IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
Mr. Justice Qazi Faez Isa
Mr. Justice Yahya Afridi

Civil Appeal No. 139-P of 2013
(Against the judgment dated 17.05.2013 of the Peshawar High Court, Peshawar in Civil Revision No. 68 of 2012)

Mst. Rabia Gula, etc.

...Appellant(s)

Versus

Muhammad Janan, etc.

...Respondent(s)

For the Appellants: Mr. Amin Khattak Lachi, ASC

For the Respondents: Nemo.

Date of Hearing: 26.01.2022

Judgment

Yahya Afridi, J.- This appeal challenges the judgment dated 17.05.2013 passed by the Peshawar High Court, whereby the concurrent judgments of the trial and appellate courts have been set aside, and the suit of the respondent has been decreed.

2. The present case relates to the contested claims of the parties over part of the estate of Mawaz Khan, relating to his two properties, the particulars whereof are: 98-Kanals of land in *Mauza* Chorlaki, Tehsil & District Kohat **("Suit Property No.1"),** which was purportedly gifted by him to his daughter-in-law, namely, Mst. Rabia Gul and four granddaughters, namely, Mst. Khan Khela, Mst.Khurseed Begum, Mst. Badshah Zareena and Mst. Bibi Ghufran **("appellants")**, *vide* mutation No. 167 dated 29.04.1977 **("gift mutation")**; and 36-Kanals of

land in *Mauza* Chorlaki, Tehsil & District Kohat **("Suit Property No. 2"),** which was inherited, by his son, Muhmmad Janan **("respondent")**, and then purportedly sold, by him to his daughter, namely, Mst. Khursheed Begum (**appellant No.3**) *vide* mutation No. 1224 dated 24.02.2004 **("sale mutation")**.

3. As for clarity of relationship of the parties, the admitted position is that: Mawaz Khan, the original owner of the Suit Properties, passed away in the year 2000; the respondent being Mawaz Khan's son, was entitled to inherit his share in the estate of Mawaz Khan; the respondent, had two wives: the first was Mst. Rabia Gula (**appellant No.1**), and from this wedlock, he had four daughters, namely, Mst. Khan Khela, Mst.Khurseed Begum, Mst.Badshah Zareena and Mst.Bibi Ghufran (**appellants No.2 to 5**); while from his second wife, he had one son, Muhammad Ibrar, and one daughter, Mst. Amir Khela.

4. The respondent instituted a suit, on 12.01.2009, seeking declaration of his ownership of the Suit Properties No.1 and 2, based on his claim to have inherited the same from his father, Mawaz Khan, and challenged the gift mutation and the sale mutation, asserting the same to be the result of fraud, and claiming that he came to know about them some days before the institution of the suit.

5. The suit was dismissed by the trial court *vide* judgment dated 13.07.2011, which was maintained by the appellate court *vide* judgment dated 04.10.2011. However, the High Court, while exercising its revisional jurisdiction, set aside the concurrent judgments of the two courts and decreed the suit of the respondent *vide* the judgment dated 17.05.2013 **("impugned judgment")**. Hence, the present appeal.

6. It would be pertinent to note that the respondent, passed away during pendency of this appeal, and his son and daughter from his second wife, namely, Muhammad Ibrar and Mst. Amir Khela, were impleaded, as respondents in the appeal. Today, despite service of notice of fixation of this appeal for hearing, no one has appeared before us on behalf of Muhammad Ibrar and Mst. Amir Khela, hence, they are proceeded *ex-parte*.

7. We have heard the learned counsel for the appellants in detail, and carefully perused the record of the case.

Challenge made to gift mutation - Suit Property No.1

8. So far as the challenge made by the respondent to the gift mutation, which was statedly made by his father, Mawaz Khan, in favour of the respondent's wife, Mst. Rabia Gula **(appellant No.1)**, and his four daughters, namely, Mst. Khan Khela, Khurseed Begum, Badshah Zareena and Bibi Ghufran **(appellants No.2 to 5)**, we note that the same has not been correctly appreciated by the High Court in the impugned judgment for reasons discussed hereinunder.

Bar of limitation

8.1 First and foremost, the bar of limitation applies to the challenge made by the respondent to the gift mutation of 1977 after a period of 32 years, as concurrently held by the trial and appellate courts. The said findings of the two courts have not been addressed by the Revisional Court in the impugned judgment.

