

THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. JUSTICE MUHAMMAD ALI MAZHAR
Mr. JUSTICE IRFAN SAADAT KHAN
Mr. JUSTICE SHAHID BILAL HASSAN

C.P.L.A. No.1157 of 2021

[Against the judgement dated 22.02.2021 passed by the Peshawar High Court, Abbottabad Bench, in C.R. No. 31-A/2013]

Barkat Khan and others

...Petitioner(s)

Versus

Banaras Khan and others

...Respondent(s)

For the Petitioner(s) : Mr. Agha Muhammad Ali Khan, ASC.

For the Respondent(s) : Mr. Khurram Ghias Khan, ASC.
Mr. Sajjad Ahmad Abbasi, ASC.
Ms. Afshean Rehman, Assistant
Commissioner Mardan

Date of Hearing : 16.09.2026

J U D G E M E N T

SHAHID BILAL HASSAN, J- Brief facts germane to the filing of the instant petition are as such that the respondents instituted a suit for declaration and mandatory injunction on 14.12.2007, claiming, inter alia, to be the legal heirs of Muhammad Ayub Khan son of Arsalah Khan. The petitioners were subsequently impleaded as defendants Nos.5 to 10 pursuant to an application moved on 15.03.2008, and the plaint was amended accordingly. It was the case of the respondents that Muhammad Ayub Khan had died on 10.10.2006 and that the remaining pro forma defendants were his legal heirs.

The petitioners, in their written statement, contested the respondents' claim of heirship and pleaded, inter alia, that the plaintiffs and pro forma defendants were not the legal heirs of

Muhammad Ayub Khan, but were in fact descendants of one Faris Khan son of Haibat Khan. It was further pleaded that Faris Khan had represented himself as Muhammad Ayub Khan and that proceedings had also been initiated in relation to the alleged impersonation.

The learned Trial Court framed ten issues and, after recording the evidence of the parties, dismissed the suit vide judgment and decree dated 13.07.2011. The respondents preferred an appeal which was allowed vide judgment and decree dated 11.12.2012.

The petitioners thereafter invoked the revisional jurisdiction of the High Court through Civil Revision No.31-A of 2013 which was dismissed, whereafter the petitioners have approached this Court through the present petition for leave to appeal.

2. Learned counsel for the petitioners contended that the learned Trial Court, after framing the necessary issues and recording evidence of the parties, had rightly dismissed the suit, whereas the learned Appellate Court reversed the said judgment without properly appreciating the evidence on record. He particularly stressed that a DNA test had also been conducted for the purpose of determining the parentage of the petitioners, but the result thereof did not support their asserted parentage, which circumstance, according to the learned counsel, had been inadequately considered by the Courts below. He further submitted that the findings recorded by the learned Trial Court and the learned Appellate Court were at variance and, therefore, the learned High Court was required to examine the evidence in order to determine which of the competing findings was supported by the record. He maintained that the respondents had failed to establish their asserted status as the legal heirs of Muhammad Ayub Khan and that the material evidence bearing upon the identity and relationship of the parties had not been properly appreciated. Learned counsel accordingly sought that the impugned judgment of the High Court be set aside and the judgment and decree of the learned Trial Court be restored.

3. Conversely, learned counsel for the respondents supported the impugned judgment and submitted that the learned Appellate Court had duly considered the evidence and had rightly reversed the judgment of the learned Trial Court. He contended that the respondents had sufficiently established their claim and legal status through the evidence available on record and that the petitioners had failed to demonstrate any misreading or non-reading of material evidence warranting interference by this Court. He maintained that the impugned judgment did not suffer from any illegality or jurisdictional defect and that no ground had been made out for interference in the present proceedings. Learned counsel accordingly prayed for dismissal of the petition.

4. In view of the rival submissions and the material available on record, the following questions arise for determination: **(i)** whether the DNA test relied upon by the petitioners was conclusive for determining their parentage, having regard to the nature of the genetic comparison undertaken; **(ii)** whether, notwithstanding the result of the DNA test, the petitioners succeeded in establishing their asserted claim through the oral and documentary evidence brought on record; and **(iii)** whether, in view of the divergent findings recorded by the learned Trial Court and the learned Appellate Court, the learned High Court properly examined and thrashed out the evidence and assigned adequate reasons for preferring one set of findings over the other.

