

**SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Justice Jamal Khan Mandokhail  
Justice Irfan Saadat Khan

**Civil Petition No.97-Q of 2024**

Against the judgment dated 07.05.2024 passed by the High Court of Balochistan, Quetta in RFA No.(S)09/2017

Mst. Ameer Begum & others ...Petitioner(s)

***Versus***

Rahima Khatoon & others ...Respondent(s)

For the Petitioner(s) : Mr. Abid Mahmood, ASC

For the Respondents No.1 to13 : Mr. Ghulam Mustafa Buzdar, ASC  
(video-link. Quetta)

Date of Hearing : 13.05.2026

**JUDGMENT**

**Irfan Saadat Khan, J.-** This petition for leave to appeal is directed against the judgment passed by the High Court of Balochistan, Quetta, in RFA No.(S)09/2017 dated 07 May 2024, whereby the appeal filed by the present petitioners was dismissed and the judgment and decree of the Trial Court in Civil Suit No.133/2007 dated 11 November 2017 was upheld.

2. Briefly stated, the facts of the case are that the present respondents No. 1 and 2 (who were alive at the time of the institution of the suit) instituted a civil suit for declaration, cancellation of mutation entries, possession, mesne profits, and perpetual injunctions against the present petitioners and respondents No. 3 to 16. The claim of respondent No. 1 and respondent No. 2 was that they were the legal heirs of one Mitha Khan, who expired in 1938. He was survived by his daughter, namely Lal Khatoon, who in turn was survived by Mst. Ayesha Bibi. The present respondents No. 1 and 2 were the daughters and legal heirs of the said Mst. Ayesha Bibi. It was claimed by respondents No. 1 and 2 that late Mitha Khan was the owner of agricultural lands located in Deh

Chattan Pati, Tehsil Jhatpat, and Deh Shahwah and upon his death, the said land devolved upon his sole legal heir, Mst. Lal Khatoon, and upon her death, it devolved upon Mst. Ayesha Bibi and after the death of Mst. Ayesha Bibi, the said land should have naturally devolved upon her two real daughters, the present respondent No. 1 and respondent No. 2, respectively, Raheema Khatoon, wife of Imam Bakhsh, and late Karima Khatoon, wife of Abdul Khaliq. It is their claim that since Abdul Razzaq Khan, their late father, had contracted two marriages, he fraudulently transferred the said land into his own name. Thereafter, he illegally transferred the land in question to his son from his second wife, which ultimately devolved upon the legal heirs of Hafiz Aitbar Khan (the step-brother of respondent No. 1 and 2). The respondents No. 1 and 2 claimed their lawful shares from the petitioners, but when the petitioners refused to entertain or accept their legitimate claim, they filed the above-referred civil suit. The learned Trial Court, after framing issues and hearing all the parties at considerable length, vide judgment dated 11.11.2017, decreed the matter in favour of the plaintiffs (respondents herein). Being aggrieved with the said judgment, the petitioners filed an appeal under Section 96 of the Civil Procedure Code (CPC), 1908, before the High Court, which too, through a detailed judgment, upheld the order of the Trial Court. Thereafter, the petitioners filed the instant petition before this Court.

3. Mr. Abid Mehmood, learned ASC, appeared on behalf of the petitioners and argued that both the Courts below have failed to consider that previously, a Revision Petition bearing No. (F) 11/2010 relating to the same property was filed, which was decided in favour of the present petitioners. Hence, according to him, as per the principles of res judicata, the respondents were barred from agitating the same issue again. He contended that the orders of both the Courts below suffer from

this legal infirmity and thus, are liable to be set aside. He next stated that a partition agreement took place between the parties in 1968 on Holy Quran, which aspect has been ignored by the High Court. He further argued that both the Courts have overlooked the fact that Mst. Ayesha Bibi, during her lifetime, had given the said properties to Abdul Razzaq Khan; hence, the present petitioners are the legal and lawful owners of the disputed property, being the legal heirs of late Abdul Razzaq Khan.

4. The learned counsel next stated that it was incorrect on the part of the two Courts below to observe that the property described in the plaint exclusively belonged to late Mitha Khan, as according to him, Mitha Khan held only a portion in the said property, the description of which had already been mentioned in the facts placed before the High Court, which aspect also, according to him, has been completely ignored by the High Court. He further submitted that, as per the injunctions of Islam, only the legal heirs are entitled to have share in the property left by the deceased, and since the petitioners are the lawful heirs of Abdul Razzaq Khan hence they are entitled to claim ownership and possession of the property. He added that the mutation entries stand in their names, proving that they are the lawful owners, while the claim of respondents No. 1 and 2 is based on no evidence which renders it liable to be rejected. He concluded that the two Courts below, while passing the impugned orders have since failed to consider various fundamental and primary facts going to the roots of the case, hence both these orders are liable to be set aside.

