

ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Const. Petition No.D-1177 of 2023

Present

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Arbab Ali Hakro

Petitioner : Muhammad Murtaza, through
Mr. Jam Khizer, Advocate, Associate of
Mr. Shahab Sarki, Advocate

Respondent No.1 : Gul Sher, through Mr. Safdar Ali Kanasro,
Advocate

Respondents
No.5 to 12 : Mukhtiarkar (Revenue) NaushahroFeroze and
others Through Mr. Ahmed Ali Shahani,
Assistant Advocate General

Date of hearing : 27.02.2024

Date of Decision : 19.03.2024

O R D E R

ARBAB ALI HAKRO, J.- Invoking the jurisdiction of this Court under Article 199 of the Constitution of Pakistan, 1973, the petitioner has challenged the legality of the Order dated 11th April 2023, passed by the Court of District Judge (MCAC), Naushahro Feroze, referred to herein as “**the Revisional Court**”, as well as the Order dated 18th June 2022, passed by the Court of Senior Civil Judge-II, Naushahro Feroze, hereinafter referred to as “**the Trial Court**”. Both judicial pronouncements dismissed the petitioner’s application under Order VII Rule 11 of the Code of Civil Procedure, 1908, referred to as “**the Code**”.

2. The material particulars of the instant case delineate that Respondent No.1, Gul Sher, has instituted a civil suit against

Respondents Nos.2 to 10, inclusive of the instant petitioner. The crux of the suit is to obtain a judicial declaration affirming that the late Muhammad, son of Allah Dino Solangi, held title to the agricultural land identified by Survey Nos.107 (comprising 07-35 acres) and 111 (encompassing 07-39 acres), located within Deh Kot Bahadur, Taluka Bhiria, District Naushahro Feroze, hereinafter referred to as "the suit land".According to his share, the plaintiff claims to be the lawful owner of the suit land by way of inheritance. He further seeks a declaration that the old mutation entries No.84 and 85, dated 27.6.1939, regarding the change of FotiKhata of the deceased Muhammad, which show Allah Rakhio and Mst. Bachal, as legal heirs of the deceased Muhammad and entry No.38 dated 21.3.1983, in the name of defendants No.1 to 4, are fake, fraudulent, forged, manipulated, illegal, null, and void. He prayed that these entries are liable to be corrected.

3. The petitioner and respondents Nos. 2 to 4 contested the said suit. They filed a written statement and an application under Order VII Rule 11 of the Code seeking the rejection of the plaint on the grounds that it is barred by law, undervalued, and does not disclose a cause of action.

4. The trial court dismissed the petitioner's application vide an order dated 18.6.2022. Subsequently, the petitioner filed a Revision Application before the Revisional court. However, this was also dismissed as per the impugned order dated 11.4.2023. As a result, the petitioner has impugned both these orders before this court through the present writ petition.

5. At the very outset, learned counsel representing the petitioner, while defending the impugned Orders of Revisional Court as well as trial Court contended that respondent No.1 has no cause of action, that the suit of respondent No.1 is time-barred under Article 120 of the Limitation Act because of the reason that the petitioner has challenged the Revenue Record/entries pertaining to the years 1939

and 1983 and his predecessors during her life did not question the said entries, therefore, both the Courts below erred in law to dismiss the application of the petitioner. He placed reliance on **2013 SCMR 299, 2021 CLC 1506, 2022 CLC 722, 1998 SCMR 1223, PLD 1967 Dacca 190 and PLD 2022 S.C 353.**

6. The learned counsel representing Respondent No.1 submits that Respondent No.1 is entitled to his due share in the legacy of Mst. Khatoon and that there is no time limitation in inheritance matters. He further argued that the inheritance mutation of the propositus of the parties in favour of his son and widow, excluding the other legal heir/daughter, is a question that cannot be determined without recording pro and contra evidence. Therefore, he contends, the rejection of the plaint is not warranted under the law. Thus, both the Courts below have rightly dismissed the application for rejection of the plaint, which does not require interference by this court under its constitutional jurisdiction. He placed reliance on **PLD 2023 S.C 362 and 2022 SCMR 399.**

7. Learned AAG submits that the limitation is a mixed question of fact and law. It cannot be decided without recording evidence, and both the courts below legally and lawfully passed the order and forwarded the suit for trial. There is no jurisdictional defect or illegality in the orders requiring interference in writ jurisdiction.

8. We have heard counsel for the parties, have perused the record with their assistance, and have taken guidance from case law submitted by them.

