

H C J D A 38
JUDGMENT SHEET
IN THE LAHORE HIGH COURT, MULTAN
BENCH, MULTAN.
JUDICIAL DEPARTMENT
Civil Revision No. 640 -D- 2001.

Hameed, etc.

versus.

Abdul Qadeer, etc.

J U D G M E N T

Date of hearing.	07.06.2017.
Petitioners by:	Mr. Muhammad Irshad Khan, Advocate.
Respondents No.1 to 6 by:	Mr. Muhammad Riaz Jahania, Advocate.
Respondents No.7-a to 7-c:	Exparte.
Respondents No. 8 to 10 by:	Rana Muhammad Sajid Iqbal, Advocate.
Respondents No.11 & 12 by.	Assistant Advocate General.

ABDUL RAHMAN AURANGZEB, J.:- This civil revision is directed against the judgment and decree dated 22.09.2000 passed by learned Civil Judge, Lodhran, whereby the suit filed by the respondents/defendants for declaration was decreed which was further affirmed by the judgment and decree dated 13.06.2001 passed by learned Additional District Judge, Lodhran.

2. The factual background of this civil revision narrated in the plaint is that agricultural land measuring 126 kanals 16 marlas situated in Mauza Dakhli Molvi Sakindar-wala Tehsil & District Lodhran was allotted to Mst. Saeeda Bibi in lieu of land abandoned by

Civil Revision No. 640 of 2001.

her husband Allah Bakhsh at the time of partition of Sub-Continent in 1947 under the customary law as “limited owner”. After migration to Pakistan, she filed the claim of property of her husband which was left in India. After due verification the above-mentioned land was allotted in her favour being widow of Allah Bakhsh (deceased). After her death in the year 1990 the Assistant Collector Lodhran sanctioned mutation of inheritance No. 83 dated 11.04.1991 in favour of daughters & other legal heirs of Mst. Saeeda Bibi treating her as “full owner” and deprived the respondents being collateral of Allah Bakhsh from inheritance. Respondents No.1 to 6 filed an appeal in the Court of Assistant Commissioner, Lodhran claiming therein that Mst. Saeeda Bibi widow of Allah Bakhsh was not a “full owner”. As per their version, she was a “limited owner”, and as such the above mutation was wrongly sanctioned. The appeal was dismissed by the Assistant Commissioner on 22.10.1991 against which a revision petition was filed before the Additional Commissioner (Revenue) Multan, which was accepted on 27.07.1992. This revisional order was further assailed in second revision before the Member Board of Revenue, Punjab, who accepted the revision of petitioners vide his order dated 19.10.1994. The respondents No. 1 to 6/plaintiffs challenged the orders of revenue hierarchy by claiming that Mst. Saeeda Bibi was a “limited owner” and was not a “full owner” and, hence, the respondents are also entitled as collateral descendant of Allah Bakhsh deceased.

Civil Revision No. 640 of 2001.

3. The suit was contested by the petitioners/defendants No.1 to 6 with the specific objection that the suit is barred by limitation and the petitioners have not challenged the status of Mst. Saeeda Bibi after the promulgation of Punjab Muslim Personal Law (Shariat) Application (Removal of Difficulties) Act, 1975 within one year, and now their claim is time barred, hence, the suit is liable to be dismissed.

4. The learned trial Court after framing of necessary issues and recording pro and contra evidence of the parties, decreed the suit of the plaintiffs/respondents. The petitioners/defendants No.1 & 2 filed appeal against the judgment and decree which also met the same fate, hence, this Civil Revision.

5. Learned counsel for the petitioners contends that the crucial question of jurisdiction under Section 2 & 3 of the Punjab Muslim Personal Law (Shariat) Application (Removal of Doubts) Act XXV of 1975 has not been validly examined by the learned trial Court and as such according to dictum laid down in “Mst. SALMA BIBI versus Mst. JAN and another” (PLD 1987 Lahore 553) the respondents No. 1 to 6/plaintiffs were under obligation to initiate the proceedings against the claimant within one year. He further argued that no such application by any affected person was moved within one year from the commencement of Act against the declaration of Mst. Saeeda Bibi as “full owner”, therefore, the suit is hopelessly time barred, hence, the decision rendered by the Member Board of Revenue, Punjab dated 17.04.1994 (Ex.P-9) is in accordance with law

and the judgments passed by the learned lower Court are liable to be set-aside.

6. Refuting the above contention learned counsel appearing on behalf of the respondents vehemently opposed and have relied upon the judgment “FEROZE versus LAL AND 3 OTHERS” (1981 CLC 11) wherein it has been settled that requirement of making application under Section 2 of the ibid Act is, in case of any decree, judgment or order having been passed by any Court or any other authority declaring refugee female allottee as “full owner” of disputed land. In the case in hand no order, judgment or decree of any court or any authority declared Mst. Saeeda Bibi refugee female allottee as full owner, therefore, the mandatory period of filing of application within one year after the enforcement of ibid Act is not applicable on the respondents/plaintiff, hence, the learned Courts below have rightly decreed the suit of the respondents.

