

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR.

CR No.465-P/2013 with CM 582/2013

Gul Mast Khan & others Vs Israr & others

Date of hearing: **07.10.2020**
Petitioners by: Mr. Khan Ghawas Khan,
Advocate.
Respondents by: Miss Neelam A Khan, Advocate.

JUDGMENT

SYED ARSHAD ALI, J. Through the instant petition, the present petitioners, have called into question the findings of both the Courts below, whereby the suit of the plaintiff was concurrently decreed.

2. Hussain Shah, predecessor of the plaintiff, on his death, was survived by his widow Alif Jana, Hassan, Sher Afzal/Plaintiff and three (3) daughters namely, Shafeha, Rahmania and Mafia.

3. Mutation No.2383 attested on 12.07.1975 is the inheritance mutation of Mst. Rahmania. According to this mutation she was survived by her mother/Alif Jana, Gul Madad Shah/husband, Hussan Ara, Amtula and Mukhtabraja as her daughters. It would be pertinent to note that in the said mutation, the name of the propositus is mentioned as Mst. Shafeha/Mst. Rahmania daughter of Hussain Shah. Hence there is confusion in the name of the propositus.

4. Mutation No.2385 entered on 18.07.1975 relates to the legacy of Mst. Mania, who was survived by Shah Raza Khan/husband, Mst. Alif Jana/mother & Mst. Taj Pari/daughter. In the said mutation too, there is a confusion regarding the name of the propositus which is written as Mst.Rahmania/Mst.Mania.

5. Mutation No.2387 attested on 05.10.1976 is the inheritance mutation of Mst. Alif Jana widow of Hussain Shah, who was survived by Sher Afzal/plaintiff, Mst. Hussan, Amtula, Mukhtabraja daughters of Rahmania and Taj Pari, daughter of Mania.

6. Mutation No.4384 attested on 05.11.1976 is the inheritance mutation of Mst. Mafia, according to the said mutation the suit property devolved upon Sarmast Khan/husband, Alif Jana/mother, Sher Afzal/plaintiff, her brother and Mst. Mania, her sister. It would be pertinent to note that in the said mutation the name of the propositus was mentioned as Mafia/Mst. Shafeha daughter of Hussain Shah. In this mutation too, the name of the propositus creates a confusion.

7. On 19.05.2009, the plaintiff Sher Afzal filed a Civil Suit bearing No.217/1 whereby, inter-alia mutation No.2384, which was attested on 05.11.1976, was challenged mainly on the ground that through this mutation the defendant No.1/Sarmast Khan was shown as husband of his sister Mst. Mania whereas her sister died

unmarried, thus, the entry in the said mutation was incorrect. The defendant/Sarmast Khan contested the said suit through his written statement thereby denying the assertion of the plaintiff. The divergent pleadings were reduced to following six (6) issues:-

1. Whether the plaintiff has got a cause of action? OPP
2. Whether plaintiff, Mst:Shafaha, Mst:Rahmania and Mst:Mafia were the legal heirs of late Hussain Shah? OPP
3. Whether defendant No.1 was the husband of Mst: Mafia? OPD
4. Whether mutations No.2384, 2387 & 2385 were wrongly attested and thus liable to correction? OPP
5. Whether plaintiff is entitled to the decree as prayed for? OPP
6. Relief.

8. *Patwari Halqa* (Israr-ud-Din) has appeared as PW-1 who produced before the Court the Revenue record/*Jamabandi* from the years 1991/92 till 2005/06 relating to the disputed property which was exhibited as (Ex:PW1/1 to 1/4). He has also produced *khasra Girdawari* from the years 2007 to 2010, which was (Ex:PW1/5).

9. AOK Katlang, Amir Hussain, the other official witness, has appeared before the Court who has placed on file the record of the *jamabandi* from 1930/31 till 1969/70 which were (Ex:PW1/1 to 1/10). ADK Mardan has appeared as PW-4, who produced before the Court mutation No.2383, attested on 12.07.1975, mutation No.2387, 2385 and 2384 which were attested on 05.10.1976. These mutations were exhibited as (Ex:4/1 to

4/8). The said witness has also produced the pedigree table of the parties.

10. Noor Azam, the son as well as attorney of the plaintiff Sher Afzal has appeared as PW-5, who has reaffirmed the grounds taken in the plaint by stating that the inheritance mutation of Hussain Shah was attested on 10.09.1949 bearing No.1068. According to the said mutation Hussain Shah was survived by three (3) daughters Shafeha, Rahmania and Mania; and Sher Afzal plaintiff. Mst. Mania died at the age of ten (10) years who was not married and thus her inheritance mutation was illegally attested wherein Sarmast Khan/defendant was also shown as one of her legal heir/husband.

