# ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

**Civil Revision No.14 of 2025.**

Chan Mehboob and another

Versus

Muhammad Yaqoob and others

| S. No. of order/ proceedings | Date of order/ Proceedings | Order with signature of Judge and that of parties or counsel where necessary. |
|---|---|---|
| | 24.01.2025 | Raja Iftikhar Ahmed, Advocate for the petitioners. |

Through this petition, the petitioners have assailed the judgment and decree dated 18.01.2024 passed by the learned Civil Judge 1st Class, Islamabad-East, whereby the suit for declaration, permanent and mandatory injunction filed by the petitioners was dismissed. The petitioners have also assailed the judgment and decree dated 26.09.2024, passed by the learned Additional District Judge (East) Islamabad, whereby the appeal filed by the petitioners against the impugned judgment and decree of the trial Court was also dismissed.

2. Learned counsel for the petitioners *inter-alia* contends that name of the grandfather of the petitioners is Ghulam Ali caste Hinjra as per revenue record; that name of father of the petitioners and respondents No.1 to 10 is Allah Ditta but name of grandfather and cast is different; that father of the petitioners purchased land measuring 3 Kanal 16 Marlas bearing Khasra No.3866 **('suit land')** through mutation No.4290 from one Muhammad Zaman son of Zardad and possession of the suit land is with the petitioners; that staff of the respondents No.11 to 13 inadvertently entered the petitioners' grandfather name in the revenue record as Ghulam Muhammad caste Hinjra instead of Ghulam Ali and the petitioners came to know about the wrong entries when they saw the record of the respondents No.11 to 13;

UNCERTIFIED

that the petitioners approached respondents No.11 to 13 time and again for correction of their grandfather's name in the revenue record but in vain; that due to the wrong entries regarding the name of the petitioners' grandfather, respondents No.1 to 10 tried to dispossess the petitioners from the suit land; that the petitioners filed a suit against the respondents before the Civil Court for declaration, permanent and mandatory injunction regarding the suit land, which was dismissed vide judgment and decree dated 18.01.2024; that against the judgment and decree of the Trial Court, the petitioners filed an appeal before the Appellate Court, which met the same fate; that both the Courts below have not appreciated the documentary evidence i.e. Exh.P.3 to Exh.P.6 in its true perspective; that both the Courts below have failed to appreciate that prior to approaching the Civil Court, the petitioners had approached the revenue department through application Exh.P.7 for rectification of name of their grandfather i.e Ghulam Ali instead of Ghulam Muhammad; that impugned judgments and decrees are result of mis-reading and non-reading of evidence.

3. I have heard the learned counsel for the petitioners and perused the record.

4. Perusal of the record reveals that during the course of evidence, petitioner No.2, who is also special attorney of petitioner No.1 appeared as P.W.1 and produced the following documents:-

i. Affidavit in evidence Exh.P.1.

ii. Special power of attorney Exh.P.2.

iii. Copy of mutation No.40003/1945 Exh.P.3.

iv. Copy of mutation No.4290/1951 Exh.P.4.

v. Copy of mutation No.4580/1954 Exh.P.5.

vi. Copy of mutation No.4581 of 1955 Exh.P.6.

UNCERTIFIED

vii. Attested copy of application to ADCR for correction Exh.P.7/3.

5. The learned Trial Court as well as the Appellate Court while considering the evidence of the petitioners came to the conclusion that the suit filed by the petitioners is hopelessly time barred as the alleged mutations of the suit land bearing No.4003, 4290 4580 and 4581 pertain to 09.01.1945, 10.05.1951, 17.11.1954 and 29.01.1955 respectively, whereas grandfather and father of the petitioners did not challenge the wrong entries in the revenue record during their life time and after 66 years the petitioners for the first time agitated the matter on 19.11.2008 by way of filing application before Respondent No.11 for correction of name of their grandfather as Allah Ditta son of Ghulam Ali instead of Allah Ditta son of Ghulam Ali. The application was disposed of by respondent No.11 with direction to the petitioners to approach Civil Court since the matter is in respect of old and settled entries of the revenue record and respondent No.1 has no authority or jurisdiction to change the old and settled entries. Thereafter the petitioners approached the Civil Court by filing civil suit on 14.01.2020. The petitioners did not mention any detail in the plaint in respect of date of knowledge of wrong entries in the revenue record and the pleadings are totally silent in this regard rather in paragraph 4 of the plaint they simply mentioned that they came to know about the wrong entries when they saw the revenue record.