7. **I have heard learned counsel for the parties and perused the record.**

8. There is no denial with this fact that husband of Mst. Saeeda Bibi namely Allah Bakhsh son of Sikandar, at the time of his death was survived by his two brothers namely Suleman and Ali Muhammad and a nephew Hanif son of Mola Bakhsh alongwith his three daughters i.e. defendants No.4 to 6 and this fact is also evident from copy of pedigreetable (Ex.P-5). There is also no denial with this fact that Mst. Saeeda Bibi was a refugee female having no male issue inherited the property of her deceased husband Allah Bakhsh. Being a

“limited owner” the collaterals of Allah Bakhsh, plaintiffs were also entitled to get share of inherited property on the event of death of Mst. Saeeda Bibi. Their claim is that Mst. Saeeda Bibi inherited the suit property as “limited owner” as she filed her claim against the suit property of Allah Bakhsh as her “widow” and was allotted the suit land in that capacity which was recorded in copy of Jamabandi for the year 1964-65 (Ex.D-1). It also reflects that she was in possession of the property as widow of Allah Bakhsh. On the death of Mst. Saeeda Bibi in the year 1990, the revenue officials by treating her as “full owner” sanctioned mutation of inheritance No. 83 dated 11.04.1991 (Ex.P-7) in favour of her daughters and other heirs of Mst. Saeeda Bibi deceased. This very act of revenue authority was challenged by the petitioners before the concerned revenue authorities. The mutation of inheritance Ex.P-7 was set-aside by Addl. Commissioner in the proceedings of revenue hierarchy but the Member Board of Revenue vide his order dated 27.07.1992 (Ex.P-4) declared Mst. Saeeda Bibi as “full owner”. This decision was passed on mere technical ground whereby the collaterals of Allah Bakhsh deceased were deprived from the inheritance for the reason that they had failed to put their claim within one year after promulgation of *ibid* Act.

9. The moot question examined in case law cited as “*FEROZE versus LAL AND 3 OTHERS*” (1981 CLC 11) wherein it was held that the validity of any alienation by a refugee female allottee of land transferred to her in lieu of abandoned land can only be examined by the Civil Court and the Civil Court is empowered to

adjudicate upon the validity of an alienation made by a female refugee of the land transferred to her in lieu of land held by her in India. It was therefore, the civil Courts had jurisdiction to go into the question relating to the validity of the alienation of the disputed land of Mst. Saeeda Bibi for the purpose of determination of status of deceased widow whether she was a “full owner” or as of “limited owner”.

10. Before proceedings further in the matter, it is necessary to reproduce the relevant provisions of section of Punjab Muslim Personal Law (Shariat) Application (Removal of Doubts) Act (XXV of 1975) which read as follows: -

*“2. **Removal of difficulties**-Notwithstanding anything to the contained in any other law for the time being in force, all decrees, judgments or other passed in any suit, appeal or other proceedings by any Court of other authority treating a refugee female allottee as full owner of the property allotted to her in lieu of the property abandoned by her in India or to which she otherwise entitled, as a limited owner, shall be of no legal effect and such suit, appeal or other proceedings shall on an application made by an affected person within year of the commencement of this Act, be decided afresh.*

*3. **Permission to file fresh suits, etc.:** Any person aggrieved by an alienation or an order of succession with regard to any property allotted to a refugee female in lieu of the property abandoned by her in India or to which she was otherwise entitled as a limited owner under custom, and who could not challenge such alienation or succession, may call it in question in a Court or before any other authority within one year of the commencement of this Act.”*

11. The relationship of respondents No.1 to 6 with deceased Allah Bakhsh is admitted and now the legal query has to be examined according to the contention raised by learned counsel for the petitioners that under Section 2 of the ibid Act any person aggrieved by an alienation may call it in question within one year of the commencement of this Act with effect from 31.03.1975 and as such

Civil Revision No. 640 of 2001.

