

**ORDER SHEET**  
**LAHORE HIGH COURT, BAHAWALPUR BENCH,**  
**BAHAWALPUR**  
**JUDICIAL DEPARTMENT**

**Civil Revision No.652 of 2011/BWP**  
**Mst. Suhagan Versus Ashiq Muhammad and others**

Sr. 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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**05.04.2018** Mr. A.R. Aurangzeb & Makhdoom Kalim Ullah Hashmi, Advocates for the petitioner  
Mr. Qamar Hameed Hashmi, Advocate for the respondents

Briefly, the present petitioner instituted a suit for declaration to the effect that she was owner in possession of the land fully described in the head note of the plaint and she neither sold her land to the respondents/defendants or their father nor received any consideration; that the mutations No.442 dated 02.07.1961, 452 dated 10.07.1962, 482 dated 22.02.1966, 507 dated 21.01.1959 and 602 dated 19.08.1966 by the petitioner/plaintiff in favour of the respondents/defendants and their father were against law and facts, ineffective qua her rights, result of fraud and as such liable to be cancelled. Allegedly, the respondents/defendants were asked time and again but they refused.

The suit was contested by the respondents/defendants, who controverted the averments of plaint and raised certain legal as well as factual objections while submitting written statement.

Out of the divergent pleadings of the parties, the learned trial Court framed as many as eight issues including "Relief" and invited evidence of the parties. The parties adduced their oral as well as documentary evidence. On conclusion the learned trial Court, after hearing arguments, vide impugned

judgment and decree dated 28.03.2011 dismissed the suit of the petitioner/plaintiff. Being aggrieved by the said judgment and decree, the petitioner/plaintiff agitated the same through an appeal, but the appeal was also dismissed vide impugned judgment and decree dated 29.09.2011, which has culminated in filing of the civil revision in hand.

2. Learned counsel for the petitioner has argued that the impugned judgments and decrees are against law and facts of the case; the same have been passed without lawful authority. Both the learned Court below have not considered the fact that it has been proved through oral as well as documentary evidence that the petitioner is owner in possession of the suit land and the mutations challenged in the suit are forged and fictitious, but even then they non-suited the petitioner illegally. He submits that after specific denial of execution of the mutations in question on behalf of the petitioner, being real owner, the onus shifts upon the respondents/defendants to prove valid execution of the same, in which they have miserably failed because no direct evidence consisting of witnesses who allegedly associated with the striking of the alleged bargain and in whose presence the alleged consideration has been paid, have been produced; thus, when the position is as such the presumption would be drawn that had they appeared, they would not have supported the execution of mutations under challenge, as envisaged under Article 129(g) of the Qanun-e-Shahadat Order, 1984. He further submits that provisions of Article 80 of the Qanun-e-Shahadat Order, 1984 have also not been complied with as no evidence showing that the attesting witnesses are either dead or cannot be found and the document was executed by the person purported to have done, but even then the impugned judgments and decrees have been passed by the learned Courts below. He adds that the question of limitation has also wrongly and illegally been considered and

decided, because a specific plea of fraud has been taken by the petitioner and in such a scenario limitation would start from the date of knowledge and not from the date of fraud. Impugned judgments and decrees are result of sheer misreading and non-reading of evidence on record and suffer from non-application of independent judicious mind. Provisions of Order XLI, Rule 31 of the Code of Civil Procedure, 1908 have been defiled by the learned appellate Court by not giving issue-wise findings while passing the impugned judgment and decree. Both the learned Courts below have committed material illegalities and irregularities, which has resulted in miscarriage of justice; therefore, by allowing the civil revision in hand, the impugned judgments and decrees may be set aside and suit instituted by the petitioner/plaintiff may be decreed as prayed for. Relies on Khan Muhammad through L.Rs. and others v. Mst. Khatoon Bibi and others (2017 SCMR 1476), Nazim-Ud-Din and others v. Sheikh Zia-Ul-Qamar and others (2016 SCMR 24), Ghulam Farid and another v. Sher Rehman thorough LRs. (2016 SCMR 862), Peer Baksh through LRs and other v. Mst. Khanzadi and others (2016 SCMR 1417), Muhammad Bashir v. Muhammad Hussain and 16 others (2009 SCMR 1256), Board of Intermediate and Secondary Education, Sargodha through Chairman and another v. Mst. Surriya Andleeb and another (2009 MLD 1252-Lahore), Abdul Hameed through L.Rs. and others v. Shamasuddin and others (PLD 2008 Supreme Court 140), Mst. Suban v. Allah Ditta and others (2007 SCMR 635), Rehmatullah and others v. Saleh Khan and others (2007 SCMR 729), Syed Shabbir Hussain Shah and others v. Asghar Hussain Shah and others (2007 SCMR 1884), Khalil Ahmad v. Abdul Jabbar Khan and others (2005 SCMR 911), Sher Baz Khan and others v. Mst. Malkani Sahibzadi Tiwana and others (NLR 2004 Revenue 1), Muhammad Akram and another v. Altaf Ahmad (PLD 2003 Supreme Court 688) and Syed

