IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
MR. JUSTICE GULZAR AHMED
MR. JUSTICE DOST MUHAMMAD KHAN

Civil Appeal No.1207 of 2004
a/w CAs 1208/04 and CAs No.577-578 of 2006
(On appeal from the judgment dated 17.04.2001, passed by the Lahore High Court, Lahore in C.R.s No.376-377 of 1998)

Mohammad Ijaz (in CAs No.1207-1208/04)
Muhammad Hussain (in CAs No.577-578/06)
....Appellants

Versus

Mohammad Shafi (decd.) through L.Rs.
..Respondent in all cases

For the appellants: Ch. Mushtaq Ahmad Khan, Sr. ASC
(CAs 1207-1208) Mr. Ishfaq Qayyum Cheema, ASC

(CAs 577-578): Mr. Muhammad Siddique Khan Baloch, ASC

For respondents No.1-2: Mr. Taki Ahmed Khan, ASC
(CAs No.1207-1208)

For respondent No.3: Ex-parte
(in call cases)

Date of hearing: 06.1.2016

JUDGMENT

Dost Muhammad Khan, J.— This single judgment shall also decide CA No.1208/04 and CAs No.577-578/06 because all have arisen from almost the same judgment of the Lahore High Court dated 17.04.2001, through which Civil Revision Petitions No.376-D and 377-D of 1987 were allowed and two separate suits for possession through exercise of right of pre-emption were decreed by reversing the judgment and decrees of the learned Additional District Judge, Camp at Narowal.

2. Leave to appeal in all the four cases was granted to consider as to whether the suits, filed by the respondents/preemptors were presented to the competent court on 30.05.1963 and if it was not

so then, whether these had become time barred on the date when the same were received by the competent forum/Civil Judge, Narowal, after the said Court reopened for judicial work.

3. The epitome of the relevant facts of the present controversy is that, the appellants in these two sets of appeals purchased land through two different transactions. In the first transaction, the land measuring 53-K, 4-M was purchased on 31.05.1962 through mutation No.675 for sale consideration of Rs.4,000/-. Through the second transaction, the remaining land of the vendor, measuring 41-K, 16-M was purchased on 21.12.1962.

4. The respondents herein, on the basis of superior right of pre-emption, instituted two separate suits on 30.5.1963, but before the then Tehsildar of the area, due to the absence of the Civil Judge. These suits were transmitted by the Tehsildar to the learned Civil Judge, who received the same on 5.6.1963 and were duly registered.

5. The appellants/vendees contested both the suits on various legal and factual grounds however, after holding trial, both the suits were decreed by the Trial Court vide judgment and decrees dated 10.12.1985. On appeals, filed by the appellants, the learned Additional District Judge, Camp at Narowal held that the suit, through which the first transaction of sale was pre-empted, was barred by time as in his view these were not presented or filed in a competent court while about the second suit the learned District Appellate Court held that after dismissal of the first suit, the vendees i.e. the present appellants had become co-owners in the suit property thus, they were possessing equal right of pre-emption and in this way superior right of pre-

emption could not be claimed by the respondents/preemptors, thus, the second suit was also dismissed and both the appeals were allowed.

6. The learned Judge in Chamber of the Lahore High Court, Lahore through the above Civil Revision Petitions, reversed the findings of the learned Additional District Judge and restored the judgments and decrees of the Trial Court and decreed both the suits.

7. The entire controversy needed to be resolved is, the one discussed in para-2 of this judgment.

8. Learned counsel for the parties also addressed arguments on this point alone.

We have considered their valuable arguments and have carefully perused the record as well.

9. It is an admitted fact that only one Civil Judge was posted at Narowal, which by then was having the status of Tehsil, or to say, sub-division. The filing of the suits before the Tehsildar in the absence of the Civil Judge from the station, was a regular practice therefore, filing of the present suits before him could not be taken as an exception.

10. Learned ASC for the appellants argued with considerable vehemence that notification No.157/C-II-26 dated 10.02.1969, issued by the learned District Judge, Sialkot, who was competent to issue the same, could not be given retrospective effect to cover the presentation or filing of the present suits before the then Tehsildar, Narowal therefore, it was wrongly relied upon by the learned Judge in Chamber of the Lahore High Court.

