of respondent No.2 and dismissed the complaint of the appellants by its order dated 26.11.2018 (**impugned order**), relying upon its judgment passed in the connected civil revision petitions, which is impugned in Civil Appeals No. 152 and 153 of 2019. Hence, the present petition for leave to appeal has been filed by the appellants.

6. The valuable submissions of the learned counsel for the parties have been heard and with their able assistance, the record of the cases perused.

Unbecoming Conduct and Wavering Stance of Respondent No.2

7. At the outset, before we discuss the merits of the contested claims of the parties and the findings recorded by the three courts

³ 2016 SCMR 1931.

thereon, we find it appropriate to first address the three-pronged challenge made by the appellants to the conduct of Syed Faisal Shah (**respondent No.2**) during the proceedings of the suit: firstly, that he introduced a fictitious attorney of Mst. Mumtaz Akhtar (**appellant No.2**) and her purported son, Imran Yunis, namely, Syed Walayat Shah, and showed Haji Muhammad Yunis (**appellant No.1**) to have died; secondly, that he got filed the written statement on behalf of the appellants through the said fictitious attorney favouring his stance in the suit; and finally, that he got half of the suit property alienated through the said fictitious attorney to him *vide* sale mutation No. 378 sanctioned on 26 December 2012.

8. The fallacy of the foundation of the entire stance taken by Syed Faisal Shah (**respondent No.2**) was exposed, when Haji Muhammad Yunis and Mst. Mumtaz Akhtar (**appellants**) appeared in person before the trial court on 24 October 2012, and apprised the trial court of the fraud committed in producing a fictitious attorney and misrepresenting the death of Haji Muhammad Yunis. These crucial facts were recorded by the trial court in its order, and that too, in the presence of Syed Faisal Shah (**respondent No.2**). The court proceedings recorded by the trial court in its orders No. 63 and 67 passed on 24 October and 10 December 2012, have resonance of the fraud and misrepresentation contended by the appellants. The same are reproduced hereunder for ease of reference:

O-63

24.10.12

Pltt through Asst present, defdt No # 3 present, submitted W/N. Defdt No. # 1, 2 in person present a/w counsel, submitted W/N and requests for personally pursuing case, as he and his wife are alive & settled in Africa, and Imran Yunus is a fictitious person who stated himself as son of the defdt No. # 1 & 2, fraudulently obtained their CNIC from NADRA, and showed them as dead just to grab their property, made fictitious inheritance mutation, in their absence. As soon as he came to know, he appeared

personally, to pursue the case. His alleged son Imran Younus & Attorney Wilayat Shah be summoned/noticed in person, to answer these complicated questions.

File to come up for personal attendance of Imran Younus & Wilayat Shah on 5/11/12.

O-67

10/12/12

Parties through counsels present, arguments on application of defdt No. # 1 & 2 heard, file perused.

Briefly stated facts are that defdt No # 1 & 2 are residing abroad having UK/British nationality. That defdt No. 1 & 2 had purchased the suit house in the year 1989/90 from the parents of plttf & defdt No # 3. That, one Imran Younus through attorney namely Vilayat Shah appeared in behalf of defdt No. 1 & 2. As Imran Younus alleged himself as son of defdt No 1 & 2, and they have been shown as dead. As defdt No. 1 & 2 came to know they personally appeared, and stated that Imran Younus is not the son since then Imran Younus & his special attorney have disappeared. Counsel for defdt No. 1 & 2 submitted application to cancel proceedings initiated by Imran Younus in behalf of defdt No. 1 & 2. Defdt No. 1 & 2 initiated criminal proceedings against said persons.

The plea of defdt No 1 & 2 seems reasonable. Proceedings initiated by the said Imran Younus in behalf of defdt No 1 & 2 are revoked in this case. Defdt No. 1 & 2 are directed to contest the case. The petition is disposed of accordingly.

File to come up for w/s in behalf of Defdt No. 1 & 2 on 13/12/12.'