5. Mr. Ghulam Mustafa Buzdar, learned ASC, appeared via video-link from Quetta on behalf of respondents No. 1 to 13, and vehemently refuted the arguments advanced by the learned counsel for the petitioners. He stated, foremost, that concurrent findings of fact stand

in his clients' favour. He next stated that the Abdul Razzaq Khan fraudulently transferred the said property into his own name and that of his brother, Wahid Bakhsh. He submitted that the two Courts below have rightly concluded that the actions of Abdul Razzaq Khan and Wahid Bakhsh were illegal and fraudulent, and therefore, rightly decreed the suit in favour of the respondents. He argued that the mutation entries are never considered absolute documents of title or ownership, as they are maintained solely for fiscal and revenue purposes. He stated that the purported agreement dated 30.10.1968, relied upon by the petitioners, was never legally proved by them; hence, no reliance could be placed upon it. He next stated that the rightful legal heirs of Mst. Ayesha Bibi have been deprived of their lawful shares in the ancestral property left by late Mitha Khan through the fraudulent acts of Abdul Razzaq Khan, in connivance with his brother Wahid Bakhsh. He maintained that such fraudulent actions ought to be struck down by this Court by upholding the concurrent orders and findings of the two Courts below. He added that it is a settled proposition of law that fraud vitiates even the most solemn proceedings.

6. The learned counsel further stressed that, in the instant matter, the properties of late Mitha Khan, ought to be legally devolved upon Mst. Ayesha Bibi, but were illegally mutated into the names of Abdul Razzaq Khan and Wahid Bakhsh through fraud and misrepresentation, hence, these mutation entries in the government records carry no legal sanctity or weight. He stated that the respondents have firmly established their entitlement to inheritance in the property left by the late Mitha Khan as per the West Pakistan Muslim Personal Law (Shariat) Application Act, 1962. He finally prayed that in view of these uncontroverted facts the petition may be dismissed with heavy cost.

7. We have heard both the learned counsel for the parties at considerable length and have perused the record with their able assistance.

8. The record clearly reveals that both the courts below have categorically observed, after examining the matter in great detail, reproducing the depositions of various plaintiffs' witnesses (PWs), and thoroughly discussing the evidence, that Abdul Razzaq Khan and Wahid Bakhsh (the sons of Haji Farid Khan) were not the legal heirs of the late Mitha Khan. His rightful legal heir was, in fact, his daughter Mst. Lal Khatoon, who was succeeded by Mst. Ayesha Bibi and subsequently by the respondents, who are the true and lawful owners of the property left by the late Mitha Khan. Conversely, Abdul Razzaq Khan and Wahid Bakhsh have no valid claim over the same.

9. It was categorically observed by both the Courts below that these two individuals, by playing fraud, got the land of late Mitha Khan mutated into their names. It is a trite principle of law that fraud violates solemn proceedings, as settled in *Fazal Ellahi*,<sup>1</sup> and if the foundational transfer is tainted with fraud, the ultimate devolution of the property upon the legal heirs of the fraudsters is itself illegal and unsustainable. Therefore, if the superstructure is illegal, the entire edifice built upon it must crumble to the ground, a principle reaffirmed in *Muhammad Yaqoob*.<sup>2</sup> It is noted that the High Court, while examining the matter, reproduced the cross-examinations and referred extensively to the depositions of the PWs, from where, it is evident that late Mitha Khan was survived solely by his daughter, Mst. Lal Khatoon. While Abdul Razzaq Khan and Wahid Bakhsh fraudulently posed themselves as legal

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<sup>1</sup> Fazal Ellahi (deceased) through his legal heirs vs. Mst Zainab Bi (2019 SCMR 1930)

<sup>2</sup> Muhammad Yaqoob vs. Mst. Sardaran Bibi and others (PLD 2020 Supreme Court 338)

heirs of the said late Mitha Khan to illegally mutate the property into their names, this fraudulent mutation was not within the knowledge of Mst. Ayesha Bibi. When it finally came to her knowledge, the respondents rightly approached the Court of law for the cancellation of those mutation entries. Hence, in our view, the question of limitation raised by the petitioners is entirely misplaced.

10. It has also been observed that although lengthy cross-examination of the PWs was conducted, but their testimony was not shattered. Rather, it was pleaded by the present petitioners that the property belonging to late Mitha Khan was transferred to Abdul Razzaq Khan and Wahid Bakhsh by virtue of a Court decision. However, interestingly, no such Court order was ever placed on the record by the petitioners. It has further come on record that Abdul Razzaq Khan and Wahid Bakhsh failed to establish any blood relationship with late Mitha Khan. Their claim rested primarily on either an unproduced Court's decision or a purported contract dated 31.10.1968 on oath, which they failed to prove through any cogent material. Astonishingly, one of the grounds asserted for claiming the property exclusively in their names is a purported custom that suppresses the inheritance rights of womenfolk. First, the petitioners failed to prove the existence of any such customary law. Second, any such custom is directly antithetical to Islamic Sharia and the Islamic law of inheritance, which explicitly mandates and guarantees the inheritance rights of women. Even any Jirga decision on this aspect is patently illegal, as a Jirga cannot divest a legal heir of the rights enshrined under the Quran and Sunnah. Any Jirga proceeding held in derogation of the Holy Quran and the Sunnah in our view is void ab initio. Moreover, Section 2A of the West Pakistan Muslim Personal Law (Shariat) Application Act, 1962, explicitly condemns and invalidates any

such customary action or tribal mechanism that contradicts Islamic injunctions.

