

***JUDGMENT SHEET***

**IN THE PESHAWAR HIGH COURT,  
BANNU BENCH.**

*(Judicial Department)*

**CR No.124-B of 2017**

**Qabil Rehman etc.**

**Vs**

**Mst. Bibi Hajra and others.**

**JUDGMENT**

Date of hearing \_\_\_\_\_ 16.09.2019 \_\_\_\_\_.

Appellant-Petitioner: **By Sami Ullah Khattak & Khush  
Amir Khattak, Advocates.**

Respondent: **By Baghdad Khan Khattk, Advocate.**

**MUHAMMAD NASIR MAHFOOZ, J.---** Through instant revision petition, the petitioners have called in question the judgment and decree dated 10.05.2017 of learned District Judge, Karak, whereby appeal of petitioners against the judgment and decree dated 08.04.2015 of learned Civil Judge-I, Karak was dismissed.

2. Brief facts of the case are that the respondent No.1 instituted a suit for declaration cum permanent mandatory injunction and for recovery of Rs.1000000/-, as damages

against NADRA and 9 others. It was averred in her plaint that Qabil Rehman the appellant No.1 has entered the name of his son Jasim Abbas, in the record with Pak Army, in Form B with NADRA and in inheritance mutation, as son of his brother Sher Abbas, in order to grab over the emoluments received on martyrdom of her husband Sher Abbas.

3. The suit was contested by the petitioners by submitting written statement, wherein they alleged Jasim Abbas to be son of Sher Abbas. On divergent pleadings of the parties, the learned trial Court framed as many as seven issues apart from relief. Parties produced pro and contra evidence and on conclusion of trial and hearing arguments of learned counsel for the parties, the learned trial court decreed the suit of respondent No.1, vide judgment and decree dated 08.04.2015. the petitioners preferred appeal before the learned District Judge, Karak, but the same was dismissed vide impugned judgment and decree dated 10.05.2019. Hence, the instant revision petition.

4. I have heard arguments of learned counsel for the parties and perused the record.

5. Case in hand is of distinctive nature, when petitioner No.1, who is shown to be father of petitioner No.2, in heading of the plaint, civil appeal filed before the learned District Judge as well as in the heading of Revision petition filed in this Court without any demur of objection even slightly over it. This fact is brought into notice of learned counsel for petitioner during his arguments to which he replied that since respondent/ plaintiff has shown the same parentage, so they could not change it, but this reply is far from satisfactory, as it would be discussed below.

6. The deceased Sher Abbas who was performing duties in Pak Army, admittedly embraced *Shahadat* on 28.07.2008 during the turbulent period of anti-state activities in Swat area of the province of Khyber Pakhtunkhwa. He joined Pak Army on 14.01.1989. As it is legally required that a martyred official is entitled to some emoluments under the *Shuhada* Package, so instant dispute cropped up between the parties. The date of martyrdom is 28.07.2008 would be of immense significance to resolve the dispute in hand.

7. The first instance in the series is preparation of Form-Bay, of deceased Sher Abbas husband of respondent No.1 by petitioner No.2 in the National Database Registration Authority (NADRA), Ex:PW 1/12 herein, this is prepared on 29.08.2008 after about one month of the martyrdom. The name of petitioner No.2 is mentioned at S.No.1 as his son with date of birth as 07.09.1997. Perhaps on this basis the concerned account office of Pakistan Army, prepared pension case of the deceased in the same month of August, 2008, wherein too petitioner No.2 is shown as his son. These documents are placed on record as Ex:PW 1/5 to Ex:PW1/13 (these two documents are one and the same, but exhibited twice). Though respondent No.1 has received all the emoluments and by now respondent No.2 has also corrected form-Bay, by deleting respondent No.2 from the list of Legal heirs, which include his three daughters and two sons. On 13.01.2011 inheritance mutation No. 2087 of the deceased was entered and finally attested on 24.01.2011, wherein petitioner No.2 is shown as his son besides other legal heirs. This gave rise to cause of action for respondent No.1 to file civil suit before the learned Senior

Civil Judge, Karak, impleading officials of Army School, NADRA and the present petitioners for correction of the record of school, revenue record as well as Army and NADRA record.

