

**IN THE PESHAWAR HIGH COURT PESHAWAR
OPENING SHEET FOR WRIT PETITION**

Case No. _____

Dated of Filing: _____

District: DISTRICT SWATCase Type: **Writ Petition**Nature of Original Proceedings : **Initial**

Original Order		Review / Appellate / Revision			Order	Bench
Forum	Date	S.#	Forum	Date		
Civil Judge-V / IQ Swat	19.09.2019	01.	<u>Additional District Judge-II, Swat</u>	<u>10-01-2020</u>	Interlocutory Final Order	Single Bench Division Bench Full Court

1. Petitioner (s) : Mst. Yasmin Anwar Ali Shah etc
Mobile No.
Address: Saidu Sharif, District Swat.

NIC: _____

2. Petitioner (s) Counsel: Inayatullah Khan Advocate
Mobile No. 0345-9440090

NIC: _____

Address: 3rd Floor, Continental Plaza, Makanbagh, Mingora, District Swat.

3. Respondents (s): Said Bashar through LRs and others
Mobile No. Nil

NIC: _____

Address: District Swat & Peshawar.

Original Order / Action / Inaction Complained of

Prayer:

In view of the above, it is most respectfully prayed that, on acceptance of the instant writ petition,

- The impugned order dated 10.01.2020 of the learned Additional District Judge-II, Swat, may please be declared null & void and the case be remanded to the learned revisional court for deciding the same on merits.
- OR**
- If this august court also deems the learned Additional District Judge-II, Swat, has no jurisdiction to adjudicate upon the revision petition, then the impugned order dated 19.09.2019 of the learned Civil Judge-V, Swat, may please be declared null & void and may also be set aside and the case be remanded to the learned trial court for decision afresh on merits and in accordance with law.
 - Any other relief not specifically prayed for, but this august court deems appropriate, may also be granted in favour of petitioners.

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Law / rules governing the original proceedings / Action / Inaction

Additional Registrar

Writ Petition Under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

Signature of Petitioner or Counsel: _____

Dated

14/03/2020

BEFORE THE PESHAWAR HIGH COURT MINGORA
BENCH / DARUL QAZA SWAT

W.P No. 541 / 2020

Mst. Yasmin Anwar Ali Shah and others.

...Petitioners

- VERSUS -

Said Bashar Mian through LRs and others.

...Respondents

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PETITIONERS
THROUGH COUNSEL

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P. Khan
INAYATULLAH KHAN
ADVOCATE HIGH COURT

Office: 3rd Floor, Continental Plaza,
Makanbagh, Mingora, District Swat.

Cell: 0345-9440090

Dated: 14-03-2020

Re-Filed Today

09 APR 2020

Additional Registrar

BEFORE THE PESHAWAR HIGH COURT MINGORA
BENCH / DARUL QAZA SWAT

W.P No. 541 / 2020

- (1) Mst. Yasmin Anwar Ali Shah;
- (2) Mst. Nelofar Sheharyar Khan;
- (3) Mst. Saira Hamayun Khan daughters of Shehzada Sultan e Rome,

.....Petitioners

V E R S U S

- (1) Said Bashir Mian son of Moeen Mian (deceased) through legal heirs (1/1) Shah Jehan Sher (1/2) Mian Said Hilal (1/3) Khurshed (1/4) Ali Haidar (1/5) Mian Said Rahim sons, residents of Chitor, Tehsil Babozai, District Swat (1/6) Mian Shamsher (deceased) through legal heirs (1/6/1) Mst. Hanifa (widow) (1/6/2) Mst. Riyasat (1/6/3) Mst. Hamida (1/6/4) Mst. Umar Bibi (1/6/5) Mst. Rahmat Bibi (1/6/6) Mst. Nazakat Bibi (1/6/7) Mst. Naheed Bibi (daughters) (1/6/8) Muhammad Roshan (1/6/9) Irfan Ali (1/6/10) Muhammad Gulshan (1/6/11) Muhammad Parwaish (1/6/12) Akbar Ali (1/6/13) Muhammad Amin (sons) (1/7) Sher Bahadar (deceased) through legal heirs (1/7/1) Mst. Jahan Poora (widow) (1/7/2) Mian Syed Usman (1/7/3) Fazal Rahman (1/7/4) Fazal Naeem (1/7/5) Sultan Malak (sons) (1/7/6) Mst. Wahida (1/7/7) Mst. Dilarama daughters;
- (2) Tehsildar Settlement with power of Assistant Collector Grad-1st at District Courts Gulkada, Swat.
- (3) Revenue Officer with the power of Collector Swat at Gulkada, District Courts Swat.
- (4) Settlement Officer Malakand Division with power of Collector at District Courts, Swat.
- (5) Commissioner Malakand Division at Saidu Sharif, Swat.
- (6) Board of Revenue Khyber Pakhtunkhwa at Peshawar.
- (7) Government of Khyber Pakhtunkhwa through Secretary Member Revenue Department, Board of Revenue at Peshawar.

