

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 65 of 2005

Liaqat Ali alias Khabar & others v. Habibullah & others

Civil Revision No. S – 68 of 2005

Liaqat Ali alias Khabar & others v. Habibullah & others

Date of hearing: **08-11-2021**

Date of decision: **08-11-2021**

Mr. Abdul Qadir Shaikh assisted by M/s Abdul Basit Shaikh and Abdul Aziz Shaikh, Advocates for the Applicants in both Revisions. Syed Jaffar Ali Shah, Advocate for Respondents No.1 to 8 in both Revisions.

Mr. Ahmed Ali Shahani, Assistant Advocate General Sindh.

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J U D G M E N T

Muhammad Junaid Ghaffar, J. – Through both these Civil Revision Applications, the Applicants have impugned judgment dated 31-01-2005 passed by the 1st Additional District Judge, Khairpur, through which Civil Appeals No.79 and 80 of 2000 were dismissed and the judgment of the Trial Court dated 22-04-2000 was maintained, through which F.C. Suit No.72 of 1999 filed by the Respondents was decreed and Applicants' F.C. Suit No.42 of 1999 was dismissed.

2. Learned Counsel for the Applicants has argued that insofar as the Respondents' Suit was concerned, issue of limitation ought to have been settled and decided as a specific objections was raised to the effect that the Suit was filed after forty-eight (48) years of execution of the sale deed which remained unchallenged throughout; that the Respondents in order to overcome this objection of limitation had raised a plea that purportedly some mortgage was created in favour of the Applicants, but again no such issue was settled and decided; that the Applicants were in possession of a registered sale deed duly executed by the grand-father of the Respondents in favor of the grandfather of the Applicants; that they took advantage of Revenue authorities failure to record the sale of the property in question in the Revenue records and got *foti khata badal* in their names; that even

otherwise the Applicants had always been in possession and Respondents filed their Suit only after summons were issued in the Applicants' Suit. He has prayed for setting aside the judgments of the Courts below, and in support, he has relied upon Manzoor Ahmad and 4 others v. Mehrban and 5 others (2002 SCMR 1391), Rasool Bukhsh and another v. Muhammad Zaman (2007 SCMR 85), Lt. Muhammad Sohail Anjum Khan and others v. Abdul Rasheed Khan and others (2003 MLD 1095), Khan Muhammad v. Khursheed (2010 CLC 970) and Barkhurdar through Legal Heirs v. Muhammad Zafar Hassan Shah and 7 others (2006 YLR 1226(2)).

3. On the other hand, Respondents' Counsel has supported the impugned judgments and submits that the sale deed in question was never produced in original; that no attesting witnesses were examined; that the Revenue record / foti khata badal was in favour of the Respondents; that admittedly, the property was owned by the grand-father of the Respondents and was mortgaged by the father of Respondents; that the Suit of the Respondents was within time as it was only for declaration, mesne profits and possession, and therefore, no case is made out and the two concurrent findings of the Courts below be maintained.

4. I have heard both the learned Counsel and perused the record.

5. Insofar as the Applicants are concerned, they filed Suit No.42 of 1999 and sought the following prayers:

- (i) *This Hon'ble Court may be pleased to declare that the plaintiffs being surviving legal heirs of their predecessor-in-interest named Ghulam Muhammad (grandfather) are legally entitled to inherit the suit land and they are therefore rightful and bonafide owners of the land in suit and alleged mutation entry No:28 pertaining to suit land in their favour effected by respondent No:9 is quite illegal, malafide, ultra vires, ineffective ab-initio void, and nullity in the eye of law and liable to be cancelled.*
- (ii) *To cancel the mutation entry No:28 effected by defendant No:9 in the names of defendants No:1 to 8 illegally without knowledge of the plaintiffs.*
- (iii) *To grant permanent injunction restraining the defendants from interfering in any manner with the rights, possession and enjoyment of the plaintiffs over suit land.*
- (iv) *To award costs of the suit.*
- (v) *To award any other relief deemed fit and proper.*