8.2 The respondent was claiming his right over the Suit Property No.1 based on his inheritance from the estate of his father, and challenged the gift mutation, essentially on the ground that the same

was the result of fraud, and asserted that he gained knowledge thereof some days before the institution of the suit. However, neither in the plaint nor in the evidence, did the respondent assert that his father, the purported donor, who remained alive for about 23 years after sanction of the gift mutation, was not aware of the gift mutation and thus could not challenge the same during his lifetime. This omission on the part of the respondent, to our mind, was crucial and in fact, defeats the very legal basis upon which he could have saved his claim from the bar of limitation.

8.3 Section 18 of the Limitation Act, 1908 **("Limitation Act")** is the most pivotal provision providing relief in computing the limitation period, applicable to a person who claims to be deprived of the knowledge of his right to sue based on the fraud of the other party. That section is reproduced for ease of reference:

> **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---
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> (a) against the person guilty of the fraud or accessory thereto, or
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> (b) against any person claiming through him otherwise than in good faith and for a valuable consideration,
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> 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.

In essence, this provision postpones the commencement of the limitation period in cases where a person is by means of fraud kept from the knowledge of his right to institute a suit. In such circumstances, the period of limitation commences from 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. Thus, section 18 of Limitation Act is an umbrella provision that makes the limitation period mentioned in the Articles of the Schedule, begin to run from the time different from that specified therein.[1]

8.4 It is but fundamental to appreciate that the "fraud" stated in section 18 of the Limitation Act must not be confused with the fraud that constitutes cause of action, and creates a right to institute the suit for the relief prayed therein. The "fraud" envisaged in section 18 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.[2]

8.5 It would, thus, be safe to hold that, when despite obtaining knowledge of such fraud and his right to sue, as mentioned in section 18, the injuriously affected person does not institute the suit within the prescribed limitation period, no fresh period of limitation can be available to his legal heir(s) or any other person who derives his right to sue from or through him (the injuriously affected person);[3] for once the limitation period begins to run, it does not stop as per section 9 of the Limitation Act.

8.6 Further, the definition of the term "plaintiff", as given in section 2(8) of the Limitation Act also has the effect of barring the fresh start of the limitation period for the legal heir(s) or any other person, who derives his right to sue from or through such injuriously affected person,

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[1] Bashir Ahmed v. Muhammad Hussain PLD 2019 SC 504.
[2] In Re: Marappa Goundar AIR 1959 Mad 26; Yeswant Deorao v. Walchand Ramchand AIR 1951 SC 16.
[3] Noor Muhammad v. Muhammad Miskeen 2009 SCMR 731.

as it provides that "plaintiff" includes any person from or through whom a plaintiff derives his right to sue.

8.7 Therefore, it is the date of knowledge of the "person injuriously affected" of the fraud mentioned in section 18, and of his right to sue that is relevant for computing the limitation period, not of his legal heir(s), unless he asserts and prove that his predecessor (the person injuriously affected) never came to know of the fraud, whereby his right to institute the suit was concealed, in his lifetime; in the latter eventuality, it is, of course, the knowledge of the present plaintiff (his successor) that would be the starting point for the limitation to run.

8.8 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 Code of Civil Procedure 1908, and then prove the same through positive evidence.[4]

8.9 In the present case, the "person injuriously affected" by the alleged fraud (if it were committed) in getting the gift mutation sanctioned was the respondent's father, Mawaz Khan (the purported donor). The respondent derived his right to institute the suit to challenge the gift mutation from his father, being his legal heir. It is, therefore, the date of the knowledge of his father, not of the respondent that is the starting point for computing the limitation period of six years provided in Article 120 of the Schedule to the Limitation Act - the residuary Article

[4] 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.

applicable to suits instituted, under section 42 of the Specific Relief Act 1877 **("Specific Relief Act")**, for declaration of any right as to any property.

8.10 In this regard, we note that the respondent (plaintiff) did not assert in the plaint that the appellants (defendants), by means of fraud, kept Mawaz Khan, his father (the person injuriously affected) from the knowledge of his right to institute the suit to challenge the gift mutation, during his life, nor did he give the particulars thereof; what to say of proving the same. Furthermore, we note that the respondent (plaintiff) did not assert any such fraud of the appellants even against himself, and give any date of his attaining knowledge of such fraud and his right to institute the suit. Therefore, the benefit of section 18 of the Limitation Act for computing the limitation period for instituting the suit to challenge the gift mutation cannot be extended to the respondent (plaintiff).

