

Supreme Court: Old Sale Deed and Mutation Alone Cannot Prove Land Ownership

The Supreme Court held that a 30-year-old document receives only a discretionary presumption and cannot prove title where the transaction, land identity and official revenue record remain doubtful.

Judgment analysis | Published 2 September 2026 | Shahbaz Shah, Advocate High Court

Case: Ghani Rehman (deceased) and others v. Masal Khan (deceased) and others

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

Court and Bench: Supreme Court of Pakistan | Justice Musarrat Hilali and Justice Shakeel Ahmad

Decision: Appeal dismissed on 23 June 2026 | No order as to costs

What the Supreme Court decided

The Supreme Court of Pakistan has reaffirmed that a mutation entry does not create or extinguish title. A person who claims ownership through a sale must prove the underlying transaction through reliable evidence; producing an old deed and a corresponding revenue entry is not enough when the surrounding circumstances create serious doubt.

In Ghani Rehman (deceased) and others v. Masal Khan (deceased) and others, Civil Appeal No. 19-P of 2015 out of CPLA No. 192-P of 2009, a two-member Bench comprising Justice Musarrat Hilali and Justice Shakeel Ahmad dismissed the appeal on 23 June 2026. Justice Shakeel Ahmad authored the order.

The appellants relied on an unregistered sale deed dated 25 July 1932 and Mutation No. 63 sanctioned on 26 July 1936. The Court held that they had not proved a valid transfer of ownership. The appellate decree in favour of the plaintiff, already maintained by the Peshawar High Court, therefore remained intact.

How the dispute reached the Supreme Court

The plaintiff claimed through Mir Rehman, the recorded owner of the suit land. According to the plaint, Mir Rehman had mortgaged the property to Faizullah Khan for Rs 100. The plaintiff sought redemption, possession and a permanent injunction.

The defendants resisted the suit by asserting that Mir Rehman had already sold approximately six kanals of agricultural land to their predecessor through the 1932 deed and that Mutation No. 63 later reflected that sale.

The trial court dismissed the suit on 28 May 1999. The first appellate court reversed that decision on 6 December 2001 and decreed the claim. The Peshawar High Court dismissed the defendants' civil revision on 23 February 2009. The defendants then pursued the present civil appeal before the Supreme Court.

The Supreme Court treated the real controversy as one of title, not merely the correctness of individual revenue entries: had the defendants proved the alleged transfer by Mir Rehman?

The burden was on the party asserting the sale

The defendants' claim depended upon the 1932 deed and the 1936 mutation. The Court placed the burden squarely upon them to prove both documents and the transaction behind them through cogent, reliable and convincing evidence.

This is the central practical lesson of the judgment. A revenue record may show that an entry was made, but the entry cannot replace proof that the alleged vendor actually entered a valid transaction concerning the land in dispute.

The older the asserted transaction, the more tempting it is to treat age, possession and a long chain of entries as substitutes for proof. The judgment rejects that shortcut. Age may permit a presumption; it does not convert a doubtful transaction into an established sale.

A document more than 30 years old is not conclusive

The sale deed was more than 30 years old. The Court accepted that an old document can attract a legal presumption concerning its execution and the signatures or thumb impressions appearing on it.

But the presumption is discretionary, not absolute or conclusive. It remains subject to proof and must be evaluated against the surrounding circumstances. Mere production of the paper does not establish the transaction where the record itself gives rise to serious questions about authenticity, identity of the property or the nature of the alleged transfer.

This distinction matters in property litigation. The presumption assists a party with an evidentiary starting point; it does not shift the court's attention away from contradictions and missing primary evidence.

The deed and mutation recorded different consideration

The alleged deed stated a sale consideration of Rs 90 for approximately six kanals. Mutation No. 63, said to arise from the same transaction, recorded Rs 100 and did not specifically refer to the deed.

No satisfactory explanation was given for that discrepancy. Because the two documents were presented as parts of the same sale, the inconsistency went to the foundation of the defendants' case rather than to a minor or collateral detail.