Perusal of the above orders of the trial court clearly confirms the presence of Syed Faisal Shah (**respondent No.2**), who was defendant No.3 in the suit, when the appellants appeared in person before the trial court on 24 October 2012, and informed the trial court about the fraud of the fictitious attorney, Syed Wilayat Shah. Thus, despite having knowledge of the fraud of the said fictitious attorney, the silent and unprotested presence of Syed Faisal Shah (**respondent No.2**) at the time of sanction of the sale mutation No. 378 on 26 December 2012 in his favour regarding half of the suit property through the said fictitious attorney, speaks otherwise than his *bona fide*.

9. Furthermore, the stance of Syed Faisal Shah (**respondent No.2**) before the trial court, during the proceedings of the suit, also kept

wavering. At the initial stage of the proceedings of the suit, he took the plea in his written statement filed on 18 February 2010 that the suit property has fallen to his share in the family settlement and he is the exclusive owner thereof. Later, he is shown to have purchased half of the suit property *vide* sale mutation No. 378 sanctioned on 26 December 2012. And finally, he abandons all his earlier claims after registration of a criminal case against the said fictitious attorney, in his statement made as DW-5 on 28 February 2014 and joins hands with his sister, Mst. Farukh Sultan (**respondent No.1/plaintiff**), supporting her claim that the suit property has devolved on all children⁴ of Mst. Suriya Ashraf and they all are entitled to their respective share therein as per the Islamic law.

10. To sum up the discussion on the conduct and stance of Syed Faisal Shah (**respondent No.2**) during proceedings of the suit, we can safely conclude that the same were beyond being civil and honest. In the background of such conduct of Syed Faisal Shah (**respondent No.2**), we may now proceed to consider the merits of Civil Appeals No. 152 and 153 of 2019.

Merits of Civil Appeals No. 152 and 153 of 2019

11. The contested pleadings of the parties led the trial court to frame ten issues for trial. Issues No.4, 5 and 8 comprised the main controversy between the parties, which are reproduced hereunder for ready reference:

Issue No.4: Whether suit of plaintiff is time barred? OPD

⁴ One daughter, namely, Mst. Fozia Naian did not come forward to support the plaintiff before the trial court, appellate court or revisional court nor did she appear in the witness box to testify about the disputed facts. However, the learned counsel, Agha Muhammad Ali, has submitted that she has now submitted her power of attorney (wakalat nama) in this Court in support of her siblings.

Issue No.5: Whether defendants No. 1 and 2 purchased property from parent of plaintiff and defendant No.3? OPD

Issue No.8: Whether mutation No. 3477 dated 15/10/1989 is fake, forged and fictitious? OPP

Bar of Limitation

12. On Issue No.4, the trial court concluded that although the suit was instituted after 19/20 years of the sanction of the sale mutation and the predecessor of the Mst. Farukh Sultan (**respondent No.1/plaintiff**) had not challenged the sale mutation during her lifetime, yet a new *Jamabandi* is prepared after every four years, which creates a fresh cause of action; therefore, the suit of the plaintiff was within time. The appellate court did not give any finding on this issue, while the High Court endorsed the findings of the trial court with the observation that repetition of every wrong entry in the subsequent *Jamabandi* gives a fresh cause of action, therefore, the suit was filed within the period of limitation.

13. We find that both the trial court and the High Court have not correctly decided the issue of limitation. This Court has recently clarified, in **Rabia Gula v. Muhammad Janan**,⁵ the application of Article 120 of the First Schedule to the Limitation Act, 1908 ("**Limitation Act**") to a suit for declaration filed under section 42 of the Specific Relief Act, 1877 ("**Specific Relief Act**"). The Court has opined:

8.12 A suit for declaration of any right, as to any property is filed under section 42 of the Specific Relief Act, which reads:

42. Discretion of Court as to declaration of status or right-- Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or

⁵ C.A. No.139-P/2013 decided on 25 February 2022, available on the official website of this Court at: https://www.supremecourt.gov.pk/downloads_judgements/c.a._139_p_2013.pdf

right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief: Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so. (Emphasis added)

It becomes evident by reading the above provisions that the right to sue accrues to a person against the other for declaration of his right, as to any property, when the latter denies or is interested to deny his such right. It thus postulates two actions that cause the accrual of right to sue, to an aggrieved person: (i) actual denial of his right or (ii) apprehended or threatened denial of his right.