6. It is not in dispute that after filing of this Suit and issuance of summons, the Respondents also filed Suit No.72 of 1999 and sought the following relief(s):

- (a) *That this Honourable may be pleased to declare that the plaintiffs are legal owners of the suit land by virtue of mutation entries in the revenue record/inheritance.*
- (b) *To cancel registered sale deed dated 24.9.48 in respect of the suit property allegedly executed between the father of the plaintiff No.1 to 7, plaintiff:8 and grand father of the defendant No.1 to 7 being managed and fabricated documents.*
- (c) *To direct the defendant No:1 to 7 to vacate the suit land and restore its vacant possession in favour of the plaintiff.*
- (d) *To award mesne profit of the suit land to the plaintiff from last three years and onwards till physical possession of the same is delivered to the plaintiffs.*
- (e) *To grant permanent injunction in favour of the plaintiff thereby restraining the defendants permanently from interfering with the legal rights and title of the plaintiffs over the suit land in any manner whatsoever.*
- (f) *To grant costs of the suit.*
- (g) *To grant any other relief this Hon'ble Court deems fit and proper.*

7. The learned Trial Court, after exchange of pleadings, settled consolidated issues, which read as under:

1. *Whether either (sic) the suit is not maintainable according to law?*
2. *Whether the registered sale deed between Muhammad Siddique and late Ghulam Muhammad dt. 24-9-1948 is legal, void, if so, its effect? (OPP)*
3. *Who is owner of the property in question?*
4. *Whether entry No.28 of deh Form VII-B regarding Fouti Khata of Gul Muhammad son of Kouro is illegal, and liable to be cancelled, if so, its effect? (OPP)*
5. *Whether registered sale deed dt. 24-9-1948 is liable to be cancelled, if so, its effect?*
6. *Whether the parties are entitled to any relief?*
7. *What should the decree be?*
8. *Whether the plaintiff Liaquat Ali & Ors are in illegal possession of the suit land, if so, its effect? (OPD)*
9. *Whether the defendants are entitled for mesne profits, if so, to what extent? (OPD)*

8. The Trial Court, after recording evidence and hearing of arguments, dismissed the Suit of the Applicants and decreed the Suit of Respondents. The Appellate Court also agreed with the findings of the Trial Court and has been pleased to maintain the judgment by dismissing the two separate Appeals of the Applicants.

9. It appears to be an admitted position that it was the Applicants who had first filed their Suit for declaration, cancellation of mutation entry and injunction, and the cause of action, so stated was, that the Respondents made an attempt to takeover possession on the ground that they are the owners of the property and some mutation has been recorded in their favour. Subsequently, after filing of written statement, the Respondents filed their Suit and sought cancellation, possession and mesne profits, and the cause of action, as stated, accrued when Suit land was forcibly occupied by the grand-father of the Applicants some ten years back on account of mortgage of the same by the father of the Respondents, and thereafter, on refusal to accept payment of the mortgage amount, and finally, when a Civil Suit was filed by the present Applicants on the basis of allegedly forged sale deed. In the plaint, the Respondents in Para-5 of their Suit stated as follows:

“5. That the father of the plaintiffs No.1 to 7 and the plaintiff No.8 Rally (sic-orally) mortgaged the suit and about 10 years back when the grand father of the defendants No.1 to 7 in the sum of Rs.5000/- on the condition that the same will be released from the possession of the defendant side, after repayment of the amount and prior to it the land remained in peaceful possession of the elders of the plaintiffs No.1 to 7 and the plaintiff No.8.”

10. When the entire plaint of the Respondents' Suit is examined, two things appear to be admitted; (i) That the possession of the Suit property was with the Applicants and (ii) Though it was pleaded otherwise, however, the cause of action for filing of the Suit was, in fact, the Suit filed by the Applicants. If that not be so, then they ought to have filed their Suit for redemption of mortgage / possession prior in time as it was their case that despite offer to pay the mortgage amount, the property was not being returned or released. Moreover, in that case and as rightly argued by the Applicants' Counsel that both the Courts below were required to first determine the question of mortgage as well as the issue of limitation. The reason being that if that is not done, then firstly, there was no cause of action for Respondents to file the Suit, and secondly, on that account, otherwise their Suit was hopelessly time barred. Respondents Suit was seeking

cancellation of an instrument pertaining to the year 1948 purportedly executed in favour of the Applicants by the grand-father of the Respondents. As to the plea of mortgage in the plaint, it has been stated that it was an oral arrangement, and therefore, this contention was required to be proved beyond doubts by the Respondents.

