IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
Mr. Justice Ijaz ul Ahsan
Mr. Justice Yahya Afridi
Mr. Justice Jamal Khan Mandokhail

Civil Appeal No. 849 of 2015
(Against the judgment dated 20.05.2015 of the Lahore High Court, Rawalpindi Bench, passed in Civil Revision No. 232 of 2007)

Salamat Ali and others

...Appellant(s)

Versus

Muhammad Din and others

...Respondent(s)

For the Appellants:	Mr. Muhammad Munir Paracha, ASC
For Respondents No. 1-4:	Sh. Zamir Hussain, ASC Syed Rifaqat Hussain Shah, AOR
For Respondents No. 5-21:	Ex-parte.
Date of Hearing:	20.01.2022

JUDGMENT

Yahya Afridi, J.- This appeal challenges the judgment dated 20.05.2015 passed by the Lahore High Court in its revisional jurisdiction under Section 115 of the Code of Civil Procedure, 1908 **("CPC")**, whereby the concurrent judgments of the trial and appellate courts have been set aside and the suit of the appellants has been dismissed.

2. The matter in hand relates to the estate of one Nasir-ud-Din, who passed away in the year 1959, and his estate comprising land measuring 22-Kanals situated in village Jalalpur Sharif, Pind Dadan Khan ("**suit land"**) devolved upon his nephew, Karam Elahi, as his sole legal heir *vide* inheritance mutations No. 1433 and 1435, both dated

14.10.1959 **("inheritance mutations")**. Karam Elahi sold the suit land, as well as the land that he jointly owned with his deceased paternal uncle having inherited the same from his father, Shams-ud-Din brother of Nasir-ud-Din, to several persons *vide* different sale deeds and mutations **("further alienations")**, and those persons further sold it to, or made exchange with, other persons.

3. Salamat Ali and his siblings, children of Lal Din, and their three paternal aunts and two daughters of the fourth paternal aunt **("appellants")** challenged the said inheritance mutations and further alienations, by filing a civil suit in the year 1982. Salamat Ali and his siblings asserted that their father, Lal Din, was the predeceased son of Nasir-ud-Din, while their paternal aunts and cousins asserted that they were the daughters and granddaughters of Nasir-ud-Din, respectively. The appellants claimed that they had been deprived of their legal share in the legacy of their predecessor-in-interest, Nasir-ud-Din, by Karam Elahi fraudulently *vide* the inheritance mutations and further alienations, and prayed for declaring those mutations and alienations void and ineffective against their rights.

4. Karam Elahi, the beneficiary of the inheritance mutations, did not appear before the trial court and was thus proceeded *ex-parte*; while the further transferees including Khushi Muhammad, the father of Muhammad Din and three others, respondents No. 1 to 4 **("respondents")** contested the suit of the appellants, denying the status of the appellants as legal heirs of Nasir-ud-Din, and claimed themselves to be the *bona fide* purchasers of the suit land, besides raising objection to the maintainability of the suit on the ground of limitation.

5. The trial court decreed the suit of the appellants. The appellate court accepted the appeal of the respondents, set aside the judgment of the trial court and dismissed the suit. The High Court **("revisional court")**, on revision petition of the appellants, set aside the judgment of the appellate court, and remanded the appeal to the appellate court, for afresh decision. On remand, the appellate court dismissed the appeal and maintained the judgment of the trial court.

6. On a revision petition filed by the respondents, the revisional court set aside the concurrent judgments of the trial and appellate courts that had been rendered in favour of the appellants, and dismissed the suit of the appellants on the grounds that the appellants had failed to prove their assertion that they were legal heirs of Nasir-ud-Din and that the suit filed by them challenging the inheritance mutations of the year 1959 in the year 1982, was time barred. Hence, the present appeal by the appellants.

7. The learned counsel for the appellant vehemently contended: that when there was positive evidence of witnesses who had "special knowledge" about the relationship between the parties as per Article 64 of the Qanun-e-Shahadat 1984, there was no reason to disbelieve them, especially when the respondents' witnesses did not specifically negate their statements; that the preponderance of probability was in favour of the assertion of the appellants and that there was no "misreading of evidence" leading to an "illegality or material irregularity" within the scope of Section 115 of the CPC, justifying interference by the revisional court in the judgments of the trial and appellate courts.