8.13 Now, 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. It is important to note that a person may ignore an “apprehended or threatened denial” of his right taking it not too serious to dispel that by seeking a declaration of his right through instituting a suit, and may exercise his option to institute the suit, when he feels it necessary to do so, to protect his right. For this reason, every “apprehended or threatened denial” of right gives a fresh cause of action and right to sue to the person aggrieved of such apprehension or threat. However, this option to delay the filing of the suit is not available to him in case of “actual denial” of his right; where if he does not challenge the action of actual denial of his right, despite having knowledge thereof, by seeking declaration of his right within the limitation period provided in the Limitation Act, then his right to do so becomes barred by law of limitation.

8.14 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.

8.15 The situation is, however, different in a case where the beneficiary of an entry in the revenue record also takes over the possession of the land on the basis of sale or gift transaction, as the case may be, recorded in that entry. His action of taking over possession of the land in pursuance of the purported sale or gift is certainly an “actual denial” of the proprietary rights of the purported seller or donor. Therefore, in such a case, if the purported seller or donor does not challenge that action of “actual denial” of his right, within the prescribed limitation period, despite having knowledge thereof, then his right to do so becomes barred by law of limitation.

(Emphasis added)

On careful reading of the above, it is evident that this Court has explained the distinction between an “actual denial of right” and an

“apprehended or threatened denial of right” in relation to applicability of the law of limitation in cases seeking declaration of proprietary rights in immovable property. It has held that every new adverse entry in the revenue record, being a mere “apprehended or threaten denial” 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. It has, however, further clarified that the situation is different in a case, where the beneficiary of an entry in the revenue record actually takes over physical possession of the land on the basis of sale or gift mutation. In such a case, the alleged wrong entry in the revenue record coupled with the very act of taking over possession of the land by the alleged buyer or *donee*, in pursuance of the purported sale or gift, is an “actual denial of the proprietary rights” of the alleged seller or *donor* and thus, the time period to challenge the said disputed transaction of sale or gift by the aggrieved seller or *donor* would commence from the date of such actual denial. Therefore, in such a case, if the purported seller or *donor* does not challenge that action of “actual denial of his right” within the prescribed limitation period, despite having knowledge thereof, his right to do so becomes barred by the law of limitation, and the repetition of the alleged wrong entry in the subsequent revenue record (*Jamabandi*) does not give rise to a fresh cause of action.

14. In the present case, Haji Muhammad Yunis and Mst. Mumtaz Akhtar (**appellants**) claim that the possession of the suit property was handed over to them under the sale mutation in 1989, and it was subsequently taken over by Syed Faisal Shah

(**respondent No.2**), when they were abroad. We find that this assertion of the appellants is supported by the documentary evidence produced by the respondent No.2 himself, that is, copy of *Khasra Girdawri* (**Exh-DW5/6**). As per the said document, Syed Faisal Shah (**respondent No.2**) took over possession of the suit property in 2009, and prior to that period Haji Muhammad Yunis and Mst. Mumtaz Akhtar (**appellants**) were recorded to be in possession of the suit property. Similarly, this fact is further fortified by the copies of Utility Bills (**Exh-DW5/1**) tendered by Syed Faisal Shah (**respondent No.2**) in his evidence; almost all these Bills relate to the period after the year 2009.

15. Possession follows the title. This is a well settled principle. Therefore, unless contrary is proved by cogent evidence, an owner is presumed to be in possession of his property. Haji Muhammad Yunis and Mst. Mumtaz Akhtar (**appellants**), who are owners of the suit property, as per the revenue record, are thus presumed to be in possession of the suit property, since the sanction of the sale mutation in the year 1989. If Mst. Farukh Sultan (**respondent No.1**) and Syed Faisal Shah (**respondent No.2**) or their parents remained in possession of the suit property throughout, as asserted by them, then they were to produce cogent evidence in that regard, which is lacking in the present case. Even the copies of the Utility Bills produced by the respondents were for the period after 2009. The failure on their part to produce copies of the Utility Bills for the period from 1989 to 2009, negates their assertion of possessing the disputed property throughout, and strengthens the stance of the appellants.