11. It is a well-settled proposition of law that mutation entries are entries maintained exclusively for revenue and fiscal purposes. Even if mutation entries stood in the names of Abdul Razzaq Khan and Wahid Bakhsh or their legal heirs, the same cannot be construed as documents of title that would entitle them to hold the property to the absolute exclusion of the legally mandated heirs. Reference in this regard may be made to the decision in Hakim Khan.<sup>3</sup>

12. The upshot of the above discussion is that we do not find any illegality or irregularity so as to warrant interference with the findings of the two Courts below. The Trial Court, while decreeing the suit, declared Mst. Ayesha Bibi to be the "exclusive owner" of the properties described in paragraphs 3 and 4 of the plaint, but simultaneously directed, in the operative part of the decree, that the official defendant No. 39, Tehsildar Dera Allah Yar, should enter the names of the respondents and hand over possession of the suit lands according to their respective shares under the Hanafi law of inheritance. These parts of the decree must necessarily be read harmoniously. It stands undisputed on the record that late Mitha Khan was owner of the properties described in paragraphs 3 and 4 of the plaint. Upon his demise in 1938, he was survived only by his daughter, Mst. Lal Khatoon. Under the express injunction of Islam contained in Surah An-Nisa (verse 11) of the Holy Quran, as recognised under the settled Hanafi law governing the succession of Sunni Muslims in Pakistan, a sole surviving daughter is entitled to one-half of her deceased father's leftover estate as her Quranic share (faraidh). Any residue remaining thereafter devolves upon the

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<sup>3</sup> Hakim Khan vs. Nazeer Ahmad Lughmani and 10 others (1992 SCMR 1832)

residuaries (asaba) according to their respective entitlements under the Sharia and returns to the Quranic heir by operation of the doctrine of Radd only where no such residuaries exist. It necessarily follows that, upon the death of late Mitha Khan in 1938, Mst. Lal Khatoon would have inherited only one-half of his estate as her Quranic share. Likewise, upon the death of Mst. Lal Khatoon, her sole surviving daughter, Mst. Ayesha Bibi, would in her turn have inherited only one-half of the property held by her mother, the residue devolving upon the residuaries of Mst. Lal Khatoon, making her entitled to one-fourth of the estate originally owned by late Mitha Khan. Ayesha Bibi was survived by her son, namely Bostan Khan and two daughters, the respondents/plaintiffs. After the demise of Ayesha Bibi, one-half of her property devolved upon her son, Bostan Khan, while the remaining one-half devolved equally upon her two daughters (the plaintiffs). Thus, the present respondents, being the daughters and legal heirs of Mst. Ayesha Bibi, shall succeed only to half of the property as was lawfully held by their mother under the Sharia at the time of her demise. The respondents are not the legal heirs of late Mitha Khan but derive their entitlement solely through Mst. Ayesha Bibi, their entitlement, therefore, is confined to their respective shares in the one-fourth interest held by Mst. Ayesha Bibi and does not extend to the entirety of the estate originally owned by late Mitha Khan. We, therefore, affirm the concurrent findings and the decree of the Trial Court, as upheld by the High Court, subject to the clarification that the entry of the suit lands in the names of the respondents in the revenue record, and the handing over of possession thereof, shall be effected strictly in accordance with the Islamic law of inheritance mentioned above.

13. It is settled law that concurrent findings of fact are not to be interfered with by this Court unless they are demonstrably shown to be suffering from misreading or non-reading of evidence, perversity, arbitrariness, or a jurisdictional defect. Reference in this regard may be made to the decisions in *Muhammad Akhtar*,<sup>4</sup> *Sardar Ali Khan*,<sup>5</sup> and *Faqir Syed Anwar ud Din*.<sup>6</sup>

14. We, therefore, are not persuaded that the impugned judgments suffer from any legal infirmity, error except the actual determination of the rights of inheritance of the respondents No.1 and 2, as explained in para-12 above, warranting interference under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973. The Trial Court shall reframe the decree sheet accordingly. Consequently, with the above modification in the impugned judgments and decrees, this petition is dismissed and leave to appeal is refused. No order as to costs.

**JUDGE**

**JUDGE**

*Announced in open Court on \_\_\_\_\_2026.*

Judge

Islamabad  
13.05.2026  
'APPROVED FOR REPORTING'  
arshed/Zainab Qazi, Judicial LC

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<sup>4</sup> Muhammad Akhtar vs. Mst Manna and 3 others (2001 SCMR 1700)

<sup>5</sup> Sardar Ali Khan vs. State Bank of Pakistan and others (2022 SCMR 1454)

<sup>6</sup> Faqir Syed Anwar ud Din deceased through LRs vs. Syed Raza Haider and others (PLD 2025 Supreme Court 31)