To clarify the factual position for the purpose of drawing legitimate inference there-from, the said notification is reproduced below:-

> *"I hereby authorize the Tehsildars Narowal and Shakargarh Tehsils who are receiving plaints in the absence of a Civil Judge in that area to sign challan forms for the deposit of rent and other amounts in consequent (consequence) of orders passed by the Civil Judge in that behalf."*

The words employed in the notification strongly suggest to an unrebuttable extent that the Tehsildars Narowal and Shakargarh, both were already authorized in receiving plaints in the absence of Civil Judge in that areas however, through this notification they were conferred upon additional powers to sign challan forms for the deposit of rent and other amounts in consequence of orders passed by the Civil Judge in that behalf.

11. Neither the appellants have brought on record any evidence to the contrary nor the learned Additional District Judge, who reversed the judgments and decrees of the Trial Court, has taken pains to probe into the matter in a legal manner by tracing out the origin of the authorization of Tehsildars by the District Judge of the Sessions Division, under Rule 7(c) of the High Court (Lahore) Rules and Orders, Chapter-I, Part-B, read with section 23 of the Civil Court Ordinance, 1962.

12. It must always be kept in mind that the establishment of judicature has been ordained by Article 175 of the Constitution. In Sub-Article (3) of Article 175 ibid it was mandatory for the State to separate the Judiciary from the Executive progressively within the initial period of five years however, this period was extended to

fourteen years by the then Martial Law Administrator, by inserting the amendment through Presidential Order No.14 of 1985 however, after the landmark judgment of this Court in the case of ***Government of Sindh v. Sharaf Faridi*** **(PLD 1994 SC 105)** the Judiciary was ultimately separated from the Executive Branch in 1994-95 due to the written undertakings, given by the Federal Government and all the Provincial Governments.

13. The reported precedents of this Court would show that presentation of plaints before the Tehsildar, where no other judicial officer of low grade was available, was a consistent practice in vogue in the said days when the Executive limb of the State was also exercising judicial powers. It may not be out of place to mention that Tehsildar possesses and exercises two-fold jurisdiction. Under the Land Revenue Act, he acts as a Revenue Officer which falls within the administrative province of the revenue authorities however, the same Tehsildar was graded as 1st Class or 2nd Class Magistrate/Revenue Courts under the provisions of **The Punjab Tenancy Act, 1887.** In this regard, reference may be made to the case of ***Elahi Bakhsh v. Mst. Balgees Begum*** **[1992 PSC 1655(b)],** therefore, we are unable to subscribe to the plea taken by the learned counsel for the appellants.

14. As already pointed out that for the resolution of civil, criminal and revenue disputes, different classes of courts have been constituted through different enactments. In some categories of cases, these different categories of courts exercise almost the same and similar jurisdiction but procedure for that is differently provided. In this regard, reference may be made to a revenue court where a title dispute is raised then the revenue officer or the Collector may frame

any issue and decide the title himself or in the alternative, may refer it to the Civil Court for determination. Similarly, with regard to the dispute over immovable property, Magistrate of 1st Class exercises powers to regulate the possession of it and confers it on the other party like the Civil Court does it u/Ss. 8 and 9 of the Specific Relief Act, 1877.

15. As the present suits were instituted in the early days when Sessions Divisions were few in the then West Pakistan and only camp courts were held at Tehsil Headquarters at different intervals, hence we entertain no amount of doubt that on the crucial date, the lonely Civil Judge posted at Narowal, was not present and similarly the Tehsildar was much earlier authorized to receive the plaints, however, through the ibid notification of 1969 extra powers were conferred upon him to deal with urgent matters because of the temporary absence of Civil Judge.

16. The litigants are the major stakeholders in the justice system. It is because of the court fee paid, different types of fine recovered and cost imposed upon them, a handsome revenue is generated for the State from their pockets thus, it is the constitutional and legal obligation of the State to provide the maximum facilities to the litigants for the redressal of their grievance through different courts duly constituted. It was in this background that the Lahore High Court had authorized the District & Sessions Judges to confer upon any officer, powers of receiving plaints to sign and endorse forms for the deposit of rent and other amounts in the temporary absence of the Civil Judge from the Tehsil Headquarters.

