IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI
MR. JUSTICE SHAHID WAHEED

CIVIL PETITION NO. 2658 OF 2019
(Against the judgment dated 04.04.2019 of the Lahore High Court, Multan Bench, Multan passed in C.R.No.753-D/2009)

Shahray Khan (decd.) through LRs etc.

...Petitioner(s)

Versus

Qadir Bakhsh (decd.) through LRs etc.

...Respondent(s)

For the Petitioner(s): Mr. Zulfikar Khalid Maluka, ASC

For the Respondent(s): Not represented

Date of Hearing: 17.11.2022

ORDER

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Through this petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners have called in question the *vires* of judgment dated 04.04.2019 passed by the learned Lahore High Court, Multan Bench, whereby the Civil Revision filed by the petitioners was dismissed and the orders of the learned two Courts below were upheld.

2. Briefly stated the facts of the matter are that one Miran Khan was owner in possession of a piece of agricultural land measuring 532 kanals 7 marlas situated in Tehsil Mailsi, District Multan. The said Miran died issueless in the year 1929. The suit property was mutated in favour of his wife Mst. Aisha, his widow, vide mutation No. 51 attested on 14.02.1929 as a lifetime owner having no right to further alienate the property. However, Mst. Aisha further transferred the said property in favour of her relatives i.e. brothers, cousins and nephews vide mutation

No. 59 dated 31.10.1931 on the pretext that she had to pay a loan of her husband, which was satisfied by them. This led to filing of a civil suit by the predecessor-in-interest of the respondents namely Qadir Bakhsh claiming himself to be the collateral/reversioner of Miran Khan on the ground that it was a life estate and Mst. Aisha had no authority to further alienate the property. The said suit was decreed vide judgment and decree dated 02.01.1940. After the promulgation of West Pakistan Muslim Personal Law (Shariat) Application Act, 1962, the limited ownership of Mst. Aisha ceased to have effect. Thereafter, the predecessor-in-interest of the respondents Qadir Bakhsh filed yet another civil suit claiming ownership in the estate of Miran Khan to the extent of 3/4th share as collateral/reversioner. The suit was initially filed against Mst. Aisha but subsequently, her relatives being transferees of the land were also impleaded as defendants. Two real sisters of Miran Khan namely Mst. Lakhan and Mst. Azmat were also impleaded in the suit on 30.01.1978 & 29.10.1980 respectively. The suit filed by Qadir Bakhsh was contested by the defendants. Ultimately vide judgment dated 17.06.1981, the learned Trial Court while dismissing the suit concluded that deceased Miran Khan was survived by his widow Mst. Aisha Bibi, his mother Mst. Jannat and two sisters namely Mst. Lakhan and Mst. Azmat, therefore, his estate devolved upon the said sharers and nothing was left to inherit by Qadir Bakhsh. The learned Trial Court also held that Mst. Lakhan and Mst. Azmat, defendants, are entitled to inherit 8/13 share in the estate of Miran Khan as sisters but no decree was passed in their favour. Against the said judgment, Qadir Bakhsh as also the sisters of Miran Khan filed appeals before the Appellate Court. The learned Appellate Court vide judgment dated 07.10.1984, dismissed the appeal of Qadir Bakhsh and accepted the appeal of sisters of Miran Khan and held them entitled to inherit 8/13 share, which becomes 2/3rd of the estate of deceased Miran Khan. Being aggrieved by the judgment of the Appellate Court, the relatives of Mst. Aisha being defendants No. 2 to 13 filed RSA No. 14/1985 before the High Court, which was ultimately remitted back to the learned Appellate Court to decide all the appeals afresh in accordance with law. The learned Appellate Court vide its judgment dated 30.06.2009

while maintaining the judgment of the learned Trial Court, dismissed the appeal filed by Qadir Bakhsh while the appeal filed by Mst. Lakhan Mai and Mst. Azmat Mai was accepted. The learned High Court vide impugned judgment upheld the concurrent findings of the learned two courts below. Hence, this petition seeking leave to appeal.

3. At the very outset, learned counsel for the petitioners contended that the mutation No. 59 was affected on the basis of sale consideration and necessity as Mst. Aisha had to pay a debt, which was satisfied by her brothers and nephews and in lieu thereof, she alienated the property to them. Contends that this fact was admitted by Mst. Aisha while appearing in the witness box and such assertion was not rebutted by the other side. Contends that the concurrent judgments of the courts below are not maintainable on the basis of law and facts, hence, the impugned judgment may be set at naught.

4. We have heard learned counsel for the petitioners at some length and have perused the impugned judgments as also the evidence available on the record.

