

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Civil Revision No. 1505 of 2009
Mst. Khurshid Bibi, etc. Versus Nazar Abbas, etc.

JUDGMENT

Date of hearing: 21.05.2018 & 24.05.2018

Petitioner(s) by: M/s Syed Kalim Ahmad Khursheed and Zaka Ur Rahman, Advocates

Respondent(s) by: M/s Dr. Abdul Basit and Inam Ullah Khan Aziz, Advocates

Mr. Zafar Iqbal Kalanori, Advocate for the applicant

Mr. Wasim Mumtaz Malik, Additional Advocate General with Khuram Shahzad Naqvi ADLR, Rai Ali Hasnain ADLR and Ashar Hameed Sial, SG1

SHAHID BILAL HASSAN-J: Succinctly, the respondents No.1 to 4 instituted a suit for declaration against the present petitioners and respondents No.5 to 13 by maintaining that Syed Muhammad Shah son of Syed Alam Shah breathed his last in 1932 leaving behind Nazar Hussain Shah (son), Mst. Jind Waddi (widow), Mst. Ghulam Fatima, Mst. Satbharai and Mst. Ghulam Sakina (daughters). It was alleged that the parties were governed by Sharia. Muhammad Shah procured the mutations of inheritance in respect of lands situated in villages Anara, Kot Dharama and Gangra, whereby Mst. Jind Waddi, Mst. Ghulam Fatima, Mst. Satbharai and Mst. Ghulam Sakina were excluded from inheritance. It was alleged that the plaintiffs/respondents No.1 to 4 came to know about the above said entries two months ago while the cause of action arose for the first time on 19.12.1933, as such,

the respondents No.1 to 4/plaintiffs being the alleged legal heirs of Ghulam Fatima daughter of Muhammad Shah instituted the suit on 26.08.2004. It was asserted that they were owners to the extent of 1/5th share and mutation No.101522 attested on 19.12.1933 was procured through fraud and misrepresentation. The possession was also claimed by the plaintiffs.

The suit was contested by the present petitioners. It was admitted that Mst. Ghulam Sakina daughter of Muhammad Shah was alive while their version was that they were governed by custom and mutation of inheritance was sanctioned under the customary law. Out of the divergent pleadings of the parties, the learned trial court framed issues. Both the parties adduced their respective oral as well as documentary evidence. On conclusion, the learned trial Court vide impugned judgment and decree dated 30.05.2008 decreed the suit. The present petitioners feeling aggrieved went in appeal. The learned appellate Court vide impugned judgment and decree dated 12.06.2009 decided the appeal in the terms that *the suit cannot be dismissed by setting aside the impugned decree; and that impugned decree is varied in the terms that the plaintiffs and defendants No.13 and 14 are entitled to inheritance and that they are entitled to the entries in the Revenue Record.* Hence, the instant civil revision.

2. Syed Kalim Ahmad Khursheed, Advocate, learned counsel for the petitioners has argued that the impugned judgments and decrees are against law and facts of the case on record. The parties were governed by customary law especially when Mai Jindwaddi, predecessor of Mst. Ghulam Fatima, Mst. Ghulam Sakina and Mst. Satbharai appeared before the Revenue Officer on 13.06.1933 and it was decided by the Revenue Officer that the parties were governed by the custom, but this aspect of the matter has been omitted from the consideration of the learned Courts below. Further argued that the plaintiffs were estopped to

bring the suit when their predecessor in interest did not challenge the validity of the inheritance mutations in their life time, as such the impugned judgments and decrees have been rendered on wrong assumption of facts and law and are result of non-reading of evidence on record. Section 2(A) of the Muslim personal Law Shariat Application Act is not applicable in this case, but the learned Courts below have wrongly construed law on the subject and erred in law while passing the impugned judgments and decrees. Maintained that the respondents No.1 to 4/plaintiffs failed to prove on record that the parties were governed by Sharia instead of Custom, thus, the impugned judgments and decrees are based on surmises and conjectures. Submitted that the findings on issues especially issue No.7-a are not sustainable under law as both the learned Courts below have omitted to consider the rulings of the Apex Court of the country. Same is the situation with issues No.1 to 5 and 7, which have wrongly been decided by the learned Courts below. Added that the question of limitation has not been considered, because the mutation, challenged in suit was attested in the year 1933 and the suit was instituted on 26.08.2004, which was badly barred by limitation. Contended that the learned appellate Court while deciding issue No.6 has erred in law and has wrongly relied upon case law referred under the said issue. Material illegalities and irregularities have been committed by the learned Courts below while passing the impugned judgments and decrees, which has resulted in miscarriage of justice; therefore, by allowing the civil revision in hand, the impugned judgments and decrees may be set aside; consequent whereof suit of the respondents No.1 to 4 may be dismissed, with costs, throughout. Relies on Ahmad Din v. Muhammad Shafi and others (PLD 1971 Supreme Court 762), Secretary to Government (West Pakistan) Now N.-W.F.P. Department of Agriculture and Forests, Peshawar and 4 others v. Kazi Abdul Kafil (PLD 1978 Supreme Court