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- (8) Civil Judge-V / Illaqa Qazi, Swat at Gulkada.
 (9) Additional District Judge-II / Izafi Zilla Qazi, Swat at Gulkada.

...Respondents

- (10) Mst. Abida Aman e Rome;
 (11) Mst Zar Nigara Aman e Rome;
 (12) Mst. Zar Afshah Aman e Rome;
 (13) Mst. Faiza Aman e Rome;
 (14) Mst. Nazi Shaukat Ali Khan daughters of Shahzada Aman e Rome (late);
 (15) Miangul Aurangzeb (deceased) through legal heirs (25/1) Barrister Miangul Hassan Aurangzeb (25/2) Miangul Adnan Aurangzeb (25/3) Miangul Mehmood Aurangzeb sons (25/4) Mst. Asmat Aman e Rome widow of Shahzada Aman e Rome (25/5) Mst. Mumtaz Mamoon ur Rashid (25/6) Mst. Eshrat Askari (25/7) Mst. Fakhri Akbarzeb daughters;
 (16) Miangul Amir Zeb (deceased) through legal heirs (26/1) Mst. Jamila (widow) (26/2) Miangul Sheharyar son (26/3) Mst. Seema daughter;
 (17) Miangul Asfandyar (deceased) through legal heirs (27/1) Mst. Falak Naz (widow) (27/2) Mst. Fatima Asfandyar (27/3) Mst. Fakhrunisa (27/4) Mst. Khadija Asfandyar daughters;
 (18) Mst. Noor Jehan daughter of Miangul Shehzada Jehanzeb (late);
 (19) Miangul Akbar Zeb S/o Miangul Alam Zeb... all residents of Saidu Sharif, District Swat.
 (20) Shahzada Sultan Mehmood S/o Shehzada Sultan e Rome.
 (21) Mst. Musarrat Begum (widow) of Miangul Ahmad Zeb (late);
 (22) Miangul Umar Farooq
 (23) Miangul Ameer Hamza sons of Miangul Ahmad Zeb (late)
 (24) Mst. Zarmina
 (25) Mst. Zarghuna daughters of Miangul Ahmad Zeb (late) all residents of Saidu Sharif, District Swat.
 (26) Miangul Dr. Anwar Zeb S/o Miangul Alam Zeb R/o Saidu Sharif, District Swat.

.....Proforma Respondents

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Writ Petition Under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

Respectfully Sheweth.

The petitioners submit as under:-

Grievances of petitioners-

That the petitioners are aggrieved by the order dated 10-01-2020, of the learned Additional District Judge / Izafi Zilla Qazi-II, Swat, as well as order passed by Civil Judge/Ilalaqa Qazi-V Swat dated 19.09.2019, whereby the petitioners' petition under Section 12(2) C.P.C. against the decree dated 07.02.1987 passed in civil suit No. 321/1986, has been dismissed and the revisional court ADJ-II, Swat also upheld the order of the lower court i.e. CJ-V, Swat and dismissed the petitioners' revision petition for want of jurisdiction.

CASE OF THE PETITIONERS:

The case of the petitioners, simply put, inter alia, is that while passing the impugned order dated 19.09.2019, not only the consent remand order dated 09.09.2015 of the Supreme Court of Pakistan has been violated by the learned Trial Court but also a series of judgments of the Superior Courts laying down the criteria for determining the forum for filing petition U/S 12(2) C.P.C have been ignored and violated. Moreover, the record has completely been overlooked and application for amendment filed by the petitioners has not been decided, thus the learned Trial court committed flagrant, illegality, gross material irregularity and has cause grave miscarriage of justice. More so, the learned Civil Judge-V, Swat, while passing the impugned order dated 19.09.2019 and 10.01.2020, also ignored the directions of the lower appellate court/ADJ-II Swat vide consolidated judgment and order dated 23.11.2017. Impugned order is violative of Article # 4, thus a 25, 37(d), 189 and 201 of the constitution of Islamic Republic of Pakistan, 1973 and is liable to be set aside. Resultantly the petition U/S (12(2) C.P.C is liable to be

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remanded to the learned trial court for decision afresh on merits in accordance with law, as well as in the light of the directions given by the Apex Court, as well as the appellate Court. Moreover, the learned Additional District Judge-II Swat, has unlawfully returned the revision petition for want of jurisdiction.