11. When the evidence, so led, by the Respondents is examined, it reflects that they have miserably failed to prove existence of any so called mortgage; rather contradictory evidence was led on their behalf, which by itself, creates serious doubts as to their contention. The Respondents / Defendants' witness DW-1 namely *Shahzad Ali (Exhibit No.55)* came into the witness box on his behalf as well as on behalf of others as an Attorney. In his examination-in-chief, he stated as follows:

“..... About 10 years back my father had given suit land to Ghulam Muhammad as mortgage in lieu of Rs.5000/- After 5 years my father went to the Ghulam Muhammad and took Rs.5000/- to him but he refused to receive the mortgage amount and return the possession to us and thereafter my father expired. We also went to the plaintiff and demanded the possession but they refused. About 2 years back plaintiff finally refused.”

He was cross-examined, and in his cross examination, he has stated as follows:

“The power of attorney produced by me at Exh.56 and 57 a not attested by any Magistrate but these have been attested by Notary Public at Khairpur. Muhammad Sadiq has also given power of attorney to me. I don't remember the name of Notary Public who attested both the power of attorney. The witnesses are Exh.56 and 57 are different. Muhammad Sadiq is still alive. Muhammad Sadiq had also share in the suit land. He transferred his share in the name of my father in 1976 but I don't know whether it was sale or gift. It is fact that I have not produced the khata in the name of Muhammad Sadiq. It is fact that I have not produced any revenue record of transfer by Muhammad Sadiq in the name of my father. Voluntarily says that the property was privately partitioned and my uncle Muhammad Sadiq was in the possession of his own share which was transferred in the name of my father and now he has been given power of attorney which I have produced at Exh.57. I don't remember the area in the name of Muhammad Sadiq. At present Muhammad Sadiq has no land and he has already sold his land. Muhammad Sadiq had one son who had expired since last 2 years and now he has only one living daughter. My uncle had one S.No. which was given to him by my father in exchange of suit land but he had sold out the same in 1980 or 1985 and I don't remember the exact sale year. Muhammad Sadiq sold out his S.No. to one Motial Kubar. Now we have about 8 S.Nos. from our father's property. My father has expired about 5 years back. It is incorrect to suggest that we have mentioned the different legal heirs in

different S.Nos. Voluntarily says that we had provided the actual list of legal heirs to Tapedar for Foti Khata. It is incorrect to suggest that we have concealed the other names of the legal heirs in the Foti Khata for S.Nos. 692, 1105, 1106 and 1107. Voluntarily says that we have provided the actual list of legal heirs to Tapedar but I don't know as to what names have been left over by Tapedar. We had complained to Tapedar but he replied that there is no harm. It is fact that we have not filed any appeal against this entry. I have not produced the fresh land revenue receipts in my name but prior to 10 years the land revenue was paid by my father and there are receipts in his name. It is fact that we have not filed any civil suit prior to this suit No.72/1999. Voluntarily says that we approached to nekmards for getting possession. I complained to our Qaumi nek mard Haji Muhammad Uris who has not expired and Nek Mard of our village namely Deengle Khan and Nek Mard Abdul Rehman Khan and Nekmard Ghulam Nabi Khan and Abdul Majeed Khan & Ors namely Allahdad Khan, Muhammad Sulleman, Jam Khan, Muhammad Saleh and other brotheri peoples. I can't say if it is mentioned in suit No.72/1999 and the W.S of the suit that we have complained the nekmards.”