11. The said Sarmast died during the proceedings and one of his son, Ali Mast, appeared as DW-1. The defendant has also produced Mir Hassan son of Zamin Khan as DW-2. He has stated in his Court's statement that Hussain Shah had three (3) daughters and one son. Shafeha was married to Guldad Shah, Rahmania was married to Shah Raza Khan and Mania was married to Sarmast Khan/defendant No.1. The said Mania wife of Sarmast Khan had died issueless therefore, Sarmast Khan had contracted second marriage. In his cross-examination, he has confirmed that he had no relation with Sarmast Khan/defendant whereas the plaintiff was his relative being husband of his aunt. To further support

the said assertion, the plaintiff has produced Bakht Zamin as DW-3.

12. Perusal of the pleadings as well as the evidence would show that point of contest between the parties is as to whether Mst.Mafia, the daughter of Hussain Shah was married to Sarmast and thus here inheritance mutation was correctly attested wherein Sarmast was recorded as one of her legal heir being her husband.

13. According to Revenue record i.e. mutation No.4384, Mst.Mafia was survived by Sarmast Khan/husband, Alif Jana/mother, Sher Afzal/plaintiff, her brother and Mst. Mania, her sister and this mutation was later incorporated in the Revenue record. The property had devolved upon Sarmast Khan through aforesaid mutation which was further exchanged through other mutations and this entry continued till institution of the suit in the year 2009. It would be pertinent to note that as evident from entries upon the said mutation, it was entered on the instruction of the plaintiff.

These entries, made in the Revenue record regarding the transfer of property in favour of Sarmast Khan, is presumptive evidence of title and if any person has to challenge it, must produce confidence inspiring evidence to rebut the said evidence in the said Revenue record. In the case of “**Evacuee Trust Property board**

vs Ghulam Rasul Khokhar” reported as [1990 SCMR 725], the august Supreme Court of Pakistan has held that;

“Entries made in the revenue record regarding ownership are presumptive evidence of title, which shift the burden on the person who challenges their correctness to establish otherwise.”

Similarly in the case of **“Fida Hussain vs Abdul Aziz”**[PLD 2005 Supreme Court 343], it was held by the Hon’ble apex Court that;

“Presumption of correctness would be attached to such entries of record of Rights which were properly maintained by revenue authorities”

14. Thus it was the plaintiff’s burden to have produced confidence inspiring evidence establishing therein that Mst.Mafia had never married to Sarmast Khan/defendant. Except the solitary statement of the attorney of the plaintiff, no other evidence has been produced to rebut the documentary evidence i.e. Revenue record.

15. It is also evident from the record that the plaintiff during the proceedings was alive but he did not opt to personally appear before the Court.

16. What prevailed before the learned Trial Court as well as the Appeal Court to decree the suit is the confusion in the inheritance mutations. In the inheritance mutations of all the three (3) sisters, the name of the propositus is mentioned with “two names”, however, this confusion *per-se* is not sufficient to rebut the long standing Revenue record.

17. Furthermore, DW-2 is the most important witness who is related to the family of the plaintiff but has recorded his statement in favour of the defendant. The plaintiff in his cross examination has not confronted the said witness with any allegation of his ill-will towards the plaintiff.

18. Both the Courts below have illegally ignored the statement of DW-2, who has stated about the relation between Mst.Mafia and Sarmast Khan being wife and husband. The testimony of DW-2 regarding the marriage of Mst. Mafia with Sarmast is the relevant fact which supports the entry of mutation No.4384 in terms of Article 64 of the Qanun-e-Shahadat Order, 1984 which reads that;

“64..When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact.”

19. The learned Courts below have also overlooked the delay in filing the suit. The impugned mutation was attested on 05.11.1976 and the suit was filed by the plaintiff on 19.05.2009 which was patently time barred. In the case of “**Atta Muhammad v. Maula Bakhsh**” (2007 SCMR 1446), where the concurrent findings of the three Courts were set aside and the suit filed by the respondents/plaintiffs in the year, 1988, questioning the

inheritance mutation of 1942 was declared to be barred by time. The Court held that;

"The law of limitation provides an element of certainty in the conduct of human affairs. Statutes of limitation and prescription are, thus, statutes of peace and repose. In order to avoid the difficulty and errors that necessarily result from lapse of time, the presumption of coincidence of fact and right is rightly accepted as final after a certain number of years. Whoever wishes to dispute this presumption must do so, within that period; otherwise his rights if any, will be forfeited as a penalty for his neglect. In other words the law of limitation is a law which is designed to impose quietus on legal dissensions and conflicts. It requires that persons must come to Court and take recourse to legal remedies with due diligence. There have been cases where even to claim inheritance law of limitation was applied."

20. The aforesaid law was also reaffirmed by the apex Court in the case of "**Mst. Grana Through LRs & others Vs. Sahib Kamala Bibi & others**" reported as [PLD 2014 Supreme Court 167].

21. In view of forgoing discussion, I have come to inescapable conclusion that the plaintiff has failed to establish before the Court that Mst.Mafia was not married to Sarmast Khan/defendant No.1, therefore, the findings of both the Courts below being based on misreading of evidence are hereby set aside, resultantly, the suit of the plaintiff stands dismissed. Parties are to bear their own cost.

Announced;
07.10.2020

JUDGE