It is an admitted fact that one Miran Khan died while leaving behind agricultural land measuring 532 kanals 7 marlas as owner in possession in the year 1929. As the said Miran Khan was issueless, the entire estate was mutated in favour of Mst. Aisha, being his widow, vide mutation No. 51 attested on 14.02.1929. She inherited the property with title as lifetime owner without having the right to further alienate the said landed property. However, she alienated a portion of the landed property to his relatives vide mutation No. 59 attested on 31.10.1931 on the pretext that her late husband had borrowed a loan from Hindu Sahokars, which was still unpaid, therefore, as her relatives satisfied the debt, which compelled her to further alienate the land under compulsion in defiance of the embargo placed while inheriting the landed property. This prompted Qadir Bakhsh, predecessor-in-interest of the respondents to file a civil suit on the ground that the suit property was a life estate and Mst. Aisha had no authority to further alienate the same. He claimed that the transfer of property made by Mst. Aisha in favour of her relatives was void qua his

right. This suit was decreed vide judgment and decree dated 02.01.1940. After the promulgation of West Pakistan Muslim Personal Law (Shariat) Application Act, 1962, the limited ownership of Mst. Aisha ceased to have effect. Thereafter, said Qadir Bakhsh filed another civil suit against Mst. Aisha and claimed ownership in the estate of Miran Khan to the extent of 3/4th share as collateral/reversioner. In this suit he did not implead the transferees i.e. the sisters of the deceased Miran Khan namely Mst. Lakhan and Mst. Azmat. However, at a later stage, Mst. Lakhan and Mst. Azmat being real sisters of Miran Khan were also impleaded as party on 30.01.1978 and 29.10.1980. The learned Trial Court vide its judgment dated 17.06.1981 dismissed the suit by holding that the estate of Miran Khan is to be devolved upon his widow, mother and two sisters as under:-

(i)	Mst. Aisha, widow	3/13 (1/4th share)
(ii)	Mst. Lakhan and Mst. Azmat, sisters	8/13 (2/3rd share)
(iii)	Mst. Jannat Bibi, mother	2/13 (1/6th share)

5. However, the learned Trial Court did not pass any decree in favour of the sisters of Miran Khan. Against the said judgment, Qadir Bakhsh as also the sisters of Miran Khan filed appeals before the Appellate Court. Vide judgment dated 07.10.1984, the learned Appellate Court while maintaining the judgment of the Trial Court, dismissed the appeal of Qadir Bakhsh and accepted the appeal of Mst. Lakhan and Mst. Azmat. The record reflects that pursuant to a Regular Second Appeal filed by the relatives of Mst. Aisha, the learned High Court, remanded the matter back to the learned Appellate Court to decide the appeals filed by Qadir Bakhsh and sisters of Miran Khan afresh. In post-remand proceedings, the learned Appellate Court maintained the judgment of the Trial Court, which was further concurred by the learned High Court. The main argument of the learned counsel for the petitioners is that Miran Khan died without settling a loan payable by him to the Hindu Sahukar, which was ultimately paid by the relatives of his wife Mst. Aisha and in lieu of the said discharging of liability, she was compelled to make transfer of the suit property in their name. This assertion of the learned counsel is beyond the contents of the record surfaced during the proceedings before this Court. The statements

of Qadir Bakhsh, plaintiff, and Mst. Aisha (DW-1) though stated this very aspect of the case but the same do not contain the amount of loan extended to the deceased husband of Mst. Aisha and the part paid by each of the relative to discharge the liability, which seems to us the most material aspect of the case. Even otherwise, a bare reading of the statements of both the plaintiff and DW-1 shows that this very ground has been expressed in generalize manner without specifying any particulars of the said transaction. Even Mst. Aisha could not disclose exact amount of the loan and the amount, which was considered for selling out the portion of the landed property. There is no denial to this fact that Mst. Aisha being limited owner of the suit property was not competent to transfer the portion of the landed property to her relatives. This very aspect of the case was adjudicated by each forum and was discarded, hence, there are concurrent findings recorded by each court regarding this aspect of the matter. The learned courts below have rightly held that under the law, Mst. Aisha, widow, Mst. Jannat Bibi, mother, and two sisters namely Mst. Lakhan and Mst. Azmat Bibi of Miran Khan excluded any other heir from inheritance and they were entitled to the decree of inheritance according to their share of inheritance. There are concurrent findings of fact recorded by the learned courts below. This Court in Muhammad Shafi and others Vs. Sultan (2007 SCMR 1602) while relying on case law from Indian as well as from the Pakistani jurisdiction has candidly held that this Court could not go behind concurrent findings of fact "*unless it can be shown that the finding on the face of it is against the evidence or so patently improbable, or perverse that to accept it could amount to perpetuating a grave miscarriage of justice, or if there has been any misapplication of principle relating to appreciation of evidence or finally, if the finding could be demonstrated to be physically impossible*." Learned counsel for the petitioners has not been able to convince us that there is any misreading or non-reading of evidence or any legal or jurisdictional defect or flaw in the impugned judgment. Consequently, we do not find any reason or justification to interfere with the impugned judgment. This petition having

no merit is accordingly dismissed and leave to appeal is refused. The above are the detailed reasons of our short order of even date.

JUDGE

JUDGE

Islamabad, the
17th of November, 2022
Approved For Reporting
Khurram