IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

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

CIVIL APPEAL NO. 1002 OF 2015
(Against the judgment dated 24.06.2015 passed by Lahore High Court, Multan Bench, in CR No.1021-D/2011)

Abdul Rehman and others

...Appellants

Versus

Mst. Allah Wasai and others

...Respondents

For the appellants:	Mr. Dil Muhammad Alizai, ASC
For respondents No. 1,2,4 & 5(i)(ii)(iv):	Mr. Aftab Alam Yasir, ASC Syed Rifaqat Hussain Shah, AOR
For respondents No. 3 & 5(iv):	Ex-parte.
Date of hearing:	25.11.2021

JUDGMENT

Yahya Afridi, J: The present Appeal relates to the contest between the consanguine sister, Mst. Talay, and the real mother, Mst. Allah Wasai, of late Taj Muhammad, over his estate situated in village Bait Daryai, Tehsil Alipur, District Muzaffargarh. The former asserting Taj Muhammad to have died as a Muslim belonging to the *Sunni* sect, claims a share in his legacy; while the latter, disputes her claim by maintaining that Taj Muhammad belonged to the S*hia* sect.

2. It all started on 12.12.1980, when an inheritance mutation No. 614 of late Taj Muhammad was sanctioned in favour of Mst. Allah Wasai.

Mst. Talay and her two sisters, the consanguine sisters of Taj Muhammad, challenged that mutation by filing an appeal before the Collector, who accepted that appeal, set aside the order dated 12.12.1980 of the Revenue Officer, and remanded the matter for a decision afresh, and after carrying out an enquiry into the faith of the deceased Taj Mohammad. On remand, the Revenue Officer *vide* his order dated 25.07.1981, re-sanctioned the inheritance mutation in favour of Mst. Allah Wasai, holding that the deceased belonged to the *Shia* sect.

3. On 22.06.1988, Mst. Talay instituted a suit seeking, *inter alia*, a declaration that she and her two sisters were legal heirs of the late Taj Mohammad, being his consanguine sisters, and had a share in his estate, and that the inheritance mutation No. 614 initially sanctioned on 12.12.1980, and re-sanctioned on 25.07.1981 **("mutation No. 614")** in favour of Mst. Allah Wasai, as his sole legal heir, to their exclusion, was illegal, void and ineffective against their rights.

4. The Trial Court framed eight issues for trial. Issues No.1 and 4 comprised the main controversy between the parties, which are reproduced, hereunder, for ready reference:

Issue No.1: Whether Taj Muhammad deceased was a follower of *Fiqa Hanfia*? OPP
Issue No.4: Whether the suit is time barred? OPD

It may be clarified here that *Fiqa Hanfia* mentioned in Issue No.1 is a school of the *Sunni* sect of Islamic jurisprudence. As for Issue No.1, the Trial Court concluded that Taj Muhammad was a *Shia* Muslim. This finding, apart from the oral testimony of Mst. Allah Wasai (DW-1), was essentially based on the entry of 04.06.1981 in the death register (Ex-D1), which was made after the initial sanction of the impugned inheritance

mutation on 12.12.1980, and also on the order dated 25.07.1981 (Ex-P3) of the Revenue Officer, re-sanctioning the impugned inheritance mutation in favour of Mst. Allah Wasai, the legal validity of which had been challenged in the suit. On Issue No.4, the Trial Court concluded that the suit was within time, with the finding that, the suit had been filed for declaration of inheritance rights and that suit had been filed within the statutory period of six years from the date of knowledge of the disputed mutation. However, it was in view of finding on Issue No.1, that the Trial Court dismissed the suit of Mst. Talay.

5. Aggrieved of the judgment of the Trial Court, Mst. Talay filed an appeal in the District Court, which was positively considered and accepted. The finding of the Trial Court on Issue No.1 was reversed, and Taj Muhammad was found to have died as a *Sunni* Muslim; while the finding of the Trial Court on Issue No.4 was confirmed. The suit of Mst. Talay was, thus, decreed by the Appellate Court.

6. Mst. Allah Wasai feeling aggrieved of the judgment of the Appellate Court filed revision petition in the High Court, which was allowed. The High Court reversed the concurrent findings of the two courts below on Issue No.4, and dismissed the suit of Mst. Talay holding the same to be time barred. Hence, the present appeal was filed by the legal heirs of Mst. Talay.

7. We have heard the arguments of the learned counsel for the parties, and with their able assistance, perused the record of the case.

