

IN THE COURT OF WAJID ALI
ADDITIONAL DISTRICT JUDGE, HARIPUR AT GHAZI.

Civil Revision No.	1/CR
Date of Institution	03.01.2023
Date of Decision	22.07.2023

Mubarak Ali s/o Muhammad Shafi r/o Khalo Tehsil Ghazi
District Haripur and 07 others.

(Defendants/Petitioners)

Versus

Raheel Ahsan s/o Safeer Ahsan and 06 others, residents of
Khalo Tehsil Ghazi District Haripur.

(Plaintiffs/Respondents)

Ashiq Hussain s/o Abdul Hussain and 27 others, residents of
Khalo Tehsil Ghazi District Haripur.

(Proforma Respondents)

JUDGMENT

22.07.2023

This Civil Revision Petition is directed against the judgment and order dated 03.01.2023 of learned Civil Judge-II, Ghazi in Civil Suit No. 49/1 instituted on 07.01.2023 whereby the application for rejection of plaint under Order VII Rule 11 of the CPC was rejected.

2. It is prayed that the impugned judgment and order be set-aside, the suit of the plaintiffs/respondents be dismissed along with other ancillary relief.
3. Parties are referred to with their original status in the suit.
4. Plaintiffs approached the learned trial court through Suit No. 49/1 dated 07.09.2021 with the averments


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that the predecessor of the parties namely; Khanbaz s/o Shehbaz was *occupancy tenant* in Property Holding No. 47/96 of year 1934 Revenue Estate Khalo and on his demise in the year 1934 the same devolved upon his male lineal descendant(s); that vide Mutation No. 469 dated 09.11.1934, the property Holding No. 156/107 was rightly devolved upon Ghulam Rasool s/o Khanbaz. However, the defendants in active connivance with the revenue officials have attested Mutation No. 660 on 15.02.1943 in favor of the widow as well as daughters of the predecessor which mutation is against the prevailing law of the time, result of fraud & collusion and ineffective upon the rights of the plaintiffs. Therefore, prayed for rectification of the revenue record. As a necessary corollary, grant of temporary injunction was also sought in order to refrain/restrain the defendants from any sort of interference in the suit property.

5. The learned trial court summoned the defendants who after appearing before the court submitted written statement coupled with an application for rejection of plaint under Order VII Rule 11 of the CPC.
6. The learned trial court after hearing both the parties dismissed the application under Order VII Rule 11 of

the CPC. Defendants being aggrieved with the findings of learned trial court have preferred this Civil Revision Petition; it was contested by the respondents.


7. Arguments heard and record perused. Admittedly the plaintiffs have challenged the Mutation No. 660 dated 15.02.1943 in the year 2001 which is after a long time however they have alleged to have got knowledge about the disputed mutation when it was relied upon by the defendants in another suit titled as "*Mubarak Ali & others vs. Shafqat Ali & others*". The referred litigation between the parties is admitted therefore in such circumstances I concur with the learned trial court that in the instant matter, the limitation period becomes a mixed question of law & facts which can properly be appreciated after recording pro & contra evidence of the parties. Similarly, the disputed mutation was also referred to in the previous litigation between the parties but the same was relied upon by the plaintiffs of the referred suit as a piece of evidence and was not the actual subject matter of the previous litigation. It would have been far better to have decided the instant suit along with the previous Suit No. 386/1 of 16.11.2017 as during pendency of the same this suit was filed however it seems that this fact was never

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brought into the notice of the court. Therefore, it is deemed in the fitness of things that the parties avail opportunity to adduce their respective evidence and then the matter is decided on merits.


8. In view of the above discussion, there is no illegality, material irregularity or any jurisdictional error in the impugned order of learned trial court to be susceptible for interference by this court in its revisional jurisdiction. The judgment and order rendered by the learned trial court is based on proper appreciation of law and facts. Thus, the instant Civil Revision Petition being devoid of merits stands dismissed. Parties are however, left to bear their own costs. File be consigned to the record room after necessary completion, compilation and scanning while record be returned to the quarters concerned.

Announced
22.07.2023


(WAJID ALI)
Additional District Judge
Haripur at Ghazi

Certificate

Certified that this judgment consists upon (4) pages and each page has been signed by me after necessary correction.


(WAJID ALI)
Additional District Judge
Haripur at Ghazi