

Form No.HCJD/C-121
ORDER SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Civil Revision No.59188 of 2024

Abdul Rehman etc.
Versus
Nazir Ahmad etc.

Sr.No. of Order/ Proceeding	Date of Order/ Proceeding	Order with signatures of Judge and that of parties or counsel, where necessary.
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30.09.2024 Mr. Nadeem-ud-Din Malik, Advocate for the petitioners.

Through this civil revision, the petitioners have challenged the vires of judgment & decree dated 11.09.2024 passed by the learned Addl. District Judge, Zafarwal who accepted the appeal of the respondents, set aside the judgment & decree dated 09.02.2022 passed by the learned Civil Judge, Zafarwal and decreed the suit for declaration filed by the respondents as prayed for.

2. Brief facts of the case are that respondents No.1 to 31/ plaintiffs filed a suit for declaration against the petitioners and proforma respondents No.32 to 37/defendants contending therein that Bashir Ahmad, Muhammad Sharif and Munshi, predecessor-in-interest of the respondents/plaintiffs were local residents, they were owners in possession of Khasra Nos.853/1 and 853/2. That Ghulam Muhammad and Nazir Ahmad (predecessor-in-interest of the

defendants) were migrated from Jammu & Kashmir in the year 1947. Predecessor-in-interest of the respondents/plaintiffs were cultivating the suit property. That in consolidation (Bandobast) of land, Khasra Nos.853/1 and 853/2 were changed into Khasra Nos.1041 and 1042. The petitioners/defendants with connivance of the revenue official got incorporated their names in column of cultivation as Dakheelkar in the record of rights for the years 1976-77, without any justification and they were not entitled to get incorporate said entry as their names were not recorded before 21st day of October 1868. In the year 1980 and 1984 consolidation proceedings were carried out whereby Khasra Nos.1041 & 1042 were again changed into Khasra Nos.1774 & 1775. The petitioners/defendants were also got entered as Dakheelkar in the column of cultivation in the record of rights for the years 1981 & 1982. On the basis of those unwarranted entries, an order was passed by the Assistant Commissioner, Narowal on 26.05.1996 and on the basis of said order petitioners got attested mutation No.2537 dated 26.09.1996 for conferment of proprietary rights whereas the entire proceedings are void, illegal and based on fraud.

Petitioners/defendants No.1,2,5 to 17 filed contesting written statement. Out of divergent

pleadings of the parties, issues were framed and evidence was recorded. The trial court vide judgment & decree dated 09.02.2022 dismissed the suit of the respondents. Respondents, feeling aggrieved with the aforementioned judgment & decree, preferred an appeal which was accepted by the appellate court vide judgment & decree dated 11.09.2024 who after setting aside the judgment & decree dated 09.02.2022 decreed the suit for declaration filed by the respondents as prayed for. Hence, this civil revision.

3. Arguments heard. Record perused.
4. Under Section 6 of the Punjab Tenancy Act, 1887, a person should hold tenancy before 21st day of October, 1868. For ready reference, Section 6 of the Act ibid is reproduced as under:

“6. Right of occupancy of other tenants recorded as having the right before passing of Punjab Tenancy Act, 1868.—A tenant recorded in a record-of-rights sanctioned by the Provincial Government, before the twenty-first day of October, 1868, as a tenant having a right of occupancy in land which he has continuously occupied from the time of the preparation of that record, shall be deemed to have a right of occupancy in that land unless the contrary has been established by a decree of a competent Court in a suit instituted before the passing of this Act.”

Section 5 of the Punjab Tenancy Act, 1887 requires that a tenant should have been in possession over the land at the time of commencement of said Act ibid or since more than two generations in the male line descendants for a period not less than 20 years without

paying rent. For ready reference, Section 5 of the Act ibid is reproduced as under:

“5. Tenants having right of occupancy.— (1) A tenant—

(a) who at the commencement of this Act has, for more than two generations in the male line of descent through a grandfather or grand uncle and for a period of not less than twenty years, been occupying land paying no rent therefor beyond the amount of the land-revenue thereof and the rates and cesses for the time being chargeable thereon, or

(b) who having owned land, and having ceased to be land-owner thereof otherwise than by forfeiture to the Government or than by any voluntary act, has, since he ceased to be land-owner, continuously occupied the land, or

(c) who, in a village or estate in which he settled alongwith, or was settled by, the founder thereof as a cultivator therein, occupied land on the twenty first day of October, 1868, and has continuously occupied the land since that date, or

(d) who, being jagirdar of the estate or any part of the estate in which the land occupied by him is situate, has continuously occupied the land for not less than twenty years, or having been such jagirdar, occupied the land while he was jagirdar and has continuously occupied it for not less than twenty years,

has a right of occupancy in the land so occupied, unless, in the case of a tenant belonging to the class specified in clause (c), the landlord proves that the tenant was settled on land previously cleared and brought under cultivation by, or at the expense of, the founder.