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

6. The controversy essentially concerns the parentage and consequent status of the parties as legal heirs of Muhammad Ayub Khan. The learned Trial Court, after recording the evidence, dismissed the suit, whereas the learned Appellate Court reversed the said judgment and decree. The petitioners thereafter invoked the revisional jurisdiction of the High Court. Since the findings of the two Courts below were at variance, it was incumbent upon the

learned High Court to examine the evidentiary basis of the competing conclusions and determine whether the finding recorded by the learned Appellate Court was supported by the evidence on record and by cogent reasons. This is consistent with the settled principle that where the findings of the Courts below are divergent, the High Court may and, where necessary, must compare their comparative merits in the light of the evidence and the reasons upon which they respectively proceeded. Reference may be made to *Madan Gopal and others v. Maran Bepari and others* (PLD 1969 SC 617), *Abbas Ali Shah and others v. Ghulam Ali and another* (2004 SCMR 1342) and *Karim Bakhsh through L.Rs. and others v. Jindwadda Shah and others* (2005 SCMR 1518).

7. The first question, therefore, is whether the DNA test relied upon by the petitioners furnishes conclusive proof of their asserted parentage. The answer must be considered in the context in which the test was undertaken. The scientific value of genetic testing depends upon the persons whose genetic profiles are available for comparison and the precise relationship which the test is designed to establish. A direct parentage examination involves comparison between the child and the putative parent. Where the putative parent is unavailable and the comparison is instead made with a collateral relative, the exercise is one of indirect kinship analysis and does not carry the same evidentiary significance as a direct parent-child comparison. Scientific literature recognizes that first-order relatives, particularly parents and full siblings, are the most informative reference relatives, whereas distant relatives may provide substantially less information when only autosomal markers are used. A study evaluating modern multiplex STR systems likewise found that, although additional loci improve the discrimination of kinship relationships, such systems were less effectively extended to the inference of first-cousin relationships than to parent-child, full-sibling and second-degree relationships¹.

¹ Tomonori Tamura et al., "*Evaluation of advanced multiplex short tandem repeat systems in pairwise kinship analysis*," 17 Legal Medicine 320-325 (2015).

Thus, a DNA comparison with a cousin or other collateral relative, in the absence of a genetic sample from the alleged parent, cannot simply be equated with a direct determination of parentage. Its evidentiary value is statistical and dependent upon the particular pedigree hypotheses, genetic markers and likelihood ratio generated by the test.

8. The foregoing distinction is also consistent with the jurisprudence of this Court. In Mst. Laila Qayyum v. Fawad Qayyum and others (PLD 2019 SC 449), the alleged father, Abdul Qayum, had died, and this Court specifically observed that the proposed DNA testing of Laila, Fawad and the siblings would "neither confirm nor negate Laila's paternity", since the DNA of Abdul Qayum, whose paternity was itself the foundation of Fawad's claim, was not available. The Court observed that his DNA could be accessed only if his remains were disinterred. The principle is of direct relevance here: where the very person whose biological parentage is in issue has not been genetically compared, a comparison with collateral relatives cannot, without more, be treated as equivalent to a direct parent-child examination.

9. The same caution has consistently informed the approach of the High Courts. In Malik Muhammad Rafique v. Mst. Tanveer Jahan and another (PLD 2015 Islamabad 30), the Islamabad High Court, while dealing with a challenge to the paternity and consequent heirship of a person in succession proceedings, held that DNA testing could not be ordered as a matter of routine and that a strong prima facie case, supported by sufficient material, was required before the Court could exercise its power in a manner affecting personal liberty. The Court further cautioned against permitting DNA proceedings to become a means of undertaking a fishing or roving inquiry into paternity. Likewise, in Mst. Rubina Kausar v. Additional Sessions Judge and others (PLD 2017 Lahore 604),

Jianye Ge et al., "Choosing relatives for DNA identification of missing persons", Journal of Forensic Sciences 1213 (2011).

where the alleged father was deceased and DNA testing was sought in the context of an inheritance dispute, the Lahore High Court emphasized that such testing should not be resorted to routinely where the question of paternity could be addressed through the oral and documentary evidence already available. The Sindh High Court has adopted the same cautious approach in Mrs. Sardar Begum Farooqui v. Dr. Azhar Masood Ahmed Farooqui (PLD 2022 Sindh 565), where the request for DNA testing was considered in light of the existing evidence and the principles enunciated by this Court. Thus, the approach is not peculiar to the present case but accords with the treatment of DNA-based challenges to paternity in inheritance disputes by the superior Courts.

