

ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Const. Petition No.D-1224 of 2023

Present

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Arbab Ali Hakro

Petitioner : Allah Dino through his legal heirs and others, through Mr. Zulfiqar Ali Channa, Advocate for Petitioners

Respondent No.1& 8 : In person

Respondents No.10 to 15 : Tapedar Deh Maari, Taluka Moro and others through Mr. Ahmed Ali Shahani, Assistant Advocate General

Date of hearing : 13.03.2024

Date of Decision : 13.03.2024

ORDER

ARBAB ALI HAKRO, J.- Invoking the jurisdiction of this Court under Article 199 of the Constitution of Pakistan, 1973, the petitioners have challenged the legality of the Order dated 16th June 2023, passed by the Court of Additional District Judge, Moro, referred to herein as “**the Revisional Court**”, as well as the Order dated 21st January 2023 passed by the Court of Senior Civil Judge, Moro, hereinafter referred to as “**the Trial Court**”. Both judicial pronouncements dismissed the petitioners’ 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 indicate that the Respondents/Plaintiffs had instituted a civil suit against the Defendants/Petitioners for declaration, separate possession, cancellation, and permanent injunction in respect of agricultural land admeasuring 55-15 acres out of Survey No.1003 of 1023, and an agricultural land measuring 17-06 acres out of Survey No.1056, 1057, 1055, 1054, 1096, 1097, 1098, 1099 & 1100 situated in Deh Mari, Taluka Moro District Naushahro Feroze, referred to as “**Suit land**”. The

crux of the suit is to obtain a judicial declaration affirming that the late Abdullah Khan, father of the late Allah Dino Soomro, held title to the agricultural land identified above and left behind his legal heirs, viz. Mst. Shanul (grandmother of Respondents), Allah Dino, Shamsuddin, and Zia-u-din (Petitioners No.1 to 3). According to their share, the petitioners claim to be the lawful owners of the suit land by inheritance. They further seek a declaration that the old mutation entries No.96 and 99, dated 24.05.1989, regarding the change of FotiKhata of deceased Abdullah Khan Soomro, are fake, fraudulent, forged, manipulated, illegal, null, and void. They prayed that these entries are liable to be corrected.

3. The Petitioners 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 because it is barred by law, undervalued, and does not disclose a cause of action.

4. The trial court dismissed the application of the Petitioners by an order dated January 21, 2023. Thereafter, the Petitioners sought recourse through a Revision Application before the Revisional Court, which was also dismissed by the impugned order dated June 16, 2023. Consequently, the Petitioners have challenged both of these orders before this Court via the instant writ petition.

5. At the very outset, the learned counsel representing the Petitioners contended that both the lower Courts have committed gross illegality and irregularity while dismissing the application under Order VII Rule 11 of the Code. He argued that the suit of the Respondents is time-barred under Article 120 of the Limitation Act. This is because the Petitioners have challenged the Revenue Record/entries pertaining to 1989, and their predecessors did not question the said entries. Therefore, he contend that both the Courts below erred in law by dismissing the Petitioners' application.

6. Conversely, the Respondents No.1 & 8, present in person, submit that the Respondents are entitled to their due share in the

legacy of Abdullah Khan Soomro and that there is no time limitation in inheritance matters. They 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, they contend that rejecting 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.

7. The learned A.A.G argues that the limitation issue involves factual and legal considerations and cannot be resolved without the recording of evidence. Both lower courts have passed the Order in accordance with the law and forwarded the suit for trial. He finally concluded that there are no jurisdictional defects or illegalities in the orders that would necessitate interference under 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 counsel for the petitioners primarily argues that the respondents' suit is barred by time under Article 120 of the Limitation Act, as the lady (the predecessor of the petitioners) did not challenge the entries of the said mutations during her lifetime. Indeed, no evidence on record indicates that the lady initiated any legal proceedings in her lifetime. However, the issue at hand pertains to inheritance. The question arises whether the lady and, subsequently, her legal heirs can be denied their inheritance rights as prescribed by Shariah Mohammadi solely on this ground, especially summarily, without allowing them to establish their rights by presenting evidence. Furthermore, it is critical to ascertain whether the question of limitation would act as a barrier in their pursuit of such rights, particularly at such an early stage. This situation calls for a meticulous examination of facts and a judicious interpretation of the law to

ensure justice is served and the rights of all parties are adequately protected. It is crucial to remember that the principles of inheritance are deeply ingrained in Islamic tenets, and any deviation from these principles must be justified by compelling reasons. While the question of limitation is important, it should not be allowed to overshadow the parties' fundamental rights.

