JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Civil Revision No.185 of 2017

Muhammad Hanif and others

Versus

Kala Khan and others

Petitioners by:	Mr. Abdul Rehman Minhas, Advocate.
Respondents No.1 to 20 by:	Mr. Abdul Kamran Butt, Advocate.
Respondent No.21 by:	Mr. Yasir Mehmood, State Counsel.
Respondent No.22 by:	Mr. Aamir Azad, Advocate.

R.S.A No.05 of 2017

Liaquat Ali

Versus

Muhammad Hanif and others

Appellant by:	Mr. Aamir Azad, Advocate.
Respondents No.1 to 20 by:	Mr. Abdul Rehman Minhas, Advocate.
Respondents No.21 to 40 by:	Mr. Abdul Kamran Butt, Advocate.
Respondent No.41 by:	Mr. Yasir Mehmood, State Counsel.
Date of Hearing:	**02.10.2025.**

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INAAM AMEEN MINHAS, J.- This single judgment shall decide the above titled civil revision and the regular second appeal as both have arisen from the same judgment.

2. In the civil revision, the petitioners have assailed the judgment and decree dated 17.09.2010, passed by the learned Senior Civil Judge, Islamabad **("Trial Court")**, whereby the suit for declaration, cancellation of mutation-Fard Badr, permanent and mandatory injunction filed by the respondents against the petitioners was decreed and the judgment and decree dated 23.11.2016 passed by the learned Additional District Judge, Islamabad-East **("Appellate Court")**, whereby the appeal filed by the petitioners against the judgment and decree of the learned Trial Court was dismissed.

3. In the regular second appeal, the appellant, who is a *bona fide* purchaser of the suit land, has challenged the same judgments and decrees that have been impugned by the petitioners in the civil revision.

4. Briefly, the facts are that respondents Kala Khan and others filed a suit for declaration, cancellation of mutation-Fard Badr, permanent and mandatory injunction claiming ownership of 2/3rd share in land measuring 32 Kanals 12 Marlas bearing old Khasra Nos.1182/1107, 1106/41, 1183/1107 new Nos.47, 48 & 49 Min situated in village Pahg, Tehsil and District Islamabad **("Suit Land")**. They averred that their predecessors, Muhammad, Fazal Din and Afsar, originally owned 1/3rd share of the Suit Land and later on purchased another 1/3rd share from Nandu Shah through Mutation No.1077 in the year 1932, thereby becoming owners of 2/3rd share, while the remaining 1/3rd share belonged to Lal son of Nadir. The respondents alleged that the petitioners' ancestors, Din Muhammad and others, had no connection with the Suit Land as they owned different land (old Khasra No.514, New 568) purchased from Paras Ram, etc. Despite that in collusion with the revenue staff, their names were fraudulently inserted in the Khata of the respondents' ancestors during the Jamabandi of 1940-41, which was later carried forward in 1951-52 and 1956-57. They further

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alleged that in 1994, the petitioners again manipulated the revenue authorities and prepared an illegal Fard Badr No.33/1994 and that subsequent Mutation Nos. 817, 818 and 991 were also fraudulent and liable to cancellation. The respondents, therefore, prayed for a declaration that they are lawful owners of the Suit Land, the cancellation of fraudulent entries, Fard Badr No.33/1994, Mutation Nos.817, 818 and 991 and permanent injunction restraining the petitioners from selling, transferring or altering the nature of the Suit Land.

5. Upon being served, the petitioners contested the suit by asserting that it was false and liable to dismissal due to the concealment of material facts by the respondents. They averred that the predecessors of both parties, Faiza and Must, were real brothers, each entitled to an equal share in the Shamlat land and therefore, the respondents could not claim exclusive ownership. The petitioners further alleged that the respondents in collusion with revenue officials had tampered with the record to show themselves as sole owners and the Fard Badr in favour of the petitioners had been prepared lawfully. The petitioners denied the respondents' claim over the Suit Land asserting that Mutation No.1077 merely reflected the repurchase of 1/3rd share from Nandu Shah, which the respondents had previously sold through Mutation No.1076. On these grounds, the respondents prayed for dismissal of the suit. Thereafter issues were framed, evidence of the parties was recorded and after hearing the arguments, the learned Trial Court decreed the suit vide judgment and decree dated 17.09.2010. Being dissatisfied, the petitioners filed an appeal before the learned Appellate Court, which was also dismissed vide impugned judgment and decree dated 23.11.2016, therefore the petitioners filed the civil revision.