DW-2 Allah Dad (Exhibit No.60), in his cross-examination, has stated as follows:

“Habibullah is son of my maternal uncle. Ghulam Muhammd expired after the death of Gul Muhammad about 4/5 years back. I was not present at the time of writing of lease agreement. I was not present at the time of talks of mortgage between Ghulam Muhammad and Gul Muhammad but Gul Muhamad told me about the mortgage. Voluntarily says that the mortgage agreement was written in the mosque and Ghulam Muhammad gave under taking on the Holy Quran that he will return the possession to Gul Muhammad and I was also present but I had not signed on the mortgage agreement. It was about 10/12 years back and it was about 12-00 noon when we went in Mosque. Gul Muhammad and Muhammad Sadiq were co-sharers to the extent of equal share. The defendants have in all 8-00 Acres and Muhammad Sadiq had 8-00 Acrès but he had sold out his lands to some persons of Khatti community and Kubar community. Muhammad Sadiq is still alive and he has only one living daughter, and his son has expired, about 2 years back. Muhammad Sadiq sold out his land even before birth of his son. Now Muhammad Sadiq is living in Jacobabad. Muhammad Sadiq has two grand sons. He comes to hers some times. It is incorrect to suggest that plaintiffs are in possession of suit land since 1948. Voluntarily says that the plaintiffs are not in possession since 1948 but prior to mortgage late Ghulam Muhammad was in possession of suit land on basis of lease, given to him by Gul Muhammad, which continued for 3/4 years. Again says that during the lease period late Gul Muhammad was hari of the same land and about 3/4 years back the plaintiffs snatched the land from harap of the defendants, and now they have installed Alam illegally. It is incorrect to suggest that I have given false evidence because of my relationship with Habibullah. There was faisla in the otaque of nek mard Deengal in which 15/20 persons were present from the brotheri namely Ali Murad, Ghulam Qadir, Allahad, Piral, Siddique, Abdul Rehman,

Habibullah, Ghulam Haider, Khabar, Usman and some others whose name I don't remember. It was about 12-00 noon or so when the faisla was held. It is incorrect to suggest that Ghulam Muhammad and his legal heirs are legal owners of the suit land."

DW-3 Muhammad Chuttal (Exhibit No.61), in his cross-examination, has stated as under:

"The S.No. of disputed land is 818 and it is situated near to the village of defendants. I was not present at the time of mortgage. I was also not present at the time when Gul Muhammad went to the Ghulam Muhammad alongwith the cash for return of possession. I was also not present when Habibullah and his brothers went to Liaquat Ali & Ors for getting the possession. I don't know the names of ladies legal heirs of Gul Muhammad. It is fact that I have visiting relationship with the defendants. Voluntarily says that I have visiting relations with the both parties. I was present in the brothery faisla held during this year prior to filing of this suit. The faisla was held in the otaque nekward Abdul Rehman at about noon time but I don't remember the exact time. Ghulam Muhammad and his legal heirs are in the possession since last 10 years when the land was given to Ghulam Muhammad as mortgaged. It is fact that some other lands of Gul Muhammad were given to Ghulam Muhammad on lease but suit land was mortgaged and not on lease. Ghulam Muhammad and his legal heirs are in continuous possession of suit land since 10 years after mortgaged. Ghulam Muhammad has expired about 3/4 years and Gul Muhammad has expired about 4/5 years back. It is incorrect to suggest that suit land has remained in possession of Ghulam Muhammad since 1948 and after his death his legal heirs come in to possession. It is incorrect to suggest that I am giving false evidence in the Court."

12. Perusal of the aforesaid evidence of Respondents reflects that the evidence of DW-1 and other witnesses is contradictory. In the plaint, it has been stated that there was an oral mortgage agreement of Rs.5,000/- and on that basis the property was given in the possession of the Applicants by the father of the Respondents. For that it was incumbent upon the Respondents to prove this oral claim of mortgage with confidence inspiring evidence. However, their own witness (DW-2) produced to support this assertion has stated that he was not present at the time of discussion about mortgage, but he was verbally told about the same by Gul Muhammad. He has then voluntarily said that *mortgage agreement was written in the Mosque and Ghulam Muhammad had undertaken on Holy Quran that he will return the possession to Gul Muhammad, and I was also present but I had not signed on the mortgage agreement.* He has further stated that this happened about 10-12 years back and it was about 12:00 noon when we went to the Mosque. When this evidence is read in juxtaposition with the