10. The record clearly shows that the respondents have accused the petitioners of fraud in their plaint. The respondents have expressly pleaded ignorance about entries in the revenue record and several other triable facts requiring evidence for adjudication. It is a well-established legal principle that fraud vitiates all solemn proceedings. Therefore, in situations where allegations of document fabrication and manipulation are made, the dispute should have been adjudicated based on the preponderance of probability of evidence presented by the parties, in accordance with the principle of civil justice dispensation. A technical knockout is not justified in this case. This highlights 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 assessing an application under Order VII Rule 11 of the Code, it is a legal requirement to accept the contents of the plaint 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 has the authority to scrutinize the averments made in the plaint, particularly in cases where multiple prayers have been made. The plaint cannot be rejected outright if even one prayer is maintainable. This is especially significant in cases involving inheritance rights. The law stipulates that all pleas must be given due consideration, and a plaint cannot be dismissed summarily if there is at least one valid claim. It is important to note that if there are allegations of violating the allocation of

shares in inherited property, these should not be dismissed as insignificant. Such rights are also derived from the fundamental rights guaranteed by the Constitution. Therefore, only assumptions should be made with a proper trial to ascertain the facts of the case.

12. The Respondents/Plaintiffs in the suit have levelled allegations in paragraphs 6 to 9 of the plaint, asserting that the entries in the revenue records were altered through fraudulent means and forgery. For the purpose of clarity and to facilitate a thorough comprehension of the case at hand, it is prudent to set forth the aforementioned paragraphs hereinbelow: -

- “6. *That subsequently, the fotikhata of deceased Abdullah Khan Soomro was changed vide entry No.96, dated 24.05.1989, in the names of defendants No.1 to 3 in respect of land measuring 17-06 acres of deh Mari out of suit land, in which the name of grandmother of plaintiffs namely Mst. Shanul was not inserted illegally and unlawfully who is real daughter of deceased Abdullah Khan Soomro; hence the plaintiff's grandmother was deprived from his legal and lawful shares in the suit land, not only this, but another fraud was committed by the private defendant partly, for that it is submitted that deceased Allah Dino Soomro was owner of his share from the total area of 17-06 acres but when the fotikhata of deceased Arbab Khatoon (second wife of deceased Allah Dino Soomro) was changed vide entry No.99 dated 24.05.1989 in which only one legal heir was shown as Nisar son of deceased but her daughter namely Mst. Ghulam Sakina (mother of plaintiffs) was not shown as a legal heir, as she was also real daughter of Allah Dino Soomro, hence alleged entry is being false, managed, result of fraud, hence the same is liable to be cancelled. (PS copy of death certificate of Mst. Ghulam Sakina is enclosed herewith).*
7. *That, even due to death of Abdullah Khan Soomro, the Governor of Sindh, being Vendor, executed Registered Conveyance deed in favour of some of the private defendants being legal heirs of deceased Abdullah Khan Soomro, bearing Registered Conveyance deed No.119 dated 01.02.2007, vide M.F Roll No.U-375/2830 dated 22.02.2007, and on the basis of such conveyance deed entry No.820 dated 26.02.2007 but with malafide intention and ulterior motives the name of grandmother of plaintiffs namely Ghulam Sakina were not inserted, hence the same conveyance deed and revenue entry is result of fraud and are also liable to be cancelled.*
8. *That, however mother of plaintiff namely Mst. Shanul died away on 28.01.1975 and so also son of late Abdullah Khan, namely Shamasuddin, died away prior to two years of death of deceased Abdullah Soomro, hence when the name of*

Shamasuddin was inserted in the above mentioned conveyance deed and in the subsequent entry on the basis of such conveyance deed, who was died away prior to death of his father deceased Abdullah Soomro then why the name of grandmother of plaintiffs namely Mst. Shanul and mother of plaintiffs namely Ghullam Sakina were not inserted in the said conveyance deed and entry, hence the alleged conveyance deed and entry being result of fraud is liable to be cancelled.

9. *That, as the plaintiffs and private defendants belongs to one and same family, however the plaintiffs and private defendants are co-owners and co-sharers in the suit land, however the plaintiffs time and again demanded their separate shares from the private defendant party and so also demanded produce in respect of suit land, who kept the plaintiffs on hollow hopes that as and when the partition of the suit land will be held in all the co-owners and co-sharers, the plaintiffs will also be put in separate possession according to their respective shares and so also kept on hollow hopes that they will pay produce on each and every seasonal crop”.*

13. The contents of the plaint reveal that the respondents (plaintiffs) have approached the Civil Court to protect their rights about the suit land, asserting their possession over the said land proportionate to their share. The resolution of the case and the cause of action are to be determined based on the assertions made in the plaint, which are presumed to be accurate, especially when allegations of fraud are involved. The resolution of such allegations can only be achieved after recording evidence. The question of whether the aforementioned entries and revenue records are fraudulent can only be answered after the evidence supporting or refuting this claim has been recorded. In the case of **Abdur Rehman Khan v. Muhammad Altaf and 3 others (1997 CLC 1260)**, it was held by a division bench of this Court held that:

