JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

Civil Revision No. 193 of 2025

Mst. Zareena Bibi

Vs.

Muhammad Abbas and 19 others

Petitioners by	:	Raja Gul Nawaz, Advocate.
Respondents by	:	Mr. Muhammad Zareef Raja Advocate, for Respondents No. 1 to 6. Respondent No. 7 to 16 *ex-parte* Mr. Shafqat Mehmood, State Counsel for respondents No. 17 to 20
Date of Hearing	:	**23-9-2026.**

Islamabad High Court, Islamabad

SHAHRUKH ARJUMAND, J.-

Through this Civil Revision, Petitioner has assailed Judgment and Decree dated 21.04.2025 **("Impugned Judgment"),** passed by learned Additional District Judge, (East), Islamabad **("Appellate Court")** whereby Appellate Court allowed the appeal filed by respondents Muhammad Abbas and 5 others (**"Respondents"**) and set aside the Judgment and Decree dated 29.06.2024 passed by Civil Court, (East), Islamabad **("Trial Court")**, and consequently decreed the suit of respondents.

2. Brief facts of the case, as per record, are that the Respondents instituted a suit for Declaration, Permanent and Mandatory Injunction, claiming inheritance rights in the estate of Amar Ali. Their case, inter

alia, was that Mst. Walayat Jan, mother of Respondents, was the daughter of Amar Ali, who died in 1938, leaving behind his son Meharban and daughter Walayat Jan. It was alleged that Mutation No.1671 dated 11.10.1938, whereby inheritance of Amar Ali was sanctioned, fraudulently excluded Mst. Walayat Jan from inheritance. The Respondents also challenged Mutation No.1350 relating to the estate of Meharban, alleging that the same was fraudulently procured by Petitioner's husband by representing himself as the sole legal heir. According to Respondents, they came to know of impugned mutations upon inspection of the revenue record in August 2020 and thereafter instituted the suit seeking declaration of the said mutations as illegal and void, their cancellation, correction of the revenue record and consequential injunctive relief. The learned Trial Court, after recording evidence and hearing the parties, dismissed the suit vide Judgment and Decree dated 29.06.2024. Aggrieved thereof, the Respondents preferred an appeal before the learned District Judge (East), Islamabad, which was entrusted to the learned Additional District Judge (East), Islamabad. The learned Appellate Court allowed the appeal and set aside the Judgment and Decree dated 29.06.2024 and decreed the suit of respondents. The Petitioners, being aggrieved thereof, have invoked the revisional jurisdiction of this Court through the instant Civil Revision.

3. Learned counsel for petitioner contended that Appellate Court erred in law and on facts by misreading the pleadings and evidence, shifting the burden of proof upon Petitioner and failing to appreciate that Respondents were required to establish their claim by cogent evidence, even in ex-parte proceedings. He submitted that Respondents' claim of inheritance through Mst. Walayat Jan was unsupported by any contemporaneous assertion or evidence of her alleged deprivation during her lifetime and that alleged payment of

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shares from agricultural produce was neither properly pleaded nor proved. It was further contended that Appellate Court failed to properly appreciate the applicable principles of Muslim law of inheritance, limitation and the effect of long-standing revenue record and subsequent transactions concerning the suit property. Learned counsel argued that allegations of fraud, misrepresentation and collusion were also required to be specifically pleaded and proved, which had not been done by Respondents. He, therefore, submitted that impugned Judgment and Decree suffer from misreading and non-reading of material evidence and legal infirmities, resulting in miscarriage of justice and are liable to be set aside. He relied upon *Aamir Afzal v. S.Akmal (deceased) through L.Rs. and 2 others* (2024 SCMR 1649), *Ghulam Hussain through Legal Heirs and others v. Ghulam Hassan and others* (2023 CLC 2082), *Pir Munawar Shah v. Habib ur Rehman and 4 others* (2018 CLC 1901), *Intelligence Bureau Employees Cooperative Housing Society through Secretary v. Shabbir Hussain and others* (2022 SCMR 877), *Mst. Phul Bibi v. Ghazan Shah and others* (2017 CLC Note 39), *Abdul Razaq v. Abdul Ghaffar and others* (2020 SCMR 202), *Sindh Irrigation and Drainage Authority v. Province of Sindh and another* (2026 SCMR 190), *Atta Muhammad v. Maula Bakhsh and others* (2007 SCMR 1446), *Muhammad Rustam and another v. Mst. Makhan Jan and others* (2013 SCMR 299), *Syed Kausar Ali Shah and others v. Syed Farhat Hussain Shah and others* (2022 SCMR 1558), *Trustees of the Port of Karachi v. Organization of Karachi Port Trust Workers and others* (2013 SCMR 238), *Muhammad Shifa and others v. Meherban Ali and others* (2022 SCMR 647).