THE ESSENTIAL FACTS OF THE CASE ARE AS UNDER:-

1. That after merger of the state of Swat into Pakistan by means of West Pakistan Regulation No. 1 of 1969 and notification dated 08.10.1970, predecessor of respondents No. 1/1 to 1/7, i.e. Said Bashar Mian claimed some landed property in the limits of village Chitor, Tehsil Babozai, District Swat, against predecessor-in-interest of the petitioners before Dir—Swat Land Disputes Inquiry Commission 1971. The commission recommended dismissal and the Deputy Commissioner Swat dismissed the claim under MLR 123 of 1972 vide order dated 29.09.1973. The Provincial Government also maintained this order vide order dated 22.10.1973 under MLR-123. (Copy of application dated 20.01.1971, statement dated 18.02.1971, exhibits, PA, PB, DA and DB, Orders dated 18.05.1971, 29.08.1973 and 22.10.1973 are Ann: A).
2. That Federal Land Commission set aside orders of the Deputy Commissioner and that of the Provincial Government in Revision petition under MLR-123 and accepted the claim of the predecessor of respondents No. 1/1 to 1/7 vide order dated 16.08.1974. (Copy of order dated 16.08.1974 is Ann: B).
3. That chairman Tribunal Land Disputes for Dir-Swat-Chitral at Mardan, reversed the order of the Federal Land Commission in Review Petition No. 140, filed by the petitioner under MLR-123 as amended by president's order No. 13 of 1980 vide order dated 13.06.1982 and restored order of the Deputy Commissioner, Swat dated 29.08.1973. (Copy of the order dated 13.06.1982 is Ann: C).

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4. That Peshawar High Court, Peshawar also maintained order of the Tribunal vide order dated 14.05.1986 in Writ Petition No. 371/82 of the respondents No. 1/1 to 1/7/7. (Copy of order dated 14.05.1986 is Ann: D).
5. That respondents No. 1/1 to 1/7/7 approached the Supreme Court of Pakistan in Petition No. 133/B/1988 dated 05.08.1988. Leave to appeal was granted on 22.03.1990. Subsequently, appeal of the respondents Nos. 1/1 to 1/7 and later review were also dismissed by the Supreme Court of Pakistan on 14.09.1991 and 01.04.1991 respectively. Thus, order of Review tribunal dated 13.06.1982 attained finality. (Copies of orders dated 14.09.1991 and 01.04.1992 are Ann: E).
6. That applicants came to know on 01.07.1988 that by suppressing the facts, concealing the truth, playing fraud and committing misrepresentation, the respondents Nos. 1/1 to 1/7/7 had instituted collusively civil suit No. 321/1 of 1986 on 23.10.1986 in the Court of Senior Civil Judge, Swat. Trial Court also did not have the jurisdiction to entertain, try and adjudicate the suit No. 321/1.
7. That suit was in respect of the property which was subject matter of the orders mentioned in preceding paras. Predecessors of the petitioners despite being necessary parties were not made party. Only respondents No. 7 to 12 were made parties. However, they did not file written statement and suit was decreed under order VIII Rule 10 C.P.C on 07.02.1987. (Copy of plaint and decree dated 07.02.1987 are Ann: F).
8. That on the basis of impugned decree dated 07.02,1987, the respondents Nos. 1/1 to 1/7/7 obtained mutations Nos. 235 and 73 in the revenue record on 08.08.2001. These were cancelled on the application of petitioners on 27.08.2001 but the said order was set aside on 15.05.2002 in review petitions filed by the respondents Nos. 1 to 4 and petitioners were not impleaded. This order was maintained in appeal and then in

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revision by SMBR vide orders dated 22.02.2003 and 03.07.2003 respectively. W.P. No. 1901/2003 was also dismissed by High Court on 04.05.2006. Said order was challenged in C.P. No. 531/2006 in Supreme Court of Pakistan which was not pressed in view of order dated 09.09.2015 in C.A. No. 1462/14 of the Supreme Court of Pakistan on the same date. (Copies of Mutations No. 235 and 73 and orders dated 27.08.2001, 15.05.2002, 22.02.2003, 03.07.2003, 04.05.2006 and 09.09.2015 are Ann: G).

9. That if is most important and extremely pertinent to mention here that the decree dated 07.02.1987 of the Civil Court of Swat was never challenged before any higher forum.

Respondents Nos. 7 to 12 (defendants in suit No. 321/1), did not file appeal against the decree dated 07.02.1987 and purposely submitted application to the Senior Civil Judge, Swat on 11.02.1987 seeking setting aside the ex-parte decree whereas it was not ex-parte decree but under Order VIII Rule 10 C.P.C due to their failure to file written statement and was appealable. So the learned Senior Civil Judge, Swat dismissed the application on 01.11.1987 on the ground that the order/decreed dated 07.02.1987 was appealable and application was not maintained. (Copies of application, reply and order dated 01.11.1987 are Ann: H).

The respondents Nos. 7 to 12 again, did not file appeal against the decree dated 07.02.1987.