6. During pendency of appeal before the learned Appellate Court, the appellant (Liaquat Ali Khan) in R.S.A No.05/2017, who was not party in the civil suit, filed an application under Order 1, Rule 10 CPC on 27.04.2016, which was allowed on the same date and he was

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impleaded in the appeal as respondent No.23. The appellant being aggrieved of the impugned judgments and decrees of the Courts below filed the regular second appeal.

7. The learned counsel for the petitioners in C.R No.185/2017 contended that the impugned judgments of the Courts below are not in accordance with law and facts; that regarding issue No. 4, the Courts below failed to properly consider the Shajra Nasab (Exh.P14 & Exh.D1), which clearly establish that Natha was the common ancestor of both parties; that the Suit Land originally belonged to Natha and on his death, the Suit Land devolved upon his legal heirs equally, including the predecessors of the respondents' Must and the petitioners' Faiza, who were real brothers, hence, no one among them could legally claim exclusive ownership without proper partition; that the Courts below overlooked Mutation No.1076 (Exh.P6), which shows that the entire share of the respondents' predecessors had been transferred to Nandu Shah and later repurchased through Mutation No.1077 (Exh.P7), meaning thereby that they regained only 1/3rd share, not 2/3rd; that while passing the impugned judgments and decrees the Courts below also disregarded settled principles of equity, law, and Qanun-e-Shahadat, Order 1984, which place the burden of proof on the party asserting a fact; that the respondents failed to prove their claim, yet issues No. 4 to 6 were wrongly decided in their favour; that the Courts below exceeded their jurisdiction, acted with material irregularity and failed to apply judicial mind rendering the impugned judgments and decrees liable to be set aside.

8. The learned counsel for the appellant in R.S.A No.05/2017 contended that the appellant is owner in possession of land measuring 2 Kanals 13 Marlas from Khasra Nos.47, 48 & 49, which he purchased through registered sale deeds (i) 5817, dated 18.05.2010 measuring 10 Marlas (2) No.5729 dated 02.07.2010 measuring 1 Kanal 3 Marlas from respondent/defendant No.1/Muhammad Hanif (3) No.7545 dated 29.05.2012 measuring 1 Kanal; that the appellant has constructed three

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houses on the land measuring 1 Kanal 13 and on 1 Kanal the appellant has also constructed boundary wall and converted it into garden and park and spent huge money; that the appellant was not made party by the respondents at the time of the filing of the suit, however, in the appeal he on his application was impleaded as party; that the learned Appellate Court while passing the impugned judgment and decree failed to appreciate the fact that the appellant being a *bona fide* purchaser has valuable rights in the Suit Land; that the learned Appellate Court also ignored the fact that the appellant purchased the land from the Suit Land during pendency of the suit from both the parties and constructed three houses and no party raised any objection; that there was no evidence to the extent of appellant's claim, therefore, the suit should have been remanded to the learned Trial Court; that the appellant has adversely effected from the decisions of the Courts below.

9. On the other hand, the learned counsel for the respondents contended that the Courts below while passing the impugned judgments and decrees properly appreciated the evidence and applied legal principles; that findings of the Courts below are based on sound reasons and do not suffer from any legal infirmity and that the impugned judgments and decrees have been passed in accordance with law.

10. I have heard the arguments of the learned counsel for the parties and gone through the record.

11. First this Court will address the civil revision. After careful examination of the record, it becomes clear that the entire case of the petitioners depends upon the interpretation of Mutation No.1076 Exh.P7. A close reading of this document shows that when the decree was executed and Mutation No.1076 was sanctioned, only one-third share belonging to Talah, widow of Mehr, was transferred to the petitioners, while the remaining two-third share of the Suit Land remained intact in the original Khata. Mutation Exh.P7 also reveals that the share of the respondents in another Khata located in village Pahg had been transferred to the predecessors of the petitioners when the

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earlier decree was executed, but the respondents' one-third share in the Suit Land was never transferred to Nandu. This important aspect appears to had been overlooked by the revenue authorities.