10. More recently, in Muhammad Nawaz v. Additional District and Sessions Judge and others (PLD 2023 SC 461), this Court reiterated the statutory significance of Article 128 of the Qanun-e-Shahadat Order, 1984, holding that where its conditions are fulfilled, the fact of birth during the continuance of a valid marriage constitutes conclusive proof of legitimacy and that “no evidence, including the evidence of DNA test, can be accepted to negate” the statutory declaration. The significance of the principle for present purposes is that DNA evidence does not operate in a legal vacuum; its evidentiary value must be considered alongside the applicable rules of evidence and the other material available on record.

11. Comparative jurisprudence likewise illustrates the distinction between direct parentage testing and indirect kinship analysis. Courts in the United States have, in appropriate circumstances, permitted genetic testing of relatives of a deceased putative father where direct testing was unavailable. Thus, in M.A. v. Estate of A.C., 643 A.2d 1047 (N.J. Super. Ct. 1993), testing of collateral family members was considered as a means of determining the biological relationship to a deceased putative father. Similarly, in Matter of Estate of Sandler, 160 Misc. 2d 955, 612 N.Y.S.2d 756 (Sur. Ct. N.Y. County 1994), genetic testing involving the alleged child's paternal grandparents was considered in determining the

deceased's paternity. More recently, in **Matter of McGuire, 240 A.D.3d 1397 (N.Y. App. Div. 2025)**, the New York Appellate Division upheld an order permitting DNA testing of a sibling of the deceased for the limited purpose of determining biological paternity. These authorities are significant not because they establish that collateral-relative testing is invariably inconclusive, but because they recognize that such testing is an indirect means of establishing biological relationship and its evidentiary force depends upon the nature and degree of the relationship tested, the methodology employed and the circumstances of the particular case.

12. The distinction becomes particularly important where the relative tested is more remote. In **re Estate of James Sheperd Smith, No. E2012-00995-COA-R3-CV (Tenn. Ct. App. Feb. 15, 2013)**, the genetic analysis between the claimant and a first cousin was reported as "inconclusive as to biological relationship". The decision does not establish that every first-cousin comparison is necessarily inconclusive; rather, it illustrates the limitations inherent in drawing an inference of parentage from a more remote collateral relationship. Scientific research similarly indicates that first-order relatives, particularly parents and full siblings, are the more informative reference relatives for kinship identification, while more distant relatives may provide less information when autosomal markers alone are used. A study of advanced multiplex STR systems found that, although additional loci improved discrimination, the systems were less effective when extended to the inference of first-cousin relationships than in parent-child, full-sibling and second-degree relationships.

13. We now turn to the evidence produced by the respondents. The record shows that they examined six witnesses. PW-1, a Record Clerk from NADRA, produced the registration record pertaining to Muhammad Ayub and exhibited his CNIC as Ex.PW-1/1. PW-2, Banaras Khan, produced the Fard Jamabandi, the death certificate relating to Muhammad Ayub, photographs of the graves of Muhammad Ayub and Amir Khan, and the Iqrar Nama pertaining to

the marriages of Muhammad Ayub, which documents were exhibited as Ex.PW-2/1 to Ex.PW-2/3. PW-3 Arshad Gul, PW-4 Adalat Khan and PW-5 Aurangzeb supported the evidence concerning Muhammad Ayub's marriages and identity, while PW-6, the Secretary Union Council, Dhamtaur, produced the relevant official record concerning his death, including Ex.PW-6/1, recording the date of death as 10.10.2006. The evidence, therefore, was not confined to an assertion of parentage by the respondents themselves; it comprised official NADRA and Union Council records, documentary material concerning the deceased, and oral evidence from persons who deposed regarding his identity, family relationships and marriages.

14. Significantly, the learned High Court considered this evidentiary material in detail. It noted that the documents produced by the respondents consistently recorded the name of Muhammad Ayub's father as Arsala Khan. It also considered the photographs of the graves produced by PW-2, on which the names of the deceased were stated to appear, and took into account the evidence of PW-3, PW-4 and PW-5 concerning Muhammad Ayub's marriages and family identity. The learned High Court further observed that the petitioners had not cross-examined PW-2, PW-3, PW-4 and PW-5 on these particular aspects and had not raised objection to the exhibition of the relevant documents. These were matters arising from the record itself and were relevant to the assessment of the evidentiary weight of the respondents' case.