8. The learned counsel for the respondents contended in rebuttal; that the appellants had produced no cogent, reliable evidence in support of their assertion; that the oral testimony of some of the appellants would not legally suffice to substantiate their assertion; that no documentary evidence, such as the appellants' birth certificates, National Identity Cards and marriage certificates, was produced; and that the revisional court had the jurisdiction to correct the material irregularities in the judgments of the trial and appellate courts, which the revisional court has legally and correctly exercised.

9. Valuable arguments of the learned counsel for the parties have been heard, and with their able assistance, record of the case was examined.

10. As the present case revolves around the legacy of Nasir-ud-Din and the claim made by the appellants is based on their asserted relationship with Nasir-ud-Din, it would be appropriate to commence our discussion with the same. The appellants have asserted that Nasir-ud-Din had four daughters, namely, Baigmaan, Fatima, Rasoolaan and Ayesha, and one son, namely, Lal Din, who pre-deceased Nasir-ud-Din in the year 1956, and he was survived by one daughter, Barkatay, and four sons, Salamat Ali, Muhammad Ramzan, Barkat Ali and Niamat Ali. On the other hand, the respondents claim Nasir-ud-Din to have died issueless, and his nephew, Karam Elahi son of Shamas-ud-Din, the brother of Nasir-ud-Din, had thus validly inherited the estate of Nasir-ud-Din, as his sole legal heir.

11. The parties produced their evidence in support of their respective assertions, and on appraising the same, the trial and appellate courts concurrently found that the appellants had proved their assertion

of being legal heirs of Nasir-ud-Din, while the revisional court, on reappraising the same evidence, has come to a contrary finding. It would, thus, be appropriate to first state on what standard of proof, the courts were to appraise the evidence produced by the parties, and render its finding thereon.

Evidential standards of proof applicable in civil cases

12. As to proof of a fact, clause (4) of Article 2 of the Qanun-e-Shahadat, 1984 provides:

> "(4) A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists."

The conceptual analysis of this clause shows that in order to prove a fact asserted by a party, it does not require a perfect proof of facts, as it is very rare to have an absolute certainty on facts. This provision sets the standard of a 'prudent man' for determining the probative effect of evidence under the 'circumstances of the particular case'. The judicial consensus that has evolved over time is that the standard of 'preponderance of probability' is applicable in civil cases,[1] the standard of 'proof beyond reasonable doubt' in criminal cases,[2] and the in-between standard of 'clear and convincing proof' in civil cases involving allegations of a criminal nature.[3] All these three standards are, in fact, three different degrees of probability, which cannot be expressed in mathematical terms, and are to be evaluated 'under the circumstances of the particular case', as provided in clause (4) of Article 2 of the Qanun-e-Shahadat, 1984.

---

[1] Zaka Ullah v. Muhammad Aslam 1991 SCMR 2126.

[2] Muhammad Asghar v. State 2010 SCMR 1706.

[3] See: Sumaira Malik v. Umar Aslam 2018 SCMR 1432, for election matters,; Shamas-Ud-Din v. Government of Pakistan, PLD 2003 SC 187 and Muhammad Ataullah v. Islamic Republic of Pakistan, 1999 SCMR 2321, for service matters; Chief Justice of Pakistan v. President of Pakistan PLD 2010 SC 61 Per Muhammad Nawaz Abbasi, J. for matters involving assertion/allegation of malafide of fact.

13. In the present case, the evidence produced by the parties on the disputed fact of the appellants' relationship with Nasir-ud-Din, is to be examined on the touchstone of the evidential standard of "preponderance of probability".