They filed a time barred appeal No. 132/B of 1988 before the District Judge, Swat against the order dated 01.11.1987 and not against the decree dated 07.02.1987, with application for condonation of delay. Moreover, they also did not implead the petitioners. The learned District Judge Swat, dismissed the appeal vide order dated 18.07.1988 on the ground that the decree dated 07.02.1987 was appealable which had not been filed. Hence order dated 01.11.1987 was upheld. Thereafter,

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the said respondents filed Civil Revision No. 568/88 in Peshawar High Court but the same was dismissed on 28.11.1997. As the petitioners had already filed suit against the decree dated 07.02.1987, therefore, their application for impleadment in revision was also dismissed. In the said order dated 28.11.1987, the learned Peshawar High Court clearly held in Para-2 of its judgment, that appeal against decree dated 07.02.1987 had never been filed and application of the petitioners was dismissed on the ground that they had already filed suit (now petition under section 12(2) C.P.C to challenge the said decree dated 07.02.1987). (Copies of order dated 18.07.1988 and 28.11.1997 are Ann: I).

10. That applicants filed civil suit No. 450/1 of 1988 on 02.11.1988 seeking setting aside of the said decree. Written statement was filed by respondents Nos. 1/1 to 1/7/7 but later on the plaint was rejected under Order VII Rule 11 C.P.C on 26.10.2002 by holding that final court was Peshawar High Court, Peshawar. Appeal and revision against the said order were also dismissed. However, in civil appeal No, 1462 in the Supreme Court of Pakistan, by consent, vide order dated 09.09.2015, the suit was ordered to be treated as Application under section 12(2) C.P.C and decided afresh. (Copies of plaint, written statement, orders dated 26.10.2002, 16.02.2004, 21.04.2014 and 09.09.2015 are Ann: J & K).

11. That from the bare perusal of these facts, it is explicitly evident that the decree dated 07.02.1987 in Civil Suit No. 321/1 of 1986 of the Senior Civil Judge, Swat was never challenged before any higher forum and had been obtained by omitting necessary parties mis-representing the true and lawful owners and playing fraud with the court, therefore, the applicants have the cause of action and right to get the said decree dated 07.02.1987 set aside on the grounds mentioned in the petition and forum was clearly Civil Court of Swat which passed the decree dated 07.02.1987.

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12. That it is clear that the remand order dated 09.09.2015 was passed by the August Supreme Court of Pakistan with consent of the parties in Civil Appeal No. 1462 of 2014. It is evident from Para-4 of the said order that August Supreme Court of Pakistan had granted right to both the parties to raise all the legal issues.

13. That, therefore, on 09.10.2015, the petitioners filed an application seeking amendment of the suit No. 450/1, so as to amend the same by pleading all the aforesaid necessary relevant facts happened during the proceedings. The petitioners had clearly submitted in Para-8 of the said application that they wish to restrict their prayer to the extent of decree dated 07.02.1987 as rest of the prayer, in any case, was superfluous. Learned Trial court did not decide the said application and not even mentioned the same in the impugned order. (Copies of application for amendment and reply are Ann: L).

14. That respondents No. 1/1 to 1/7/7 filed a fresh written statement (despite that a written statement had already been filed) and an application under Order VII Rule 11 C.P.C, reply to the application was filed by the petitioners. The learned Trial Court did not advert to the application of the petitioners and through the impugned order, dismissed the petition under Section 12(2) C.P.C. It is most pertinent to note here that previously the suit (now petition under Section 12(2) C.P.C) was dismissed on the ground that proper forum was Peshawar High Court and the suit was not maintainable and those orders were set aside by the Supreme Court of Pakistan. In the new written statement filed by respondents No. 1 /1 to 1 /7/7 and in application under Order VII Rule 11 C.P.C, the respondents No. 1 /1 to 1 /7/7 again pleaded that forum for Section 12(2) C.P.C was Peshawar High Court and the learned trial court allowed the application of respondents Nos. 1/1 to 1/7 under Order 7 Rule 11 and dismissed the petitioners' petition U/s 12(2) CPC

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vide order dated 09-01-2016 and did not decided the petitioners' application for amendment (Copies of fresh written statement, application under Order VII Rule 11 C.P.C and its reply and order dated 09-01-2016 are Ann: M, N & O respectively).

15. That Civil Revision Petition No. 7/CR of 2016 instituted by the petitioners against the order dated 09.01.2016, which was accepted in favour of the petitioners vide a consolidated judgment and order dated 23.11.2017, passed by learned lower appellate Court/ADJ-II Swat, whereby the learned appellate court set aside the order of the trial court dated 09-01-2016 and the case was remanded back to the trial court with the directions to decide the application for amendment first and then proceed with the petition under Section 12(2) C.P.C strictly in accordance with law/procedure. (Copy of consolidated judgment dated 23.11.2017 is Ann: P).

