

ORDER SHEET

**LAHORE HIGH COURT, LAHORE**

JUDICIAL DEPARTMENT

**Civil Revision No.3684/2016**

Qadir Dad                      Vs                      Easal etc.

S.No. of Order/ Proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary
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11.5.2017      Sardar Muhammad Ramzan, Advocate on behalf of the petitioner.

This civil revision has been filed against concurrent findings of learned trial and appellate courts as a civil suit for declaration and permanent injunction, filed by the petitioner against the respondents, has been dismissed vide judgment and decree dated 8.11.2013 passed by the learned Civil Judge, Kharian and appeal also meeting the same fate vide judgment and decree dated 2.4.2016 passed by the learned Additional District Judge, Kharian.

2.      Facts emerging from the record of this civil revision are that petitioner/plaintiff Qadir Dad filed a suit for declaration and permanent injunction against the respondents before the Civil Court Kharian and it was averred in the plaint that son of the petitioner namely Basharat Ali, who died on 17.2.2009, owned landed property detailed in the plaint and after his death, the petitioner as father, respondent No.3 Mst. Nuzhat Parveen (widow) and respondent No.4 Luqman Basharat (minor son) are his only legal heirs. It was further stated

in the plaint that deceased Basharat Ali in his life time contracted marriage with respondent No.2 Mst. Musarrat Bibi in the year 1987 and sometime after the marriage, he left Pakistan for a foreign country. It was alleged in the plaint that respondent No.2 Mst. Musarrat Bibi, in the absence of her husband deviated from normal life and lost her morals and later on gave birth to a child namely Easal respondent No.1 in the house of her parents, who was not legitimate son of Basharat Ali. Son of the petitioner Basharat Ali returned to Pakistan in the year 1992 and after learning about the misdeeds of his wife divorced her and declared in the divorce deed that respondent No.1 Easal was not his son. It was further averred in the plaint that after the death of Basharat Ali, the respondent No.1, at the instigation of his mother, started professing and claiming in the locality that he was son of Basharat Ali and in league with the concerned Union Council staff also got incorporated his birth entry on 11.8.2009. The petitioner in the suit challenged the said birth entry in the record of Union Council Galwana as void, illegal, collusive, fraudulent and mala fide, hence not binding upon the legal rights of successors of Basharat Ali. Besides seeking the declaration that respondent No.1 was illegitimate son of Basharat Ali, the petitioner also sought setting aside of birth entry report alongwith consequential relief. The respondents No.3 and 4 filed consenting written statement while

respondents No.1 and 2 mainly contested the suit, who in their written statement vehemently controverted the averments of plaint and termed the assertions raised in the plaint amounting to committing the crime of Qazaf. Out of the divergent pleadings of the parties, six issues were framed. After observing due formalities of trial, the suit filed by the petitioner was dismissed and appeal also met the same fate vide impugned judgments of the learned lower courts, challenged through this civil revision.

3. The learned counsel for the petitioner has argued that the findings recorded by the learned lower courts in the impugned judgments are contrary to law, outcome of misreading and non-reading of record as well as evidence; that the learned trial court did not afford adequate opportunity to the petitioner to lead necessary evidence and lastly the conclusions drawn by the two courts below are based on erroneous assumptions, conjectures and unfair suppositions. Hence, the civil revision be admitted for regular hearing and processed further.

4. Preliminary arguments heard. Record perused.

5. In order to prove the vital issues No.1 and 2, the petitioner, who happened to be father of Basharat Ali deceased, did not enter in the witness box but examined a special attorney Nadir Khan as PW-1 and one Nazir Ahmad as PW-2 and in documentary evidence tendered

nine documents which included copies of record of rights pertaining to the properties owned by his deceased son, birth entry record of respondent No.1 dated 19.8.2009 challenged through the suit and copies of mutations of inheritance as Exh.P-1 to Exh.P-9. In rebuttal Mst. Musarrat Bibi respondent No.2 examined herself as DW-1 only.

6. A careful scrutiny of the record of the case and evidence led thereon reveals that deceased son of the petitioner namely Basharat Ali divorced respondent No.2 Mst. Musarrat Bibi in the year 1992 while respondent No.2 namely Easal was born in the year 1991 and deceased Basharat Ali remained alive till the year 2009 for a period of about 18-years and he in his life time never challenged or disowned the paternity of his son i.e. respondent No.1 before any forum of this country. Article 128 of the Qanoon-e-Shahadat Order, 1984 stipulates that any person born during the continuance of a valid marriage between his mother and any man and not earlier than the expiration of six lunar months from the date of marriage, or within two years after its dissolution, the mother remaining unmarried shall be conclusive proof that he is the legitimate child of that man. To rebut the above strong presumption of law, the evidence offered by the petitioner was hardly sufficient and reliable as the principal witness PW-1 even in his examination-in-chief based his source of knowledge

upon others, thus his testimony on material aspects could not be believed. Another witness Nazir Ahmad PW-2 is not close relative of the parties but a mere acquaintance and regarding paternity position of respondent No.1, the said witness in his examination-in-chief made a general statement that only Allah Almighty or parents of the child would be knowing as to who was father of respondent No.1.

7. In the plaint, reliance was placed upon alleged statement of deceased Basharat Ali while drawing divorce deed that respondent No.1 was not his son. In evidence such document was not adduced and later on the petitioner sought permission to adduce this deed in evidence, which was rightly turned down by the learned appellate court as it would be making hardly any difference, when this aspect is considered in the light of presumption of law contained in Article 128 of the Qanoon-e-Shahadat Order, 1984. The petitioner's side also termed the late incorporation of birth entry of respondent No.1 in the record of Union Council as a dubious act on the part of respondents No.1 and 2 but mere this circumstance is not enough to discredit the strong presumptions of law and facts upon the paternity issue especially in a background when none of the examined witness of the petitioner in their statements even obliquely reiterated the allegation that respondent No.2 ever led adulterous life.

8. In the light of above, the learned counsel for the petitioner has been unable to make out a case for interference in the concurrent impugned judgments of the learned lower courts on revisional side as it is now well settled that ordinarily the concurrent findings of fact recorded by the lower courts are rarely disturbed when there is found no misreading and non-reading of evidence on the record. In this regard reference may be made to “Nazim-ud-Din and others Vs Sheikh Zia-ul-Qamar and others” (2016 SCMR 24). Resultantly, this civil revision is dismissed in limine.

**(Abdul Sattar)**  
Judge

*Naeem*

Approved for reporting.

**Judge**