Evidence produced by the parties in support of their respective assertions

14. We note that appellants, Fatima Bibi **(PW2)** and Salamat Ali **(PW4),** the co-plaintiffs in the suit, appeared in the witness-box and testified in support of their assertion of being legal heirs of Nasir-ud-Din. The appellants examined Allah Ditta **(PW-1)**, the grandson (daughter's son) of Qutab Din father of Nasir-ud-Din, and Bashir Ahmad (**PW-3),** a resident of the locality where Nasir-ud-Din died. They both testified that Nasir-ud-Din had four daughters and one son, Lal Din, and Lal Din had four sons and one daughter. All the witnesses produced by the plaintiffs stood firm to the test of cross-examination, and their testimony of the deposed fact could not be shaken. The appellants also produced documentary evidence, such as the birth certificate of Lal Din **(Ex-P1)** and his death certificate **(Ex-P2),** wherein he has been recorded as son of Nasir-ud-Din, to prove their assertion. The quantum of evidence produced by the appellants was sufficient to create a high degree of probability of the relationship of the appellants with Nasir-ud-din to exist. Accordingly, the evidential burden shifted to the respondents/defendants to rebut the facts asserted by the appellants/plaintiff.

15. In rebuttal, the respondents/defendants produced Khuda Bakhsh **(DW2)** and Muhammad Din **(DW3)**, who did not deny the asserted relationship of the appellants with Nasir-ud-Din, rather only expressed their ignorance about Nasir-ud-Din having four daughters and one son,

Lal Din, and Lal Din having four sons and one daughter. Karam Elahi, the beneficiary of the inheritance mutations, as aforementioned did not appear to contest the suit and dispute the asserted relationship of the appellants with Nasir-ud-Din, nor did the respondents call him as a witness, to rebut the assertion of the appellants.

16. In view of the above evidence produced by the parties, we find that the appellants/plaintiffs proved their assertion with high degree of probability and the preponderance of probability was clear and evident in favour of their stance regarding their relationship with Nasir-ud-din, while the respondents/defendants failed to rebut the same through any cogent evidence.

Jurisdiction of revisional court – interference of the concurrent findings of fact

17. The trial and appellate courts had rightly found the preponderance of probability in favour of the appellants in accepting their assertion of their relationship with Nasir-ud-din, whereas the revisional court appears to have exceeded its jurisdiction by setting aside their findings. We note that the concurrent findings on the crucial issue of relationship recorded by the two courts was set aside by re-appraising the evidence, without pointing out, what material evidence was misread or non-read by the courts below or how their appraisal of evidence was perverse or absurd. Needless to mention that a revisional court cannot upset a finding of fact of the court(s) below unless that finding is the result of misreading, non-reading, or perverse or absurd appraisal of some material evidence. The revisional court cannot substitute the finding of the court(s) below with its own merely for the reason that it finds its own finding more plausible than that of the court(s) below. Hence, the positive concurrent finding in favour of the appellants

regarding their asserted relationship with Nasir-ud-din would legally stand.

Application of limitation to inheritance cases

18. So far as the finding of the revisional court on the issue of limitation is concerned, we find the same is in accord with the law declared by this Court in **Mst. Gharana v. Sahib Kamal Bibi**[4] and **Atta Muhammad v. Maula Bakhsh**[5], as well as in the recent case of **Ghulam Qasim v. Mst. Razia Begum**[6] wherein after referring to some of the leading judgments on the issue, this Court opined that the law of limitation would be relevant in inheritance cases, where third party interest has been created in the property, as is in the present case.

19. In the present case, the trial court found the suit to be within time by holding that limitation would run from the date the appellants got knowledge about the fraudulent transaction. The appellate court upheld the finding of the trial court observing that no limitation runs against a fraudulent act. The revisional court set aside the findings of the trial and appellate courts with the observation that the appellants had failed to disclose the date of their knowledge, therefore, the suit instituted by them in the year 1982 questioning the validity of inheritance mutations of 1959 was hopelessly time-barred.

20. We find that all the three courts have failed to notice the exception provided in section 18 of the Limitation Act 1908 **("Limitation Act")**, according to which the benefit of postponing the commencement of the period of limitation provided to an injuriously affected person is not applicable against a *bona fide* purchaser. The section reads:

---

[4] PLD 2014 SC 167.
[5] 2007 SCMR 1446.
[6] PLD 2021 SC 812.