16. That the trial court/Civil Judge-V, Swat has totally misconceived and misinterpreted the order of the Apex Court dated 09.09.2015 as well as ignored the directions of the appellate court/ADJ-II Swat vide consolidated judgment dated 23.11.2017 and passed the impugned order dated 19.09.2019 whereby the learned trial court held that the petition under Section 12(2) C.P.C of the petitioners is not maintainable. (Copy of the impugned order dated 19.09.2019 is Ann: Q).

17. That revision petition was filed against order dated 19.09.2019, which was dismissed by the learned Additional District Judge-II, Swat, vide order dated 10-01-2020, for want of jurisdiction (Copy order dated 10.01.2020 is Ann: R).

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18. That both the orders of the learned lower courts dated 19.09.2019 of the learned Civil Judge-V, Swat and order dated 10.01.2020 of the learned Additional District Judge-II, Swat,

(herein referred to as impugned orders) are illegal, against the law, therefore, not sustainable in the eyes of law.

19. That petitioners having no other adequate and efficacious remedy, but to approach this august court inter alia on the following grounds.

GROUND OF PETITION:-

The impugned orders are liable to be set aside, inter alia, on the following grounds:-

i. **That** the impugned order is in violation of consent of order dated 09.09.2015 of the august Supreme Court of Pakistan. As is evident from the bear perusal of Para—4 of the said order, with the consent of the parties, all the parties were allowed to "**raise all the legal issues**". The learned trial court granted this right to the respondents Nos. 1/1 to 1/7/7 by allowing them to file fresh written statement and application under Order VII Rule 11 C.P.C. At the same time the petitioners have been denied this right by overlooking their application seeking amendment of the suit No. 450/1 (treated as petition under Section 12(2) C.P.C). No compliance of the order dated 09.09.2015 is not only violative of Article 189 of the Constitution of Islamic Republic of Pakistan, 1973, but also Article 4, 10-A and 25. The petitioners were not even allowed to amend the title of the petition and some parties who have died or still without legal heirs.

ii. **That** the impugned order is based on non-reading of record. Even the reply of the petitioners to the application under Order VII Rule 11 C.P.C has not been mentioned let alone considered in the impugned order. Even the complete arguments of the petitioners have not been mentioned. Primary argument, based on record as mentioned in para-9, for determining forum of the application under Section 12(2) C.P.C is that decree

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dated 07.02.1987 was never challenged by anybody. This has not been decided by the learned trial court.

- iii. **That** the learned trial court overlooked that previous orders dated 26.10.2002, 16.02.2004 and 21.04.2004, based on order dated 28.11.1997, were set aside by the Supreme Court of Pakistan, with consent of parties. Therefore, same had lost their efficacy and could not be relied upon, either by the respondents or by the learned trial court.
- iv. **That** even the learned trial court failed to appreciate that on the basis of previous order dated 28.11.1997 of Peshawar High Court, previously the petitioners were not suited by holding that forum was Peshawar High Court, Peshawar and now the learned trial court has held that forum was District court. This clearly shows non application of judicial mind by the learned trial court. Petitioners have challenged the decree dated 07.02.1987.
- v. **That** furthermore, even the respondents Nos. 1 to 4 were claiming in their new written statement and application under Order VII Rule 11 C.P.C, that forum was Peshawar High Court, Peshawar, and same was rebutted by the petitioners in their reply to application under Order VII Rule 11 C.P.C. the finding of the learned trial court clearly show that it did not appreciated the record, (which consists mostly on order of different courts). This also manifestly make it clear, that application seeking amendment filed by the petitioners should have been allowed and the petition U/s 12(2) C.P.C should have been decided after amendment and after taking evidence of the parties. The slipshod, perfunctory and novel procedure adopted by the learned trial court is shocking to the legal conscience. The length of the impugned order is only due to the fact that repetitively

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assertions have been reproduced but no record has been perused, analyzed and considered by the learned trial court. Trial court has clearly just gotten rid of lis before it instead of deciding the same after judicial and judicious application of mind to the record. Learned trial court has evaded its primary legal duty to decide the lis in accordance with law by considering the relevant record, irrespective of the fact that false and contumacious and contemptuous pleadings were made by the respondents Nos. 1/1 to 1/7/7. This is not only material irregularity but also illegality committed by the learned trial court as it has completely and miserably failed to perform its primary legal duty.

