THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

JUSTICE SHAHID BILAL HASSAN
JUSTICE MUHAMMAD SHAFI SIDDIQUI

C.P.L.A. No.422 of 2025 a/w C.M.A. No.885 of 2025

[Against the judgement dated 16.12.2024 passed by the Peshawar High Court, Peshawar in C.R. No.627-P of 2024 & stay application]

Kifayat Ullah and others

...Petitioner(s)

Versus

Kiramat Ullah and others

...Respondent(s)

For the Petitioner(s): **:** Mr. Mudassar Khalid Abbasi, ASC.

For the Respondent(s): **:** Barrister Kamran Qaiser, ASC.
(via video link Peshawar)

Date of Hearing **:** 27.10.2026

JUDGMENT

SHAHID BILAL HASSAN, J- Through the instant petition filed under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners call in question the judgment dated 16.12.2024 passed by the learned Peshawar High Court, whereby Civil Revision No.627-P of 2024 was allowed, the orders passed by the learned trial Court and the learned appellate Court, rejecting the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 ("**C.P.C.**"), were set aside, and the matter was remanded to the learned trial Court for decision on merits after recording evidence of the parties.

2. Facts, in precision, are as such that the respondents/ plaintiffs instituted a suit seeking cancellation of Mutation No.50 dated 17.11.1931, attested in favour of Mukaram Khan,

predecessor-in-interest of defendants Nos.1 to 9, and Mst. Taja. The respondents/plaintiffs asserted their entitlement to inherit the property in dispute and challenged the impugned mutation on the grounds relating to their inheritance rights. The petitioners being defendants filed their written statement, whereafter the learned trial Court framed issues. During the pendency of the suit, the petitioners/defendants moved an application under Order VII Rule 11, C.P.C., seeking rejection of the plaint. The application was allowed by the learned trial Court vide order and decree dated 27.09.2023 and plaint was rejected. The appeal preferred against the said order was dismissed by the learned appellate Court vide judgment and decree dated 03.06.2024. The respondents/plaintiffs, consequently, approached the High Court through a civil revision, which was allowed vide impugned judgment and case was remanded to the trial Court for decision afresh after recording pro & contra evidence of the parties. Hence, the instant petition.

3. Learned counsel for the petitioners/defendants contends that the subordinate Courts rightly rejected the plaint and that the claim raised by the respondents/plaintiffs, founded upon a mutation dating back to 1931, could not be entertained after such an extraordinary lapse of time. It is argued that the learned High Court erred in interfering with the concurrent findings of the subordinate Courts and in directing the trial Court to proceed with the suit.

4. Naysaying the above submissions, learned counsel for the respondents/plaintiffs maintain that the claim of the respondents/ plaintiffs concerns the determination and enforcement of inheritance rights, which cannot be adjudicated without examining the pleadings and recording of evidence. Learned counsel supports the impugned judgment as being in accordance with law.

5. We have heard learned counsel for the parties and have examined the available record with their assistance.

6. The controversy requiring determination is whether the plaint could lawfully be rejected under Order VII Rule 11, C.P.C., when the claim, as presented, raises questions concerning entitlement to inheritance and the validity and effect of the mutation challenged by

the respondents/plaintiffs, the determination of which may require examination of the relevant facts and evidence.

7. Order VII Rule 11, C.P.C., provides a statutory mechanism for rejection of a plaint in the circumstances specified therein. While exercising jurisdiction under this provision, the Court is required to examine the plaint and the material legally relevant to the particular ground invoked. The defence set up in the written statement cannot merely be treated as an established fact so as to defeat a claim which otherwise requires adjudication. Where the objection depends upon disputed facts, the nature of the right asserted, or circumstances which cannot be conclusively determined from the plaint itself, the Court must be cautious not to convert an application for rejection of the plaint into a premature determination of the suit.

It is equally important to observe that the mere framing of issues does not, by itself, extinguish the jurisdiction of a Court to consider an application under Order VII Rule 11, C.P.C. The legality of rejection must be assessed with reference to the statutory requirements and the pleadings in the particular case. Nevertheless, where the controversy has progressed to the stage of framing issues and the objection raised substantially overlaps with matters requiring adjudication upon evidence, the Court must determine whether the statutory conditions for rejection are actually satisfied, rather than treating the defence as proved merely because it has been pleaded.