> **18. Effect of fraud**. Where any person having a right to institute a suit or make an application has, by means of fraud, been kept from the knowledge of such right or of the title on which it is founded, or where any document necessary to establish such right has been fraudulently concealed from him, the time limited for instituting a suit or making an application---
>
> (a) against the person guilty of the fraud or accessory thereto, or
>
> (b) against any person claiming through him **otherwise than in good faith and for a valuable consideration,**
>
> shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of the concealed document, when he first had the means of producing it or compelling its production. (Emphasis added)

Before we consider and explain the exception provided in the above provision, it would be pertinent to understand the true purport of the general rule encompassed in the section. In essence, this provision is a safeguard against fraud committed to conceal from a person his right to sue. It postpones the commencement of the period of limitation to the date when the fraud first became known to the "person injuriously affected". Such injuriously affected person can, therefore, institute a suit within the limitation period specified for such suit in the First Schedule **("Schedule")** to the Limitation Act, but computing it from the date when he first had knowledge of the fraud, whereby he was kept from knowledge of his right to institute the suit.

21. We, however, must appreciate that the "fraud" envisaged in this provision of the law only relates to concealing, not creating, the right to sue and thus, affects only the limitation period and has nothing to do with the cause of action and the relief prayed.[7] It is also needless to mention that, a plaintiff who wants to avail the benefit of section 18 of the Limitation Act, must assert the commission of such fraud by the defendant in the plaint, and should also give the particulars thereof, and the date of knowledge as required under Rule 4 of Order VI of the CPC, and then prove the same through positive evidence.[8]

---

[7] In Re: Marappa Goundar AIR 1959 Mad 26; Yeswant Deorao v. Walchand Ramchand AIR 1951 SC 16.

[8] Naeem Finance Ltd v. Bashir Ahmad PLD 1971 SC 8; Izzat Bakhsh v. Nazir Ahmad 1976 SCMR 508; Faizum v. Nander Khan 2006 SCMR 1931; Bashir Ahmed v. Muhammad Hussain PLD 2019 SC 504.

22. The umbrella concession *qua* the commencement of period of limitation, under section 18 of the Limitation Act, has an express exception, that is, when the disputed property is purchased by a third person in good faith and for valuable consideration (*bone fide* purchaser), the benefit of section 18 to the owner would then not be available against such third person.

23. In the present case, Ghulam Hussain and Abdul Aziz sons of Ahmad Din, the predecessors of respondents No.8 to 18, had purchased and taken over possession of the major part of the suit land from Karam Elahi, *vide* sale deed dated 12.05.1960 **(Ex-D1)**. The record of the case is silent on which dates, Karam Elahi, sold the remaining part of the suit land to other respondents, as the appellants have not mentioned the mutation numbers, in their plaint as well as in their evidence, whereby the remaining part of the suit land was sold by Karam Elahi,. What is important is that, the appellants have neither asserted in their plaint, nor have discharged their initial legal burden to prove the same by making statement on oath to that effect while appearing in the witness box, that the respondents (further transferees) had not purchased the suit land in good faith and for a valuable consideration or that they were accessory to the fraud committed by Karam Elahi. Most importantly, their possession over the suit land has not been disputed by the appellants. For these reasons, the benefit of section 18 of the Limitation Act is not available to the appellants against the respondents, and the limitation period for the suit instituted by the appellants was to be adjudged as per the regular limitation period provided in the applicable Article of the Schedule to the Limitation Act.

24. The suit instituted by the appellants was for declaration of their proprietary rights in the suit land, which is covered by the provisions of Article 120 of the Schedule to the Limitation Act - the residuary provision that caters for cases not expressly provided under the Limitation Act. This Article prescribes six years period of limitation for instituting the suit to be computed from the time when the right to sue accrues. It reads:

Description of suit.	**Period of limitation.**	**Time from which period begins to run.**
120. Suit for which no period of limitation is provided elsewhere in this schedule.	Six years.	When the right to sue accrues.