17. Just for a moment, if it is assumed, *albeit* not correct, that the then Tehsildar was not competent to receive the plaint and the learned District & Sessions Judge of District Sialkot had also not issued any notification or public notice to directly receive such plaints, etc. then, for such omission the respondents/plaintiffs cannot be blamed nor they can be held to be at fault because it was/is the legal obligation of the court to facilitate the litigants, approaching the courts conveniently. There is a well-known maxim ***"Actus Curiae Neminem Gravabit"*** (an act of the court shall prejudice no man) thus, where any court is found to have not complied with the mandatory provision of law or omitted to pass an order, required by law in the prescribed manner then, the litigants/parties cannot be taxed, much less penalized for the act or omission of the court. The fault in such cases does lie with the court and not with the litigants and no litigant should suffer on that account unless he/they are contumaciously negligent and have deliberately not complied with a mandatory provision of law. (see PLD 1972 SC 69). Even if it is held that filing of the plaint before the Tehsildar was not valid then, section 4 of the Limitation Act and Rules of Propriety will come into play and no limitation shall run against such party till the date, the competent court i.e. of Civil Judge reopened for judicial work.

The provision of S.4 of the Limitation Act does not extend or enlarge the period of limitation, prescribed under the law however, it certainly stops the clock to tic forward to the prejudice of the litigant due to closure of the Court and permit him/them to file the plaint/appeal/application on the re-opening of the Court, albeit the period of limitation provided there-for had expired on the day when the court was closed. In the present case, the evidence does furnish

proof that the Presiding Officer was on tour to another Tehsil/District and was holding Camp Court there, obliging the present respondent to have approached him in case he was reachable for the filing of the plaints. In any case, the respondents/plaintiffs cannot be held to have committed any fault or default in presenting the plaint to the Tehsildar, who was regularly receiving the same, duly authorized by the District & Sessions Judge by then.

18. In this case, the learned Civil Judge without any exception or reservation received the plaints from the Tehsildar and registered the same in the relevant register, which is another fact, suggesting that the practice of receiving the plaints by the Tehsildar was well in the field and was duly acknowledged, therefore, in our considered view the contention of the learned ASC for the appellants is absolutely unfounded and liable to be rejected. In this regard, reference may be made to the case of ***Rashad Ehsan and others v. Bashir Ahmad*** **(PLD 1989 SC 146)**. Similar proposition was resolved by this Court in the above manner in the case of ***Muhammad Yar v. Muhammad*** **(2003 SCMR 1772)** where a plethora of authorities, right from the Indian jurisdiction upto 1968 were relied upon.

19. We fully endorse the view taken by the learned Judge in Chamber of the Lahore High Court that on one hand the learned Additional District Judge held almost a similar view but jumped at the conclusion without any justification by holding that because due to dismissal of the 1st suit, the vendees/appellants herein had become co-owners in the suit land and have equal right therefore, the superior right of preemption of the respondents/plaintiffs has been brought to naught and was not enforceable. This was rightly held to be a wrong

conclusion against the statutory provisions of law and was rightly set aside by the High Court.

20. During the course of hearing of these appeals, we have observed that right from the beginning upto this Court, the appellants/vendees have taken shelter behind mere technicalities to defeat the right of pre-emption of the respondents/plaintiffs, although certain technicalities of law, where right is vested in the opposite party by efflux of time or where public policy demands so, may become relevant however, the same cannot be given any preference by defeating the ends of justice, depriving a party of substantive rights, which accrued to it under the law and principle of justice.

In this regard the famous principle laid down in the case of ***Imtiaz Ahmad v. Ghulam Ali*** **(PLD 1963 SC 382)** is reproduced below:

> *"…the proper place of procedure in any system of administration of justice is to help and not to thwart the grant to the people of their rights. All technicalities have to be avoided unless it be essential to comply with them on grounds of public policy…..Any system which by giving effect to the form and not the substance defeats substantive rights (and) is defective to that extent."*

21. Judged and discussed from all angles, we are entertaining no amount of doubt that the learned Judge in Chamber of the Lahore High Court has fairly comprehended the correct legal position, according to the facts and circumstances of the case and has applied the correct principle of law to it, to which no exception can be taken on any ground whatsoever.

22. Accordingly, all these appeals are found bereft of legal merits, both on factual and legal premises. Thus, the same are dismissed, with no order as to costs.

Judge

Judge

Islamabad, the
6th January, 2016
Nisar /-'

Approved For Reporting.