*Iftikhar-Ud-Din Haidar Gardezi and 9 others v. Central Bank of India Ltd., Lahore and 2 others* (1996 SCMR 669).

3. Naysaying the submissions above, the learned counsel representing the respondents has supported the impugned judgments and decrees, which have been rendered concurrently, and has further argued that at this stage the same cannot be interfered with under section 115 of the Code of Civil Procedure, 1908 merely because different view is possible to be taken. He has prayed for dismissal of the civil revision in hand. Relies on *Abdul Qayum through Legal Heirs v. Mushk-e-Alam and another* (2001 SCMR 798), *Muhammad Sardar and others v. Province of Punjab and others* (2011 YLR 119-Lahore), *Muhammad Ijaz and 2 others v. Additional District Judge, Multan District Multan and 4 others* (PLJ 2011 Lahore 42) and *Muhammad and others v. Mst. Khatoon and others* (2013 YLR 2036-Lahore).

4. Heard.

5. Limitation does not run against a void transaction nor does efflux of time extinguish the right of inherence. In the present case the petitioner has taken a specific stance that neither she entered appearance before any revenue official/officer for execution or attestation of mutations in dispute nor did she receive any sale consideration nor delivered the possession of the disputed property to the respondents/defendants and the mutations in dispute are result of impersonation, fraud, forgery and against law. Thus, the suit of the petitioner/plaintiff is well within limitation after specific denial about two months prior to institution of the suit as has been averred in the plaint by her and even the mutation is not a proof of title and a beneficiary thereunder has to prove the same by leading strong, cogent and trustworthy evidence. This Court is fortified on this view by judgments reported as *Peer Baksh through LRs and other v. Mst. Khanzadi and others* (2016

SCMR 1417), Mst. Suban v. Allah Ditta and others (2007 SCMR 635) and Khalil Ahmad v. Abdul Jabbar Khan and others (2005 SCMR 911).

6. Now the argument that at this stage the concurrent findings recorded by the learned Courts below cannot be interfered with under section 115 of the Code of Civil Procedure, 1908 merely because different view is possible to be taken is considered and dilated upon and in this regard sufficient is to observe that while dealing with this proposition the Hon'ble Supreme Court of Pakistan in various judgments including Nazim-Ud-Din and others v. Sheikh Zia-Ul-Qamar and others (2016 SCMR 24), Sultan Muhammad and another v. Muhammad Qasim and others (2010 SCMR 1630), Ghulam Muhammad and 3 others v. Ghulam Ali (2004 SCMR 1001) and Habib Khan and others v. Mst. Bakhtmina and others (2004 SCMR 1668) has invariably held:

*'5. It is well-entrenched legal proposition that concurrent findings of facts of the Courts below could not be reversed in exercise of revisional Jurisdiction as conferred upon the High Court under section 115, C.P.C. and learned ASC has rightly referred and relied upon various authorities as mentioned in the preceding paragraph but it should not be ignored that such concurrent findings, cannot be termed as "sacrosanct" and could be reversed if the same are based on insufficient evidence, misreading of evidence, non-consideration of material piece of evidence, erroneous assumption of facts and patent error of law. We are not persuaded to agree with Raja Muhammad Ibrahim Satti, learned ASC that concurrent findings must be kept intact*