8.11 Thus, the limitation period of six years provided in Article 120 of the Limitation Act is to be computed from the time mentioned in the said Article, that is, when the right to sue accrued. 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 provision clearly declares that for computing the limitation, the period of six years would commence from the date of accrual of right to sue, but it does not state when such right accrues. To ascertain, when does the right to sue accrue to a donor, to seek a declaration of his ownership right over the property shown to have been gifted and of his

such right not to be affected by the gift mutation, we have to consider another provision of law, that is, section 42 of the Specific Relief Act**.**

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 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:
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> 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.
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> (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.

8.16 In the present case, as per the revenue record and other evidence, the appellants, the purported donees, took over possession of the Suit Property No.1 on the basis of gift transaction recorded in the gift mutation since the date of sanction of the gift mutation, that is, 29.04.1977. Their act of taking over possession was an “actual denial” of

the proprietary rights of the purported donor, therefore, it was necessary for the purported donor to challenge the gift mutation (if it had been got sanctioned fraudulently) within the limitation period of six years provided in Article 120 or to seek recovery of the possession of the Suit Property No.1 within the limitation period of twelve years as provided in Article 142 of the Schedule to the Limitation Act, from that date. Mawaz Khan, the donor, did not opt for any of the two, and allowed both possibly applicable periods of limitation to lapse during his lifetime, since he died in the year 2000 after about 23 years of the said act of taking over possession of the Property No.1 by the appellants. Therefore, no fresh limitation period could be made available to his legal heir, the respondent. Thus, the challenge made by the respondent in 2009 to the gift mutation of 1977, based on his inheritance rights from Mawaz Khan, was clearly barred by time, as concurrently held by the trial and appellate courts, especially when the respondent is not found entitled to the benefit of section 18 of the Limitation Act. This crucial issue was not addressed by the Revisional Court in the impugned judgment, hence, it warrants interference by this Court in its appellate jurisdiction, in the interest of justice.

A reasonable and natural gift

8.17 Although we need not look into the merits of the gift transaction and gift mutation that followed, as the very suit to their extent has been held to be barred by law of limitation, yet we, in the peculiar circumstances of the case, are constrained to note that the gift transaction recorded in the impugned gift mutation, as appropriately held by the appellate court, appears to be reasonable and natural in the facts and circumstances of the case; where a father, whose son had

contracted a second marriage, transferred some of his property to his first daughter-in-law, who also happened to be his niece, and to his granddaughters to ensure their financial security, out of his love and affection for them.

Challenge made to sale mutation - Suit Property No.2

9. As far the challenge made by the respondent, the purported seller of Suit Property No. 2, to the sale transaction and sale mutation that followed, we note that once Muhammad Ibrar, his son and special attorney, appeared in the witness box as **PW-3** and denied the making of the sale transaction recorded in the sale mutation on his behalf, the evidential burden to prove the same by adducing affirmative evidence shifted on Mst. Khursheed Begum **(appellant No.3)**, the beneficiary thereof. Carefully reviewing the evidence on the record, it is but clear that Mst. Khursheed Begum was unable to prove the essential ingredients of the sale transaction and the due sanction of the sale mutation that recorded it. Accordingly, we find the High Court is correct in its findings as to the inconsistencies and clear contradictions in the testimony of her two witnesses, namely, Sultan-ul-Mulk **(DW-1)** and Wali-ur-Rehman **(DW-2)** on material particulars of the sale transaction and of the sale mutation recording the same in the revenue record. No independent witnesses, in particular, the patwari who entered, and the revenue officer who sanctioned the sale mutation were examined in evidence. In fact, no cogent, reliable evidence was produced by Mst. Khursheed Begum **(appellant No.3)** to prove payment of the sale-consideration, the most essential ingredient of a valid sale, to the respondent. This being so, the High Court has correctly recorded its finding in the impugned judgment,

as to invalidity of the alleged sale of the Suit Property No. 2 and also of the sale mutation.

10. For the above reasons, we partially allow the appeal to the extent of gift mutation regarding Suit Property No.1, and dismiss it to the extent of the sale mutation regarding Suit Property No.2. The impugned judgment and decree are modified, accordingly. The suit of the respondent to the extent of gift mutation regarding Suit Property No.1 stands dismissed, and to the extent of the sale mutation regarding Suit Property No. 2, decreed.

Judge

Judge

Announced in open Court
On 25th February, 2022 at Islamabad

Judge

Approved for reporting
Arif