8. In support of her plaint Superintendent of Fauji Foundation School, Karak was produced as PW-1, who stated that at the time of admission of petitioner No.2 on 27.05.2010 in class-VI, in the said school by his father, petitioner No.1, was shown as son of the deceased Sher Abbas. He added that signature of his father is not mentioned in the record. The record is produced as Ex:PW 1/1 to Ex:PW 1/15. It is worthwhile to mention, that the petitioners while filing instant revision petition have not annexed said exhibited record, nor requested for time to annex the same. In cross-examination he has admitted that respondent No.1 has not signed the concerned register. But respondent No.1 is shown as his mother because of the entries of Form-Bay of NADRA. The statement of this witness is only acceptable to the extent of contents of entries in the admission register, because he appears as an official witness of the same. This witness was re-examined.

9. PW-2, Naimatullah Secretary Union Council Metha Khel, Karak, produced record Ex:PW 2/1 to Ex:PW2/9 that pertains to entries of birth of petitioner No.2. In examination in chief he has specifically added that petitioner No.1 has completed the said proceedings before him. He has categorically named the petitioner No.1 to have submitted application for preparing birth certificate of petitioner No.2 and that is why his name as paternal uncle is mentioned. He also admitted that such like entries are made by relative of the family.

10. Official of NADRA appeared as Pw-3, who produced form-Bay as Ex:PW 3/1 and Ex:PW3/2 prepared on 29.08.2008 and that is after martyrdom of deceased Sher Abbas. In cross-examination he has named respondent No.1 to have incorporated the entries. Respondent No.1 had objected to the record and published news item in the daily newspaper produced through PW-4, Senior Primary School teacher Muhammad Khurshid appeared as PW-5 alongwith record for admission of petitioner of the school of Kanda Baji Khel. As per S.No.426 dated 05.06.2004 petitioner NO.2 is shown to be

admitted in school by his paternal uncle Hameedullah and his date of birth is shown to be 16.05.1998 and the name of his father is shown as Qabil Rehman, petitioner No.1 herein. He added in his examination in chief that vide Ex:PW 5/3 the name of his father was changed alongwith date of birth and another certificate was issued on 26.05.2010. All the record produced as Ex:PW5/1 to Ex:PW5/4, but none of the said record is annexed with the instant revision petition.

11. PW-6, Mujahid Khan Representative of Anti-Corruption, Karak produced FIR No.1, dated 16.12.2011 lodged by respondent No.1 for the preparation of manipulated record of school, NADRA, and Revenue record and the date of occurrence is alleged to be 21.08.2008.

12. ADK appeared as representative of Deputy Commissioner, Karak as PW-7, who produced letter dated 29.04.2011 relating to attestation of inheritance mutation as Ex:PW7/1.

13. PW-8, Special attorney of respondent NO.1 and her brother repeated all the allegations as mentioned in the plaint and produced record Ex;PW8/1 to Ex:PW8/3. This

witness was subjected to cross-examination in detail but he denied that petitioner No.2 is son of respondent No.1. During cross-examination he divulges that record of pension and Form-Bay of NADRA was prepared when respondent NO.1 was in Iddat and she could not leave the house during the said period and he has repeated the version of respondent No.1.

14. PW-9 is headmaster Govt. Middle School Kanda Baji Khel, who produced certificate. At Serial Number 83, petitioner No.1 is shown as father of petitioner No.2 and due to absence from school he has been struck off from the school on 27.05.2010. It reveals that one day prior on 26.05.2010 the name of father of petitioner No.2 was changed and school leaving certificate was issued. It was produced as Ex:PW 5/4 and Ex:PW 5/5. The documents exhibited by this witness have not been annexed with the instant revision petition. This non-annexation of the relevant record would also be considered in succeeding paragraphs herein.

15. Petitioner No.1 appeared as DW-1, and denied the allegations of plaintiff/ respondent. He has been subjected to detailed cross-examination, wherein he has admitted that death

certificate of Sher Abbas is prepared by him and the entries in the union council regarding legal heirs of deceased Sher Abbas were also made by him. He has also admitted that the entries in the record of Army, were also made by him on 21.08.2008. The certificate issued by office of Army on 28.05.2011 Ex: DW1/p-1, is produced by him alongwith written statement. He further admitted that the date of birth of two daughters Mst. Madiha and Mst. Muniza are mentioned as one and the same and he had admitted petitioner NO.2 in class 6th of Fauji Foundation School. He inter alia, admitted that respondent No.1 had submitted application to one Jamal Tehsildar for cancellation of inheritance mutation No.2087 of deceased Sher Abbas.