The Court assessed the discrepancy together with the other defects. It did not hold that every difference in an old record automatically invalidates a transaction. The point was cumulative: the unexplained difference made an already doubtful claim less reliable.

The land described in the deed was not reliably identified

The deed described the property by boundaries but did not state the corresponding khasra numbers. The defendants did not produce convincing evidence connecting the land described in the deed with the land involved in the suit.

Without that link, the identity of the subject matter remained uncertain. Even a genuine document cannot establish title to a particular parcel unless the party relying upon it proves that the document relates to that parcel.

For counsel, this requires more than placing a deed and a present revenue extract on the record. The evidentiary chain should connect the historic description, khasra numbers, changes in settlement or consolidation, area, boundaries and present identity of the land.

The 1932 deed still had to be proved under the applicable evidence law

The defendants argued that Article 79 of the Qanun-e-Shahadat Order, 1984, requiring proof through attesting witnesses, could not apply to a document executed in 1932.

The Supreme Court rejected the argument as misconceived. The deed had to be proved under the law applicable when it was executed. Section 68 of the Evidence Act, 1872, likewise required examination of at least one attesting witness if a witness was alive and capable of giving evidence.

If no attesting witness was available, the defendants first had to establish that the witnesses had died or could not be found and then prove their attestation and the executant's signature or thumb impression in the manner prescribed by law.

The deed named three attesting witnesses: Ismail son of Amir Khan, Hameed Ullah son of Mehmood Ullah and Khano son of Fazal. No attesting witness, legal heir or other competent witness was produced to identify the relevant signatures or thumb impressions. Nor was evidence given to establish that the attesting witnesses were unavailable.

The decision therefore prevents an anachronistic objection from becoming a route around proof. The 1984 Order was not retrospectively imposed; the Court applied the corresponding requirement found in the evidence law governing the 1932 document.

Cultivation entries did not establish ownership

The revenue record showed the defendants' predecessor only in the cultivation column, described in the judgment as lagan. Mir Rehman, the plaintiff's predecessor, continued to be recorded as owner.

The Court held that an entry in the cultivation column is consistent with permissive possession or tenancy. Standing alone, it does not confer ownership and does not displace the continuing presumption arising from ownership entries in the record of rights.

Mutation No. 63 also failed to record unequivocally a completed transfer of proprietary rights. Column No. 13 referred to a sale of the Kharif crop, bila lagan, for Rs 100, including the land. Read in context, the entry appeared primarily connected with crop or cultivation rights and did not clearly establish an absolute sale of ownership.

Later mortgage and redemption supported the plaintiff's title

The subsequent conduct recorded in the revenue record was also material. The plaintiff mortgaged the suit property to the Agricultural Development Bank through Mutation No. 370 sanctioned on 15 September 1991 and redeemed it through Mutation No. 383 sanctioned on 19 December 1995.

If Mir Rehman had sold the property absolutely in 1932, no proprietary interest would have remained to pass to his heir, and the plaintiff could not later have mortgaged the land as owner. The Bank would also ordinarily have required satisfactory proof of ownership before accepting the property as security.

The Court treated this subsequent assertion and recognition of ownership as a relevant circumstance that substantially undermined the defendants' claim of a completed sale in 1932.

Why the mutation could not prove title

The Court restated the settled rule that mutations are maintained primarily for fiscal purposes. They neither create nor extinguish proprietary title.

Even if the defendants' names or their predecessors' names appeared in the revenue record, those entries could not confer ownership unless the transaction on which they depended was independently proved. When the alleged sale itself was doubtful, the evidentiary value of the mutation was correspondingly weak.

There was another serious omission. The mutation did not record an acknowledgement by the alleged vendor before the revenue authorities. A sale mutation would ordinarily proceed on the transferor's acknowledgement of the transaction before the competent revenue officer. Its absence cast doubt on the regularity and authenticity of the mutation proceedings.