15. In these circumstances, the contention that the respondents had established their claim solely through an assertion unsupported by evidence cannot be accepted. The question was one of appreciation of the entire body of evidence. The official record produced through the NADRA and Union Council officials, the documentary material brought through PW-2, and the corroborative oral testimony of PW-3 to PW-5 constituted material which the Courts were entitled to evaluate in determining the identity and parentage of Muhammad Ayub. The fact that the petitioners relied

upon a DNA test which did not involve a direct comparison with the alleged parent did not, by itself, render the remaining evidence incapable of consideration or displace the probative value of the documentary and oral evidence duly brought on record.

16. We also find no substance in the submission that the learned High Court was precluded from examining the evidence merely because it was exercising revisional jurisdiction. The prohibition against reappraisal of evidence in second appeal or revision is principally directed towards cases where the Courts below have recorded concurrent findings of fact on a proper appreciation of the evidence. The present case stood on a different footing: the learned Trial Court dismissed the suit, whereas the learned Appellate Court reversed that conclusion. The findings were thus divergent. In such circumstances, the law required the High Court to examine the competing conclusions and the evidentiary foundation upon which they rested. In *Karim Bakhsh*, this Court expressly held that where the Courts below were at variance, the High Court was justified in appreciating the evidence to determine which decision accorded with the evidence on record. Likewise, in *Abbas Ali Shah*, this Court held that where findings are at variance, their comparative merits are to be assessed in the light of the facts and the reasons supporting the respective findings.

17. On examination of the impugned judgment, we find that the learned High Court did precisely what the law required. It did not merely advert to the conclusion of the learned Appellate Court or mechanically affirm the same, rather, it examined the documentary record, considered the testimony of the witnesses, adverted to the official record concerning Muhammad Ayub, noticed the entries recording Arsala Khan as his father, considered the evidence regarding his marriages and death, and also took note of the failure of the petitioners to challenge material portions of that evidence in cross-examination. It further considered the legal significance of the DNA issue in the context of the other evidence. The exercise undertaken by the learned High Court was therefore a substantive

examination of the competing evidentiary positions and not a mere affirmation of the judgment of the learned Appellate Court.

18. The expression “conclusive” cannot, in the circumstances of the present case, be attached to the DNA comparison relied upon by the petitioners merely because the report is described as a DNA test. Genetics does not convert every kinship comparison into a direct parentage determination. Where the alleged parent is not himself genetically tested and the comparison is made through collateral relatives, the result constitutes an indirect statistical assessment of kinship. The scientific literature itself recognizes the greater information content of direct and first-order relatives and the diminished utility of more distant relatives in certain autosomal analyses. The legal position stated by this Court in *Laila Qayyum* is consistent with that distinction: where the alleged father's own DNA is unavailable, testing the siblings could not, in the circumstances of that case, confirm or negate the daughter's paternity.

19. Consequently, the DNA evidence, considered in its proper context, did not furnish a conclusive answer to the question of parentage so as to render the remaining evidence irrelevant. The respondents' case had to be, and was, examined on the totality of the material brought before the Court. The learned High Court, having undertaken that exercise at considerable length and having addressed the principal pieces of oral and documentary evidence as well as the DNA controversy, cannot be said to have failed in its obligation to examine the record merely because its ultimate conclusion differed from that of the learned Trial Court.

20. We are mindful that a first appellate finding which is at variance with the finding of the Trial Court does not possess the same sanctity as a concurrent finding. Nevertheless, such finding ordinarily prevails where it is substantiated by the evidence and supported by logical reasoning. Where the High Court examines the competing findings and finds the conclusion of the Appellate Court to be supported by the record, interference in further jurisdiction is

not warranted merely because another view of the evidence may be possible. The governing consideration remains whether the impugned conclusion suffers from misreading or non-reading of material evidence, perversity, arbitrariness, or a material legal infirmity.

21. In the present case, we have independently examined the material to which our attention was drawn. The evidence produced by the respondents, particularly the official NADRA and Union Council record and the oral and documentary evidence referred to above, provided a substantive evidentiary basis for their claim. The DNA comparison relied upon by the petitioners, not being a direct comparison with the alleged parent, could not by itself conclusively determine the question of parentage. The learned High Court, faced with divergent findings of the two Courts below, undertook the requisite comparative examination of the evidence and recorded reasons for its conclusion. No misreading or non-reading of any material piece of evidence, nor any other error of law or material irregularity warranting interference, has been demonstrated before us.

22. For the foregoing reasons, we find no merit in the petition. The impugned judgment does not call for interference. The petition is, accordingly, dismissed and leave to appeal is refused.

Islamabad, the
16th of September, 2026
Approved for Reporting
M.A. Hassan