

**1995 C L C 403**

**[Peshawar]**

**Before Saleem Dil Khan, J**

**RAZA MUHAMMAD ---Petitioner**

**versus**

**MAFTOOLAN JAN---Respondent**

Civil Revision No. 196 of 1992, decided on 14th May, 1994.

**(a) Limitation Act (IX of 1908)---**

---Arts.142 & 144---Suit for possession of property---Plaintiff's ownership was neither denied by defendant nor he claimed adverse possession over the same and attaining of title by prescription ---Defendant never disclosing throughout litigation as to what inherent right he was possessing in property in question, for which he was resorting to litigation---Defendant at the fag-end of arguments before High Court, taking plea in contrast of his evidence and pleadings that he had matured his title through prescription---Apart from the fact that such plea was taken at very late stage and without any basis, title by prescription had been declared un-Islamic and a kind of usurpation by Supreme Court in Maqbool Ahmad's case (1991 SCMR 2063) therefore, such plea was of no avail to defendant---Suit of possession thus, stood rightly decreed.

Maqbool Ahmad v. Government of Pakistan 1991 SCMR 2063 rel.

**(b) Adverse possession---**

---Requirements---For maturing title through adverse possession it is sine qua non that person making assertion of adverse possession must establish disclaimer of the title which must be notorious and explicit.

**(c) Limitation Act (IX of 1908)---**

---Art. 144---Claim through adverse possession and prescription---Such claim is un-Islamic and a kind of usurpation.

Maqbool Ahmad v. Government of Pakistan 1991 SCMR 2063 distinguished.

Sardar Zahur Ahmad for Petitioner.

Khalid Rehman Qureshi for Respondent.

Date of hearing: 14th May, 1994.

## **JUDGMENT**

This petition under section 115, C.P.C. for revision of the judgment and decree passed by District Judge, Haripur, dated 18-10-1992, whereby he confirmed the judgment and decree of Civil Judge, Haripur, dated 24-3-1991, has been filed by Raza Muhammad petitioner against Mst. Maftoolan Jan respondent. Relevant facts giving rise to the present litigation are that Mst. Maftoolan Jan respondent had purchased the suit house through registered deed No. 1252 dated 5-12-1984, wherein the present petitioner Raza Muhammad was residing not as tenant but, in fact, he was given this concession by the original owner Mst. Razia Sultana as gratus. As per the aforementioned registered deed, respondent had purchased 18/32 share in the house and she purchased the remaining portion of the house i.e. 14/32 share through another deed dated 26-12-1984 which is placed on file as Exh. P.W.2/1. It is pertinent to note that this deed was also registered subsequently in accordance with law.

2. From the averments of " the parties it appears that petitioner Raza Muhammad had agreed, through the efforts of the original owner that he would vacate the premises for the respondent, Mst. Maftoolan Jan as soon possible, but later on, he refused to do so. Respondent Mst. Maftoolan Jan approached the Court of Rent Controller for eviction of the petitioner but the application was dismissed on the ground that there were no relations of landlord and tenant between the petitioner and the learned Rent Controller also directed the respondent than plaintiff to have recourse to a Civil Court for obtaining possession of the suit premise's. Mst. Maftoolan respondent then filed a suit in the Court of Civil Judge-1, Haripur for possession of the suit property on the ground which have been enumerated in the foregoing paragraphs. The suit was contested by petitioner Raza Muhammad then defendant and as many as 10 issues were framed.

3. From the perusal of the record it transpires that petitioner Raza Muhammad has never taken a specific stand with regard to his claim over the said house but, all along, he has tried to create doubts in the title of Mst. Maftoolan Jan respondent. The suit was proceeded with, by the learned trial Court and after recording the evidence a decree was passed in favour of Mst. Maftoolan respondent. Not content therewith, the petitioner filed appeal in the Court of District Judge, Haripur. The petitioner met with no better fate in the said Court and his appeal was also dismissed on 18-10-1992. Hence the present revision petition.

4. After hearing the learned counsel for the rival parties and going through the record with their valuable assistance it transpires that the documents which made the basis of the title of the respondent were never challenged by the present petitioner during the two trials. Similarly, there is no other interested party forthcoming on the record of the case, who claims the ownership of the suit premises. It is also pertinent to note that all along the petitioner has never laid hand on the suit premises either by way of ownership or by way of tenancy. It is strange to note that throughout the litigation the petitioner Raza Muhammad has never disclosed as to what inherent right he is possessing in the suit property for which he is resorting to the litigation.

5. From the perusal of the plaint and written statement it becomes clear that the respondent had very specifically declared Raza Muhammad petitioner as stranger to the property in para. 3 of the plaint. But the petitioner did not take any stand or exception to this allegation of the respondent. In the same wake the petitioner has stated that he is residing in the suit premises for the last 20/25 years but again a dilemma comes in the way as to what does he mean by saying so, because, he has never taken the plea of adverse possession in his pleadings. The perusal of issues framed by the trial Court also indicate that there is no issue on the point as to whether the present petitioner had attained the title of the property by prescription. It was vehemently argued on behalf of the petitioner that Mst. Maftoolan Jan respondent was owner of only 18/32 share and, therefore, she had no right to eject the petitioner from the said premises. But this point is negated by the record, in that agreement deed for purchase of the rest of 14/32 share in the suit premises has been placed on file in evidence as Exh. P.W.2/1. There is no objection to the exhibition of this document in evidence, by the present petitioner which clearly proves that the respondent had purchased the entire suit premises. Towards the conclusion of the arguments by the learned counsel for the petitioner a very feeble attempt was made to establish the point that the petitioner had attained the title of the property by prescription as he was having adverse possession of the suit premises for more than 20 years. For maturing title through adverse possession, it is the sine qua non that the person making this assertion must establish disclaimer of title which must be notorious and explicit. Furthermore, the dictum of Supreme Court in case of Maqbool Ahmad v. Government of Pakistan (1991 SCMR 2063) has declared title by prescription as un-Islamic and a kind of usurpation. The aforesaid dictum of the august Supreme Court has taken out bottom from the stand of adverse possession.

6. In view of the aforesaid observations this revision petition is bereft of merit and, therefore, dismissed with costs.

AA./1634/P

Revision dismissed.