6. The learned Trial Court as well as the learned Appellate Court have dealt with question of limitation in paragraph 9 and paragraph 15 the impugned judgments respectively. It is evident from the record that the suit was filed beyond the limitation period of 6 years as provided in Article 120 of the Limitation Act, 1908. It is settled law that when question of limitation is raised by a party delay of each and every day has to be explained

UNCERTIFIED

by the said party whereas in the instant matter the petitioners did not explain that how and when fact of the wrong entries in the revenue record came into their knowledge. Neither any such fact is mentioned in the application dated 19.11.2018 Exh.P.7 regarding wrong entries nor the same is explained in the plaint. When a suit is filed beyond the prescribed period of limitation a vested right is created in favour of the opposite party which cannot be taken back by giving a premium to a delinquent litigant. In this regard reliance is placed upon *Khushi Muhammad vs. Fazal Bibi* (PLD 2016 SC 872), wherein it has been held that:-

> *When a lis is initiated beyond the prescribed period of limitation a vested right is created in favour of the opposite side which cannot be obliterated by giving a premium to a delinquent litigant.*

7. It is also noted that the petitioners did not mention the time and date of knowledge of the wrong entries in the revenue record in the first application before the Collector as well as in their civil suit. However, when petitioner No.2 appeared as P.W.1 in the witness box and exhibited his affidavit as Exh.P.1, wherein he for the first time mentioned the date as he got the knowledge in the year 2018 when visited the office of Patwari. This fact is not mentioned in the pleadings and this portion of evidence is beyond the pleadings, which can neither be read and considered by the Court as settled in *Muhammad Aslam and others vs. Muhammad Anwar* (2023 SCMR 1371 and *Messrs Pak Suzuki Motors Company Limited vs. Faisal Jameel Butt and another* (PLD 2023 SC 482).

8. The petitioners claim that they are in possession of the suit land whereas respondents No.1 to 10 while submitting their written statement categorically denied the possession of the petitioners in paragraph 8 of their written statement. The onus of

UNCERTIFIED

proof was on the petitioners as it is settled law that he who alleges must prove it but in the instant case the petitioners have failed to bring any relevant document to establish their possession over the suit land.

9. The petitioners relied upon different mutations Exh.P.3 to Exh.P.6 but did not produce any witness to prove their contention raised in the suit. It is clearly mentioned in the mutations Exh.P.3 to Exh.P.6 that all the mutations were attested in public gathering and Lambardar of the area namely Sultan Khan identified the person, in whose name the mutations were sanctioned in the presence of the revenue officers but the petitioners did not produce any witness of the locality or their relative to establish their version.

10. The learned Trial Court as well as the Appellate Court very minutely considered all the legal and factual aspects and decided the matter in accordance with law. Concurrently both the Courts below have dealt factual and legal controversy of the case in accordance with law while exercising jurisdiction vested in them. High Court while exercising jurisdiction under section 115 CPC has to satisfy itself upon following three matters:-

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of the jurisdiction illegally or with material irregularity

No jurisdictional defect as of course has been pointed out in this case and similarly no illegality or infirmity in the impugned judgments has been pointed out by the petitioners and the petitioners have also failed to point out any piece of evidence, which was misread or non-read by the Courts below. While exercising jurisdiction u/s 115 CPC, the Courts normally give due weightage and consideration to the opinion of the Courts

UNCERTIFIED

below and generally Courts do not interfere with the findings of the facts reached by the primary Courts when findings of the Courts below are on whole reasonable and are not arrived by disregarding any provision of law or any accepted principle concerning the appreciation of evidence or caused miscarriage of justice.

11. In view of the above discussion, the instant civil revision bears no merits, therefore, the same is hereby ***dismissed in limine***.

**(INAAM AMEEN MINHAS)**
**JUDGE**

**R.Anjam**

UNCERTIFIED