

SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Justice Musarrat Hilali
Justice Shakeel Ahmad

Civil Appeal No. 19-P of 2015 out of CPLA No. 192-P of 2009

(Against the judgment dated 23.02.2009, passed by the Peshawar High Court, Peshawar in CR No. 610/2001)

Ghani Rehman (deceased) & others ...Appellant(s)

Versus

Masal Khan (deceased) & others ...Respondent(s)

For the Appellant(s) : Mr. Abdul Sattar Khan, ASC.

For respondent No.1/LRs : Mian Saadullah Jandoli, AOR

Other respondents : Ex.parte

Date of Hearing : 23.06.2026

ORDER

Shakeel Ahmad, J.- This appeal, with the leave of the Court, challenges the validity of the judgment dated 23.02.2009 (*"impugned judgment"*), passed by the Peshawar High Court, Peshawar (*"High Court"*), whereby the Civil Revision Petition instituted by the appellants and proforma respondents No. 2 to 25 (*"appellants-defendants"*) against respondent No.1, Masal Khan (*"respondent-plaintiff"*), was dismissed.

2. Briefly stated, the respondent-plaintiff instituted a suit for declaration of ownership in respect of the land fully described in the headnote of the plaint. It was pleaded that he is the legal heir and successor-in-interest of Mir Rehman, the original owner of the suit property, who, during his lifetime, had mortgaged the property in favour of one Faizullah Khan for a sum of Rs.100/-. It was further averred that despite the lapse of time, the appellants-defendants continued to remain in possession of the mortgaged property. Claiming entitlement to redeem the mortgage upon payment of the mortgage amount of Rs.100/-, the respondent-plaintiff sought possession of the property through redemption. He also prayed for a decree of permanent injunction restraining the appellants-defendants from interfering with his rights. Upon service of summons, the appellants-defendants entered an appearance and contested the suit. After a full-fledged trial, the trial Court, vide judgment and decree dated 28.05.1999, dismissed

the suit. On appeal, the Appellate Court, through judgment and decree dated 06.12.2001, allowed the appeal and decreed the suit. Aggrieved thereby, the appellants-defendants preferred Civil Revision Petition before the High Court, which was dismissed through the impugned judgment. Hence, the present appeal.

3. Heard and record perused.

4. On the facts narrated above, the judgment and decree passed by the Appellate Court in favour of the respondent-plaintiff, as affirmed by the High Court, suffer from no legal infirmity. The controversy is not confined to the correctness of the revenue entries; rather, it turns upon whether the appellants-defendants successfully established the alleged transfer of title by Mir Rehman, the respondent-plaintiff's predecessor-in-interest, through the sale deed dated 25.07.1932 (Ex.DW-1/2) and the consequential Mutation No. 63, sanctioned on 26.07.1936 (Ex.DW-1/3). The burden squarely rested upon the appellants-defendants to prove these documents through cogent, reliable and convincing evidence. Although the sale deed is an unregistered document relating to agricultural land measuring approximately six kanals and is more than thirty years old, thereby attracting the presumption available under the law with respect to its execution and the signatures or thumb impressions appearing thereon, such presumption is neither absolute nor conclusive. It is discretionary in nature and remains subject to proof in the light of the surrounding circumstances. Mere production of an old document does not, by itself, establish the underlying transaction where the attending circumstances give rise to serious doubt regarding its authenticity.

5. In the present case, the alleged consideration mentioned in the sale deed dated 25.07.1932 is Rs.90/- for approximately six kanals of agricultural land purportedly sold to the predecessor-in-interest of the appellants-defendants. However, Mutation No.63, sanctioned on 26.07.1936, records the consideration as Rs.100/- and does not even specifically refer to the said sale deed. No satisfactory explanation has been offered for this material discrepancy. Since the mutation is alleged to have been sanctioned on the basis of the very same transaction, the inconsistency strikes at the root of the appellants-defendants' case. Equally significant is the fact that the sale deed identifies the

property merely by its boundaries without mentioning the corresponding *khasra* numbers. In the absence of any convincing evidence establishing that the land described therein is identical to the suit property, the identity of the subject matter of the alleged sale remains uncertain. Such ambiguity creates a serious doubt regarding the transaction itself. Learned counsel for the appellants-defendants contended that, since the document was executed on 25.07.1932, prior to the promulgation of the Qanun-e-Shahadat Order, 1984, the requirement contained in Article 79 thereof regarding proof through attesting witnesses was inapplicable. The contention is misconceived. The document was required to be proved in accordance with the law applicable at the time of its execution, namely Section 68 of the Evidence Act, 1872, which equally mandated the examination of at least one attesting witness, if alive and capable of giving evidence. In the absence of an available attesting witness, it was incumbent upon the appellants-defendants to establish that the attesting witnesses had died or could not be found and thereafter prove their attestation and the executant's signature or thumb impression in the manner prescribed by law. The sale deed bears the attestation of Ismail, son of Amir Khan, Hameed Ullah, son of Mehmood Ullah and Khano, son of Fazal. Yet, neither any attesting witness nor any legal heir or other competent witness was produced to identify their signatures or thumb impressions. Nor was any evidence led to establish that the attesting witnesses were unavailable.