4. Conversely, learned counsel for Respondents No. 1 to 6 opposed instant Civil Revision and submitted that impugned Judgment is in accordance with law and suffer from no illegality or jurisdictional defect warranting interference. He prayed for dismissal of this revision

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petition. The learned counsel relied upon *Khan Muhammad through L.Rs and others v. Mst. Khatoon Bibi and others* (2017 SCMR 1476), *Shabla and others v. Ms. Jahan Afroz Khilat and others* (2020 SCMR 352), *Saadat Khan and others v. Shahid ur Rehman and others* (PLD 2023 Supreme Court 362), *Muhammad Mushtaq Bhutta through legal heirs v. Ch. Muhammad Jameel and 6 others* (2018 MLD 1090), *Muhammad Lehrasab Khan v. Mst. Aqeel un Nisa and 5 other* (2001 SCMR 338).. Whereas, Respondents No.7, 8, 12 and 16, despite being duly served, have failed to appear before the Court. As regards the remaining Respondents No.9 to 11 and 13 to 15, service was effected through publication in the newspaper; however, none has entered appearance on their behalf. Accordingly, Respondents No.7 to 16 are proceeded against ex-parte.

5. Learned State Counsel supported the impugned Judgment and prayed for dismissal of instant revision petition.

6. I have heard the learned counsel for the parties and perused the available record.

7. It is an admitted position, as evident from the cross examination of defendant/petitioner' witnesses, that the principal propositus, namely Amar Ali, had a son and a daughter, the predecessors-in-interest of the petitioner and respondents respectively. It is also admitted by the witnesses of petitioner that predecessor-in-interest of respondents was not given her legal share after the death of propositus, namely Amar Ali. Accordingly, the first impugned mutation was sanctioned in the name of their predecessor-in-interest namely Mehrban in the year 1938. The petitioner, though not included the stance in pleadings, but contended in the evidence that predecessor-in-interest of respondents was denied her legal share on the basis of prevailing custom. However, no evidence in this regard regarding the prevailing custom for

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depriving females could be placed on record in the given situation and applicable in the area where the suit property is situated. In accordance with settled law in this regard, in absence of establishing the prevailing custom in the particular tribe and place, the same cannot be made a ground for depriving a female from her lawful share. The existence of any such custom or usage is required to be proved strictly qua the tribe involved and not others. The relevant principles are laid down in the case of ***"Mst. Zargoon etc. Vs. Mst. Shandana etc"*** where it was held that.:-

> *"In a case Mst. Sohab Kulli and others Vs. Mst. Balour Jan and others, it was held that it is admitted that under personal law, Mst. Balour Jan acquired title by inheritance in half of the estate left by her deceased father. But rule of inheritance under personal law was subject to exception of custom. It was permissible that if a particular tribe or family was governed by custom viz-a-viz inheritance of the estate it could prove custom to the exclusion of personal law, the consensus is that when the exception of custom is alleged, it must be proved by very cogent and convincing evidence. This is so as the custom is preferred as an exception to the personal law."*[1]

8. These principles clearly establish that in order to prove the existence of a usage or custom, independent, reliable and cogent evidence is required with regard to the existence of any such custom or usage in a particular tribe. Contrarily, in the instant case, petitioners failed to establish the prevailing custom in their respective tribe.