plaint and the evidence of DW-1, there appears to be contradiction as to the mortgage agreement itself. Whether it was an oral agreement or a written agreement is not clear. Admittedly, no mortgage agreement was brought on record, and therefore, the presumption would be that it was an oral agreement, but then the same was required to be proved through cogent evidence and the Defendants' own witnesses have given contradictory evidence as DW-2 has stated that there was a written agreement. Now this contradiction by itself creates doubts on the assertions and averments made in the plaint, as apparently, this Suit was filed after Applicants' Suit and the stance was taken that it was mortgaged some ten years back so as to cover the issue of limitation. This aspect of handing over possession on the basis of some mortgage as claimed was required to be established first, and only then the Suit of the Respondents could have proceeded further regarding the sale deed being allegedly false and fabricated and consequently liable to be cancelled.

13. Though it has been pleaded and argued on behalf of the Respondents that no sale deed ever existed and the Applicants had failed to prove that it was a registered instrument, however, the evidence on record suggests to the contrary. It would be advantageous to examine the evidence of Ghulamullah, which was produced by the Respondents as their own witness as DW-4 (Exhibit No.62), who was the Sub-Registrar, Gambat at the time of leading evidence. Surprisingly, this official witness was not summoned as a Court witness but as a witness of Respondents. It would be advantageous to refer to his examination-in-chief conducted by the Respondents' Counsel and the cross-examination by the Applicants' Counsel. The same reads as under:

“Examination-in chief to Mr. Mushtaque Ahmed Shaikh Advocate for Defendants.

I am posted as Sub-Registrar at Gambat and I have brought the original register in which the register sale deed No.203 dt. 23-9-1948 is registered. According to my record it was presented in our office on 23-9-1948 and it was registered on 24-9-1948. I produce attested photo stat copy of sale deed at Exh.63 and it has been attested by me after verifying from the original book (Original seen and returned). This sale deed has been written from page No. 275 to 276 of Book No. I, Volume No. V. I see last page of the sale deed and say it is not signed by the then Sub-Registrar Gambat. Further says that as per practice the Sub-Registrar signs himself in the end of the sale deed Book, but in this case there is no signature the then Sub-Registrar Gambat. I see page No.276 and say that the word signed is not mentioned on the

name of Sub-Registrar Mirwah appearing on the right column at page No.276. The true copy is issued when the sale is signed by the Sub-Registrar in the Book. I see Exh.41 and say that it has not been issued from my office.

XXXXXXXXXXXX to Mr. Ahmeduddin Shar Baloach Advocate for Plaintiff.

The Book No. I, Volume No. V is brought by me is original Book. I see the Book brought by me and say that there are also other 4/5 sale deeds which are not signed by the then Sub-Registrar. It is fact that at time of sale is necessary for execution/Vendor to appear personally before Sub-Registrar. According to my record the executant Gul Muhammad and Muhammad Sadiq had appeared and their left thumb impressions were obtained on the original sale deed. It is not clear in my record as to whom the original sale deed was returned at the time of registration. But generally the sale deed is obtained by purchaser registration. I see Exh.48 and say that it is written in our office from our book which I brought today but I have not formally issued because of there is no signature the then Sub-Registrar.”