“The Courts have been very careful and cautious in dealing with any situation where the slightest allegation of fraud or collusion is raised by any of the parties to the case and, whenever any such allegation or issue is raised the Court takes upon itself to hold a thorough and complete inquiry to find out as to whether the transaction is tainted with fraud or not and, if so, then the entire proceedings of the Court, as well as the proceedings prior to the Court, become illegal and void if it be established that the basis of case before the Court was a

*forged or fraudulent document. Even a judgment/decreed or an order obtained from a Court on the basis of a fraudulent statement or any other kind of fraud loses its authenticity or sanctity and fraud renders the judgment, decree and order of every Court and Tribunal as voidable and it will be appropriate to examine decided cases of our Supreme Court and High Courts dealing with the consequences and repercussions of fraud and misrepresentation on the transactions, judgments and orders and powers of the Courts and Tribunals in setting aside such transactions". It was further held that: "In the circumstances, the learned Single Judge should not have rejected the plaint under Order VII, Rule 11, C.P.C. when a specific and definite allegation of fraud was levelled by the appellant/plaintiff and should have enquired into the question of fraud". The aforesaid case was upheld by the Supreme Court of Pakistan in Case of **Muhammad Altaf and others v. Abdur Rehman Khan and others (2001 SCMR 953)**, by observing that: "However, it will suffice to observe that for the purpose of an application under Order VII, Rule 11, C.P.C., the averments contained in a plaint are to be presumed to be correct. In the case in hand, learned Judges of the Division Bench have rightly pointed out that the allegation of fraud which was also averred in the plaint could not have been resolved without recording evidence. In this view of the matter, the learned Single Judge was justified in non-suiting the petitioners under Order VII, Rules 11, C.P.C."*

14. As per the 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 light of the provisions of Order VI Rule 2 of the Code, the pleading is not a substitute for the evidence. Therefore, without providing the Plaintiffs with an opportunity to prove their pleadings through evidence, rejecting the plaint would not be just and proper. In the case of **Saleem Malik v. Pakistan Cricket Board (PCB) and 2 others (PLD 2008 Supreme Court 650)**, the Supreme Court of Pakistan held 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.”

15. 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 question of limitation does not arise in matters of inheritance in view of the settled principles of law. It was held by the Apex Court of Pakistan in the Case of **Abdul Rehman and others v. Mst. Allah Wasai and others (2022 SCMR 399)** that:

“In such circumstances, the suit was thus to be adjudged in accord with the provisions of Article 120 of the Limitation Act, 1908. The six-year period of limitation provided by Article 120 (supra) was to be counted from the time when the right to sue accrues, and the right to sue accrues to a co-sharer against the other co-sharer when the latter denies the rights of the former in the joint property or ousts her from the co-ownership of the joint property. A wrong entry as to one’s inheritance rights in the revenue record (i.e., inheritance mutation) is not, as held by this Court in the case of Ghulam Ali, to be taken as an ouster of a co-heir from the co-ownership of the joint property. Indeed, the devolution of the ownership of the property on the legal heirs takes place, under the Islamic law, through inheritance immediately, and that too without intervention of anyone. Therefore, treating a wrong inheritance mutation, as an ouster of a co-sharer from the co-ownership of the joint property, and treating the six-year limitation period under Article 120 of the Limitation Act, 1908 to start from the date of sanction of the inheritance mutation, as done by the revisional court, is not legally correct”.

The underlining is supplied.

16. It may also be added that efflux of time does not extinguish any rights of inheritance because on the death of an owner of the property, all the co-inheritors immediately and automatically become

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 someone denied the right of any such co-sharers/co inheritors in such land. Further, in the 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".

17. Notwithstanding the petitioners' plea, it has been unanimously dismissed by the two Courts below. In the context of writ jurisdiction, the onus was on the petitioners to establish that the Orders of the Courts below were tainted with jurisdictional errors, that these Courts had exercised their jurisdiction unlawfully or arbitrarily, or that significant irregularities had been committed by the lower Courts, which would necessitate this Court's intervention under Article 199 of the Constitution of Pakistan. However, the petitioners failed to substantiate these points before this Court. Given the discretionary nature of Constitutional Petition jurisdiction, the contents of the plaint and the impugned orders have been meticulously examined. 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.

18. These are the reasons for our short order dated 13-03-2024. The present Constitutional petition is found to be lacking in maintainability and is, therefore, dismissed. It is essential to emphasize that the trial Court is duty-bound to resolve the matter on

its merits, considering the evidence tendered, and in strict adherence to the relevant legal provisions. The trial Court's judgment shall stand unaffected by any observations this Court may have made in relation to the current petition.

JUDGE

JUDGE

Faisal Mumtaz/PS