*irrespective of the fact whether the same are erroneous or otherwise.'*

In the present case, it is evident that the learned Courts below have not considered the fact that the respondents have failed to consider that after specific denial of the petitioner regarding execution and attestation of the mutations in question on the basis of oral sale as well as receipt of sale amount, it was duty of the respondents to prove the same to have been validly and legally executed after receipt of consideration by the petitioner/plaintiff, but they have miserably failed to prove the same as per requirement of law, because they have relied upon solitary statement of D.W.1 namely Mushtaq Ahmad, grandson of Banna and have not produced Patwari Halqa who entered the mutation, the revenue officer who attested the said mutations and the witnesses who identified and verified the presence of the petitioner. Moreover, no evidence has been led by the respondents to show when, where and in whose presence the bargain reached at between the parties, because no day, time, month, year and venue has been pleaded by them. In Abdul Hameed through L.Rs. and others v. Shamasuddin and others (PLD 2008 Supreme Court 140) and Ghulam Farid and another v. Sher Rehman through L.Rs. (2016 SCMR 862), the Apex Court of the country held:

*'Under the law and principle of justice, when mutation is never held to be a document of title and when a negligible presumption is attached to it, provided it is proved fairly and its entry and attestation is conducted in the laid down manner, the mere incorporation of it into the "Jama Bandi" and its repetition periodically, would not confer title on the purchaser unless the transaction of sale is independently established, through cogent and convincing evidence. In the case of transaction*

*with illiterate village lady this principle assumes the status of rule of law as in that case the onus of the beneficiary of it becomes manifold. To discharge the burden of proof he has to satisfy the Court of law that the entire transaction was completed in a transparent manner and all the required precautions were faithfully and honestly observed before the attestation of mutation, dispelling every suspicion that it was tainted with fraud and misrepresentation.'*

7. In view of the above, when the respondents have not produced the witnesses in whose presence the bargain has struck in, consideration has been paid, if for the sake of arguments it is accepted that the petitioner thumb marked the disputed mutations, even then after denial, the same would not be said to have been proved, because not only mere signing or putting thumb-mark on a document, but something more must be proved for its due execution, which is lacking in this case. In this regard reliance is placed on Syed Shabbir Hussain Shah and others v. Asghar Hsusain Shah and others (2007 SCMR 1884), wherein it has been held:

*'According to Article 78 of the Qanun-e-Shahadat, 1984, execution of a document is to be proved to be in the handwriting or signature or thumb-mark of the alleged executant, which would mean signing or putting thumb-mark over a document as consenting party thereto. Execution of document would not only mean mere signing or putting thumb-impression but something more than mere signing or putting thumb-impression by executant. It must be proved that thumb-mark was made in the presence of witness in whose presence the document was written and read over and it was*

*understood by the vendor and would not only be limited to merely signing a name or placing thumb-impression upon a blank sheet of paper so as to prove the document to have been executed whose identification should also be proved by reliable and authentic evidence that a person who has affixed thumb-mark or signature was the same person who owned the land and sold the same to be vendee. Execution would mean series of acts, which would complete the execution. Mere signing or putting thumb-mark would not amount to execution in terms of Article 78 of Qanun-e-Shahadat Order, 1984. A document which is not proved is inadmissible in evidence, unless strict proof of it is waived.'*

8. Pursuant to the above discussion, it is proved on record that the respondents have failed to comply with the requirements of Article 17 & 79 of the Qanun-e-Shahadat Order, 1984 and there is also no evidence to prove that the witnesses who entered and attested the mutations were either dead or could not be found; thus, the findings of the learned Courts below are based on wrong appreciation and interpretation of law on the subject as well as suffer from glare misreading and non-reading of evidence. Both the learned Courts below have failed to exercise vested jurisdiction in accordance with law. Therefore, the impugned judgments and decrees being not sustainable in the eye of law cannot be allowed to hold field further.

9. The case law relied upon by the learned counsel for the respondents, with utmost respect to the same, has no relevance to the peculiar facts and circumstances of the case in hand; thus, it does not render any assistance or help to the respondents' case.

10. The crux of the discussion above is that while placing reliance on the judgments supra as well as judgment reported as Muhammad Akram and another v. Altaf Ahmad (PLD 2003 Supreme Court 688), the civil revision in hand is accepted, impugned judgments and decrees passed by the learned Courts below are set aside and the suit instituted by the petitioner/plaintiff is decreed declaring the mutations No.442 dated 02.07.1961, 452 dated 10.07.1962, 482 dated 22.02.1966, 507 dated 21.01.1959 and 602 dated 19.08.1966 against law and facts, ineffective qua the rights of the petitioner/plaintiff, result of fraud and are cancelled, accordingly.

**(Shahid Bilal Hassan)**  
Judge

*M. A. Hassan*

*Approved for reporting.*

*Judge*