Withholding the pert sarkar justified an adverse inference

The judgment explains that a mutation record ordinarily has two parts: the pert patwar and the pert sarkar. The pert sarkar is the record maintained by the revenue authorities and constituted the best evidence of the proceedings.

The defendants produced only the pert patwar and withheld the pert sarkar without explanation. The missing official record could have clarified whether the mutation genuinely reflected a completed sale, what rights were transferred and whether the transaction concerned ownership or only cultivation or crop rights.

The Court therefore drew an adverse inference under Article 129(g) of the Qanun-e-Shahadat Order, 1984: the withheld evidence, if produced, would have been unfavourable to the defendants.

This part of the ruling is especially important in revenue cases. A party should seek the complete official mutation file and should explain any genuine inability to produce it. Selective production of a weaker or unofficial counterpart can damage the case instead of strengthening it.

The Court considered the defects cumulatively

No single factor was treated in isolation. The Supreme Court relied on the combined effect of:

- the Rs 90 and Rs 100 consideration discrepancy;
- the absence of khasra numbers from the deed;
- failure to prove due execution through the legally required evidence;
- continuing ownership entries in favour of the plaintiff's predecessor;
- the plaintiff's later mortgage and redemption as owner;
- absence of the alleged vendor's acknowledgement in the mutation proceedings;
- non-production of the pert sarkar;
- the ambiguous crop-rights entry in column No. 13; and
- the rule that mutation entries do not independently confer title.

Together, these defects established that the defendants had not proved a valid transfer of ownership to their predecessor.

Final result

The Supreme Court found no illegality, material irregularity, misreading or non-reading of evidence, or jurisdictional defect in the concurrent judgments of the first appellate court and the Peshawar High Court.

The appeal was dismissed, with no order as to costs. The decree in favour of the plaintiff for redemption and possession therefore stood.

Practical guidance for land-title litigation

For a party relying on an old sale deed and mutation, the record should include:

- legally admissible proof of execution and attestation;
- evidence explaining why original witnesses are unavailable, where relevant;
- a reliable link between the historic property description and present khasra numbers;
- a consistent account of consideration, area and nature of rights transferred;

- the alleged vendor's acknowledgement before the revenue authority, if recorded;
- the complete mutation proceedings, including the pert sarkar;
- record-of-rights entries showing ownership rather than cultivation alone; and
- subsequent conduct consistent with the alleged transfer.

For the party challenging the mutation, counsel should separate three questions: whether the private transaction occurred, whether it concerned the suit land, and whether it transferred proprietary rights. A weakness in any one of those links may prevent the mutation from supporting title.

Limits of the ruling

The Supreme Court did not hold that every unregistered historic deed is invalid, that every old mutation is false, or that a boundary description can never identify land. It held that the defendants in this case failed to prove their asserted title when the record was assessed as a whole.

The ruling also does not make the presumption for an old document meaningless. It confirms that the presumption remains discretionary and rebuttable. Its practical weight depends on the document's custody, condition, contents, connection to the property and consistency with independent evidence.

The judgment should therefore be used for its precise propositions: mutation is not title; the underlying transaction must be proved; an old document is not conclusive; property identity matters; cultivation is not ownership; and withholding the best official record may justify an adverse inference.

Judgment record and downloads

The supplied six-page scanned copy has been combined into a single PDF without changing its substantive content. The case title, number, bench, hearing date, deed, mutation, evidentiary reasoning and final order were checked page by page against the supplied images.

This commentary is independent legal analysis for research and general information. Before relying on the decision in proceedings, counsel should verify the official Supreme Court copy, any later reported citation, the applicable evidence law and subsequent judicial treatment.

Primary source

Supreme Court of Pakistan, Ghani Rehman (deceased) and others v. Masal Khan (deceased) and others, Civil Appeal No. 19-P of 2015 out of CPLA No. 192-P of 2009, decided 23 June 2026 and approved for reporting. The supplied six-page scanned copy is available on the corresponding article page.

General legal information only. Verify the official judgment, applicable statutory text, reported citation and later judicial treatment before formal reliance.