16. Needless to reiterate, that disputed facts in civil cases are ordinarily decided on the evidential standard of preponderance of probability. In view of the evidence available on record of the case, all probabilities tilt in favour of the assertion of fact made by Haji Muhammad Yunis and Mst. Mumtaz Akhtar (**appellants**). We, therefore, find that the possession of the suit property was taken over by the appellants in the year 1989 under the sale mutation as claimed by them. Therefore, the cause of action arose, and the right to sue for declaration of her right and challenge the sale mutation accrued to Mst. Surriya Ashraf, the purported seller, in 1989 as per section 42 of the Specific Relief Act and Article 120 of the first Schedule to the Limitation Act 1908. She lived for about two decades after sanction of the suit mutation but did not exercise such right within the limitation period of six years prescribed in Article 120 of the first Schedule to the Limitation Act. Her right, therefore, became time barred even in her lifetime, and if she were alive in 2009 and had herself instituted the suit to challenge the sale mutation, her suit would have been time barred. When the right to sue of a person from or through whom the plaintiff derives his right to sue has become time barred, no fresh period of limitation can start for such plaintiff.⁶ Neither in the plaint nor in her evidence did Mst. Farukh Sultan (**respondent No.1/plaintiff**) assert that her mother, the purported seller, who remained alive for about 19 years after sanction of the sale mutation, was not aware of the sale mutation and thus could not challenge the same during her lifetime. She has not even stated in the plaint or in her statement (**PW-2**) how and when she came to know of the sale mutation. These omissions on her part defeats the

⁶ See Rabia Gula case.

very legal basis upon which she could have saved her suit from the bar of limitation under section 18 of the Limitation Act.⁷

17. In view of the above discussion, it is apparent that the suit of Mst. Farukh Sultan (**respondent No.1/plaintiff**) was clearly barred by the law of limitation, as it was filed beyond the six-year period prescribed under Article 120 of the first Schedule to the Limitation Act. Thus, the suit was liable to be dismissed on this ground alone, as per section 3 of the Limitation Act. The High Court has therefore legally erred in deciding the issue of limitation in the impugned judgment, which warrants interference by this Court in its appellate jurisdiction.

Validity of the sale mutation and presumption of truth

18. As for the legal validity of the sale mutation, which was in fact the core matter for determination under Issues No.5 and 8, it need not be looked into, as the very suit has been found to be barred by the law of limitation.⁸ However, for completeness of the discussion and furtherance of fairness, we have examined the evidence of the parties on these issues also. In this regard, we may observe, when a sale transaction of an immovable property is challenged, the ultimate onus to prove the same is on the “beneficiary” thereof. However, this onus is shifted on the “beneficiary”, only when the challenger puts forth some evidence to discharge the initial burden to rebut the legal presumption of truth in favour of the disputed long-standing revenue entries or registered sale deed, as the case may be. In the present case, we note, Mst. Farukh Sultan (**respondent No.1/plaintiff**) had not

⁷ Ibid.

⁸ Section 3 of the Limitation Act, 1908

discharged the initial onus; firstly, to rebut the presumption of regularity attached to the official act of sanctioning the sale mutation by the Revenue Officer, under Article 129(e) of the Qanun-e-Shahadat 1984, and secondly, the presumption of truth attached to the entries in the revenue record, under section 52 of the Land Revenue Act 1967.⁹ Thus, the burden to prove the sale transaction and the sale mutation did not shift upon Haji Muhammad Yunis and Mst. Mumtaz Akhtar (**"appellants/defendants No.1 and 2"**).