9. The primary argument put forth by the counsel for the petitioner is that respondent No.1's suit is time-barred under Article 120 of the Limitation Act, given that the lady (the predecessor of the petitioner) failed to challenge the entries of the said mutations during her lifetime. It is indeed true that there is no evidence on record to suggest that the lady herself ever initiated any legal proceedings during her lifetime. However, the matter at hand pertains to the

question of inheritance. The issue that arises, therefore, is whether the lady and, subsequently, her legal heirs could be denied their rights of inheritance as ordained by Shariah Mohammadi solely on this ground, especially in a summary manner, without providing them with an opportunity to establish their rights by producing evidence. Furthermore, it is crucial to determine whether the question of limitation would hinder and be an obstacle in their pursuit of such rights, particularly at such an initial stage. This situation necessitates a thorough examination of facts and a careful interpretation of law to ensure justice is served and all parties' rights are duly protected. It is essential to remember that the principles of inheritance are deeply rooted in the tenets of Islam, and any deviation from these principles must be justified as compelling reasons. The question of limitation, while important, should not be allowed to overshadow the fundamental rights of the parties involved.

10. The record unambiguously indicates that respondent No.1 has accused the petitioner and respondents No.2 to 4 of fraud in his plaint. He has explicitly pleaded ignorance about entries in the revenue record and several other triable facts that require evidence for adjudication. It is a well-established legal principle that fraud nullifies all solemn proceedings. Therefore, in situations where document-fabrication and manipulation are alleged, the dispute should have been adjudicated based on the preponderance or probability of evidence presented by the parties, as per the principle of civil justice dispensation. A technical knockout was not justified in this case. This underscores the importance of a thorough examination and fair adjudication in legal proceedings, particularly when allegations of fraud are involved. The law mandates that all parties be given a fair opportunity to present their case and that decisions be made based on the weight of the evidence.

11. When evaluating an application under Order VII Rule 11 of the Code, the contents of the plaint are to be accepted as true at face

value. The plaint can only be rejected if any statement within it is found to be prohibited by law. The court can examine the averments made in the plaint, especially in cases where multiple prayers have been made. If even one prayer is maintainable, the plaint cannot be rejected. This is particularly important in cases involving inheritance rights. The law mandates that all pleas be given due consideration, and a plaint cannot be dismissed outright if there is at least one valid claim. At this point, it's crucial to note that if there are claims of violation of the allocation of shares in inherited property, these should not be dismissed as trivial. Such rights are also derived from the fundamental rights guaranteed by the Constitution. Consequently, no assumptions should be made without a proper trial to determine the facts of the case.

12. The plaintiff (respondent No.1) has claimed in Paragraphs 7 to 10 of the plaint that the entries in the revenue record were manipulated through deceit and forgery. Therefore, it is conducive to reproduce the said paragraphs hereunder: -

- “7. *That in entry No.64 and 85 dated 27.6.1939, Foti Khata of deceased Muhammad S/o Allahando Solangi was changed and his daughter Mst. Khatoon was not shown as his daughter in Foti Khata and Revenue Officials in collusion with one Allah Rakhio shown one son Allah Rakhio and Mst. Bachul as widow of deceased Muhammad son of Allahando Solangi but in fact said deceased have one daughter Mst. Khatoon and Revenue Officials and Allah Rakhio and Mst.Bachul in collusion with each other got mutated forged and fake fraudulent entries No.84 and 85 in record of rights and committed fraud with real and legal heirs of deceased Muhammad.*
8. *That thereafter turn by turn said Allah Rakhio and others committed fraudt and forgery in record of rights in collusion with Revenue Officials and at the time of changing Foti Khata of deceased Muhammad, no any notice issued to any person nor held any Jalas-i-aam and illegally deprive the real and legal heirs of deceased Muhammad from their legal rights.*
9. *That after the death of deceased Muhammad, his legal heirs are in possession of suit land as per their respective share including plaintiff and any other preson have no any right, title over the same.*
10. *That with malafide intention the defendant No.1 to 4 in collusion with revenue officials committed fraud and forgery*

and mentioned Survey No.111 with whole area in record of rights in the name of defendant No.1 to 4 with other survey numbers bearing entry No.38 dated 21.03.1983 the same is bogus and manipulated and same is liable to be cancelled.”

