

ORDER SHEET
LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Civil Revision No.2108 of 2009

Muhammad Ashraf, etc. Versus Muhammad Boota, 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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02.02.2018 Malik Muhammad Arshad Awan and Ms. Saima Hanif Mughal, Advocates for the petitioners
Mr. Abdul Rehman Miyo, Advocate for the respondent No.1

Tersely, the facts relevant are as such that respondent/plaintiff Muhammad Boota instituted a suit for declaration alongwith permanent injunction as a consequential relief maintaining therein that one Bashir Ahmad son of Noor Muhammad, who died some 1 ½ years ago, was the uterine brother of the respondent/plaintiff. Hashim Bibi, the real mother of said Bashir Ahmad got divorce from her previous husband Noor Muhammad and was married to Lal Din, father of the respondent/plaintiff and he (plaintiff) was born out of the wedlock of Hashim Bibi and Lal Din. The respondent No.4/defendant No.3 (Sabran Bibi) was the widow of said Bashir Ahmad and the defendants No.4 to 7/the present petitioners were the step brothers and sisters of said Bashir Ahmad and they had the same father Noor Muhammad by name, while their mothers were different.

Lal Din, father of Muhammad Boota sold away 10 kanals 07 marlas land to the respondent No.1/plaintiff and the said Bashir Ahmad vide registered sale deed dated 06.09.1962 out of the land measuring 90 kanals 11 marlas bearing Khata No.23, Khatuni No.51, Khasra Nos. 1, 2, 3, 8, 9, 11 to 16, 112, 113 min, 127-13 min situated in Mauza Sanial, Tehsil Pasrur according to record of rights for the year 1990-91.

Subsequently, the mutation was sanctioned on 03.08.1966 regarding the sold land measuring 10 kanals 06 marlas vide mutation No.234. About one month ago the respondent/plaintiff came to know that the said Bashir Ahmad, in the absence of the plaintiff, got 90 kanals 11 marlas land mutated in the revenue record in equal shares between the plaintiff and himself instead of the real land sold measuring 10 kanals 06 marlas; hence, the revenue entries subsequent to the sale deed dated 06.09.1962 were illegal, void and against the facts. The said Bashir Ahmad was only owner of land measuring 5 kanals 3 marlas vide registered sale deed and he had nothing to do with the rest of the land measuring 85 kanals 8 marlas. Lal Din, the father of the plaintiff died in 1965 and the respondent/plaintiff was the only heir of his father, hence, the respondent/plaintiff was the owner of land measuring 85 kanals 8 marlas. After the death of the said Bashir Ahmad, the respondent/plaintiff got the inheritance of the deceased to the extent of 1/6, so the respondent/plaintiff got 17 marlas of land out of the legacy of the said Bashir Ahmad as his uterine brother. Therefore, the plaintiff was now owner in possession of the land measuring 86 kanals 05 marlas while the defendants No.3 to 7/petitioners were entitled to the land only to the extent of 4 kanals and 6 marlas. They have nothing to do with the rest of the land. In view of his submission, the plaintiff prayed that he be declared to be owner in possession of the land measuring 86 kanals 05 marlas and further to declare that the mutation No.234 dated 03.08.1966 and entries of record of rights 1975-76 as well as the entries of record of rights till date were illegal and against the facts; as a consequential relief the defendants/petitioners be restrained from interfering in the land belonging to the respondent No.1/plaintiff measuring 86 kanals 05 marlas, perpetually.

2. The defendants No.1, 2 & 3 were proceeded against ex parte while the defendants No.4 to 7 raised legal objections upon the suit. The learned trial Court, out of the divergent pleadings of the parties, framed issues. Both the parties led their evidence in support of their respective contentions.

The suit was decreed on 16.05.1996 and an appeal was preferred against the said judgment and decree by the present petitioners, which was accepted and case was ordered to be remanded by the learned Appellate Court vide judgment dated 19.09.1998 after framing an additional issue. However, the remand order was assailed by the decree holder/plaintiff vide C.R.No.1744/1998 before this Court, which was accepted vide order dated 07.10.2008 and the learned appellate Court was directed to dispose of the appeal. Therefore, the learned appellate Court vide impugned judgment and decree dated 17.07.2009 while deciding the appeal dismissed the same; which has culminated in filing of the civil revision in hand.

3. Learned counsel for the petitioners has argued that the impugned judgments and decrees are against law and facts of the case; that the respondent No.1 challenged mutation No.234 dated 03.08.1966 on the ground that it was illegal and inoperative, while Ex.P1, the registered sale deed was admitted by him and if the mutation and registered sale deed are put in juxtaposition, it appears that mutation is in consonance with the entries of the registered sale deed, but the learned Courts below have misread the contents of both the documents, thus, have erred in law while passing the impugned judgments and decrees. Submits that according to the averments of the sale deed whatever the property was owned by Lal Din or any property which was declared or added later on in his name was transferred to the petitioners and the respondent No.1/plaintiff in equal shares, but both the learned Courts misread this aspect.

Adds that the Jamabandi had presumption of truth attached to it and same were continuously showing the ownership of the petitioners and the respondent No.1 in equal share. Further adds that the suit was badly barred by limitation because the matter in hand does not pertain to inheritance, therefore, the learned Courts below while passing the impugned judgments and decrees have misconstrued law on the subject as Article 120 of the Limitation Act, 1908 provides six years period for assailing vires of such transaction, thus, have wrongly decided issue with regard to limitation, which has resulted in miscarriage of justice. Contends that material illegalities and irregularities have been committed while passing the impugned judgments and decrees and both the learned Courts below have travelled beyond vested jurisdiction. Thus, by allowing the civil revision in hand, the impugned judgments and decrees may be set aside, consequent whereof the suit instituted by the respondent No.1/plaintiff may be dismissed throughout with costs.