6. The revenue record further weakens the appellants-defendants' claim. The predecessor-in-interest of the appellants-defendants appears only in the column relating to cultivation (*lagan*), whereas the respondent-plaintiff's predecessor-in-interest consistently continued to be recorded as the owner. Moreover, Mutation No.63 does not unequivocally record a completed transfer of proprietary rights but rather reflects cultivation arrangements. An entry in the cultivation column is consistent with permissive possession or tenancy and, by itself, does not confer ownership or rebut the continuous presumption arising from the entries in the record of rights. In the absence of reliable and independent evidence establishing that the transaction of 25.07.1932 constituted an absolute sale resulting in the transfer of proprietary rights, the longstanding ownership entries in favour of the

respondent-plaintiff's predecessor-in-interest must prevail over the cultivation entries relied upon by the appellants-defendants.

7. Additionally, the revenue record reflects that the respondent-plaintiff mortgaged the suit property in favour of the Agricultural Development Bank through Mutation No. 370, sanctioned on 15.09.1991, and subsequently redeemed the mortgage through Mutation No. 383, sanctioned on 19.12.1995. This circumstance assumes considerable significance. Had the suit property in fact been sold by the respondent-plaintiff's predecessor-in-interest under the alleged sale deed dated 25.07.1932, he would have ceased to have any proprietary interest therein, and no title could thereafter have devolved upon his legal heirs. Consequently, the respondent-plaintiff could not have validly created a mortgage over the property as the owner. Equally, the Agricultural Development Bank would ordinarily have required satisfactory proof of ownership before accepting the property as security. The subsequent conduct of the parties is a relevant circumstance under the law of evidence, and the continued assertion and recognition of ownership in favour of the respondent-plaintiff and his predecessors substantially undermine the appellants-defendants' plea that the property had already been sold in 1932.

8. It is a settled principle that mutation entries neither create nor extinguish title; they are maintained primarily for fiscal purposes. Consequently, even if the names of the appellants-defendants or their predecessors-in-interest appeared in the revenue record, such entries, standing alone, could not confer ownership unless the underlying transaction was independently proved. Where the very foundation of the alleged transaction is doubtful, the evidentiary value of the corresponding mutation is considerably diminished. In the present case, Mutation No. 63 suffers from serious infirmities. It does not record any admission by the alleged vendor acknowledging the sale before the revenue authorities. Such an omission materially weakens the mutation because a mutation based upon sale ordinarily proceeds upon the transferor's acknowledgement of the transaction before the competent revenue officer. The absence of any such acknowledgement casts serious doubt upon the regularity and authenticity of the mutation proceedings. Furthermore, in

mutation proceedings, the record ordinarily consists of two parts, namely, the *pert patwar* and the *pert sarkar*, the latter being the record maintained by the revenue authorities and constituting the best evidence of the proceedings. Despite its obvious importance, the appellants-defendants produced only the *pert patwar* while withholding the *pert sarkar*, without offering any explanation for its non-production. Had the official record been produced, it could have established whether the mutation genuinely reflected a completed sale, the precise nature of the transaction, and whether it related to the transfer of proprietary rights or merely cultivation or crop rights. In these circumstances, the Court is justified in drawing an adverse inference under Article 129(g) of the Qanun-e-Shahadat Order, 1984, that the withheld evidence, if produced, would have been unfavourable to the appellants-defendants. The deliberate non-production of the primary official record, coupled with the other deficiencies attending the alleged transaction, further reinforces the conclusion that the appellants-defendants failed to establish a valid transfer of title.

9. The entry in column No.13 of Mutation No.63 gives rise to further doubt. It records "*sale of Kharif crop*" (*bila lagan*) for a consideration of Rs.100/-, including the land, without even referring to the mutation number. Rather than unequivocally recording the transfer of proprietary rights, the entry appears to relate primarily to the sale of crop rights. This ambiguity assumes particular significance when viewed alongside the doubtful nature of the alleged sale transaction, the inconsistency in consideration, and the non-production of the official revenue record. In these circumstances, such a doubtful mutation cannot be treated as proof of title.

10. Viewed cumulatively, the discrepancy between the consideration mentioned in the sale deed (Rs.90/-) and the mutation (Rs.100/-), the absence of *khasra* numbers in the sale deed, the failure to prove its due execution, the continued ownership entries in favour of the respondent-plaintiffs predecessor-in-interest, the subsequent mortgage and redemption of the property by the respondent-plaintiff, the absence of any acknowledgment by the alleged vendor in the mutation proceedings, the non-production of the *pert sarkar*, the ambiguous entry in column No.13 suggesting a sale of crop rights rather than

a transfer of ownership, and the settled principle that mutation entries do not by themselves confer title, unmistakably establish that the appellants-defendants failed to prove a valid transfer of ownership in favour of their predecessor. The learned Appellate Court and the High Court were, therefore, fully justified in decreeing the suit in favour of the respondent-plaintiff.

11. For the foregoing reasons, we find no illegality, material irregularity, misreading or non-reading of evidence, or jurisdictional defect in the concurrent judgments passed by the ^{two} Courts below, warranting interference by this Court. Consequently, this appeal is dismissed. There shall be no order as to costs.

Peshawar, the
23rd June, 2026
"Approved for reporting".
Zia/- Rameen Shahram LC