

C.R.No.3359 of 2011

*Mst. Noor Begum etc*

*Muhammad Aslam etc*

15.11.2011. Sh. Irfan Akram, Advocate for the petitioners.

**C.M.No.2-C of 2011**

Through the instant application a copy of the judgment and decree dated 17.4.1982 is sought to be placed on record of this Civil Revision. Rest of the documents annexed with the C.M. are not part of the record of the learned trial court. The learned counsel for the petitioners does not press this C.M. with respect to the other documents annexed with the C.M. This C.M. is dismissed to the extent of other documents whereas it is allowed with respect to the production of the judgment and decree dated 17.4.1982.

**MAIN SUIT.**

2. One Muhammad Ali was the predecessor-in-interest of both the parties. He firstly married with Mst. Noor Begum the defendant No.1 and during the wedlock the other two defendants were born. Muhammad Ali is stated to have married again with Mst. Sughran Bibi plaintiff No.3 of

the suit and during this second wedlock two sons namely Muhammad Aslam and Muhammad Azam were born. A suit for declaration and permanent injunction was instituted by the present respondents before the learned Civil Judge at Lahore against the present petitioners assailing the mutation of Hiba incorporated in Revenue record vide mutation No.1459 dated 26.9.1974 claimed by the present petitioners from the deceased Muhammad Ali as being fraudulent, illegal and of no legal effect upon the rights of the plaintiffs of the suit.

3. The suit instituted by the respondents was contested by the present petitioners and after recording evidence of the parties the suit was decreed vide judgment and decree dated 19.3.2004. The present petitioners preferred an appeal against the judgment and decree dated 19.3.2004 before the learned District Judge, Lahore which is pending before the learned Addl. District Judge. During the pendency of the appeal the petitioners first moved an application dated 22.5.2004 for production of judgment and decree dated 17.4.1982 and the copies of the plaint, written statement and evidence in the suit forming the basis of judgment and decree passed by the learned Judge Family Court. The learned

counsel for the petitioners contends that this application remained un-disposed of. Another application was moved by the present petitioners dated 5.9.2011 seeking permission to place on record the judgment and decree dated 17.4.1982 passed by the learned Judge Family Court, Lahore. This second application is stated to have been dismissed by the learned Addl. District Judge vide impugned order dated 11.10.2011. This Civil Revision has been filed against the order dated 11.10.2011.

4. It is contended by the learned counsel for the petitioners that the judgment and decree dated 17.4.1982 passed by the learned Judge Family Court was intended to prove that the plaintiff No.3 was divorced on 17.4.1982 through the judgment and decree of the learned Judge Family Court and therefore she did not have any locus standi to file the suit. The learned counsel however when confronted with the situation that as the mutation No. 1459 dated 26.9.1974 claimed by the present petitioners from Muhammad Ali has been assailed in the suit and in the year 1974 admittedly Mst. Sughran Bibi the plaintiff No.3 was the wife of deceased Muhammad Ali, the learned counsel for the petitioners contends that the judgment and decree dated 17.4.1982 is

aimed at objecting to the locus standi of the plaintiff No.3 to file the suit. The learned counsel for the petitioners has thus prayed for setting aside the impugned order dated 11.10.2011 passed by the learned Addl. District Judge and has further requested that the additional evidence by invoking the provisions of order 41 Rule 27 CPC be directed to be allowed.

**5. I have considered the arguments of the learned counsel for the petitioners and have perused the record.**

6. The learned Addl. District Judge has recorded the reasons in the impugned order that the petitioners have not raised the plea in their statements that Mst. Sughran Bibi was not the wife of the deceased Muhammad Ali in the year 1974. Furthermore that the plea that she was divorced in the year 1982 by the deceased Muhammad Ali through the judgment and decree dated 17.4.1982 passed by the learned Judge Family Court was also not raised during the trial. The learned Addl. District Judge thus rejected the application of the petitioners for additional evidence through the impugned order dated 11.10.2011. The plea raised by the learned counsel for the petitioners that the

judgment and decree dated 17.4.1982 is intended to raise objection to the locus standi of the plaintiff No.3 only has no legal substance. The record annexed with the Civil Revision further points out that the petitioners earlier moved an application dated 22.5.2004, in paragraph No.4 of which application the copies of the plaint, written statement and evidence of the parties and judgment and decree dated 17.4.1982 were sought to be placed on record through additional evidence. An order dated 10.5.2010 is on the file which has been passed by the learned Addl. District Judge in which the application of the petitioners for additional evidence was dismissed. When attention of the learned counsel for the petitioners was drawn to this order he contends that this order dated 10.5.2010 was passed in another application which is not available on the record. Be that as it may the judgment and decree dated 17.4.1982, even if analyzed, has a little bearing on the merits of the case. The suit instituted by the respondents is with respect to the mutation No.1459 dated 26.9.1974 which was claimed by the present petitioners from the deceased Muhammad Ali. It is not denied that in the year 1974 when this mutation was claimed by the

present petitioners the respondent No.3/plaintiff No.3 was the wife of the deceased Muhammad Ali. The learned Addl. District Judge has recorded valid reasons for dismissing the application of the present petitioners for additional evidence. It is also settled principle of law as pronounced in the case law reported as **"Khan Iftikhar Hussain Khan of Mamdot Vs. Messrs Ghulam Nabi Corporation Ltd., Lahore"** (PLD 1971 Supreme Court 550), **"Bashir Ahmad Vs. Ahmad-ul-Haq Siddiqui"** (1985 SCMR 1232)" that for the purpose of invoking the provisions of order 41 Rule 27 of CPC it is for the first Appellate Court to come to the conclusion that the Civil appeal cannot be decided on the basis of available record and additional evidence is needed by the Court itself. Keeping in view all the above circumstances I do not find it a fit case for interference in the impugned order in exercise of my revisional jurisdiction. This Civil Revision is accordingly **dismissed in limine.**

**(Nasir Saeed Sheikh)  
Judge**