9. It is again a settled proposition of law that custom and the existence thereof is a question of fact and is required to be proved strictly *qua* the tribe involved and not others.[2]

10. Moreover, the law of inheritance is clear in terms that most of the principles have been laid down in the Holy Quran in details. The holy Quran states:

> *"Allah decrees a will for your children; the male gets twice the share of the female. If the heirs are women, more than two, they*

[1] 1989 CLC 407
[2] In a case titled "Eada Khan Vs. Mst. Ghanwar and others" 2004 SCMR 1524.

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> *receive two thirds of the estate. If only one daughter is left, she gets one half. The parents of the deceased are each entitled to one sixth if he has left offspring. If he left no children and his parents are the only heirs, his mother gets one third. If he has siblings then his mother gets one sixth after the fulfillment of any will the deceased has left and after the payment of all debts. Your parents or your children – you know not which of them are nearest to you in benefit. [These shares are] an obligation [imposed] by Allah. Indeed, Allah is ever Knowing and Wise. (Surah Al-Nisa'a: 11).*

11. Thus, foundation of the law of inheritance has been set forth in the holy Quran and most of the principles have been prescribed in details, no deviation is permissible wherefrom. Regarding compliance of these rules by every Muslim (believer), Mufti Kaleem Muhammad says:

> *"As for the institute of Inheritance, Allah took it upon himself and not only did He explicitly mention the Heirs of the deceased but moreover stipulated clearly the amount (shares) each and every Heir will inherit. After mentioning the heirs and stipulating the shares Allah mentions: These are the boundaries set by Allah (regarding Inheritance). And whoever obeys Allah and His Messenger (in implementing the laws of Inheritance) He (Allah) will enter him into gardens through which rivers flow therein to abide, and this is the greatest victory. Thereafter, Allah mentions the consequences of those who fail to implement and adhere to the laws of the Shariah; And whoever disobeys Allah and His Messenger and transgresses His limits (laws of inheritance) He will put him into the Fire to abide eternally therein and he will have a humiliating punishment.[3]"*

12. It is admitted position that custom has been considered as a source of Islamic law on the basis of a legal maxim of Islamic law which states that *"what is proven by 'Urf' (custom) is like that which is proven by a Shari'ah proof (law)"* or *"a matter established by custom is a matter established by law"*. Regarding acceptance of custom as a source of law, one of the contemporary scholars says:

> *"Islamic sharīah is destined to continue for ever, so it follows that its rules and principles should be applicable, usable and practicable for every age. The usage of people is a reality which has been in the past and will continue to exist in the future. A great deal of financial,*

[3] Mufti Kaleem Muhammad, *Islamic Inheritance: Laws and Calculations*, 4, available at https://www.mnblind.org/pdf/fiqh-miscellaneous/8365-16-inheritance-new/file, last accessed on 07-03-2022.

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> *social and marital injunctions of Islamic law is founded on the customs, and just on the customs and usages.*[4]"

13. Prof. Imran Ahsan Khan Nyazee says that "*the legal maxim has been translated as 'custom governs' or 'custom rules decisively' and so on. Assigning such a meaning to custom would make custom an all-powerful principle".*[5]

However, for acceptance of any custom as a source of law, three primary conditions have been stipulated by Dr. Muhammad Tahir Mansoori i.e. *firstly*, the custom should be most widely prevalent and common practice, *secondly*, the custom should not be contradictory to the injunctions of Shari'ah and *thirdly*, custom must not contravene a clear stipulation of an agreement.[6] The conditions for the admissibility of the custom as a legal principle clearly reflect that the foremost condition in this regard is that it should not contradict the clear text of Shari'ah. Since the shares of sons and daughters are clearly stated in the above mentioned text of the holy Quran, hence, the custom relied upon by the petitioners cannot be accepted a binding legal principle overriding the settled norms of the law of inheritance.