242), Muhammad Shafi, etc. v. Sultan (2008 SCJ 181), Atta Muhammad v. Maula Bakhsh, etc. (2008 SCJ 147), Muhammad Hussain, etc. v. Muhammad Shafi, etc. (2008 AC 379) & (2008 AC 526) & (2008 SCMR 230), Gul Rehman v. Gul Nawaz Khan (2009 SCMR 589), Bashir Ahmed v. Abdul Aziz and others (2009 SCMR 1014), Ch. Muhammad Ashraf and others v. Mst. Gulshan Ara and others (2008 YLR 650-Lahore), Abdul Rashid v. Muhammad Yaseen and another (PLJ 2010 SC 1059), Ghulam Haider and others v. Murad through Legal Representatives and others (PLD 2012 Supreme Court 501), Muhammad Rustam and another v. Mst. Makhan Jan and others (2013 PSC 439-Supreme Court of Pakistan) & (2013 CLJ 463), Mst. Grana through Legal Heirs and others v. Sahib Kamala Bibi and others (PLD 2014 Supreme Court 167), Dr. Muhamad Javaid Shafi v. Syed Rashid Arshad and others (PLD 2015 Supreme Court 212), Nazim-Ud-Din and others v. Sheikh Zia-Ul-Qamar and others (2016 SCMR 24), and Muhamad Azam through LRs. v. Abdul Qayyum Khan and 2 others (2017 CLC Note 48-Lahore).

3. On the contrary, Dr. Abdul Basit, Advocate learned counsel for the respondents has supported the impugned judgments and decrees, which have been passed concurrently, and has prayed for dismissal of the civil revision in hand.

4. Heard.

5. It is an admitted fact that at the time of death of deceased Muhammad Shah his all three daughters namely Ghulam Sakina, Satbharai and Ghulam Fatima alongwith her widow Mst. Jindwadi were alive besides Nazar Hussain Shah (son) and the same was the situation when the mutation of inheritance was attested but none of them was incorporated in the inheritance mutations in dispute bearing No.10, 15 and 22 attested on 09.12.1933 pertaining to Mauza Anarra, Mauza Kot Dharaman and Mauza Kanghrra, respectively. It was stance of the petitioners

that their family was governed by customary law but astonishingly the D.Ws. including one of the defendant No.5 namely Aamir Shah (D.W.3) admitted that both the parties belonged to the most renowned and highly respectable spiritual family of Hazrat Shah Jewna who was a saint and a strict follower of the injunctions of Holy Quran and Sunnah. Moreover, neither Hazrat Shah Jewna nor his descendants either followed any un-Islamic ritual and even they did not persuade anybody else who was spiritually related to him to follow the same and for whole of his life Hazrat Shah Jewna and his descendants always persuaded their followers and disciples to follow Quran and Sunnah in respect of all the matters of life. When all these facts had been admitted by the petitioners, how could it be said that their family was governed by customary law, rather it was established on record that the family of the parties was governed by Islamic Law, which provides that on death of a Muslim, his property devolves upon his legal heirs as per their shares ordained by Holy Quran and Muhammadan Law. Thus, it was established on record that disputed inheritance mutation was got entered with mala fide while joining hands with the revenue officer as at the time of preparation of pedigree table the daughters and widow had not been shown; thus, the observation rendered by the learned Court below especially the learned trial Court that all the practice was done only to deprive the daughters and widow of deceased Muhammad Shah from their valuable rights collusively and it had rightly been held by the learned trial Court that all the daughters and widow of deceased Muhammad Shah were entitled to inherit his property according to their shares. In Mst. Shahro and others v. Mst. Fatima and others (PLD 1998 Supreme Court 1512), it was invariably held:

'Plaintiffs being female heirs of deceased landowner could not be deprived of their right in property left

by deceased by illegal mutation sanctioned at the behest of male heirs.'