(2) If a tenant proves that he has continuously occupied land for thirty years and paid no rent therefor beyond the amount of the land-revenue thereof and the rates and cesses for the time being chargeable thereon, it may be presumed that he has fulfilled the conditions of clause (a) of sub-section (1).

(3) The words in that clause denoting natural relationship denote also relationship by adoption, including therein the customary appointment of an heir and relationship, by the usage of a religious community.”

The petitioners failed to produce their pedigree table and *waja tasmia* to establish that they were descendants of original tenant and they occupied the land for more than two generations without paying any rent and their predecessor was settled on or before 31.10.1868 whereas their status was mentioned in revenue record as ‘tenants at will’. Thus, tenancy of the petitioners has not been established through any documentary evidence. Reliance is placed on a judgment titled as *Muhammad Shafi and others Vs. Custodian of Evacuee Property and others (1985 CLC 3005)* and *Amir Hussain Shah and 5 others Vs. Ranjha and others (2000 YLR 2188)*. Under Section 6 the Punjab Tenancy Act, 1887, Dakheelkar occupancy tenant is the only tenant who has possession upon the land about 20 years prior to promulgation of the said Act. Moreover, DW1 in his cross examination has admitted that they are evacuee from Azad Jammu & Kashmir in 1947. DW2 also stated that they migrated from Jammu & Kashmir at the time of partition of India. Petitioners/defendants in their written statement mentioned that their predecessors were in possession of suit property for the last 40/41 years which proves that defendants were not in possession of the suit property since 21st day of October 1868. The record also shows that prior to the preparation of record of

rights 1976-77 the names of predecessors of petitioners were not mentioned in the revenue record as occupancy tenant rather names of predecessors of the respondents/plaintiffs are mentioned in column of ownership in the record of rights pertaining to the years 1956-57 (Exh.D2), 1964-65 (Exh.D4) & Exh.P1 respectively. Further, it is worth mentioning here that prior to sanctioning of impugned mutation No.2537 dated 26.09.1996, the particulars of the petitioners did not exist in the revenue record as occupancy tenant and even no affirmative document is produced by the petitioners to show their being occupancy tenants under the Tenancy Act 1887, as such any entry made by the revenue officer as well as order dated 26.05.1996 passed by the Assistant Commissioner, Narowal are perverse and patently illegal. The trial court decided issue No.4 in favour of the respondents /plaintiffs but the petitioners neither challenged the findings on said issue nor filed any cross objections under Order XLI Rule 22 CPC, as such the said issue had attained the status of finality against the petitioners/defendants and had become past and closed transaction. Reliance is placed on Pakistan International Airlines Corporation Vs. Aziz ur Rehman Chaudhary and another (2016 SCMR 14).

5. As the trial court has failed to appreciate the legal and factual aspects of the case and on the basis of misreading and non-reading of evidence dismissed the suit of respondents/plaintiffs whereas the appellate court through a well-reasoned judgment has decreed the suit and has committed no illegality. It is well settled law that in the event of conflict of judgments, findings of appellate Court are to be preferred, unless it is proved from the record that such findings are not supported by evidence. Reliance is placed on the cases titled as Muhammad Hafeez & Another Vs. District Judge, Karachi East & Another (2008 SCMR 398) and Rao Abdul Rehman (deceased) through legal heirs Vs. Muhammad Afzal (deceased) through legal heirs and others (2023 SCMR 815).

6. In view of the matter, this civil revision is hereby dismissed in limine being devoid of any merits with no order as to cost.

7. Before parting with this judgment, it is important to note that the revenue hierarchy without following the procedure prescribed in Sections 5 & 6 of the Punjab Tenancy Act, 1887 is granting proprietary rights to many persons in the province on the basis of The Punjab Conferment of Proprietary Rights on Occupancy Tenants and Muqarraridars Act,

2012 and also ignoring the definition of “occupancy tenant” mentioned in Section 2(b) of the Act, 2012 ibid. The act of the revenue hierarchy is not only unwarranted but also illegal and unlawful which is required to be addressed. Thus, a copy of this judgment be transmitted to the Senior Member, Board of Revenue, Punjab who shall issue clear directions to all the concerned quarters to consider the criteria prescribed in Sections 5 & 6 of the Punjab Tenancy Act, 1887 before granting proprietary rights under Section 2(b) of The Punjab Conferment of Proprietary Rights on Occupancy Tenants and Muqarraridars Act, 2012.

**(CH. MUHAMMAD IQBAL)
JUDGE**

Approved for reporting.

JUDGE

*Shahzad Mahmood /
Abdul Hafeez*