14. It is also the case of petitioners that after sanctioning the first mutation in 1938 and subsequent mutation in 1998, filing of the suit on 26.09.2020 is barred by limitation. However, in accordance with the relevant law laid down by Honorable Superior Courts of the country, it has been time and again held that in the matters of inheritance, particularly depriving the females falling within the definition of *Pardanashin* ladies, limitation does not run. For instance, it was held in the case of '*Shakira Akbar and 5 others v Mst. Safia Kakar and 19 others'* that:

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[4] Hafiz Abdul Ghani, "'Urf -o-Ādah (Custom and Usage) as a Source of Islamic Law", *American International Journal of Contemporary Research*, Vol. 1 No. 2; September 2011, 184.
[5] Imran Ahsan Khan Nyazee, *Islamic Legal Maxims*, (Rawalpindi-Lahore: Federal Law House).
[6] Muhammad Tahir Mansoori, *Shari'ah Maxims: Modern Applications in Islamic Finance*, (Islamabad: Shari'ah Academy, 2012), 131.

> *"14. Undeniably, every individual heir in the cases of inheritance are considered to be in constructive possession of the legacy of their predecessor on behalf of all the legal heirs in spite of exclusive possession of one of the heirs, thus sisters or any other siblings even if are out of a possession of a particular property shall deemed to be in possession thereof and limitation would not be an impediment to seek relief, thus no benefit can be derived by a person claiming proprietary rights based on fraudulent transactions and there can be no denial of their rights on the basis of Article 142 or Article 144 of the Limitation Act 1908, unless the conduct of claimant demonstrates acquiescence and particularly, when third party interest is created in the inherited property. In this regard, reference can be made to the cases of "Ghulam Ali v. Mst. Ghulam Sarwar Naqvi"* ***(PLD 1990 SC 1)*** *and "Khair Din v. Mst. Salaman"* ***(PLD 2002 SC 677).***[7]***"***

15. Since both the impugned transactions were alleged to be fraudulent and no evidence of acquiescence of the respondents could be placed on the record, the petitioners cannot deprive the respondents from their lawful share in the suit property on the ground of limitation. It is also an undeniable fact that the respondents have challenged a document executed in the year 1938 and presumption of truth is attached to it under the provisions of the Qanun-e-Shahadat Order, 1984, however, it is a settled law that mere assertion of a party that it being a ninety-year-old document cannot be accepted as gospel truth unless its contents are duly proved by the beneficiary in accordance with law, particularly when the same was executed against the rights of an illiterate lady and is denied by the opposite party. Superior Courts have also formulated certain rules with regard to transactions affecting *pardnasheen* ladies. It was held in the case of '*Phul Peer Shah v Hafeez Fatima*' that:

> *"In a case of such transaction with old, illiterate/rustic village 'Parda Nasheen' lady onus to prove the transaction being legitimate and free from all suspicions and doubts surrounding it, can only be dispelled if the lady divesting herself of a valuable property, the following mandatory conditions are complied with and fulfilled through transparent manner and through evidence of a high degree. Amongst this condition, the pre-dominantly followed are as follows:-*

[7] *Shakira Akbar and 5 others v Mst. Safia Kakar and 19 others*, 2026 Y L R 931 [Balochistan].

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> *"(i)That the lady was fully cognizant and was aware of the nature of the transaction and its probable consequences;*
> *(ii) that she was having independent advice from a reliable source/person of trust to fully understand the nature of the transaction;*
> *(iii) that witnesses to the transaction are such, who are close relatives or fully acquainted with the lady and were having no conflict of interest with her;*
> *(iv) that the sale consideration was duly paid and received by the lady in the same manner; and*
> *(v) that the very nature of transaction is explained to her in the language she understands fully and she was apprized of the contents of the deed/receipt, as the case may be."*[8]