13. The contents of the plaint also indicate that respondent No.1 (plaintiff) has sought the Civil Court's protection for his rights related to the suit land, asserting his possession of the suit land to the extent of his share. The plaintiff seeks an injunction against the petitioner and respondents No.2 to 4 (the defendants) to prevent illicit, unlawful, and unauthorized meddling with the suit land. The case's resolution and the cause of action are to be determined on the assertions made in the plaint, which are presumed to be accurate, particularly when fraud is alleged and attributed. The resolution of such allegations is only possible after recording of evidence. The question of whether the aforementioned entries and revenue records are fraudulent or not can only be answered after evidence supporting or not this claim has been recorded. As per provisions of Order VI Rule 2 of the Code, every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved..... In view of the provisions of Order VI Rule 2 of the Code, the pleading is not a substitute of the evidence. In such circumstances, without providing opportunity to the Plaintiff to prove his pleadings through evidence, it will not be just and proper to reject the plaint. In the case of Saleem Malik v. Pakistan Cricket Board (PCB) and 2 others(PLD 2008 Supreme Court 650), it was held by the Supreme Court of Pakistan as under:-

“Subject to the certain exception to the general principle, the plaint in the suit cannot be rejected on the basis of defence plea or material supplied by the opposite party with the written statement. This is settled law that in case of controversial questions of fact or law, the provision of Order VII, Rule 11, C.P.C. cannot be invoked rather the proper course for the Court in such cases is to frame issue on such question and decide the same on merits in the light of evidence in accordance with law. The rejection of plaint on technical grounds would amount to deprive a person from his

legitimate right of availing the legal remedy for undoing the wrong done in respect of his legitimate right, therefore, the Court may in exceptional cases, consider the legal objection in the light of averment of the written statement but the pleading as a whole cannot be taken into consideration for rejection of plaint under Order VII, Rule 11, C.P.C.”

14. Undeniably, the Supreme Court of Pakistan’s judgments, which have been referenced at the bar, address the limitation issue. However, these judgments were reached after comprehensive trials and evidence collection. As such, they may not be beneficial to the petitioner at this juncture. The limitation issue, a complex interplay of fact and law, necessitates evidence for its resolution, and each case must be evaluated on its unique facts and circumstances. The Supreme Court of Pakistan’s landmark judgment in the case of **Ghulam Ali and others vs. Mst. Ghulam Sarwar Naqvi(PLD 1990 Supreme Court 1)**, wherein it was held that relinquishment of share in inheritance by a lady would be against public policy and the inheritance opens just after the death of a person without intervention of State organs. This single observation underscores the need for evidence to establish the Limitation issue. It may also be added that efflux of time did not extinguish any rights of inheritance because on the death of an owner of property; all the co-inheritors, immediately and automatically, became co-sharers in the property and as has been mentioned above, limitation against them would start running not from the time of the death of their predecessor-in-interest nor even from the date of mutation, if there be any, but from the date when the right of any such co-sharers/coinheritors in such land was denied by someone. In Case of **Zohra Bibi and another v. Haji Sultan Mahmood and others (2018 SCMR 762)**, it has been held by the Supreme Court of Pakistan as under:-

“The cardinal principle of Mohammadan law is that the inheritance of a person opens the moment he dies and all the legal heirs become owners to the extent of their respective shares there and then by the dint of settled law. Sanction of inheritance mutation, issuance of succession certificate etc. are

the procedural matters regulated by the procedural laws just to make the records in order and also for fiscal purposes”.

15. Even so, the petitioner’s plea has been unanimously rejected by the two Courts below. In the context of writ jurisdiction, the petitioner had the responsibility to demonstrate that the lower Courts' Orders were afflicted with jurisdictional errors, that these Courts had unlawfully or arbitrarily exercised their jurisdiction, or that significant irregularities had been committed by the lower Courts, which would warrant this court's intervention under Article 199 of the Constitution of Pakistan. However, the petitioner was unable to substantiate these points before this court. In light of the discretionary nature of Constitutional Petition jurisdiction, careful consideration has been given to the contents of the plaint and the impugned orders. Following the precedent set by the Supreme Court of Pakistan in the case of Nawab Syed Raunaq Ali and others v. Chief Settlement Commissioner and others(PLD 1973 SC 236), we find no compelling reason to exercise discretion in favour of the petitioner.

16. In light of the foregoing considerations, it is determined that the present Constitutional petition lacks maintainability and is hereby dismissed. It is imperative to underscore that the trial Court is obligated to adjudicate the matter on its merits, based on the evidence presented, in strict conformity with the applicable legal framework. The trial court’s decision shall remain uninfluenced by any observations made by this court in the context of the instant petition.

JUDGE

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