14. Perusal of the aforesaid evidence of the concerned Sub-Registrar, who was brought as a Defendants' / Respondents' witness, reflects that he has admitted that the sale deed was executed as per his record and Gul Muhammad and Muhammad Sadiq had appeared and their left thumb impressions were also obtained on the original sale deed. The Respondents' Counsel has doubted the veracity of the sale deed on the ground that in his evidence the Sub-Registrar has admitted that it was not signed by the then Sub-Registrar, however, when he was cross-examined, he admitted that he had brought the original Book No. I, Volume No. V and on perusal of the same, wherein the sale deed was recorded and registered. He further admitted that there were also 4 to 5 other sale deeds which were also not signed by the then Sub-Registrar. In that case, this piece of evidence alone cannot be doubted so as to dislodge the claim of the Applicants having a registered sale deed. The Sub-Registrar brought the original register, wherein the registered sale deed No.203 dated 23-09-1948 was registered. In his examination-in-chief, he further admitted that it was presented in the office of the Sub-Registrar on 23-09-1948 and was registered on 24-09-1948. He has admitted that both person came and executed the same as per record. He also produced attested photo stat copy of the sale deed and he has stated that it was so done after verifying it from the original book. He further deposed that sale deed has been written from Page No.275 to 276 of Book No. I, Volume No. V. As regards the proof of execution of the sale deed in question suffice is to say that the sale deed

is a registered document and the respondents are in possession of the suit land on the basis thereof, therefore, non-examination of its attesting witnesses is not fatal¹.

15. It is also a matter of record that the Respondents in their own pleadings have stated that (Para 6 of their written statement) “*the actual position is that the father of the answering defendants mortgaged the suit land about 10 years back with the grand father of the plaintiffs in the sum of Rs.5000/- on the condition that the same will be released from the possession of the plaintiffs side after re-payment of the amount*”, and that “*the grand father of the plaintiffs was approached by the father of the answering defendants during his lifetime about 5 years back..*”. Now there is nothing on record; nor was cited before this Court, that if the father of the Respondents had himself made an attempt to repay the purported mortgage amount, then what action he took in his lifetime, and as to why it is only after filing of a Suit by the Applicants, that the Respondents came forward and filed their Suit and pleaded this oral mortgage argument which the father himself never agitated in this lifetime. This also contradicts the stance of the Respondents and goes against their claim in the Suit, whereas, the Suit then appears to be hopelessly time barred as to seeking cancellation of the sale deed.

16. Therefore, after having examined the above contradictions in the very evidence led by Respondents, it is very surprising that the Trial Court as well as the Appellate Court both went on to decree the Suit of Respondents and dismissed the Suit of Applicants. On perusal of these two judgments, it appears that both the Courts below were much impressed by the change of *foti khata badal* and the Revenue entry / mutation in the name of the Respondents. It is settled law that a mere entry in the Revenue record does not always becomes a title document and when the other party is in possession of a registered instrument, then the Revenue entry and the mutation loses its value as against their registered instrument. This aspect of the case has not been attended to while deciding both the Suits and the Appeals. Insofar as the registered sale deed of the Applicants is concerned, though the same was not mutated in the record of Revenue authorities, but then it would not be, and cannot be a sole basis, to declare that it is liable to be cancelled; and the holder of the sale deed is not the owner of the land.

¹ Manzoor Ahmad v Mehrban (2002 SCMR 1391)

Mere omission of recording of mutation or Revenue entry in the record of rights does not ipso facto renders the sale deed liable to be cancelled. For that it was required to be proved independently that it was a forged and fabricated documents, and even notwithstanding of such recording and mutation of such a sale deed, if proved in accordance with law, will render it liable to be cancelled. Learned Counsel for the Applicants has relied upon certain rules and standing orders of the Revenue authorities to support the proposition that it was the responsibility of the officials and the Sub-Registrar to send the same for mutation in the Revenue record; however, for the present purposes, I am not inclined to decide this issue, but at the same time it may be observed that in view of the second proviso² to section 42(3) of the Sindh Land Revenue Act, 1967, the Applicants and or their predecessor in interest cannot be held at fault as it was the responsibility of the officials to correct entry in their record³. Even otherwise, the above evidence is enough to hold that the Respondents' Suit ought not to have been decreed; but dismissed; rather Suit of the Applicants ought to have been decreed. At the same time