16. No proof regarding knowledge, consent or understanding of predecessor in interest of the respondents could be established by the petitioners, rather the respondents contended that their predecessor in interest had no knowledge about the impugned mutation and they came to know only after her death. It was further held in the case of '*Khawas Khan through Legal Heirs v Sabir Hussain Shah and others*' that:

> *"In case of Pardanasheen lady, the party placing reliance upon the document would have to prove execution of said document that the Pardanasheen lady understood the terms of the deed and the deed was read over and explained to her. This Court has also time and again held that in case of illiterate Pardanasheen lady, it must be shown that deed was read over to her and the terms of the same were adequately explained to her and Court has to be cautious to see that the burden is satisfactorily discharged by the party in whose favour the deed was allegedly executed. It was necessary for the petitioners/ defendants to bring on record that Pardanasheen lady/executant was free and intelligent to execute the deed and Court has to come to definite conclusion that transaction through the deed was understood by her not only from the evidence in the case but also from the facts and circumstances of the case."*[9]

17. Since the knowledge about the impugned transaction has been denied by the respondents, therefore, question of understanding the nature and extent of impugned transaction does not arise. However, the predecessor in interest of the respondents and respondents themselves after her death cannot be deprived from their lawful share due to her status as an illiterate lady, which status has not been denied by the

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[8] *Phul Peer Shah v Hafeez Fatima*, 2016 S C M R 1225 (Supreme Court of Pakistan).
[9] Khawas Khan through Legal Heirs v Sabir Hussain Shah and others, 2004 S C M R 1259

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petitioners in accordance with their cross examination. It was also held in the famous case of '*Ghulam Ali and 2 others v Mst. Ghulam Sarwar Naqvi*' that:

> *"Dealing particularly with females it is to be noticed that: Where one is concerned with pardanashin Muslim females, different considerations apply from those that apply between adult males……..*
> *It might be very rare that a male co-heir would relinquish his right for a female heir. Experience, shows that it has always been the reverse. The flow of love cannot be so unnatural. Therefore, the, rules devised by the Privy Council for the, Parda Nasheen ladies as contracting patties and the one referred to above emanating from the public policy, would lead to another principle- that in cases like the present one, there will be, a presumption otherwise; namely, that it was not on account of natural love but on account of social constraints which would be- presently referred to, that relinquishment has taken place……..The Holy Prophet (P.B.U.H) was eager to explain again and again the rights of daughters and the way their fulfilment takes one to the heights of piety…….*
> *On questions of public policy, morality (Section 23), lack of consideration (Section 25) and undue influence (Section 16) vis-a-vis Parda Nasheen ladies it has to be reiterated and recapitulated that:*
> *Firstly the relinquishment by' the respondent, if any, is against public policy and morality, which concepts are to be decided on the basis of Islamic teachings and principles....Secondly the question of lack of consideration loses much of its relevance on account of the firstly above. But had it been not so, the so-called exceptions in Section 25 not being applicable in the context of Islamic rules and would not have saved the disputed relinquishment. Thirdly the relinquishment as such having been annulled, the same could not in this case operate as an ordinary alienation under the existing law.*[10]*"*

18. Although relinquishment of claim is not the case of petitioners in this case, but deprivation of predecessor in interest of the respondents has to be judged on the touchstone of principes enunciated in Ghulam Ali case *supra*, which has been declared to be the mother judgment on the rights of females deprived of their lawful share. Neither customary law not any other justified reason could be pointed out to deprive the predecessor in interest of the respondents against the principles of Islamic law, particularly when she appears to be a vulnerable lady. Accordingly, the Courts have provided protection to these ladies

[10] *Ghulam Ali and 2 others v Mst. Ghulam Sarwar Naqvi*, P L D 1990 Supreme Court 1.