8. In the present case, the respondents/plaintiffs have asserted a right to inherit the property in dispute and have challenged a mutation which, according to their stance, adversely affects their entitlement. The question whether the respondents are entitled to inherit, what rights devolved upon the relevant heirs, and what legal effect is to be attributed to the impugned mutation, cannot be conclusively determined merely by referring to the oldness of the revenue entry. The legal effect of the mutation, the nature of the rights asserted, and the objections available to the defendants must be examined in the light of the pleadings and the applicable law.

These matters cannot be pre-empted by assuming, at the threshold, that the lapse of time necessarily extinguished the claim.

In this regard, the principle enunciated by this Court in *Faqir Ahmed Khan (Deceased) through L.Rs. v. Riaz Ahmad and others* **(2020 SCMR 346)** is relevant. This Court held, in substance, that an heir's right to claim inheritance does not dissolve upon his or her death; rather, the entitlement devolves upon the heir's own legal representatives. Where a predecessor was entitled to a share in an estate under Muslim Personal Law but died without receiving or claiming that share, the failure to assert the right during the predecessor's lifetime does not, by itself, extinguish the entitlement transmitted to the successors.

9. The principle is founded upon the nature of succession under Muslim Personal Law. Inheritance devolves upon the death of the predecessor-in-interest, and the rights thereby acquired are not dependent upon the personal assertion of the claim by the heir during his or her lifetime. Accordingly, where the plaintiffs claim through an earlier heir, the mere circumstance that the predecessor did not obtain possession of, or separately institute proceedings for, the claimed share during his or her lifetime cannot, without examination of the relevant facts and law, furnish a conclusive basis for rejecting the plaint.

10. The same underlying principle finds support in the discussion of inheritance rights in C.P.L.A. No.1103/L/2016 (**2026 SCP 211**), wherein this Court reiterated that inheritance rights vest upon the death of the predecessor-in-interest and that revenue entries do not, by themselves, create or extinguish proprietary rights. The legal effect of a mutation must be considered in accordance with the nature of the transaction and the rights asserted by the parties. These principles reinforce the necessity of examining the actual controversy rather than treating the mere existence or age of a revenue entry as conclusive of title.

11. It must, however, be clarified that the aforesaid authorities do not lay down that every claim concerning inheritance is immune from limitation or that a plaint relating to an old mutation can never

be rejected under Order VII Rule 11, C.P.C. The applicability of limitation depends upon the nature of the relief claimed, the facts pleaded, the accrual of the relevant cause of action and the statutory provisions governing the claim. Likewise, the mere description of a claim as one concerning inheritance does not dispense with the requirement to establish the asserted entitlement in accordance with law. The question before us is narrower: whether the plaint in the present case was liable to be rejected at the threshold without determination of the disputed matters identified in the impugned judgment? The learned High Court found that the controversy concerning inheritance required the recording of evidence and that the plaint could not properly be rejected on grounds which remained to be examined in the suit. On perusing the material presently before us, no sufficient ground has been demonstrated to hold that this conclusion suffers from such legal infirmity as would warrant interference by this Court. The objections relating to the oldness of the mutation and the maintainability of the claim may be considered by the learned trial Court in accordance with law, to the extent permissible on the pleadings and evidence. They cannot, however, be treated as conclusively established merely because the mutation was attested in 1931.

12. We are, therefore, of the considered view that the learned High Court was justified in setting aside the orders rejecting the plaint and remanding the matter to the learned trial Court for adjudication on merits. The direction to record evidence and decide the controversy in accordance with law does not determine the respondents' entitlement to inheritance, nor does it foreclose any legally available defence of the petitioners. All such questions remain open for determination by the learned trial Court without being influenced by any observation herein that may be construed as expressing an opinion on the ultimate merits of the suit.

13. For the foregoing reasons, the instant petition is dismissed and leave to appeal is refused. The impugned judgment dated 16.12.2024 passed by the Peshawar High Court in Civil Revision No. 627-P of 2024 is maintained. The learned trial Court shall proceed

with the suit in accordance with law, afford the parties opportunity to lead their respective evidence, and decide the matter on its merits. Since this is an old case, we are sanguine that the learned Trial Court shall endeavour to decide the suit expeditiously, preferably within a period of six (06) months from the date on which the parties first appear before it pursuant to this order. The learned District Judge concerned shall ensure that the record is transmitted to the learned trial Court forthwith and shall fix the matter before the appropriate Court. The parties shall appear before the learned District Judge concerned on 16.11.2026, without awaiting any further notice.

14. The reasons recorded hereinabove constitute the basis of our short order dated 27.10.2026.

CMA No.885 of 2025

15. This petition is disposed of as having become infructuous, as the main case has been decided.

JUDGE

JUDGE

Islamabad,
Approved for Reporting
M.A.Hassan