16. The well-known legal principle that “Fraud vitiates most solemn proceedings” is squarely applicable to the instant case. Petitioner No.2 due to his age may not be so instrumental in committing the fraud, but petitioner No.1 has got sullied hands, because it is an act of deliberate deception with the design of securing something with unfair advantage over another. It is deception to gain by another’s loss. It has an element of deceit as well as injury. The societal disorder might

sometime reveal such instances that parents may disown a child, but such extreme step must have a root in some extreme disobedience or an act unbecoming of child towards his parents. But that too could only be in shape of disinheriting the child and not disowning his relationship. From perusal of the record on file nothing could be divulged to see any wisdom as to why respondent No.1 would be disowning petitioner No.2 as her son in case he was in fact her son. Relevance of circumstances indicate a dastardly act on the part of petitioner No.1 to get share in the inheritance of his brother deceased Sher Abbas in the *Shuhada* package that runs into millions in addition to a claim in inheritance in the immoveable property. This greed on his part has made respondent No.1, a *Pardanasheen* lady and her brothers to run from pillar to post in getting emoluments of her husband.

17. The learned trial Court need to be appreciated to get truthfulness of the matter by recording statement of Tufailur Rehman her brother as Court witness as CW-1, Sajidur Rehman as CW-2, who have unequivocally repeated the same assertion of respondent No.1 that the petitioner No.2 is son of petitioner

No.1. Only statement of one Khalidur Rehman, paternal cousin, who appeared as CW-4, who has stated in examination in chief that petitioner No.2 is son of Sher Abbas deceased, but in cross-examination he stated that petitioner No.2 is married and he is residing with his wife in the house of Qabil Rehman petitioner No.1, while respondent No.1 is living in Sargodha, but his statement may be influenced by many factors as suggested in cross examination, that he had tried to misuse the passport of Sher Abbas in his name or had expressed his interest in marrying respondent No.1, but she refused. The most significant aspect of the case as mentioned in the written statement of present petitioners is, wherein preliminary objection No.4, they have laid some adverse allegations with the sense of immorality on the part of respondent No.1. Had he been her son how could he implicate his mother with such allegations not to speak of any other lady. Such like allegations against a lady is not only dealt with under the law of harassment of Women's Act, but in the present case it has got implication of wider amplitude. A *Pardanasheen* lady is seeking justice from 11.04.2011 by filing her suit till date in

this court and it could be only she herself, who could properly explain her agonies which she has faced since the death of her husband and that too due to getting monetary benefit in the legacy of her deceased husband. She has been made to travel from Sargodha to Bannu and bearing huge expenses in pursuing her litigation before hierarchy of civil courts as well as the Anticorruption establishment. In our system of administration of justice even procuring attendance of witness some time becomes huge task which not only consumes sufficient time, but also involves other insurmountable hurdles.

18. Keeping in view all the oral and documentary evidence on record the inevitable conclusion that could be arrived at, is that the petitioner No.1 has played fraud with the *pardanasheen* lady, who unfortunately falls within fiduciary capacity.

19. Hon'ble Supreme Court has elaborated the principle in many landmark judgments that fraud vitiates most solemn proceedings and some of them are reproduced below incase titled **"Lal din and another Vs Muhammad Ibrahim (1993 SCMR 710).**

*“The law on what is fraud has been correctly stated and the statement is inclusive of the exception as laid down in the case of Mst. Izat, in the following words:--*

*“Every representation made to a Court which is deliberately false amounts-to a fraud and would vitiate a decree subject to the exception that a mere falsity of a claim to the knowledge of the person putting forward the claim would not be ground for setting aside the decree on the ground of fraud. Even where a claim is false there is a false representation made to a Court but this cannot by itself be a ground for setting aside a decree, because if such ground was accepted there would be no end to litigation for every decree which does not proceed on some legal ground alone would be liable to be challenged on the ground that the party has deliberately put forward an untrue case. If it was untrue it would be untrue, at least in most cases, to the knowledge of the party.””*

*In another case titled “Muhammad Younis Khan and 12 others Vs government of NWFP though Secretary, Forest and Agriculture, Peshawar and others” (1993 SCMR 618) it is observed that:*

