JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, PESHAWAR
(Judicial Department)

CR No. 898-P of 2012.

JUDGMENT

Younas Khan etc Vs DOR etc

Date of hearing 06.05.2016

Petitioner (s) by: Mr. Mazullah Barkandi Advocate.
Respondent (s) by: Mian Hikmat Ullah Jan Advocate.

MUHAMMAD DAUD KHAN, J:- Through instant revision petition, Younas Khan & others, the petitioners, have assailed the concurrent judgments and decrees dated 24.3.2011 passed by learned Civil Judge-XI, Peshawar and dated 07.5.2012, passed by learned Additional District Judge-VI, Peshawar, whereby former decreed the suit of respondents/plaintiffs while the latter maintained/upheld the same.

2. Brief facts of the case are that the respondents/plaintiffs filed declaratory suit to the effect that they are owners of property measuring 16 Kanals in Khata No.477/2125, bearing Khasra No.4381, measuring 38 Kanals and 14 Marlas in revenue estate of village Badahber Maryamzai vide mutation No.77 from one Shah Sanam predecessor-in-interest of respondents/defendants No.s 31 to 52 and that revenue record in favour of appellants/defendants
No.4 to 29 was illegal, wrong, fraudulent and in collusion with appellants/defendants No.1 to 3 and is ineffective upon the rights of the respondents/plaintiffs and is liable to be cancelled. Further, mutation No. 6583 dated 10.07.2007 by appellants/defendants Nos. 12 and 13 in favour of appellant/defendant No.30 is wrong, based on collusion and is liable to be cancelled and the revenue record to the extent of 16 Kanals in favour of respondents/plaintiffs is liable to be corrected. Further sought permanent injunction and possession fully detailed in the head note of the plaint. The defendants No.1 to 3 and 23 to 52 despite service remained absent so the learned trial Court placed them ex-parte while the present petitioners/defendants No.4 to 22 controverted claim of the respondents by filing written statement. From the divergent pleadings of the contested parties, the learned trial Court framed the following issues:-

**ISSUES.**

1. **Whether the plaintiffs have got cause of action?**
2. **Whether the plaintiffs are owners on the basis of mutation No.77. If so, its effect?**
3. **Whether mutation No.6583 is bogus, fraudulent and fictitious. If so its effect?**
4. **Whether the suit of the plaintiffs is within time?**
5. **Whether the defendants are owners of the suit property on the basis of deed No.54 dated 12.08.1935 and deed No.65 dated 5.8.1925?**
6. **Whether the plaintiffs are entitled to the decree as prayed for?**

7. **Relief?**

3. Both the parties produced their evidence as they wished. On conclusion of trial the learned trial Court decreed the suit of the respondents/plaintiffs as prayed for vide its judgment and decree dated 24.3.2011. Aggrieved from the same, the petitioners/defendants preferred an appeal before the District appellate Court which was also dismissed vide its appellate judgment and decree dated 07.05.2012, hence the instant revision petition has been filed by the petitioners/respondents assailing the said judgments and decrees.

4. Arguments of learned counsel for the parties heard and with their valuable assistance, the available record perused.

5. In order to prove their case, the petitioners/plaintiffs produced Patwari Halqa as PW.1 who produced Fard-e-Patwar of mutation No.77 dated 11.3.1931 which is Ex.PW.1/15, vide which the suit property 16 Kanals was transferred from one Shah Sanam s/o Muhammad Amin in favour of Ahmad Khan s/o Yousaf Khan (predecessor of respondents/plaintiffs) and produced Fard Patwar of mutation No.78 dated 11.3.1931 placed on record as Ex.PW.1/16 vide
which the said Shah Sanam transferred land measuring 14 Kanals in favour of Daray Khan s/o Yousaf who was also predecessor of respondents/plaintiffs. According to the statement of Patwari Halqa (PW1) these mutations were correctly mentioned in periodical record in Fard Jamabandi for the year 1929-30 with red ink but the mutation No.77 was not incorporated erroneously in subsequent Jamabandi for the year 1933-34. As per statement of Patwari Halqa mutation No.78 has been incorporated while the mutation No.77 has not been incorporated in the subsequent Jamabandies due to which rights of respondents/plaintiffs were affected. According to said entries respondent/plaintiff Gul Habib had submitted application for correction of record in respect of which he had submitted his report on 4.5.2009. The report of Patwari Halqa is reproduced as under:

"جناب عالی

بسلسلہ درخواست گل حبیب دربار
مرتب کریں فرد بدر حسب رپورٹ بٹواری حلقہ بہ بھر
حوریزئی تصویل یشاوار.