- vi. Because, the learned trial court gravely erred in law by holding that forum for petition under Section 12(2) C.P.C was District Swat. in this regard, not only the record has been overlooked, as aforesaid, but also the law laid down by the superior courts.
- vii. That It is clear from record, as explained earlier that decree dated 07.02.1987 was never challenged by anyone (as also held in order dated 28.11.1997 as aforesaid) and there was no decision of any court on merits to either uphold it or reverse it or modify it or vary it or alter it. Thus, the forum was only and only Civil Court, Swat to entertain and adjudicate upon the application under Section 12(2) C.P.C filed by the petitioners.
- viii. **That** the judgment relied by learned trial court in its finding No. 1 is unidentified and in any case irrelevant to the facts of instant case. Moreover reliance on judgment of Peshawar High Court dated 28.11.1997 is inapt as previous judgments based on this judgment had been set aside by the Supreme Court of Pakistan vide order dated 09.09.2015. In any case, conclusion drawn on the basis of this judgment too is correct. Moreover, reliance

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on judgment dated 21.04.2014 is also inapt as the same was set aside by the Supreme Court of Pakistan vide order dated 09.09.2015. In any case, conclusion drawn on the basis of this judgment too is incorrect. Order dated 09.09.2015 has also been misinterpreted. In the said order both the parties were allowed to **raise all legal issues**. Petitioners were allowed opportunity to raise legal issues and their application for amendment was not heard and decided.

ix. **That** second finding of the learned trial court qua relief against judgment of District Court dated 18.07.1988 is also incorrect as not only against the law and facts of the case but also in oblivion to the application of amendment filed by the petitioners wherein by para-8, the petitioners had submitted that they wish to restrict their claim against only decree dated 07.02.1987. Moreover, in any case, in view of law laid down by Superior Courts, as aforesaid, the judgment/ decree dated 18.08.1988 was irrelevant as neither the petitioners were party to it nor this judgment/ decree had affirmed or varied or modified or altered the decree dated 07.02.1987. This Judgment/ decree was passed in respect of order dated 01.11.1987 of Civil Court.

x. **That** learned trial court failed to appreciate that the property in dispute had been declared by the Peshawar High Court on 14.05.1986 to be ownership of the above applicants. Against this, the respondents No. 1/1 to 1/7/7 had filed petition for special leave to appeal in the Supreme Court of Pakistan which was yet to be decided at time of filing of suit on 26.10.1986 and this fact they concealed from the court of their plaint.

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xi. **That** learned trial court ignored, that the appeal of respondents No. 1/1 to 1/7/7 was dismissed by the Supreme Court of Pakistan on 14.09.1991 and review

petition was dismissed on 01.04.1992, hence order or Review Tribunal dated 13.06.1982 has attained finality and no averment could be made in violation of judgments of the Supreme Court of Pakistan.

- xii. **That** learned trial court ignored that in view of para-4 of MLR-123, suit No. 321/1 of 1986 was not maintainable and civil court lacked jurisdiction.
- xiii. **That** learned court stepped aside and ignored that the order of tribunal dated 13.06.1982 regarding the property in dispute is in favour of the petitioners and against the respondents No. 1/1 to 1/7/7 but the respondents No. 1/1 to 1/7/7 have claimed and interpreted in their plaint that this order is in their favour. This is clear case of misrepresentation and fraud.
- xiv. **That** the learned trial court did not take into account that the petitioners were, and are till now, the owners of the property in dispute but the respondents No. 1/1 to 1/7/7 did not implead them as party to the suit for obvious reason that the facts may not come before the court.
- xv. **That** the learned trial court remained oblivious that respondents No. 7 to 12 intentionally avoided to file the written statement and allowed the respondents No. 1/1 to 1/7/7 to obtain a decree under Order VIII Rule 10 C.P.C.
- xvi. **That** the learned trial court did not take into account that respondents No. 1/1 to 1/7/7 prevailed upon the defendants No. 7 to 12 not to impugn the decree dated 07.02.1987 in appeal instead they submitted application for setting aside ex-parte decree and then purposely made appeal against the order on that application with the obvious purpose to get the fraudulent decree matured.

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- xvii. **That** the learned trial court kept a close to the fact it was apparent on the face of the record that the respondents played misrepresentation, collusion, suppression and fraud upon the court and succeeded in getting the impugned decree dated 07.02.1987.
- xviii. **That** respondents No. 2 to 6 have been arrayed in panel of respondents as a Proforma respondents, for the reason that they are not challenging the impugned judgment jointly with the present petitioners and they have told petitioners that they will challenge the same judgment independently.
- xix. **That** the learned trial court/Civil Judge-V, Swat vide the impugned order dated 19.09.2019 totally misconceived and misinterpreted the order of the Apex Court dated 09.09.2015, whereby the Apex Court held that the civil suit filed by the petitioners shall be deemed to be pending before the learned Civil court and shall be decided by the treating it as an application under Section 12(2) C.P.C, thus the findings of the learned trial court with regard to maintainability is against the findings of the Apex Court and is not maintainable.
- xx. That the learned trial court has also ignored the directions given by the appellate court vide the consolidated judgment dated 23.11.2017 whereby the case of the petitioners was remanded back to the trial court with the directions to decide the application for amendment first and then to proceed with the petition under Section 12(2) C.P.C strictly in accordance with law and procedure, thus the impugned order dated 19.09.2019 is not maintainable and is liable to be set aside.
- xxi. That the learned trial court while passing the impugned order dated 19.09.2019 has not properly perused the

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numerous litigations of the petitioners with the respondents regarding the matter in hand which has also reached to the Apex Court and then were remanded back with clear and crystal directions to the trial court.