*“15. There is no cavil with the proposition that fraud vitiates all solemn acts and any instrument, deed, or judgment, or decree obtained through fraud is a nullity in the eye of law and can be questioned at any time so much so that they can be ignored altogether by any Court of law before*

*whom they are produced in any proceedings. Fraud is defined in section 17 of the Contract Act as the suggestion, as a fact, of that which is not true, by one who does not believe it to be true; the active concealment of a fact by one having knowledge or belief of the fact; a promise made without any intention of performing it; any other act fitted to deceive; and any such act or omission as the law specially declares to be fraudulent.”*

*In case titled “Ghulam Farid and another Vs Sher Rehman through LRs (2016 SCMR 862), it is held that:*

*“In the first instance it may be pointed out, without any fear of denial, that fraud vitiates every solemn transaction and Court of law shall, in no eventuality, endorse and perpetuate a fraud once it is proved to have been committed. Any transaction, which is the result of misrepresentation, is not protected on the ground of period of limitation. It is a settled principle of law that whenever such transaction is pressed into service or is pleaded, the Court of Law has to refuse to give effect to the same, much less to execute the same or endorse and acknowledge it”.*

20. As regard to non-filing of the relevant exhibited documents with the instant revision petition and counted by learned counsel for petitioner to be about 40 documents that have not been annexed suffice to rely on a case law reported as

**“Mst. Banori Vs Jilani through legal heirs and others (PLD**

**2010 Supreme Court 1186)** relevant Para is reproduced below.

*17. To show the required respect to these provisions by following them in letter and spirit, we direct that copies of this judgment shall be sent to the Registrars of all the High Courts who would place the same before the Hon'ble Chief Justices of the High Courts and also circulate them to all the learned Judges of the subordinate courts within their respective jurisdictions so that it is ensured:*

*(a) that steps are taken, in accordance with law, to order the applicants under section 115, C.P.C. to supply copies of the pleadings and documents where these pending applications were not accompanied by the same;*

*(b) that steps are then taken again in accordance with law, to return the records to the subordinate courts where the same had been summoned otherwise than through specific orders passed by the revisional courts or where the same had been requisitioned not for indispensable reasons recorded in writing by the revisional courts;*

*(c) that in future, no applications filed under section 115, C.P.C. are entertained unless accompanied by copies of the commanded documents and record;*

*(d) that every subordinate court provides a copy of the decision sought to be revised to the person who so seeks, within the prescribed three days; and finally*

*(e) that the revisional courts decide such-like applications within six months and do so without calling the subordinate court record unless it was indispensable to summon such a record.”*

*Even if petitioner No.2 could be treated as adopted son of respondent No.1, even then he has no right in any part of the legacy of Sher Abbas. Reference to Holy Quran is given below.*

□

مَا جَعَلَ اللَّهُ لِرَجُلٍ مِنْ قَلْبَيْنِ فِي جَوْفِهِ ۗ وَمَا جَعَلَ أَزْوَاجَكُمْ اللَّائِي تَظَاهَرُونَ مِنْهُنَّ أُمَّهَاتِكُمْ ۗ  
وَمَا جَعَلَ أَدْعِيَاءَكُمْ أَبْنَاءَكُمْ ۗ ذَٰلِكُمْ قَوْلُكُمْ بِأَفْوَاهِكُمْ ۗ وَاللَّهُ يَقُولُ الْحَقَّ وَهُوَ يَهْدِي السَّبِيلَ ؕ

*“In no way has Allah made to any man two hearts within the hollow (of his breast); and in no way has He made your spouses whom you (declare) as your mother's back (i.e., divorce by Dhihar, a pre-Islamic form of*

*divorce (truly) your mothers; and in no way has He made your adopted sons your sons (in fact). That (Literally: temptation; i.e., if the hypocrites had been asked to apostatize from Islam) is your saying, (the words) of your mouths; and Allah says the Truth, and He guides on the way.”*

21. As I have held above, respondent No.1 lady has been made to suffer for long only for getting lawful emoluments of her deceased husband on the part of petitioner No.1, I would beside dismissing instant revision petition, for not only playing fraud with the official record, but also not annexing relevant documents with the instant revision petition, dismiss it with cost of Rs.100000/- (one lac) under section 35-A CPC, to be paid by petitioner No.1 to respondent No.1. Instant revision petition is dismissed with cost accordingly.

**Announced.**

16.09.2019

**J U D G E**