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against the male members of society adamant to usurp their rights and they can only be deprived in exceptional circumstances laid down by the Superior Courts. Hon'ble Peshawar High Court has introduced detailed principles with regard to the transaction affecting the rights of *pardanasheen* ladies in the case '*Mst. Tahrian v Zarshad Khan and another*' wherein it was held that:

> *"The superior courts have woven a cloak in different pronouncements to protect interest of the Parda Nasheen Ladies, particularly in this conservative society, where parda observing ladies are mostly dependent on their kith and kins regarding the management of their property which more often than not are misused and exploited by the male member of the family. In most of the cases their properties are transferred by anyone, proceeds whereof is often misappropriated by the male members and not a single penny is paid or meagre amount is handed over to them. Keeping in view social constraints and interest of the ladies, time and again High Courts as well as the august Supreme Court have pronounced in their judgments that their interest be jealously protected. Whenever suit is brought on their behalf with the allegation of collusion and fraud, it is keenly observed that they may not have been deprived of their valuable rights by undue influence of the fiduciary relations. There is chain of judgments since pre-partition till date wherein their rights have been protected when it is established that their interest has been usurped by the male members of the family. In appreciating their case, it is oftenly scrutinized as to:--*
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> *I.Whether an independent friendly advice was available to the lady at the time of transaction?*
> *II.Whether she has been benefited from the transaction?*
> *III.Whether her hand while impressing thumb or signing deed was accompanied by her mind?*
> *IV.Whether she has retained some part of the property for herself or disposed of the whole?*
> *V.Whether the transaction was free from any shadow of doubt?*
> *VI.Whether the transaction was righteous in character?*
> *VII.Whether she was not under the undue influence of her kith and kin or beneficiary of the transaction?*
> *VIII.Whether she was in actual need of transaction to sell out her property and what were the circumstances which constrained her to enter into transaction?*
> *IX.Whether the document of sale/gift was explained to her and whether she really understood its consequences?*
> *X.What were the compulsive elements which forced her to transfer/gift whole property to brother/nephews, depriving her own children?*
>
> *If answer to any one of the questions posed, is wavering in character or unsatisfactory, it would adversely affect the very root,*

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> *veracity and genuineness of the transaction, entered into on her behalf.*[11]*"*

19. In accordance with these principles, a transaction cannot be declared valid if answer to any of above ten questions becomes unsatisfactory. Although execution of any document is not alleged in this case, but no benefit or absence of undue influence could be established in this case by the petitioners. Therefore, the waiver or deprivation of her right cannot be justified.

20. The petitioners denied the fact that predecessor of the respondents was a pardanasheen lady. However, definition of pardanasheen ladies has been provided in an earlier case before Calcutta High Court, where it was held that:

> *"Pardanasheen woman is that woman of rank who lives in the seclusion; shut in the zenana, having no communication except behind the parda or screen with any male persons save a few near relations."*[12]

21. In another case of **'*Ashok Kumar and Anr. v Gaon Sabha, Ratauli and Ors*'** it was held that:

> *"It is not merely by parda itself that the law throws its protection around a pardanasheen lady but by reason of hoe disabilities to which the life of a section of people living in seclusion gives rise to the disabilities and with which a pardanasheen lady suffers."*[13]

22. It is also contended by the respondents that their predecessor in interest was minor at the time of first impugned transaction. This fact alone makes her vulnerable and casts a clear doubt of undue influence, absence of which is the foremost requirement in accordance with the case of Mst. Tahrian *supra.* Further, testing the principles laid down in Satish Chandra and Ashok Kumar on the present case, it is evident that predecessor of the respondents was a *pardanasheen* lady and in such like situation, burden to establish the validity of mutation sanctioned in 1938 was on the petitioners.