8. Much was argued from both sides on burden of proof and presumption as to sect of a deceased Muslim, the sect of Taj Mohammad;

therefore, we consider it appropriate to deal with these issues, at the very outset.

Burden of proof and presumption as to sect of a deceased Muslim

9. As per Article 117 of the Qanun-e-Shahadat 1984, the burden of proof lies on a person, who desires a Court to give judgment, as to a legal right or liability dependent on the existence of facts, which he asserts; while under Article 118 (*supra*), burden of proof in any suit or proceeding lies on a person, who would fail, if no evidence at all were given on either side. Hence, when a plaintiff comes to a Court, and seeks relief on the basis of certain facts, asserted by him in his plaint, the burden of proving those facts is on him; for the relief prayed for cannot be granted, unless the Court holds the existence of those facts proved. However, there is an exception to this general rule. When the law allows for certain presumptions of facts, provided under Qanun-e-Shahadat 1984, then under clause 7 of Article 2 of the Qanun-e-Shahadat 1984, "the Court may presume such fact as proved, unless, and until it is disproved, or may call for proof of it". Thus, when a party on whom the burden lies under Articles 117 or 118 of the Qanun-e-Shahadat 1984, asserts such fact and the court presumes the same as proved, then it would be for the other party to disprove that fact. Articles 117 and 118 of the Qanun-e-Shahadat 1984 are, therefore, to be read subject to such presumptions. The presumptions of facts, which are rebuttable, are thus part of the rules of evidence regulating the burden of proof.

10. It was in the case of **Pathana vs. Mst Wasai**, that a five-member bench of this court stated that every Muslim in the Sub-continent is

presumed to belong to *Sunni* sect, unless "good evidence" to the contrary is produced by the party contesting the same. The Court ruled that:

> "In the Indo Pak Sub continent there is the initial presumption that a Muslim is governed by Hanafi Law, unless the contrary is established by good evidence (vide Mulla's Muhammadan Law, Section 28)".[1]

The judicial determination of whether the said presumption of faith of a party, holds or positively stands rebutted, would be adjudged on the principle of preponderance of evidence produced by the parties. No strict criteria can be set to determine the faith of a person, and thus, to pass any finding thereon, the Courts are to consider the surrounding circumstances; way of life, parental faith and faith of other close relatives.[2]

11. In civil dispensation of justice, courts are to adjudge the *lis* on the standard of preponderance of probability of evidence produced by the parties. And the decision of the court would tilt in favour of the party having preponderance of evidence. As for the burden of proving a fact is concerned, it gains importance and relevance, only when no evidence is led by the concerned party or the Court is unable to take a decision, one way or the other, on the basis of evidence available on record of the case.

12. In the light of the above principle, when we examine the findings of the Trial Court and the Appellate Court on the crucial Issue No.1, we find that the Appellate Court reversed the finding of the Trial Court and recorded its finding that Taj Muhammad belonged to *Sunni* sect, after discussing each and every piece of the evidence, adduced by the parties in support of their respective assertions. What has impressed us is that the Appellate Court addressed and judiciously nullified, in a very logical

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[1] Pathana vs. Mst. Wasai and another (PLD 1965 Supreme Court 134)
[2] Muhammad Bashir vs. Mst Latifa Bibi (2010 SCMR 1915); Chanani Begum vs. Qamar Sultan (2020 SCMR 254); Shahzado Shah vs. M. Sardaro (2004 SCMR 1738)

and reasoned manner, the grounds that, had led the Trial Court to the contrary finding on Issue No.1. In addition, thereto, the appellate court also recorded the reasons in support of its own finding on the crucial issues, which we found to be in accordance with the settled principles of civil dispensation of justice.

13. As for the oral testimony of Mst. Allah Wasai, the Appellate Court traced her stance from the inception, and correctly found that the same was not consistent, and had in fact been attuned overtime. When the impugned inheritance mutation was initially entered and sanctioned, she did not claim that Taj Muhammad was a *Shia* Muslim. It was only after the impugned inheritance mutation was set aside, and the matter was remanded by the Collector for afresh decision that she, for the first time, took the stance that her son, Taj Muhammad, belonged to *Shia* sect. Moreover, we also noted that, she was not a credible witness, as her deposition that her husband, namely Noor Muhammad *alias* Nooran, father of Taj Muhammad, was a *Shia* Muslim was belied by the inheritance mutation of Noor Muhammad *alias* Nooran **(Exh. P4)**. Under the said mutation, the estate of Noor Muhammad *alias* Nooran was divided amongst his legal heirs in accordance with the *Hanfi Sunni* law of inheritance, not *Shia* law.