12. Further examination of Mutation No.1077 Exh.P8 shows that Nandu, who had purchased one-third of the Suit Land from Talah, subsequently transferred the same to Muhammad, Fazal Din and Afsar, sons of Illaya. As a result, the respondents became owners of the Suit Land after purchasing the said share from Nandu. Both these mutations were sanctioned as far back in 1932 and the respondents' ownership rights over their portion remained intact since then. Copy of Jamabandi for the year 1936-37 Exh.P16 corroborates that the legal heirs of Illaya and Nadir were the rightful owners of the Suit Land and the names of the petitioners do not appear anywhere in the record. Copy of Jamabandi for the year 1940-41 Exh.P9 further establishes that the petitioners' predecessors Din Muhammad and Khaliq were owners only in Khasra No. 514, which is not part of the Suit Land. The same position persisted even in the year 1944–45, as reflected in the register Haqdaran Zameen, confirming that the Suit Land never belonged to the petitioners' side.

13. Perusal of copy of Jamabandi for the year 1956-57 Exh.P12 shows that a change had occurred in the revenue record of 1956–57, where the names of the petitioners' predecessors were unlawfully incorporated as co-owners of one-third share in the Khata of the Suit Land. This alteration was made without any lawful justification, as the petitioners had not produced any proof of ownership. Such manipulation of long-standing entries amounts to forgery, apparently committed with the connivance of the revenue authorities. Fard Badr Exh.P4 was also prepared without lawful basis, merely to include the petitioners' names in the record. The mere relationship between the predecessors of both parties does not justify inclusion of the petitioners as owners in the Khata.

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14. It is a settled principle of law that while human testimony may be mistaken or false, documentary evidence speaks for itself. In civil and revenue matters, the documentary record carries a presumption of truth under the law. Though this presumption is rebuttable, it can only be displaced by strong, cogent and unimpeachable evidence, which the petitioners have failed to provide. Hence, in light of the unimpeached documentary record and legal principles, the claim of ownership by the petitioners is without foundation and cannot be sustained. The learned Trial Court as well as the learned Appellate Court rightly appreciated the facts, evidence and draw the conclusion in accordance with law. The learned counsel for the petitioners has failed to point out any material irregularity or jurisdictional defect in the impugned judgments and decrees.

15. The revisional jurisdiction is exercised under specific conditions where a subordinate Court has acted without jurisdiction, failed to exercise jurisdiction vested in it or committed a material irregularity in the exercise of its jurisdiction. In ***M/s. Abbasia Cooperative Bank Ltd. vs. Hakeem Hafiz Muhammad Ghaus***, **(PLD 1997 SC 3)**, the Honourable Supreme Court held that revisional jurisdiction is not akin to appellate jurisdiction and cannot be invoked merely to substitute a different view in place of the one taken by the lower Court unless it is shown that the decision suffers from jurisdictional defects or material illegality. The revisional jurisdiction should only be exercised to correct jurisdictional errors and not to interfere with mere findings of fact unless they are perverse or based on no evidence.

16. Now this Court will deal with regular second appeal. From the record, it is evident that respondent No.1 Kala Khan and others instituted the civil suit for declaration, cancellation of mutation-Fard Badr, permanent and mandatory injunction against Manzoor Hussain and others on 27.06.2002, which was decreed by the learned Trial Court vide judgment and decree dated 17.09.2010. The appellant purchased land measuring 1 Kanal and 3 Marlas from respondent/defendant

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No.1/Muhammad Hanif through Mutation No.5729 dated 02.07.2010. Thus it is admitted position that he purchased the land from the Suit Land during pendency of the suit attracting the doctrine of *lis pendens* in terms of section 52 of the Transfer of Property Act, 1882.

17. It is a settled principle of law that when any party acquires property rights or titles in respect of a property already under judicial consideration, such transfer remains subject to the outcome of the pending proceedings. In such circumstances, the purchaser steps into the shoes of the transferor and cannot claim an independent or superior right against the eventual judgment of the Court. Since the main suit was decreed in favour of the respondents regarding the same land purchased by the appellant, the transaction of sale executed during the pendency of the litigation carries no overriding legal effect. It must abide by the final decree passed in the civil suit. The appellant, therefore, cannot claim any immunity or exception from the principle of *lis pendens*, which safeguards the sanctity and finality of judicial proceedings concerning immovable property.

18. It is important to emphasize that scope of regular second appeal is narrow and confined to the grounds specifically provided under section 100 CPC. This section states that a second appeal shall lie only on a substantial question of law and no on mere questions of fact or re-appraisal of evidence.

19. In view of above discussion, the captioned civil revision and the regular second appeal bear no merit, therefore, the same stands **dismissed.** No order as to costs.

(INAAM AMEEN MINHAS)
JUDGE

Announced in open Court on 31.10.2025.

JUDGE

R.Anjam

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