- xxii. That the learned revisional court miss-interpreted the law on the subject and dismissed the revision petition of the petitioners illegally.
- xxiii. That the learned revisional court has unlawfully dismissed the revision petition filed by the petitioners against order dated 19.09.2019, for want of jurisdiction, vide order dated 10.01.2020.
- xxiv. That the learned revision court held vide impugned order dated 10.01.2020, that, ***"this court (revisional court) as per Khyber Pakhtunkhwa Code of Civil Procedure (Amendment), Act, 2019, lacks the jurisdiction to entertain the present revision petition, which is hereby dismissed and the petitioners are at liberty to restore before the proper forum as per law"***, but it is worth mentioning to submit here that the said amendment has been suspended by the competent authority, therefore, the impugned order is liable to be set aside on this score alone, moreover, it is in the interest of justice, that the petitioner be provided proper opportunity of equal treatment of law, as valuable rights of the petitioners are involved with the case property and is also evident from the record that the case was finally remanded by the apex Supreme Court of Pakistan, for decisions on merits.

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In view of the above, it is most respectfully prayed that, on acceptance of the instant writ petition,

- i. The impugned order dated 10.01.2020 of the learned Additional District Judge-II,

Swat, may please be declared null & void and the case be remanded to the learned revisional court for deciding the same on merits. **OR**

- ii. If this august court also deems the learned Additional District Judge-II, Swat, has no jurisdiction to adjudicate upon the revision petition, then the impugned order dated 19.09.2019 of the learned Civil Judge-V, Swat, may please be declared null & void and may also be set aside and the case be remanded to the learned trial court for decision afresh on merits and in accordance with law.
- iii. Any other relief not specifically prayed for, but this august court deems appropriate, may also be granted in favour of petitioners.

**Petitioners
Through Counsel**



**Inayatullah Khan
Advocate High Court**

Interim Relief:

By way of interim relief, respondents may please be restrained from alienating the disputed property, till disposal of the captioned writ petition.



**Inayatullah Khan
Advocate High Court**

List of Books:

- 1) Constitution of Islamic Republic of Pakistan 1973.
- 2) Case law according to need.

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**Inayatullah Khan
Advocate High Court**

BEFORE THE PESHAWAR HIGH COURT MINGORA
BENCH / DARUL QAZA SWAT

W.P No. 541 / 2020

Mst. Yasmin Anwar Ali Shah and others. ...Petitioners

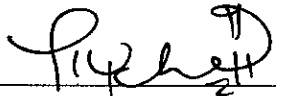
- VERSUS -

Said Bashir Mian through LRs and others. ...Respondents

Certificate

It is certified that as per instruction received from my clients that, the proforma respondents Nos. 10 to 19 have also filed writ petition No. 387-M/2020, before this august court, against the impugned orders / judgments, wherein next date of hearing is fixed for 18-03-2020.

Petitioners
Through Counsel


Inayatullah Khan
Advocate High Court

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BEFORE THE PESHAWAR HIGH COURT MINGORA
BENCH / DARUL QAZA SWAT

W.P No. 541 / 2020

Mst. Yasmin Anwar Ali Shah and others. ...Petitioners

- VERSUS -

Said Bashar Mian through LRs and others. ...Respondents

Affidavit

I, Bakht Rawan S/o Yahya R/o Saidu Sharif, District Swat (**General Attorney for Petitioners**), do hereby solemnly affirm and declares, all the contents of this writ petition are true and correct to the best of my knowledge and belief and nothing has been kept concealed therein from this august court.

Deponent:

B. Rawan
 Bakht Rawan
 (General Attorney for Petitioners)

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1504

S.No. _____
 Certified that the above was verified on Solemn
 affirmation before me on this 16th day
 of Mar 2020 by Bakht Rawan
 S/o Yahya R/o Swat who
 was identified by Self
 _____ Who is personally known to me.

Lin
 ADDL. REGISTRAR
 Peshawar High Court
 Mingora Bench/Dar-ul-Qaza, Swat.

BEFORE THE PESHAWAR HIGH COURT MINGORA
BENCH / DARUL QAZA SWAT

W.P No. 541 / 2020

Mst. Yasmin Anwar Ali Shah and others.

...Petitioners

- VERSUS -

Said Bashar Mian through LRs and others.