17. It is by now a settled proposition of law that mere existence of a mutation entry in the revenue record does not confer any title to a party. More importantly when it is based on some foti khata badal and is claimed by the opponent that the property was sold by the deceased much prior in time. Further, when the adverse party claims its ownership on the basis of a registered document, it has attached to it a presumption of correctness and genuineness. Here the sale deed is more than 30 years old and as per findings of this Court, it has been established and proved from the record placed before the Court. There may be some shortcomings, as to non-production of attesting witnesses; but then in cases of such documents, when considerable time had passed, and the persons executing and attesting are no more alive, Article 100 of the Qanoon-e-Shahadat Order, 1984, provides sanctity and protection, in that the burden then shifts to the opposing party. In the case of ***Muhammad Durwaish v Haji Muhammad Hussain*** (**1999 CLC 106**) a learned Single Judge of the Peshawar High Court has been pleased to discuss this aspect and has come to the following conclusion:

² Provided further that it shall not be necessary to give the information if the right or interest has been acquired by a registered document in which case it shall be the duty of the Sub-Registrar concerned to inform the Mukatiarkar or the authorized officer within three months of the registration of the document.

³ Barkurdar v Muhammad Zafar Hasan Shah [2006 YLR 1226(2)]

10. Thus, the question to be determined is whether Article 79 or 100 of the Qanun-e-Shahadat Order be applied to resolve the controversy between the parties. If the former is relevant, the burden would be on the defendants to prove the execution of the sale-deed No.171, notwithstanding its registration. If Article 100 aforesaid is found to be applicable, the burden to disprove the execution of the deed would shift to the plaintiffs. Under Article 100 of the Qanun-e-Shahadat Order presumption of correctness is attached to the signatures and contents of a thirty-years old document if produced from proper custody. When a document fulfils requirements of Article 100, the person relying upon the document is not required to prove its execution unless the presumption is rebutted. Thus, the provisions of Article 79 of the Qanun-e-Shahadat Order would not come into play if the benefit of Article 100 is available to the defendants.

18. In this matter the Revenue authorities have made an Entry in the Revenue Record allegedly in favor of the Respondents much later, whereas, no supporting document has been placed on record to justify such entry in the Records, except a foti khata badal. If the property had been sold, then there was no question of any such right of the legal heirs. On the contrary the Applicants are in possession of a registered document (though it may be a case that such registered document was not presented for mutation of record). However, a registered instrument can only be cancelled by a Civil Court, whereas, in this matter the Revenue authority has practically made an attempt to cancel or nullify the effect of the sale deed of the Applicants. In fact, even in cases where a sale deed is in existence and mutation has not been recorded; the revenue authorities are not competent to give a declaration of ownership. If such practice of entertaining applications and correction in entries is permitted, then it would seriously prejudice the rights so accrued in favour of the parties. More so, when there is always a clog of limitation attached for seeking cancellation. The Respondents in this matter after expiry of their ancestors have come forward with a claim that property was never sold out to the Applicants; but was mortgaged; however, they have miserably failed to establish this averment made in the plaint. It is settled law that a Mutation Entry in Revenue Record could neither create nor extinguish title to property as they are only maintained for fiscal purposes. See ***Muhammad Ali v Hassan Muhammad (PLD 1994 SC 245)***. Further a right to title or ownership of any property depends entirely on the title i.e. source of acquisition of the right while an Entry in the Record of Rights is not the conclusive evidence of the right to ownership. See ***Bahadur Khan v Qabool Ahmed (2005 CLC 1937)***.

19. Reliance may also be placed on the case of ***Ghulam Ahmed v Muzafara Begum (2011 YLR 2991)*** wherein a somewhat similar situation

was before the Court as the dispute between the parties was to the effect that one party was relying upon the Entry in mutation record, whereas, the other party was claiming ownership on the basis of a registered sale deed and it was its case that Mutation Entry has been altered and or amended without there being any proof of ownership. The observation of the learned Division Bench of the Baluchistan High Court is pertinent to the facts of this case and reads as under;

It is settled principle of law that mere mutation does not confer any right in any property on any one and the mutation entry raises a rebuttable presumption in favour of person in whose favour the same is made. The presumption is rebuttable and in the instant case the entry in the Revenue Record has been duly rebutted by the appellant-plaintiff, who is challenging the entry by producing cogent and confidence inspiring evidence contrary to mutation entry. In the instant case the presumption attached with the mutation entry in favour of predecessor of respondents-defendants stands rebutted through registered sale-deed dated 16-6-1920 in view whereof the respondents-defendants or their predecessor cannot be held as exclusive owner of the disputed property rather the appellant-plaintiff and the respondents-defendants/their predecessor are half owners of the disputed property in equal share. The Revenue Record reflects that the entry in the Revenue Record in the name of predecessor of respondents-defendants is a result of fraud and under the law fraud vitiates most solemn proceedings. Reliance in this regard is placed on the case of Muhammad Younus Khan v. Government of N.-W.F.P. reported as 1993 SCMR 618..”