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[11] *Mst. Tahrian v Zarshad Khan and another*, 2016 Y L R 1883 (Peshawar).
[12] *Satish Chandra v Kali Dasi,* (AIR 1922 Cal. 203)
[13] *Ashok Kumar and Anr. v Gaon Sabha, Ratauli and Ors,* (AIR 1981 AII 222)

23. Another contention of the petitioners is that the claim of the respondents is hit by the law of limitation. Generally, in the matters involving inheritance dispute, limitation is not taken into consideration to make such issue crucial for the dismissal of a suit especially of women folks and other fragile persons in the society when an element of fraud is involved and those in which a *pardanasheen* lady applies for her share in her lifetime. Reliance is placed on the case of '*Faqir Ali and others Versus Sakina Bibi and others*' and the relevant extract is reproduced hereunder for ready reference:

> *"...It is settled law that fraud vitiates even the most solemn transactions and any transaction that is based upon fraud is void and notwithstanding the bar of limitation. Courts would not act as helpless by stands and allow a fraud to perpetuate..."*[14]

24. Likewise in the recent case of '*Muhammad Boota (deceased) through L.Rs., and others v Mst. Fatima daughter of Goahr Ali and others*', the Hon'ble Apex Court has held regarding limitation in the following terms:

> *…….Article 120 of the Limitation Act, 1908 deals with the limitation to file a suit for declaration which has been interpreted by this Court in its recent judgment Saadat Khan and others v. Shahid-ur Rehman and others (PLD 2023 SC 362) where the Court has held that in the cases where brothers deny their sisters their right to inherit, limitation would run from the date of knowledge when the fraud or denial became known to the sisters……..*
> *……In another case Shabla and others v. Ms. Jahan Afroz Khilat and others (2020 SCMR 352), this Court has held that no limitation runs against matters involving inheritance rights of a female where she has been defrauded of her right by her family. It has also been held in Khan Muhammad through LRs. and others v. Mst. Khatoon Bibi and others (2017 SCMR 1476) that in cases of inheritance, it is well settled that a claimant becomes a co-owner/co- sharer of the property left by the predecessor on his death and the sanction of inheritance mutation is meant for updating the revenue record for fiscal purposes. Where a person has been denied the right of inheritance that would give them cause of action and that no limitation would run against a co-sharer……..*[15]

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[14] *Faqir Ali and others Versus Sakina Bibi and others*, PLD 2022 85.
[15] *Muhammad Boota (deceased) through L.Rs., and others v Mst. Fatima daughter of Goahr Ali and others*, 2023 S C M R 1901.

25. Therefore, the cases where question of limitation was considered to be relevant also contain exception like cases pertaining to women folks and particularly that of *pardanasheen* ladies. Predecessor in interest of the respondents was deprived of her rights without any justification and the same amounts to practice of fraud which cannot be allowed to perpetuate even if hit by the law of limitation. This Court is also conscious of the fact that in several cases it has been laid down that the law of limitation shall be applicable in inheritance matters, but it is also laid down that the same would not be applicable in case of fraud. Furthermore, the law of limitation becomes relevant when there was an express repudiation of the claims of females in favor of males in order to relinquish or transfer the shares of females in the subject property and the Courts have further laid down that for this purpose, there has to be a positive and affirmative act in absence of which the law of limitation shall not be applicable. In other words, the law of limitation would be relevant when the conduct of claimant demonstrates acquiescence and not otherwise. It was laid down in the case of *Noor Din* that:-

> *"6. Undisputedly, the matter pertains to inheritance and under the Islamic Law of inheritance, as soon as an owner dies, succession to his property opens. This Court in the case titled Ghulam Ali and 2 others v. Mst. Ghulam Sarwar Naqvi (PLD 1990 SC 1) has held that if the State, the Court, the clergy, the executor, the administrator does not intervene, no other body intervenes on any other principle, authority, or relationship- even of kinship, thus, the brother, the father, the husband, the son or vice versa, does not or cannot intervene as an intermediary. Likewise, the law is well settled that wrong mutation confers no right in property as revenue record is maintained only for fiscal purposes. This Court in a case titled Mst. Gohar Khanum and others v. Mst. Jamila Jan and others (2014 SCMR 801) has held that mutation is meant to record the legal entitlement and if the mutation is erroneously made such mutation would not create title in accordance with Sharia Law of inheritance. So far possession of the property by an heir is concerned, a three member bench of this Court in a case titled Khair Din v. Salaman (PLD 2002 SC 677) has followed the*