In the said judgment, it was further held that:-

'It has been held in several decisions by this court and is now well-settled that possession of one co-sharer or co-owner is for benefit of all other co-sharers and the mere fact that mutations had been attested in favour of some of the co-sharers should not extinguish the title of the other co-sharers. It has also been held, time and again, that entries in the revenue record of rights do not create or extinguish title but are a mere evidence thereof. In Ghulam Ali's case (Supra) it had been held that adverse entries in the revenue record and non-participation in the profits in the property would not amount to ouster of the co-sharers as wrong mutation confer no right in property, the revenue record being maintained only have the purpose of ensuring realization of land revenue.'

Apart from this, in Mst. Fazal Nishan and others v. Ghulam Qadir and others (1992 SCMR 1773), the Hon'ble Supreme Court held:-

'Last full owner (deceased) having acquired agricultural land under custom from a Muslim prior to 15 March 1948, would be deemed to have inherited under Muslim Personal Law; his heirs after his death would inherit in accordance with Muslim Law whether they were male or female heirs.'

Same is the situation with case law reported as Mst. Ghulam Janat and others v. Ghulam Janat through legal heirs and others (2003

SCMR 362), rather in this judgment, the Hon'ble Apex Court of the country further held:-

'Under section 2-A, it was declared that a male heir of deceased Muslim will be deemed to be full owner thereof meaning thereby that he shall be deemed to have inherited the property not under custom with limitations on his powers to transfer but under the Mohammadan Law, as such, he was deemed to have inherited the property under Mohammadan Law as a consequence of which he could not be held to have acquired ownership rights in the entire estate but shall have to be deemed to be the full owner to the extent of his share.'

When the daughters and widow were co-sharers in the disputed land to the extent of their share since very beginning thus their suit was not barred by limitation, especially when after death of Muhammad Shah the property was devolved upon them and it was of no importance that their ownership was not recorded in mutation of inheritance; thus, the question with regard to limitation was also rightly adjudicated and considered by the learned Courts below.

So far as the copies of mutations exhibited on record as Ex.D1 to Ex.D7 are concerned, it is suffice to observe that none of these mutations discloses that the same were attested following the customary law, thus, the same have rightly been discarded by the learned trial Court.

6. Pursuant to the above discussion, both the learned Courts have rightly evaluated evidence on record and have reached to a just conclusion, concurrently, that the plaintiffs/respondents are entitled to inherit the land owned by Muhammad Shah deceased and when there appears no misreading and non-reading of evidence, the concurrent findings on facts, howsoever

erroneous, cannot be interfered with as has been held in judgments reported as Muhammad Farid Khan v. Muhammad Ibrahim, etc. (2017 SCMR 679), Mst. Zaitoon Begum v. Nazar Hussain and another (2014 SCMR 1469) and CANTONMENT BOARD through Executive Officer, Cantt. Board Rawalpindi v. IKHLAQ AHMED and others (2014 SCMR 161).

7. The case law relied upon by the learned counsel for the petitioners, with utmost respect to the same, has no relevance to the peculiar facts and circumstances of the case in hand, thus, it is not helpful to the petitioners' case.

8. In view of the above, the findings of the learned appellate Court that only plaintiffs and defendants No.13 & 14 are entitled to inheritance and they are entitled to the entries in revenue record are modified as such that Nazar Hussain Shah (son), Mst. Jind Waddi (widow), Mst. Ghulam Fatima, Mst. Satbharai and Mst. Ghulam Sakina (daughters) or their legal heirs, as the case may be, are entitled to inherit the property left by Muhammad Shah deceased.

9. During pendency of the instant civil revision, Zulfiqar Ahmad an Asim Nisar filed C.M.No.6-C of 2016 seeking their impleadment under Order I, Rule 10 of the CPC, claiming themselves to be bona fide purchasers with value without notice of some portion of the disputed land. The said application has been resisted by the revision petitioners. It is evident from the record the applicants namely Zulfiqar Ahmad and Asim Nisar purchased the land in dispute during pendency of the proceedings in the suit, thus, the transaction is hit by doctrine of lis pendens and the applicants are not necessary party, because they will step into the shoes of their vendors. Thus, by placing reliance on *2008 SCMR 1024* and *PLD 1993 SC 292*, the application bearing No.C.M.6-C of 2016 stands dismissed.

10. For the foregoing reasons, the civil revision in hand, with above said modification, stands dismissed with no order as to the costs.

SHAHID BILAL HASSAN
Judge

M.A.Hassan

Announced in open Court on _____.

Judge

Approved for reporting.

Judge