...Respondents

Memo of Addresses

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Addresses of Petitioners:

- (1) Mst. Yasmin Anwar Ali Shah;
- (2) Mst. Nelofar Sheharyar Khan;
- (3) Mst. Saira Hamayun Khan daughters of Shehzada Sultan e Rome Residents of Saidu Sharif, District Swat.

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Petitioners Nos. 1 to 9 through General Attorney Bakht Rawan S/o Yahya R/o Saidu Sharif, District Swat.

CNIC No: 15602-0322756-7

Cell No: 0300-9740069.

Addresses of Respondents:

1. Said Bashar Mian son of Moeen Mian (deceased) through legal heirs (1/1) Shah Jehan Sher (1/2) Mian Said Hilal (1/3) Khurshed (1/4) Ali Haidar (1/5) Mian Said Rahim sons, residents of Chitor, Tehsil Babozai, District Swat (1/6) Mian Shamsher (deceased) through legal heirs (1/6/1) Mst. Hanifa (widow) (1/6/2) Mst. Riyasat (1/6/3) Mst. Hamida (1/6/4) Mst. Umar Bibi (1/6/5) Mst. Rahmat Bibi (1/6/6) Mst. Nazakat Bibi (1/6/7) Mst. Naheed Bibi (daughters) (1/6/8) Muhammad Roshan (1/6/9) Irfan Ali (1/6/10) Muhammad Gulshan (1/6/11) Muhammad Parwaish (1/6/12) Akbar Ali (1/6/13) Muhammad Amin (sons) (1/7) Sher Bahadar (deceased) through legal heirs (1/7/1) Mst. Jahan Poora (widow) (1/7/2) Mian Syed Usman (1/7/3) Fazal Rahman (1/7/4) Fazal Naeem (1/7/5) Sultan Malak (sons) (1/7/6) Mst. Wahida (1/7/7) Mst. Dilarama daughters;
2. Tehsildar Settlement with power of Assistant Collector Grad-1st at District Courts Gulkada, Swat.
3. Revenue Officer with the power of Collector Swat at Gulkada, District Courts Swat.
4. Settlement Officer Malakand Division with power of Collector at District Courts, Swat.
5. Commissioner Malakand Division at Saidu Sharif, Swat.
6. Board of Revenue Khyber Pakhtunkhwa at Peshawar.
7. Government of Khyber Pakhtunkhwa through Secretary Member Revenue Department, Board of Revenue at Peshawar.

8. Civil Judge-V / Illaqa Qazi, Swat at Gulkada.
9. Additional District Judge-II / Izafi Zilla Qazi, Swat at Gulkada.

...Respondents

10. Mst. Abida Aman e Rome;
11. Mst Zar Nigara Aman e Rome;
12. Mst. Zar Afshah Aman e Rome;
13. Mst. Faiza Aman e Rome;
14. Mst. Nazi Shaukat Ali Khan daughters of Shahzada Aman e Rome (late);
15. Miangul Aurangzeb (deceased) through legal heirs (25/1) Barrister Miangul Hassan Aurangzeb (25/2) Miangul Adnan Aurangzeb (25/3) Miangul Mehmood Aurangzeb sons (25/4) Mst. Asmat Aman e Rome widow of Shahzada Aman e Rome (25/5) Mst. Mumtaz Mamoon ur Rashid (25/6) Mst. Eshrat Askari (25/7) Mst. Fakhri Akbarzeb daughters;
16. Miangul Amir Zeb (deceased) through legal heirs (26/1) Mst. Jamila (widow) (26/2) Miangul Sheharyar son (26/3) Mst. Seema daughter;
17. Miangul Asfandyar (deceased) through legal heirs (27/1) Mst. Falak Naz (widow) (27/2) Mst. Fatima Asfandyar (27/3) Mst. Fakhrunisa (27/4) Mst. Khadija Asfandyar daughters;
18. Mst. Noor Jehan daughter of Miangul Shehzada Jehanzeb (late);
19. Miangul Akbar Zeb S/o Miangul Alam Zeb... all residents of Saidu Sharif, District Swat.
20. Shahzada Sultan Mehmood S/o Shehzada Sultan e Rome.
21. Mst. Musarrat Begum (widow) of Miangul Ahmad Zeb (late);
22. Miangul Umar Farooq
23. Miangul Ameer Hamza sons of Miangul Ahmad Zeb (late)
24. Mst. Zarmina
25. Mst. Zarghuna daughters of Miangul Ahmad Zeb (late) all residents of Saidu Sharif, District Swat.
26. Miangul Dr. Anwar Zeb S/o Miangul Alam Zeb R/o Saidu Sharif, District Swat.

... Proforman Respondents

**Petitioners
Through Counsel**



**Inayatullah Khan
Advocate High Court**

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