19. Mst. Farukh Sultan (**respondent No.1/plaintiff**) deposed in her statement (**PW-2**) that she had not preferred any claim against Haji Muhammad Yunis and Mst. Mumtaz Akhtar (**appellants/ defendants No.1 and 2**) that she had made her claim only against her brother Syed Faisal Shah (**respondent No.2**) and that she did not know Haji Muhammad Yunis and Mumtaz Akhtar (**appellants/defendants No.1 and 2**) and had no concern with them. This portion of her statement has specifically been cited by the appellate court in its judgment. Such a statement of Mst. Farukh Sultan (**respondent No.1/plaintiff**) could not be treated to have discharged the initial onus of rebutting the legal presumptions of regularity and truth attached to the long-standing revenue entries in favour the appellants. This statement of respondent No.1 had rather strengthened the said presumptions of regularity and truth.

20. As for the denial of Syed Faisal Shah (**respondent No.2**) of the validity of the sale mutation in his statement (**DW-5**), it was of no value and could be of no use to Mst. Farukh Sultan (**respondent**

⁹ Wajdad v. Provincial Government 2020 SCMR 2046; Mazloom Hussain v. Abid Hussain PLD 2008 SC 571.

No.1) or to him, as he had withdrawn his suit challenging the sale mutation and had, thus, lost his cause of action to re-agitate the same matter in the suit filed by another,¹⁰ either as a co-plaintiff or a *proforma* defendant supporting the plaintiff on the same matter. For what cannot be done directly, cannot be allowed to be done indirectly. Syed Faisal Shah (**respondent No.2**) was legally barred under the provisions of Rule 1(3) of Order XXIII of the Code of Civil Procedure 1908 to re-agitate his claim as to the validity of the suit mutation, after withdrawing his suit; his appeal before the District Court and his revision petition before the High Court were, therefore, not maintainable and wrongly entertained. Further, he having got sanctioned the sale mutation No. 378 on 26 December 2012 regarding half of the suit property through a fictitious attorney of Haji Muhammad Yunis and Mst. Mumtaz Akhtar (**appellants**) had admitted their ownership under the sale mutation. Similarly, the initial non-challenge¹¹ of the sale mutation by Mst. Fozia Naian (**respondent No.6**), the third legal heir of Mst. Surriya Ashraf, the seller, also strengthens the legal presumptions of regularity and truth of the revenue entries in favour of the appellants.

21. Accordingly, it is but apparent that the decision of the High Court reversing the concurrent findings of fact of the courts below on Issues No. 5 and 8 by holding that Haji Muhammad Yunis and Mst. Mumtaz Akhtar (**appellants**) being beneficiaries of the sale

¹⁰ Muhammad Saleem v. Abdul Hakeem 2000 YLR 2888. He can however defend his stance on such matter as a defendant; see Ghulam Haider v. Ahmed Ali 2002 MLD 632.

¹¹ She did not come forward to support the plaintiff before the trial court, appellate court or revisional court nor did she appear in the witness box to testify about the disputed facts. However, the learned counsel, Agha Muhammad Ali, has submitted that she has now submitted her power of attorney (Wakalat nama) in this Court in support of her siblings.

mutation failed to prove the sale transaction is also legally flawed, as the burden to prove the same had not shifted upon them because of the failure of Mst. Farukh Sultan (**respondent No.1/plaintiff**) in discharging the initial burden of rebutting the legal presumptions of regularity and truth attached to the sale mutation and the subsequent entries in the revenue record.

Scope of Revisional Jurisdiction

22. The High Court is found to have erred in reversing the concurrent findings of facts of the trial and appellate courts on Issues No. 5 and 8, by simply reappraising the evidence and without pointing out what substantial evidence was either non-read or misread by the courts below or how their appraisal of the evidence was perverse or absurd, justifying interference in the limited scope of revisional jurisdiction.

