

In the Supreme Court of Pakistan
(Appellate Jurisdiction)

Present:

Mr. Justice Anwar Zaheer Jamali
Mr. Justice Dost Muhammad Khan
Mr. Justice Umar Ata Bandial

Civil Appeals No.1194 to 1197 of 2014

(On appeal from judgment of Peshawar High Court, Peshawar dated
21.7.2014 passed in R.F.A. Nos.6-P, 16-P/2014 & C.R. 105-P & 106-P/2014)

Zafeer Gul (in all appeals)

Appellant

Versus

Dr. Riaz ali & others (in C.A. No.1194/2014)
Anar Gul & others (in C.A. No.1195/2014)
Mst. Farzana Javed & others (in C.A. No.1196/2014)
Haji Sattar Gul & others (in C.A. No.1197/2014)

Respondents

Appellant (in all appeals): In person

For respondents No.1,3-7: Qazi Jawwad Ehsanullah, ASC
(in C.A. No.1194-1195/2014)

For respondents No.3-6: Qazi Jawwad Ehsanullah, ASC
(in C.A. No.1196-1197/2014)

Date of hearing: 14.5.2015

Judgment

Anwar Zaheer Jamali, J – These four connected appeals arise out of the common judgment dated 21.7.2014, passed by learned Single Judge in Chambers of the Peshawar High Court, Peshawar, in R.F.A. Nos.6-P of 2014, 16-P of 2014, and C.R. Nos.105-P of 2014 & 106-P of 2014. In these cases the order dated 16.12.2013, passed by the learned Additional District Judge, Peshawar, thereby ordering return of the memo of two civil appeals, was challenged by the respondents on the ground that looking to the valuation of the suit in the plaint and the pecuniary jurisdiction of the Court of

Additional District Judge, Peshawar at the time of filing civil appeals No.58 of 2013 and 59 of 2013, on 5.10.2011, and in view of the relevant provisions of the Suit Valuation Act 1887 and the Civil Courts Ordinance, 1962, such remedy was rightly availed. Therefore, the order for return of memo of appeals for its presentation before the concerned forum was uncalled for and illegal.

2. We have heard the arguments of the appellant in person and the respondents' learned ASC and have perused the case record, which reveals that through impugned judgment, relying upon the ratio of the judgment in the case of Muhammad Ayub & four others versus Dr. Obaidullah and six others (1999 SCMR 394) and some other case law, the Peshawar High Court set aside the order dated 16.12.2013, impugned before it and remanded the case to the appellate Court, which at the relevant time had pecuniary jurisdiction to hear these appeals and decide the same on merits and in accordance with law. In doing so, the High Court has aptly taken into account the fact that as the civil suit for partition in respect of the disputed property, instituted before the trial Court, was valued at Rs.230 for the purpose of jurisdiction and Rs.15 for the purpose of Court fee, therefore, in terms of section 18 of the Civil Courts Ordinance, 1962, such valuation disclosed in the plaint was to be considered the value of the suit property for determining the forum of appeal *qua* pecuniary jurisdiction of the appellate Court.

3. To expound the legal position in relation to the valuation of a suit for partition and separate possession for the purpose of jurisdiction, it will be pertinent to mention here that every co-sharer in the immovable property is legally deemed to be in its joint possession to the extent of his undivided share. Therefore, in a suit of such nature, law permits him tentative valuation of his share in the immovable property as specified in the plaint for the purpose of pecuniary jurisdiction, which is subject to final determination by the Court; till then the valuation shown in the plaint is to be deemed as proper value of the suit property for the purpose of availing the remedy of appeal qua determining the forum of appeal. For further guidance see: Ajiruddin Moudal and another versus Rahman Fakir and others (PLD 1961 S.C. 349).

4. As a result of above discussion, no exception could be taken to such findings in the impugned judgment enunciating the above legal position.

5. Accordingly, above captioned four appeals are dismissed.

Judge

Judge

Announced at Islamabad
On 25th May, 2015

Judge

Judge
Approved for reporting.
Riaz