20. The upshot of the above discussion is that both the Court(s) below have miserably failed to appreciate the evidence properly and it is a fit case of misreading and non-reading of evidence led by the parties, whereas, the Courts have also failed to dilate upon the issue of limitation which goes to the root cause that whether the Court had any jurisdiction to entertain a Suit at such a belated stage, and therefore requires interference by this Court while exercising its revisional jurisdiction, in view of the dicta laid down by the Hon’ble Supreme Court in the case of, ***Nazim-Ud-Din v Sheikh Zia-Ul-Qamar (2016 SCMR 24)***⁴, and ***Islam-Ud-Din v Mst. Noor Jahan (2016 SCMR 986)***⁵. Further reliance may also be placed on the cases reported as

⁴“It is settled law that ordinarily the revisional court would not interfere in the concurrent findings of fact recorded by the first two courts of fact but where there is misreading and non-reading of evidence on the record which is conspicuous, the revisional court shall interfere and can upset the concurrent findings, as well as where there is an error in the exercise of jurisdiction by the courts below and/or where the courts have acted in the exercise of its jurisdiction illegally or with material irregularity”

⁵ 9. Mr. Gulzarin Kiani, the learned counsel for the siblings, contended that the High Court in exercise of its revisional jurisdiction could not have set aside the findings of the two courts below and if at all it should have remanded the matter. In this regard the learned counsel had cited a few cases (above). In the case of Sailajananda Pandey, which was referred to in the case of Gul Rehman, the matter was remanded because "further investigation of some necessary facts" was required where after "many different principles" of law were to be dilated upon. However, there is no need of any further investigation in the present case nor the need to consider many different [legal] principles as a consequence thereof In Iftikhar-ud-Din Haidar Gardezi's case it

Nabi Baksh v. Fazal Hussain (2008 SCMR 1454), Ghulam Muhammad v Ghulam Ali (2004 SCMR 1001), & Muhammad Akhtar v Mst. Manna (2001 SCMR 1700). Since both the Court(s) below have failed to exercise the jurisdiction so vested in them and have completely misread the evidence on record while decreeing the Suit of the private respondents and dismissing the Suit of the Applicants; therefore, by means of a short order dated 08-11-2021 both these Civil Revision Applications were allowed in the following terms and above are the reasons thereof:

“For the reasons to be recorded later on, both these Civil Revision Applications are allowed. Judgments of the trial Court dated 22.04.2000 as well as Appellate Court dated 31.01.2005 to the extent of F.C Suit No.72 of 1999 (Habibullah and others v. Liaquat Ali and others) are set aside; whereas F.C Suit No.42 of 1999 (Liaquat ali and others v. Habibullah and others) stands decreed, as prayed. Office to place a signed copy of this order in captioned connected matter.”

Abdul Basit

J U D G E

was held that judgments in revisional jurisdiction could only be assailed in terms of section 115 of the Code of Civil Procedure ("the Code"). We entirely agree. However, in the present case the trial and appellate courts had exercised jurisdiction vesting in them illegally or with material irregularity, as they disregarded Article 79 of the Qanun-e-Shahadat Order and misread or did not read the evidence as noted above. Since the parties had already lead evidence and the material facts had clearly emerged the High Court had correctly exercised its revisional jurisdiction under the Code. It was held in *Nabi Baksh v Fazal Hussain (2008 SCMR 1454)* that concurrent findings of the courts below can be set aside by the High Court in its revisional jurisdiction if the same, "were based on misreading or non-reading of the material available on record".