14. Moving on to the documentary evidence, we have noted that the Appellate Court has critically considered all the crucial evidence produced by the parties: first, the order dated 12.12.1980 passed on the impugned inheritance mutation **(Exh.P-1)** itself did not record that Taj Muhammad was a *Shia* Muslim, but simply stated that, Mst. Allah Wasai was his sole heir; second, the inheritance mutation No.24 **(Exh.P-2)**

regarding other property of Taj Muhammad situated in *Mouza* Kotli, Dera Ghazi Khan, his legacy was distributed amongst his legal heirs, including Mst. Allah Wasaai, in accordance with *Sunni* law, not *Shia* law; third, the inheritance mutation No.174 **(Exh.P-4)**, whereby the estate of Noor Muhammad *alias* Nooran, father of Taj Muhammad, was distributed amongst his legal heirs in accordance with *Sunni Hanfi* law*,* not *Shia* law.

15. In the present case, we have noted that the preponderance of evidence supports the assertion of Mst. Talay, that the late Taj Muhammad was of *Sunni* sect, resultantly, Mst. Allah Wasi was unable to positively discharge the burden of proof that lay on her and rebut the initial presumption that the deceased belonged to *sunni* sect. This crucial finding of the Appellate Court on Issue No.1 does not suffer from any misreading or non-reading of the evidence.

Period of limitation in filing a suit for declaration

16. The revisional court accepted the revision petition of Mst. Allah Wasai, and set aside the judgment of the Appellate Court, principally on the ground of limitation. What prevailed upon the revisional court was that the suit challenging the inheritance mutation of 25.07.1981 was filed on 23.06.1988, and thus was stated to be beyond the six-year period provided for a declaratory suit under Article 120 of the First Schedule to the Limitation Act, 1908.

17. What escaped the attention of the revisional court was that there was concurrence of both, the Trial Court and the Appellate Court on the issue of limitation: that the suit of Mst. Talay having been instituted on 1988 was within six years from the date of her gaining the knowledge of

the impugned inheritance mutation, and was thus, within time. The Appellate Court held that Muhammad Azam **(PW-4)** got knowledge of the impugned inheritance mutation 9 years and 9 months prior to recording his statement on 04.02.1998. Therefore, tentatively, he got knowledge on 04.05.1988 and the suit was filed on 23.06.1988, thus the stance of the plaintiff that she obtained knowledge one month prior to filing the suit is supported by the evidence on record.

18. Mst. Talay filed the suit for declaration of her ownership rights in the estate of her deceased consanguine brother against Mst. Allah Wasai, a co-heir and a co-sharer, who had denied her such rights. In such circumstances, the suit was thus to be adjudged in accord with the provisions of Article 120 of the Limitation Act, 1908. The six-year period of limitation provided by Article 120 (*supra*) was to be counted from the time when the right to sue accrues, and the right to sue accrues to a co-sharer against the other co-sharer, when the latter denies the rights of the former in the joint property or ousts her from the co-ownership of the joint property. A wrong entry as to one's inheritance rights in the revenue record (i.e., inheritance mutation) is not, as held by this Court in the case of *Ghulam Ali,*[3] to be taken as an ouster of a co-heir from the co-ownership of the joint property. Indeed, the devolution of the ownership of the property on the legal heirs takes place, under the Islamic law, through inheritance immediately, and that too without intervention of anyone. Therefore, treating a wrong inheritance mutation, as an ouster of a co-sharer from the co-ownership of the joint property, and treating the six-year limitation period under Article 120 of the Limitation Act, 1908 to

[3] Ghulam Ali v. Ghulam Sarwar PLD 1990 SC 1.

start from the date of sanction of the inheritance mutation, as done by the revisional court, is not legally correct.

19. For all what has been discussed above, we find that the well-reasoned findings of the Appellate Court did not suffer from any misreading or non-reading of the evidence available on record of the case, and the revisional court exceeded its jurisdiction in reversing them. We, therefore, allow this appeal, set aside the judgment of the revisional court and restore that of the Appellate Court, which decreed the suit of Mst. Talay.

Judge

Judge

Announced in open Court
On 11.01.2022 at Karachi

Judge

Approved for reporting
Arif