when no application was moved at any forum within prescribed period, therefore, the claim of respondents No.1 to 6 is hopelessly time barred and, therefore, for this sole reason Mst. Saeeda Bibi shall be treated as “full owner” and the petitioners are rightly entitled to get the inherited property in their favour. This reason is not convincing because no such declaration in favour of Mst. Saeeda Bibi as full owner, was ever declared by the revenue authority. It is for the first time after the death of Mst. Saeeda Bibi in the year 1990, the impugned mutation came into existence due to which respondents No.1 to 6 became aggrieved. Hence, they filed an appeal under Section 161 of Land Revenue Act, 1967 against the illegal beneficiaries of mutation. It is further enunciated that Sections 2 & 3 of the ibid Act cannot be interpreted to hold that even if suit or appeal was pending or had been decided by a Civil Court on an application made by affected person, it can be decided by Revenue Authority. This proposition was elaborately discussed in judgment “SHEIKH SAEED AHMED 2. BADAR-UL-HADA versus ABDUL WAHID” (1999 SCJ 133). Moreover, in the cited judgment, the ratio of Feroze case (1981 CLC 11) has also been examined. Wherein it is held as under:-

“The learned counsel then invited the attention of the Court to the case of “Hashmat Ali and another. Vs. Mst. Jantan and 6-others (1993 SCMR 950), wherein Sections 2 and 3 were interpreted in para-7 of the judgment which is reproduced hereunder:-

“If Sections 2 & 3 reproduced above, are read together, then it would appear that the intention of legislature was to

divide affected persons into two categories. In the first category are persons, who, aggrieved on account of erroneous view, had litigated and some judgments and orders were passed in suits, appeals, or other proceedings. Such judgments and orders treating refugee females as full owners were declared to be of no legal effect and such affected persons were given right of fresh hearing. The other category of affected person is covered by Section 3 which provides for permission to file fresh suits. This permission is given to persons, who could not challenge such alienation or succession for some reason. Here legislature has not used word "did" but on purpose has used word "could" to denote the sense that such persons who were unable to challenge alienation for variety of reasons and legal objections including the one that suit was barred by limitation, where given opportunity to file fresh suits".

It is further held in the above cited reference:-

"We are, therefore, of the considered view that the learned single Judge in the High Court has rightly held that in the circumstances of this case, only the Civil Court was possessed of jurisdiction to decide the claim having arisen under Sections 2 & 3 of the Act rather than the Revenue Authorities."

12. Reverting to the case in hand, when there is no such order or decree passed by any such authority or any Court treating the refugee female allottee as "full owner" of the property allotted to her in lieu of the property abandoned by her deceased husband exists. Therefore, the time frame fixed for challenging the validity within one year from the commencement of (ibid) Act is not applicable on the respondents/plaintiffs as they have validly approached on the event of death of Mst. Saeeda Bibi when mutation of inheritance No.83 dated 12.08.1992 was wrongly sanctioned in favour of only the legal heirs

of Mst. Saeeda Bibi by treating her as “full owner” and by excluding the collaterals of Allah Bakhsh.

13. As discussed earlier that there is no denial with the fact that Allah Bakhsh son of Sikandar, at the time of his death, survived by two brothers namely Suleman, Ali Muhammad and a nephew Hanif son of Mola Bakhsh besides his three daughters defendants No.4 to 6, therefore, the widow of Allah Bakhsh cannot be exclusively treated as “full owner” which has been rightly assessed by the Courts below as “limited owner” being widow of Allah Bakhsh.

14. Learned counsel for the petitioners has also agitated another astonishing stance that actually Mst. Saeeda Bibi was daughter of Bahar and the abandoned property was transferred to her in Pakistan against her father’s landed property but this assertion was neither found from the evidence produced by the petitioners nor asserted through their written statement. On the other hand, it is a very amazing fact that the petitioners contesting defendants while submitting their written statement have specifically accepted that the suit property was owned by Allah Bakhsh husband of Mst. Saeeda Bibi. This glaring fact was also evident from Ex.P-6 Jamabandi which was produced in the evidence by the petitioners/ defendants themselves that Mst. Saeeda Bibi was the widow of Allah Bakhsh, therefore, the oral assertion of the petitioners that Mst. Saeeda Bibi being daughter of Bahar got the suit property, was not proved from any oral as well as documentary evidence. Therefore, it was rightly held by both the Courts below that Mst. Saeeda Bibi being widow of

Civil Revision No. 640 of 2001.

Allah Bakhsh having only daughters and the other collateral of Allah Bakhsh i.e. respondents No. 1 to 6 are also entitled for the inheritance claim on the death of Mst. Saeeda Bibi.

15. In view of clear law on this point, the learned Courts below have rightly held that the respondents No. 1 to 6 were legitimately entitled for inheritance as collateral of Allah Bakhsh deceased, hence, the suit of the respondent was rightly decreed by the learned lower courts.

16. Learned counsel for the petitioners has failed to point out any illegality or irregularity in the concurrent judgments and decree, which are based on the correct appraisal of law as well as evidence on record, hence, the same are maintained and upheld. Resultantly, this civil revision being devoid of any force and is hereby ***dismissed*** without any order as to costs.

(Abdul Rahman Aurangzeb)
Judge.

Approved for Reporting

Judge

A.Razzaq*