انتقالات نمبر 77 منجانب شاہ صنم ولد محمد أمین بنام احمد خان ولد يوسف خان آراضی خسره نمبر 4381 تعدادی 14 مرلے 38 کنال سے بقدر 16 کنال نمبر 78 بیبح منجانب شاہ صنم ولد محمد أمین بنام دریحان ولد يوسف خان آراضی خسره نمبر 8183 تعدادی 38 کنال 14 مرلے سے بقدر 14 کنال درج رجستر بوبر مورخ 31.11.1931 10.03.1931 کو منظور بو چکے بین لیکن وقت تحریر رجستر حقداران زمین 34-3433 صرف انتقال نمبر 78 بیبح کا عمل بنام دریحان ولد يوسف خان مشتری کرم
Mutation No.77 dated 31.3.1931 Ex.PW.1/15 reveals that Ahmad Khan predecessor in interest of respondents/plaintiffs has purchased the property measuring 16 Kanals from Shah Sanam whereas as per Mutation No.78 dated 31.3.1931 Ex.PW.1/16 Daray Khan has purchased property measuring 14 kanals from Shah Sanam that reference has been made with red entries as periodical in Fard-e-Jamabandi for the year 1929-30 as Ex.PW.1/1. However, the entry of mutation No.77 has not been incorporated in the subsequent Jamabanndi for the year 1935-36 till last Jamabandi for the year 2004-05. The application Ex.PW.2/1 for correction of entry of disputed property in the revenue record submitted by Gul Habib and report of Patwari Halqa and Revenue official reveals that
request for correction of entries had been made to the Patwari Halqa, who submitted his report on the same thereby supporting the version of respondents/plaintiffs by stating that mutation Nos. 77 & 78 have been attested on 31.3.1931 but erroneously at the time of preparation of Register Haqdaran Zameen for the year 1933/34, it has not been entered which shows that the said property belongs to the respondents/plaintiffs but its entry has not been made in the revenue record and wrong entries in the revenue record have been continuously till in Jamabandi year 2004-05.

7. On the other hand, the attorney of petitioners/defendants while appearing as DW.1 produced certain documents (Ex.DW.1/2 to Ex.DW.1/4) regarding purchase of suit property by their predecessor in interest but they could not produce any evidence in this regard coupled with his admission in his statement that in the said mutations there are no Khasra numbers. He further admitted that the property purchased by their predecessor Daray Khan and predecessor of respondents/plaintiffs namely Ahmad Khan, are in their respective possession and they have got no objection if correction in this regard is made in the revenue record, which shows that ownership of respondents/plaintiffs regarding disputed property is proved.
8. So far as contention of petitioners that suit of respondents/plaintiffs is time barred having been filed after 78 years. I am of the view that as per statements of witnesses as well as admission by DW.1 in his statement, he admitted the disputed property is in possession of the respondents/plaintiffs and reference of mutation No.77 is mentioned in the Fard Jamabandi for the year 1929-30 (Ex.PW.1/1) and erroneously not incorporated in the subsequent Jamabandi till latest Jamabandi for the year 2004-05 while the suit was filed on 30.09.2009, so it cannot be declared as time barred because in every wrong entry in Jamabandi would given a fresh cause of action suit for declaration and correction of wrong entries. The Hon’ble Supreme Court of Pakistan in the case titled *Abdul Sattar Khan & others Vs Rafiq Khan & others* reported in *2000 SCMR 1574* while placing reliance on the judgment of this Court reported in *PLD 1993 Peshawar 127* has held as under:

“I may state that no objection as to limitation was raised by the respondents and consequently no issue was framed. Even otherwise I agree with the learned counsel for the petitioners that every wrong entry in Jamabandi would give a fresh cause of action for a suit for B declaration and for the correction of the wrong entries. Suit can be filed within 6 years from the date when the right to sue has occurred. In this regard the learned counsel has
placed reliance upon Atta Muhammad Vs Nasir-ud-Din (PLD 1993 Peshawar 127). As the suit has been admittedly filed within 6 years from the latest Jamabandi, therefore, the same is within time.”

9. Both the courts below have properly appreciated the entire evidence available on the record as well as the revenue record and have reached to a right conclusion by decreeing the suit of the respondents/plaintiffs. Learned counsel for the petitioners/defendants failed to point out any illegality or irregularity in the impugned judgments, which may warrant interference of this court in the concurrent findings of facts recorded by two Courts below. Consequently, the instant petition is dismissed.

Announced,
06.05.2016.

JUDGE