4. Naysaying the submissions made above, the learned counsel representing the respondent No.1/plaintiff while supporting the impugned judgments and decrees, which have been rendered concurrently, has argued that at this stage findings recorded by the learned Courts below on facts cannot be interfered with because the learned Courts below have minutely gone through evidence and have rightly reached to the conclusion. He has prayed for dismissal of the civil revision in hand.

5. Heard.

6. It is a settled principle that concurrent findings cannot be considered as inviolable and High Court is competent to interfere if such findings are based on insufficient evidence, misreading of evidence, non-consideration of material evidence, erroneous presumption of facts and consideration of inadmissible evidence; thus, the argument advanced by the

learned counsel for the respondent No.1/plaintiff that this Court cannot make interference at this stage have no force and the same are discarded. Reliance is placed on Muhammad Sami v. Additional District Judge, Sargodha and 2 others (2007 SCMR 621), Muhammad Aslam v. Mst. Ferozi and others (PLD 2001 Supreme Court 213), Barkat Ali v. Muhammad Nawaz (PLD 2004 Supreme Court 489) and Dilawar Jan v. Gul Rehman and 5 others (PLD 2001 Supreme Court 149).

7. Now this Court adverts to the second question that whether the suit was barred by limitation? The present case does not pertain to inheritance, because vide registered sale deed (Ex.P1) dated 08.08.1964 the property was purchased by the petitioners and the respondent No.1/plaintiff, which was subsequently entered into mutation No.234 (Ex.P2) dated 03.08.1966, while the suit was instituted on 06.01.1993, meaning thereby after about 26 years, while article 120 of the Limitation Act, 1908 provides six years limitation period as no specific explanation in respect of keeping mum for such a long period has been submitted, rather a vague plea that cause of action accrued about one month earlier has been taken by the respondent No.1/plaintiff. Moreover, the respondent No.1/plaintiff has admitted the contents of sale deed (Ex.P1), which is to be read harmoniously as a whole with attending circumstances giving effect to all the clauses contained in it which manifest the intention of the person who executed it, and has assailed the vires of mutation (Ex.P1), but when both the documents are read together and are put in juxtaposition, it appears that the same are in line with each other, because in sale deed (Ex.P1), Lal Din sold out his entire land present in the Khata as well as subsequently added land on equal share basis to Bashir Ahmad, the predecessor in interest of the present petitioners and the respondent No.1/plaintiff. Thus, when the position was as such, the same fact was in the knowledge and

notice of the petitioners/plaintiffs, they would have challenged the entries, if not satisfied with the same, well within time, but they kept tightlipped for such a long period and all of a sudden after about 26 years they woke up from deep slumber and instituted suit. In this respect, guideline has been sought from Lal Khan (Decd.) through His LRs. v. Muhammad Yousaf (Decd.) through His LRs. and another (NLR 2011 Revenue 65), wherein it has invariably been held by Apex Court of the Country:-

'27. In the case in hand, a bare look at the plaint of respondent's suit would indicate that he neither specified the date when he came about the impugned mutation nor gave any explanation tenable in law to justify condonation. In these circumstances, the findings on issue No.4 are violative of the law declared and therefore not sustainable.'

Thus, the plea that the respondent No.1/plaintiff was not aware of the facts and all of a sudden came to know about the same about one month prior to institution of the suit is also not believable in view of the facts narrated above. In a reported case titled Muhammad Amir and others v. Mst. Beevi and others (2007 SCMR 614) the August Court of the Country held:-

'14. We will like to add that the contention that the donor perhaps did not know the mutation is, in the circumstances, not believable for the reason that a landowner is required to pay a number of Government dues on each crop and it is not possible that till his death which occurred after almost 24 years of the gift Lala remained unaware of attestation of the mutation. D.W.3 had stated that after one year after the gift Muhammad Amir

had taken back the land from him but after two years it was again given to him for cultivation and at that time consolidation had already taken place. Thus, according to his evidence, consolidation had taken place somewhere in 1969-70. Since the consolidation, wands are made afresh it is not possible for a land owner not to come to know of a transaction in which his property stands alienated in favour of somebody else.'

8. In addition to the above, a specific plea was taken by the present petitioners that land increased because of consolidation but this aspect has not been categorically denied by the respondent No.1/plaintiff, either by submitting rejoinder or leading evidence against it; meaning thereby the stance taken up by the petitioners has been admitted by the respondent No.1/plaintiff. Moreover, the respondent No.1/plaintiff has not led any evidence with regard to his minority at the time of attestation of mutation.

9. The crux of the above discussion is that the learned Courts below have failed to appreciate evidence on record rather misread the same and have failed to exercise vested jurisdiction in accordance with law while committing material illegality and irregularity. Thus, by placing reliance on the judgments *ibid* the civil revision in hand is allowed, impugned judgments and decrees are set aside, consequent thereof the suit instituted by the respondent No.1/plaintiff stands dismissed. No order as to the costs.

(Shahid Bilal Hassan)

Judge

M.A.Hassan

Approved for reporting.

Judge