23. The trial court had answered both these issues in favour of Haji Muhammad Yunis and Mst. Mumtaz Akhtar (**appellants**), by holding that the sale mutation was sanctioned by the Revenue Officer in presence and on the identification of the seller's husband, who was a retired army officer; therefore, the plea of Mst. Farukh Sultan (**respondent No.1/plaintiff**) as to ignorance of or fraud with her mother, Mst. Suriyya Ashraf, the alleged seller, was immaterial. The trial court had also underlined that the alleged seller died after about 19/20 years of the sanction of the sale mutation but she did not challenge it during her lifetime, and Mst. Farukh Sultan (**respondent No.1/plaintiff**) had no right to challenge it independent of her predecessor.

24. The appellate court further confirmed the findings of the trial court, after making its own independent appraisal of the whole evidence available on record, and also addressing the contentions of Mst. Farukh Sultan (**respondent No.1/plaintiff**) regarding non-production of cogent evidence by Haji Muhammad Yunis and Mst. Mumtaz Akhtar (**appellants/defendants No.1 and 2**), to prove the sale transaction and the sale mutation. The appellate court rejected the said contention with the observation that the appellants could not have produced the evidence demanded of them to prove the sale transaction and the sale mutation after 30 years, when not only the seller, but the identifier, the witness and the Revenue Officer who sanctioned the sale mutation had died. The appellate court also cited that part of the statement (**DW-5**) of Syed Faisal Shah (**respondent No.2**) in its judgment, wherein he had admitted that the signature of his father on the disputed sale mutation (**Mark-A**), as identifier of the seller, his mother, matched with his signature on his CNIC (**Exh-DW5/D1-2**) and that his mother used to make her signature in English, as it was on the disputed sale mutation (**Mark-A**). The High Court did not have, in its revisional jurisdiction, the legal mandate to reverse the concurrent findings of the trial and appellate courts, without first addressing the said reasoning of the trial and appellate courts. Accordingly, the judgment of the high Court warrants correction.

25. For the forgoing reasons, we allow both the appeals, Civil Appeals No.152 and 153 of 2019, set aside the impugned judgment of the High Court and restore the concurrent judgments of the trial

court and appellate court, while reversing the finding of the trial court on Issue No. 4.

Merits of Civil Petition No. 472 of 2019

26. The High Court had allowed the writ petition of Syed Faisal Shah (**respondent No.2**) and accepted his application regarding non-maintainability of the complaint filed by Haji Muhammad Yunis and Mst. Mumtaz Akhtar (**appellants**), under sections 3 and 8 of the Illegal Dispossession Act, 2005, relying upon its judgment passed in the connected civil revision petitions. As we have set aside the judgment dated 26.11.2018 passed in the connected civil revision petitions by allowing Civil Appeals No. 152 and 153 of 2019, the present petition is converted into appeal and allowed. The impugned order of the High Court is set aside and that of the trial court is restored. The trial court shall proceed with the complaint expeditiously and conclude the trial as early as possible, in accordance with law.

Affirmative actions for redressal of the grievances of the overseas Pakistanis

27. Before parting with the judgment, we consider it appropriate to highlight the plight of the overseas Pakistanis in perusing their legal rights in courts in Pakistan. Their disadvantageous position requires urgent positive attention of all organs of the State. Overseas Pakistanis being not present in Pakistan, cannot pursue their cases as efficiently as can be done by the local residents, and are thus in a disadvantaged position in comparison to the latter. They as such form a class distinct from the local residents, based on an *intelligible differentia*. The public institutions can, therefore,

take affirmative actions and make certain special provisions for the protection of their lawful rights and for the redressal of their genuine grievances. We are informed that the Lahore High Court has taken certain administrative measures for early decision of the cases of Overseas Pakistanis and to address their complaints regarding undue delay in decision of their cases, and the Legislature of the Province of Punjab has also enacted a law to redress the grievances of Overseas Pakistanis relating to Government Agencies. These actions are appreciable, and we expect that other Provinces and the Islamabad Capital Territory would follow suit.

28. Office shall send a copy of this judgment to the Registrars of all the High Courts in the country and the Secretaries of all the Provincial Law Departments and the Federal Law Ministry, for their information and appropriate action.

Judge

Judge

Announced in open Court on 17th May, 2022
at Islamabad

Judge

Approved for reporting

Arif