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> *decision of a two member bench in the case of Ghulam Ali, supra, that heir in possession has to be considered to be in constructive possession of the property on behalf of all the heirs in spite of his exclusive possession, e.g., the possession of the brothers would be taken to be the possession of their sisters, unless there was an express repudiation of the claims of the sisters in favour of brothers and in order to relinquish or transfer her interest in the property, there has to be a positive and affirmative act. In the case titled Mst. Granan through legal heirs and others v. Sahib Kamala Bibi and others (PLD 2014 SC 167) this Court has held that the law of limitation would be relevant when the conduct of the claimant demonstrates acquiescence and particularly when third party interest is created in the inherited property.*[16]*"*

26. The superior courts have also held that when property is possessed by brother or brothers on behalf of sisters, said possession will be in fiduciary character and cannot be declared to be absolute. It was held in the case of '*Saadat Khan and others v Shahid-Ur-Rehman and others*' that:

> *"The obligations of the brothers to their sisters, as co-sharers of joint property, are further augmented when viewed in the light of the Islamic law and jurisprudence as expounded by this Court in Ghulam Ali. Because of the fiduciary and protecting relation of the brothers to their sisters, they cannot claim their possession of the joint property adverse to the rights of their sisters; possession of the brothers is taken to be the possession of their sisters.*[17]*"*

27. It is also one of the contentions of petitioners that predecessor-in-interest of respondents did not challenge the impugned mutations during her lifetime and in accordance with settled law in this regard, the respondents were not legally authorized to challenge the same after her death. The applicable law in this regard is contained in the case of *"Muhammad Rustam and another v. Mst. Makhan Jan and others"*, wherein it was held that:-

> *"3. Having heard petitioners' learned counsel at some length, we find that admittedly the impugned mutation of inheritance*

[16] Noor Din (Deceased) through LRs v Pervaiz Akhtar and others, 2023 S C M R 1928 [Supreme Court of Pakistan].
[17] *Saadat Khan and others v Shahid-Ur-Rehman and others*, P L D 2023 Supreme Court 362.

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> *bearing No.571 dated 9-7-1927 was never challenged by Mst. Karam Jan; that she remained alive till 1975 and no reason whatsoever is reflected either in the plaint or in the evidence led to indicate as to why she did not challenge the said mutation.* ***It has never been the case of the petitioners that either they or their predecessor-in-interest were unaware of the said mutation.*** *In the afore-referred circumstances, the judgment of the learned High Court is unexceptionable.*[18] (emphasis supplied).

28. Careful perusal of the case of Muhammad Rustam *supra* reflects that the principle of not challenging a transaction during the life time of predecessor-in-interest becomes applicable when the relevant party was aware of the impugned transaction and did not challenge the same during his or her lifetime. Whereas, in the instant case, the respondents specifically took the plea that they were unaware of the impugned transactions/mutations till August 2020, therefore, they cannot be non-suited on the ground that their predecessor in interest did not challenge the impugned mutations during her life time and challenging the same after her death is not allowed.

29. Another contention raised by petitioners before learned appellate court was that the wife of Mehrban instituted a suit against the respondents which was ultimately decreed and the appeal filed against the said decree passed by Civil Court was also dismissed by learned Additional District Judge. However, contents of plaint of the said suit reflect that the same was instituted *qua* another property and not the suit property. Therefore, it cannot be presumed that respondents had the knowledge about the impugned mutations and they deliberately and willfully failed to challenge the same within the prescribed time limitation.

30. For the foregoing discussion, the findings recorded by the Appellate Court below do not suffer from any illegality, material irregularity or

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[18] Muhammad Rustam and another v Mst. Makhan Jan and others, 2013 S C M R 299 [Supreme Court of Pakistan].

jurisdictional defect warranting interference in exercise of revisional jurisdiction. Hence, instant Civil Revision Petition is, accordingly, **dismissed.**

(SHAHRUKH ARJUMAND)
JUDGE

Approved for reporting

Farid ur Rehman /*

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