The above provision only provides that the period of six years is to commence, when the right to sue accrues. However, it does not state when such right accrues.

25. A suit for declaration of any right as to any property is filed under section 42 of the Specific Relief Act 1877 **("Specific Relief Act")**. Therefore, to ascertain when the right to sue accrues to a legal heir to seek a declaration of his ownership right over the property inherited by him and of his such right not to be affected by the further transfer of such property, we need to consider 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 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.

26. What "actions" can be termed as an "actual denial of right", and what a mere "apprehended or threatened denial of right", in the context of adverse entries recorded in the revenue record, is a question that requires consideration. Admittedly, entries in the revenue record do not create or extinguish proprietary rights. Such an entry may at most be termed as a mere "apprehended or threatened denial" of right, and not an "actual denial" of right. Accordingly, every new adverse entry in the revenue record relating to proprietary rights of a person in possession (actual or constructive) of the land regarding which the wrong entry is made, gives to such person, a fresh cause of action to institute the suit for declaration. The situation is, however, different in a case where the person in possession (actual or constructive) of the land regarding which the wrong entry is made, is ousted from such possession, besides a wrong entry in the revenue record. In such a case, the act of ousting him from the actual or constructive possession of the land, constitutes an "actual denial" of his rights, and does not remain a mere "apprehended or threatened denial". Therefore, in such a case, if the person injuriously affected by such an act of "actual denial" of his rights does not challenge the same within the prescribed limitation period, despite having knowledge thereof, then his right to do so becomes barred by law of limitation.

27. In an inheritance case, like the present one, a wrong mutation in the revenue record, as to inheritance rights does not affect

the proprietary rights of a legal heir in the property, as the devolution of the ownership of the property on legal heirs takes place under the Islamic law, through inheritance immediately, without any formality including sanction of inheritance mutation. Therefore, a wrong mutation is a mere “apprehended or threatened denial” of right, not necessitating for the person aggrieved thereby to institute the suit. The position is, however, different when the co-sharer in possession of the joint property, on the basis of a wrong inheritance mutation, sells the joint property, or any part thereof exceeding his share, claiming him to be the exclusive owner thereof and transfers possession of the sold land to a third person, the purchaser. In such a circumstance, the co-sharer by his said act “actually denies” the rights of the other co-sharer, who is only in constructive possession of the same, and ousts him from such constructive possession also by transferring the possession of the sold land to a third person, the purchaser. In such circumstances, the right to sue accrues to the aggrieved co-sharer from the date of such sale, and transfer of actual possession of the sold land to the third person, the purchaser.

28. Therefore, in the present case, the right to sue accrued to the appellants on 12.05.1960 when Karam Elahi, their co-sharer, claiming him to be the exclusive owner, sold and transferred possession of the major part of the suit land exceeding his share therein, which he had inherited from his own father, Shams-ud-Din brother of Nasir-ud-Din, *vide* sale deed dated 12.05.1960 **(Ex-D1)**, to Ghulam Hussain and Abdul Aziz sons of Ahmad Din, the predecessors of respondents No.8 to 18. The limitation period of six years provided in Article 120 of the Limitation Act was, therefore, to be counted for the suit of the appellants from the said date, i.e., 12.05.1960, when the benefit of section 18 of the Limitation

Act was not available to them, as discussed above. The suit instituted by the appellants on 15.04.1982 was thus hopelessly time barred, as correctly held by the revisional court.

29. The issue of limitation is one of law, or at-least mixed one of law and facts; therefore, the re-examination of findings of the court(s) below on this issue by the revisional court falls within the scope of the revisional jurisdiction. The trial and appellate courts had acted in the exercise of their jurisdiction illegally by wrongly deciding the issue of limitation, and the revisional court has rightly interfered with, and overturned their findings on this issue.

30. For the above reasons, we find that the decision of the revisional court, non-suiting the appellants on the ground of limitation, is legally correct and made well within the scope of the revisional jurisdiction. This appeal, therefore, fails and is dismissed, accordingly.

Judge

Judge

Judge

Islamabad,
20th January, 2022
Approved for reporting.

Arif